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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY, AND FOR ADJUSTMENTS TO ITS RATES AND CHARGES FOR UTILITY SERVICE FURNISHED BY ITS EASTERN GROUP AND FOR CERTAIN RELATED APPROVALS.	Docket No. W-01445A-11-0310

Arizona Corporation Commission
DOCKETED
JUN 13 2012
DOCKETED BY ZM

RUCO'S MOTION TO FILE LATE FILED EXHIBIT
(EXPEDITED RULING REQUESTED)

The RESIDENTIAL UTILITY CONSUMER OFFICE ("RUCO") hereby moves to file as a late filed exhibit or in the alternative asks the Commission to take judicial notice of the attached Comments of the Alaskan Attorney General filed before the Regulatory Commission of Alaska on May 31, 2012.

The hearing in this matter ended on May 24, 2012. On May 31, 2012, the Alaskan Attorney General filed comments before the Regulatory Commission of Alaska in the Matter of the Consideration of a Plant Replacement Surcharge Mechanism for Water and Wastewater

Utilities ("PRISM"). The PRISM is a DSIC mechanism and is referred to as such in the Comments. The Comments include a lengthy analysis of the DSIC and its implementation in other states (the 11 states recognized in this docket) and includes an in-depth analysis of each state that has a DSIC, an explanation of the DSIC in those states as well as the legal basis and evolution of the DSICs. The Comments further, among other things, analyze whether the DSIC in other states reduce rate case frequency, improve quality of service, are affordable for ratepayers, and are actually being implemented by those eligible utilities.

These are the exact issues that Commissioner Burns, in her opening remarks in the subject case, sought guidance on. Transcript 43-44. Unfortunately, there has been very little put into the record during the hearing in response to Commissioner Burns's questions. The Comments are not only relevant, they are necessary for the Commission to get a full understanding of the DSIC and how it has been implemented and the results in other jurisdictions.

RUCO believes that the Commission can take judicial notice of the Comments as they were filed at the Regulatory Commission of Alaska and are hence part of that Commission's public records. However, RUCO did contact the Company, through its attorney who has indicated that the Company would object to the admission of this document. Given the Company's position RUCO felt it appropriate to file this motion. RUCO requests an expedited ruling because RUCO would like to use the Comments in its Opening Brief which is due June 26, 2012,

RESPECTFULLY SUBMITTED this 13th day of June, 2012.

Daniel Pozefsky
Chief Counsel

AN ORIGINAL AND THIRTEEN COPIES
of the foregoing filed this 13th day
of June, 2012 with:

Docket Control
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RECEIVED
By the Regulatory Commission of Alaska on May 31, 2012

STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners: T.W. Patch, Chair
Kate Giard
Paul F. Lisankie
Robert M. Pickett
Janis W. Wilson

In the Matter of the Consideration of a Plant Replacement Surcharge Mechanism for Water And Wastewater Utilities	))))	R-11-006

COMMENTS OF THE ATTORNEY GENERAL

The Attorney General (AG), under the authority of AS 44.23.020(e), offers the following comments in response to Order R-11-6(2), dated May 1, 2012.

INTRODUCTION

Order R-11-6(2) requests comments on a Utility Group's[1] position paper and suggested regulations for a surcharge that would allow water and wastewater utilities to recover costs associated with infrastructure investment outside of normal rate cases.[2] Because only a limited number of states have experimented with or implemented similar

[1] The Utility Group consists of AWWU, GHU/CUC, Doyon Utilities and David Kranich, a small utility consultant. Order R-11-6(2) at 2.

[2] Order U-11-6(2) refers to the surcharge as a Plant Replacement and Improvement Surcharge Mechanism or a "PRISM." These surcharges are given different names in different jurisdictions. In Delaware, Indiana, New York, Maine and Pennsylvania the surcharge is called a Distribution System Improvement Surcharge (DSIC). In California it is called an Infrastructure Investment Surcharge Mechanism (IISM). In Connecticut and New Hampshire it is called a Water Infrastructure and Conservation Act (WICA) surcharge. In Illinois it is called a Qualifying Infrastructure Plant (QIP) surcharge. In Missouri it is called an Infrastructure System Replacement Surcharge (ISRS), and in Ohio it is called a System Improvement Surcharge (SIC).

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surcharge mechanisms, these AG Comments will first track the evolution of the surcharge mechanisms, and their success at addressing many of the same issues identified by the Commission as support for possible PRISM (or "DSIC") implementation in Alaska.[3] These Comments will then address the Utility Group's proposed regulation.

The AG Comments presented below represent the culmination of a substantial research project conducted by RAPA staff on the issues presented in Order R-11-6(2). RAPA staff research included, but was not necessarily limited to:

- Review of statutes and regulations of other jurisdictions implementing DSIC-type surcharges;
- Review of orders from other state commissions, and utility and intervener testimonies relating to the implementation of DSIC-type surcharges;
- Review of other state commission websites;
- Review of National Regulatory Research Institute (NRRI) white papers;
- Participation in NRRI *Webinars* on water utility issues;
- Discussions with the National Association of State Utility Consumer Advocates (NASUCA) Water Committee;

[3] The infrastructure investment surcharge programs are referred to in these Comments using the generic term "DSIC."

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- Discussion with at least one utility representative, Commission staff member and/or consumer advocate from each jurisdiction where a DSIC-type surcharge has been allowed; and
- Communications with National Association of Water Companies (NAWC).

SUMMARY OF COMMENTS

The results of DSIC surcharge adoption in other jurisdictions in improving quality of service or decreasing rate case frequency are largely mixed or inconclusive. Where measurement is possible, there is little if any evidence showing DSIC adoption has led to a reduction in rate case frequency or rate case expense. Instead, the surcharge's availability generally subjects ratepayers to more frequent rate increases at the expense of rate stability, while at the same time jeopardizing assurances that infrastructure costs rolled into rates are prudently incurred.

The vast majority of DSIC-eligible utilities also do not use the surcharge. Its use has instead been largely relegated to a handful of large multi-state utilities. And even though a DSIC program (much like any utility's capital improvement plan) allows for infrastructure improvements which can improve service quality, it is difficult or impossible to track whether DSIC adoption has increased the rate of infrastructure investment.

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Based on the experience of other jurisdictions, only two large water and wastewater utilities can be expected to use the surcharge in Alaska with any regularity.[4] Such limited use suggests a "one-size fits all" regulation might not be a good fit for Alaskan utilities of different sizes, facing different issues and having different levels of sophistication. It would appear prudent instead to address the necessity of implementing a surcharge in individual adjudicatory dockets rather than in a rulemaking.[5]

Adopting the Utility Group's proposed surcharge is questionable for added reasons. DSIC adoption circumvents numerous ratemaking safeguards, interjecting a substantial degree of uncertainty into the ratemaking process to the likely detriment of ratepayers. In addition, substantial commission resources appear to have been devoted to implementing and administering DSIC-type surcharges in other jurisdictions.[6] To the extent added Commission resources will be required to administer this surcharge in

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[4] Anchorage Water & Wastewater Utility (AWWU) and Golden Heart Utilities/College Utilities Corp. (GHU/CUC).

[5] *See Amerada Hess Pipeline Corp. v. APUC*, 711 P.2d 1170, 1178 (Alaska 1986)("[A]bsent statutory restrictions and due process limitations, administrative agencies have the discretion to set policy by adjudication instead of rulemaking.")

[6] For example, Connecticut regulates approximately 20 water utilities. Of the 20, approximately 5 participate in its DSIC program. The Connecticut review process requires the commission staff and the advocate to look at utility systems closely. Utilities are required to show replacement projects are incremental to an ongoing replacement program for eligibility. The Connecticut Commission has approximately 2 or 3 staff qualified to conduct these reviews. The state's consumer advocate generally accompanies staff on their assessments. In Delaware, all DSIC rates are subject to later review, audit or revision. Illinois, Indiana and Ohio require substantial filings to justify initial eligibility and ongoing review. And in Pennsylvania, Commission staff performs periodic management and operations audits or management efficiency investigations in addition to administering a program to aid in monitoring lost and unaccounted for water.

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Alaska, it is unclear how the Commission will be able to ensure that consumers will be adequately protected from unreasonable surcharge requests without added resources.[7]

Finally, the Utility Group's proposed regulation is seriously flawed. It is over-inclusive as to the scope of items allowed without imposing any cap or other limit, it allows for use of a stale rate of return (ROR) at odds with case law and fails to account for reduced risk in the proposed DSIC formula, it is unsynchronized because it fails to require updated plant accounts and accumulated depreciation, it appears to violate state law by allowing the use of cost estimates without any true-up to actual cost at the time of assessment, it employs an impossible-to-use test for eligibility, and it is structured in a way that will deprive the Commission and any interested person from testing included cost items in a meaningful way.

[7] Under AS 44.62.195, agencies are required to evaluate if adopting a new regulation would require increased state appropriations. The Commission should therefore comprehensively evaluate what added resources it would need (and the Attorney General might need as well) to administer any new surcharge mechanism in order to ensure consumers are protected from unreasonable rates. The Commission is mandated by law to provide consumers this protection. AS 42.05.381(a). It also appears unlikely a DSIC could be administered in Alaska without increased administrative costs, particularly given the Commission's existing duties under AS 42.05.175.

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USE OF DSIC-TYPE SURCHARGES IN OTHER JURISDICTIONS

Pennsylvania was the first state to implement a DSIC-type surcharge in 1997. Since then another seven states have authorized DSIC-type surcharges by statute[8]:

- Connecticut: C.G.S.A. § 16-262w[9]
- Delaware: 26 Del. C. § 314[10]
- Illinois: Ill. Stat. § 9-220.2[11]

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[8] Copies of each state's statutes are attached in Appendix A.

[9] In Connecticut, before a utility is allowed to implement a DSIC (WICA), it must first file an initial assessment report addressing the condition of their system. Based on that report the Commission may find the utility eligible to participate in the WICA program. In order to participate in a WICA program a utility must show that the replacements projects included in the surcharge are incremental to the utilities ongoing replacement program.

Once a utility is found to be WICA eligible it must make a filing ranking the projects it intends to pursue. Projects are limited to the distribution system. (There is a separate mechanism for treatment plant projects). Once the ranked projects are placed into service the utility can file a WICA surcharge request. The Commission staff and the Connecticut Office of Consumer Counsel verify that the plant was approved and is in service. There is currently a 7.5 percent cap on the surcharge. Most WICA surcharges are currently about 2 percent.

[10] Under Delaware's DSIC, utilities are able to recover depreciation and pretax return on post-test year used and useful plant additions between rate cases. The DSIC is allowed to renew existing water mains, valves, services, meters and hydrants or to extend mains to eliminate "dead ends." DSIC projects must either be a water supply project identified as, or subsequently added as an "A list projects" in the December 1999 Governor's Task Force Report to resolve regional water supply concerns, or the project must be placed in service to meet new state or federal water quality standards rules or regulations.

The Delaware DSIC rate is capped at 7.5 percent of the amount billed to customers for all other rates and charges, but cannot increase more than 5 percent within any 12 month period. DSIC rates are implemented subject to later "review, audit or revision." The Delaware DSIC statute also allows Commission staff or the Public Advocate to revisit and, after a hearing (without the necessity of a general rate filing), reset a water utility's cost of capital to reflect its current cost of capital. The DSIC rate is adjusted back to the date of the motion to reflect any change in the cost of capital determined by the Commission.

[11] The Illinois DSIC is limited to a return on the investment in and depreciation expense on plant items which (1) are not included in base rates and (2) are not installed to serve new customers. An annual true-up of the revenues received through the surcharge is required.

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- Indiana: IC § 8-1-31 *et. seq.*[12]
- Maine: 35-A MRSA §6107-A[13]
- Missouri: V.A.M.S. § 293.1000 – 393.1006[14]
- Ohio: O.R.C. §4909.1762[15]
- Pennsylvania: 66 Pa. C.S. § 1350 *et. seq.*[16]

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[12] Indiana DSIC projects are limited to used and useful and non-revenue producing net plant necessary to transport treated water from the treatment facility to the point where it is delivered to customers which was not included in base rates. DSIC costs include depreciation and pre-tax return, adjusted for changes in the weighted average cost of capital on eligible projects. The surcharge is capped at 5 percent of revenues from the last rate case. Utilities are prohibited from filing a DSIC and a general rate case in the same year.

Indiana DSIC filing requirements include specified schedules and forms along with testimony describing the projects, identifying why projects are needed, how the projects benefit the utility and the ratepayers, and the age of plant being replaced. Utilities must also include a 5 year replacement plan and proposed tariff sheets. Annual reconciliation filings that include an offset for retired plant are also required.

[13] Maine will allow water utilities to implement infrastructure improvement surcharges subject to rules that are yet to be established by the Maine Public Utility Commission. New rules are to be modeled after the Connecticut rules, which among other things limit eligible plant and include a cap on the surcharge.

[14] The Missouri DSIC is limited to a single utility, Missouri-American. The DSIC may include estimated distribution plant subject to refund until the next rate case. The surcharge includes "bonus depreciation" property taxes, pre-tax return, a reconciliation factor and adjustments for plant retirements, and eligible plant additions. There is no preapproval process for what plant will be allowed into the surcharge, but the surcharge is subject to refund until after the subsequent rate case. Staff review generally includes work order inspection, discovery and discussions with utility personnel.

[15] Ohio DSIC filings must include testimony supporting the proposed surcharge. Eligible projects are limited to distribution or gathering plant or to main extensions that eliminate documented supply problems. Proposed projects must be listed by major property group, account and by month. Projects must be traceable to the general ledger and / or continuing property records and be used and useful at a date certain. Commission staff does a physical inspection of projects.

The surcharge calculation includes proposed rate base, pre-tax rate of return and net depreciation expense to arrive at a revenue requirement for the infrastructure improvement surcharge. Each surcharge is capped at 3 percent of revenues for each customer class however; the utility can have up to three surcharges at one time.

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Indiana and Illinois enacted DSIC legislation in 2000. Delaware did so in 2001, Missouri in 2002, Ohio and Connecticut in 2007, and Maine in 2012.

In addition to implementation by statute, a number of state commissions have authorized or rejected the use of DSIC-type surcharges administratively.[17] Beginning in 2002, the New York Public Utility Commission began accepting some

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[16] Pennsylvania's DSIC was originally limited to water systems when it was adopted in 1997. 66 Pa.C.S.A. §1307(g). This statute was repealed in 2012. The new statute applies to water, wastewater, electric and gas distribution systems. 66 Pa. C.S.A. § 1350 *et. seq*. The Pennsylvania Commission regulates approximately 184 water and wastewater utilities – 73 of which are eligible for the DISC. Its staff conducts periodic management and operational audits, or management efficiency investigations. The results of these investigations are considered in general rate cases. It has a program to aid water utilities in monitoring Lost and Unaccounted for water (LAUF). Municipally-owned utilities like AWWU are not eligible for Pennsylvania's DSIC.

Commission staff and the Pennsylvania Department of Environmental Protection (DEP) communicate regularly regarding troubled infrastructure areas. Sometimes the DEP makes filings in various utility application proceedings asking the Commission to require utility compliance with DEP requirements.

The Pennsylvania Commission also has authority to prohibit utilities from filing general rate cases for set periods of time. At least some Pennsylvania water utility shareholders make voluntary contributions to the "H_20 Help to Others Program" which provides grants, discounts and water saving devices and education to customers.

[17] At least one state court has concluded a public utility commission is without authority to implement a surcharge in the absence of express enabling legislation. *See Popowsky v. Pennsylvania Public Utility Commission*, 869 A.2d 1144, 1158 – 1160 (Pa. Commw. Ct. 2005). *Accord, State, Office of Public Counsel v. Missouri Pub. Serv. Comm'n.*, 331 S.W.3d 677, 685 (Missouri App. 2011)(finding the Missouri Commission had express statutory authority to implement regulations allowing periodic rate adjustments outside a general rate case). These AG Comments do not address this issue other than to note the RCA's broad enabling legislation (AS 42.05.141(a)(3)), and the APUC/RCA's long-standing approved use of surcharges first in tariffs, and later as permitted by regulation. *See* Orders U-74-2(2), U-74-115(6), U-79-23(5)(discussing the use of fuel adjustment clauses since 1974) and 3 AAC 52.501 - .519 (2004). *See also, MEA v. Chugach Electric Ass'n*, 53 P.3d 578, 581 (Alaska 2002)(discussing use of a COPA surcharge established in a utility's tariff in dicta). *Cf., MEA v. Chugach Electric Ass'n*, 58 P.3d 491, 494 (Alaska 2002)(concluding the Commission had jurisdiction to adjudicate a dispute arising under a contract executed between Chugach and MEA that governed the preliminary method by which changes in rates to be imposed by Chugach on MEA would be noticed and developed. The Court reasoned that because the contract "expressly deals with issues lying within the Commission's core area of jurisdiction – changes in rates, charges or other tariff provisions" that the Commission had jurisdiction to adjudicate the dispute.)

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settlement agreements which allowed DSIC surcharge implementation in limited instances.[18] In August 2007, the California Public Utility Commission authorized one utility to implement a DSIC-type mechanism in a single service area, but this utility has since requested the surcharge be discontinued.[19] In 2009, the New Hampshire

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[18] The New York settlements allowing a DSIC have limited it to expected distribution upgrades. The DSIC is limited to expenditures recorded in certain accounts. The DSIC can be implemented for any project that the settling parties agree is needed. No DSIC can be implemented until the project is used and useful.

Settling parties generally review the utilities capital improvement plans, and projects that are in progress to determine what projects they are willing to agree should be included in a DSIC rate plan. When the utility files to actually implement an agreed DISC or rate plan increase, the Commission's staff conducts a review to ensure that the requested capital investment has actually been made or the agreed cost has been incurred.

Many rate case settlement agreements include a 3 to 5 year rate plan, where the utility agrees not to file a new rate case for a set period of time. In exchange the utility is allowed to increase rates on an agreed timeframe, subject to refund. The rate plan rate increases are based on an understanding of what infrastructure improvements or cost increases the utility is expected to incur. DISC surcharges are sometimes a part of that process. During the next rate case, the utility's operations during the rate plan period are reviewed. If projected costs did not materialize then a downward revenue requirement adjustment is included in the next case. Over the last two years, DSIC use in settlements has decreased as utilities and advocates have turned to adding provisions to three year rate plans instead.

[19] Docket No. D0708030. http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/71722.htm. On July 28, 2011, the utility requested that its DSIC be discontinued. *See* http://docs.cpuc.ca.gov/efile/MOTION/141195.pdf at page 305, Sec. 11.7 (where the utility, California-American, stated "the quarterly DSIC rate surcharges have resulted in frequent and confusing rate changes for customers.")

The Cal-Am DSIC was initially approved in 2007 as a pilot project for the utility's Los Angeles district. In approving the pilot program, the CPUC stated, among other things that "We have carefully reviewed Cal-Am's capital investment plan and the underlying supporting cost determinations, and set a cap commensurate with this review. . . . We have strengthened Cal-Am's capital asset planning requirements and will fully review its planning and the results of the pilot program in the next GRC proceeding."

The Cal-Am DSIC was subject to the following requirements: eligibility was limited to specific projects as determined in the prior general rate case, the program was capped at 7 percent of revenues, with a quarterly 4 percent cap, and revenues received under the DSIC were subject to true-up provisions with interest assessed at the 90 day commercial paper rate.

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Commission accepted the first of three settlement agreements that allowed DSIC-type surcharges to be implemented on a pilot project basis.[20] And in late 2011, the New Jersey Board of Public Utilities released a DSIC draft rule for public comment.[21]

In 2011 and 2012, the Iowa and West Virginia Commissions both denied utility requests to implement DSIC-type surcharges. The Iowa Commission found claims about regulatory lag inadequate to justify surcharge adoption.[22] The West Virginia Commission also found DSIC adoption unreasonable.[23] It instead concluded use of an

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[20] Docket No. DW 08-098, Order 25,019. http://www.puc.state.nh.us /Regulatory/CASEFILE/2008/08-098/ORDERS/08-098%202009-09-25%20ORDER%20NO.%2025%20019-%20ORDER%20APPROVING%20%20SETTTLEMENT%20AGREEMENT%20AND%20PERMANENT%20RATE%20INCREASE.PDF.

The New Hampshire DSIC (WICA) has been limited to projects which the Consumer Advocate agrees to in advance. The WICA is limited to distribution system projects. An initial infrastructure assessment report detailing the capital improvement projects eligible is required. The assessment takes into account asset management (break history, size of pipe, materials, water quality, soil type, age, location and, paving projects) hydraulic improvements and the need for redundancy.

[21] http://nj.gov/bpu/newsroom/news/pdf/20111109.pdf.

[22] *See*, https://efs.iowa.gov/efiling/groups/external/documents/docket/094181.pdf at pages 6 - 14 (where the Iowa Commission concluded regulatory lag is not a sufficient justification for implementing the surcharge in part because of the utility's ready access to interim rate relief, and because the utility could not show how *ratepayers* would benefit "either in the form of increased time periods between general rate cases" or from "a reduction in the rate of return on the [surcharge] investment to reflect reduced regulatory lag.")

[23] http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=319347&NotType='WebDocket' at pages 7- 8 (where the West Virginia Commission stated that use of a DSIC-type surcharge would not be allowed, concluding approval of a DSIC would "inevitably be viewed by the public [and the utility] as automatic and additional rate increases that the DSIC will visit on [the utility's] customers.")

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alternative ratemaking mechanism (an "AFFAC") would accomplish the same goals as a DSIC without creating a new and administratively burdensome surcharge methodology.[24]

Similar surcharges (or "riders") proposed by different types of utilities have been rejected by other state commissions. For example, in 2011 the Maryland Commission rejected a gas distribution utility's request to implement a surcharge for pipe replacement. The utility unsuccessfully claimed implementing a surcharge would allow it to improve service quality by permitting it more rapid cost recovery, and that consumer rates would be reduced because rate case frequency would fall.[25]

The following table summarizes this DSIC-type surcharge history for water and wastewater utilities by jurisdiction over time:

1997	**Pennsylvania.** Legislation allowing a DSIC for water utilities is enacted with a 5 percent cap.
2000	**Indiana.** Legislation allowing a DSIC for water utilities is enacted with a 5 percent cap.
2000	**Illinois.** Legislation allowing a DSIC for water and wastewater utilities is enacted with a 5 percent cap.
2001	**Delaware.** Legislation allowing a DSIC for water utilities is enacted with a 7.5 percent cap.
2002	**Missouri.** Legislation allowing a DSIC for Missouri American Water Company is enacted with a 10 percent cap.

[24] "We believe that the income flowing from AFFAC accounting, although non-cash earnings, will provide relief for WVAWC between rate cases without the need for the quarterly rate adjustments required by the Company DSIC proposal. We will allow an accounting procedure that includes recording an AFFAC debit in a single account rather than to individual plant accounts. The accumulated AFFAC debits may be depreciated through the application of an average depreciation rate on the accumulated AFFAC balance. . . . The AFFAC should provide a current return on all qualified plant investment and will eliminate the current regulatory lag between the date that the qualified plant goes into service and the effective date of rates in the Company's next rate case."

[25] http://webapp.psc.state.md.us/Intranet/Maillog/orders_new.cfm. Maryland Public Service Commission Docket No. 9267, Order 84475 (November 14, 2011) at 95 – 96, 106 - 108.

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2002	**New York**. The NY Commission begins accepting settlement agreements that include DSIC surcharge provisions.
2005	**Pennsylvania.** Commonwealth Court reverses a Pennsylvania Commission decision allowing DSIC use by a wastewater utility because of the absence of enabling legislation. *Popowski v. Penn. P.U.C.*, 869 A.2d 1144 (Pa. Commw. Ct. 2005).
2007	**Ohio**. DSIC legislation enacted for water and wastewater utilities with a 3 percent cap for each filing.
2007	**Connecticut**. Legislation allowing a DSIC for water utilities enacted with a 7.5 percent cap.
2007	**California**. The California PUC allows California-American Water Company to implement a DSIC in one of its service districts, subject to a 4 percent cap.
2009-2010	**New Hampshire**. The NH Commission accepts a series of three settlement agreements that allow DSIC surcharges on a pilot basis.
2010	**California**. California American files a request to discontinue its DSIC surcharge effective December 2011.
2011	**California**. California American discontinues its DSIC.
2011	**West Virginia**. The Public Service Commission of West Virginia denies West Virginia-American's request to implement a DSIC.
2011	**New Jersey**. NJ Board of Public Utilities publishes draft DSIC rules for public comment. Draft rules include a 5 percent cap.
2012	**Iowa**. The Iowa Utilities Board denies Iowa-American's petition to implement a DSIC.
2012	**Maine**. Legislation allowing a DSIC for water utilities enacted.
2012	**Pennsylvania.** Legislation enacted expanding DSIC allowed use to wastewater utilities.

In all, eight states have enacted legislation allowing DSIC surcharges, three states have accepted settlement agreements that have allowed utilities to implement DSIC surcharges, one state has recently issued draft regulations for public comment regarding a DSIC, and at least two state commissions have explicitly denied utility requests to use

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DSIC surcharges. A total of approximately 693 utilities are eligible to implement a DSIC type surcharge,[26] but research to date shows only 34 (4.9%) have done so. Of the 34 utilities that have implemented a surcharge, at least 20 are owned, in whole or in part by one the nation's four largest water companies: Aqua America, American Water Works, United Water Company and Utilities Inc.

WHAT ARE THE CLAIMED PURPOSES OF DSIC SURCHARGES?

Utility goals in seeking DSIC surcharge adoption typically focus on reducing regulatory lag or difficulties utilities face reaching authorized returns.[27] These same objectives ("problems") are identified by the Utility Group in this Docket. At Appendix A to Order R-11-6(2), the Utility Group lists three basic complaints:

- Regulatory lag creates a problem for utilities that are highly capital intensive and which need "robust" capital investment plans.
- Utilities are not earning their authorized returns and therefore must file "almost annual rate cases."
- Filing rate cases is costly which "creates a disincentive for utilities to invest capital into their aging systems."

The National Association of Regulatory Utility Commissioners (NARUC) has also addressed DSIC-type surcharges in resolutions. But the focus of its DSIC

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[26] Excluding Maine.

[27] *E.g.*, West Virginia (Order dated April 18, 2011 in Docket No. 10-0920-W-42T at 7); Iowa (Order dated February 23, 2012 in Docket No. RPU-2011-0001 at 11). Links for these orders are found above.

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discussion is very different. NARUC makes no mention of reducing regulatory lag, improving utility achieved returns or any other utility-oriented benefit as a driver for DSIC adoption. NARUC instead focuses on perceived *ratepayer benefits* as the litmus test underlying its DSIC endorsement.[28]

In its February 1999 Resolution, NARUC lists six *ratepayer benefits* then thought to flow from use of a DSIC-type surcharge:

- "improved water quality"
- "increased pressure"
- "fewer main breaks"
- "fewer service interruptions"
- "lower levels of unaccounted for water"; and
- "more time between rate cases which leads to greater rate stability."[29]

Other jurisdictions adopting a DSIC-type surcharge articulate similar ratepayer-oriented, rather than utility-oriented, goals. For example, the Pennsylvania

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[28] Appendix B. A subsequent 2005 NARUC Resolution referenced DSIC surcharges, among other tools, as having been identified by the National Association of Water Companies (NAWC) as a method state commissions could use to promote "capital investment and cost effective rates." But no consensus was reached by those entities participating in the NAWC Forum (which did *not* include any consumer advocacy groups) on the tools NAWC's Summary Report ultimately proposed – including the DSIC. *See* Appendix C. *See also* Order R-11-3(1), App. at 7 ("NAWC is a trade organization for private water companies, so it cannot be assumed that water utility customers or consumer advocates would necessarily concur that these practices are the best.")

[29] Appendix B.

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Commission's 2009 Annual Report says its DSIC surcharge was designed to provide ratepayers with "improved water quality, greater rate stability, increased water pressure, fewer main breaks, fewer service interruptions, and lower levels of unaccounted for water."[30]

NASUCA has also addressed DSIC surcharges, disagreeing that DSIC adoption is appropriate. In a June 1999 resolution, NASUCA recommended state legislatures and state commissions avoid adopting DISC surcharges for numerous reasons, including:

- prudence and reasonableness reviews are truncated or inadequate;
- regulatory incentives to control costs are reduced or eliminated;
- price stability is reduced;
- a lack of any "convincing evidence . . . to support the claim that the frequency of rate cases is reduced by such [surcharges]"; and
- creating an inappropriate shift in business risk away from utilities towards consumers for the purpose enticing utilities to perform obligations they are already required to perform by law.[31]

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[30] http://www.puc.state.pa.us/general/publications_reports/pdf/09-10_PUC_Ann_Rpt.pdf.

[31] Appendix D. Other consumer organizations have criticized DSIC-type surcharges for reasons similar to those stated by NASUCA. Appendix E is a copy of an October 2011 *Food & Water Watch* publication detailing many objections to using DSIC-type surcharges, claiming their use: sidesteps adequate regulatory review, ignores offsetting decreases in operating expenses, unreasonably inflates a utility's return by failing to account for reduced risk, and creates "unnecessary consumer burden[s]" and "inflated water bills."

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The competing leanings of these two associations (NARUC and NASUCA) show DSIC surcharge adoption is quite controversial. However, at a minimum, the gatekeeper for preliminary DSIC consideration should be as NARUC suggests – a demonstration of *actual ratepayer benefits*.

DO DSIC SURCHARGES REDUCE RATE CASE FREQUENCY?[32]

RAPA staff reviewed the rate case filing practices of water utilities using DSIC surcharges in 10 states. Thirty four utilities in 10 jurisdictions have implemented some sort of DSIC-type program since 1997. Where records were available, RAPA staff compared the number of rate cases the DSIC-using utilities filed before they began using a DISC with the number of rate cases they filed after implementing the DSIC:

- California implemented a DSIC for a single utility in a single service district in 2007 which the utility asked to be discontinued in 2010. It is unclear what conclusions can be drawn from California's limited DSIC experiment.[33]

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[32] It cannot be claimed DSIC adoption has resulted in fewer wastewater utility rate cases because research has not shown any wastewater utility having taken advantage of DSIC surcharge availability where it is permitted. Wastewater utilities have been authorized to use a DSIC in Ohio (since 2003) and Illinois (since 2000). No other jurisdictions appear to allow wastewater utilities to use a DSIC surcharge other than Pennsylvania which enacted legislation in 2012.

[33] A partial settlement filed in the utility's 2010 rate case included the utility's statement: "The current DISC structure, the quarterly and annual limitations and review process are preventing the program from operating in a beneficial manner. The quarterly DISC surcharges have resulted in frequent and confusing rate changes for customers." CPUC Docket No. A1007007. http://docs.cpuc.ca.gov/efile/MOTION/141195.pdf at page 305, Sec. 11.7.

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- Connecticut's DSIC was adopted in 2008, and its impact on utility filing frequency is largely inconclusive. To the extent any preliminary conclusion can be reached it would be that rate case frequency is largely unchanged.[34]
- Delaware adopted a DSIC in 2001. Three utilities use the surcharge regularly; two others have used it on a single occasion.[35] RAPA staff

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[34] Connecticut regulates approximately 20 water utilities, of which 5 participate in its DSIC (WICA) program. Since 2002, the five participating Connecticut water utilities have filed rate cases at the following frequency:

- Torrington Water filed a rate case in 2008, about the same time the WICA program became available.
- United Water of Connecticut filed a rate case in 2006 and one in 2009,
- Aquarian Water Company filed rate cases in 2004, 2007 and 2010,
- Connecticut Water Company filed rate cases in 2006, 2007 and 2010, and
- Avon Water Company filed rate cases in 2005 and 2009.

[35] There are 12 regulated water utilities in Delaware. All are DSIC eligible. Three have made regular DSIC filings. These three utilities are: United Water of Delaware (serving 110,000 customers), Tidewater Utilities (serving approximately 32,700 customers), and Artesian Water Company, Inc. (serving approximately 76,000 customers). Two other utilities have each made a single DSIC filing. These two utilities are: Prime Hook Water Company (serving 440 customers), and Sussex Shores Water Co. (serving approximately 1,200 customers). All three utilities regularly filing a DSIC have filed rate cases since 2005 (which is the time limit on electronic access to Delaware Commission records):

- United Water – Delaware filed rate cases in 2006, 2009, and 2010,
- Tidewater Water Company filed rate cases in 2006, 2009 and 2011, and
- Artesian Water Company filed rate cases in 2006, 2008 and 2011.

During the same timeframe one of the two utilities that filed a single DSIC filed a rate case (Sussex Shore Water Co. in 2007), and two non-DSIC participating utilities filed rate cases in 2005, 2007 and 2010.

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was not able to access pre-2001 electronic records to determine if utility rate case frequency decreased since Delaware's DSIC was implemented.

- Illinois adopted a DSIC in 2000. Its adoption has had mixed results in rate case frequency for two participating utilities. One utility filed one less rate case in ten-year block comparisons, while the other filed the same number of rates cases in the same ten-year block comparisons.[36]
- Indiana's DSIC was adopted in 2000. Four utilities participate. Rate case frequency has either increased or remained the same for each since DSIC adoption.[37]

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[36] Illinois regulates approximately 33 water, 5 sewer and 14 combined water/sewer utilities. Only Illinois-American Water Company and Aqua Illinois, Inc., the state's two largest utilities, have used the Illinois DSIC (QIP).

Prior to QIP implementation, Illinois-American/Citizens Utilities filed rate cases for its water utility in 1990, 1992, 1994, 1995, and 1997. After the QIP was implemented, Illinois-America filed rate cases in 2000, 2002, 2007, and 2009.

Prior to QIP implementation, Aqua Illinois (f/k/a Consumer Illinois), filed rate cases for its water and/or sewer utilities in 1990, 1991, 1993, 1995, 1997, 1998, and 1999. After QIP implementation, Aqua Illinois filed rate cases in 2000, 2003, 2004, 2005, 2006, 2007, 2008, 2010 and 2011.

[37] There are about 110 water utilities that are eligible to file a DSIC in Indiana. Four have participated in the program: Indiana America Water Company, Utility Center, Inc., Water Services Company of Indiana, and Indiana Water Service, Inc.

Indiana America Water Company serves 284,000 customers. It has made seven DISC filings since 2002 and has filed rate cases in 1991, 1996, 1999, 2001, 2003, 2006, 2009 and 2011.

Utility Center, Inc. serves 12,161 customers. It made five DSIC filings since 2003 and since 1991 it filed rate cases in 2007, 2008 and 2010. Utility Center is owned by Aqua America.

Water Services Company of Indiana serves 184 customers. It filed one DSIC in 2004. Since 1991 it has filed one rate case in 2005. Water Services of Indiana is owned by Utilities Inc.

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- Maine's DSIC was just adopted in 2012. No data is available to draw conclusions.
- Missouri's DSIC was adopted in 2002. One utility uses the surcharge.[38] RAPA staff was not able to access pre-2002 electronic records to determine if this single utility's rate case frequency has decreased.
- New Hampshire has allowed a DSIC in pilot projects for three different utilities, one in 2009, and two in 2011.[39] Inadequate time has elapsed to evaluate rate case filing frequency for these three utilities.
- New York has allowed DSIC use in five settlement agreements.[40] Because some settlements bar the utility from filing rate cases for a set period, it is not possible to draw conclusions from New York's limited DSIC implementation.

Indiana Water Service Inc. serves 1,825 customers. It filed one DSIC in 2004 and since 1991 it has filed one rate case in 2011. Indiana Water Service Inc. is owned by Utilities, Inc.

[38] The one regulated utility allowed to use the surcharge is Missouri-American, which serves approximately 1.5 million customers. It filed general rate cases in 2003, 2007 and 2008. DSIC (ISRS) filings were made in 2003, 2006 (twice), 2008, 2009 and 2010.

[39] The New Hampshire Commission regulates 20 water utilities. The first DSIC (WICA) was approved for Aquarian Water Company in September 2009, the second was approved for Pennichuck Water Works in October 2011, and the third was approved for Pittsfield Aqueduct Company in October 2011.

[40] Long Island American Water (serving 200,000 customers), United Water New Rochelle, Inc. (serving 143,000 customers), United Water New York Inc. (serving 70,240 customers), United Water Westchester Inc. (serving 44,000 customers), and New York Water Service Company (serving 152,000 customers).

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- Ohio's DSIC was enacted in 2003, and procedures implementing it in 2004. Two utilities use the surcharge. One has filed more rate cases since DSIC implementation, and the other has filed rate cases at the same frequency.[41]
- Pennsylvania's DSIC was implemented in 1997. RAPA staff was not able to access pre-1997 electronic records to determine if rate case frequency has decreased for Pennsylvania utilities using the surcharge.

The data available from other jurisdictions does not appear to support a conclusion that DSIC adoption reduces rate case frequency. At best, the results can be said to be mixed or inconclusive. Perhaps more accurately the same data can be said to show no reduction or an actual increase in rate case frequency among utilities using a DSIC.

Testimony filed in a West Virginia Public Service Commission docket supports the later:

> In the twelve years since the DSIC was first implemented, [Pennsylvania American Water Company] has filed six base rate

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[41] The Ohio Commission regulates 15 water utilities and seven wastewater utilities. Only two water utilities use the DSIC (SIC): Aqua Ohio (f/k/a Consumers Ohio Water) and Ohio American Water. No wastewater utilities have used the surcharge.

Aqua Ohio serves 88,000 customers. It has made nine SIC filings and four rate case filings since 2003. From 1993 through 2002 it filed 2 rate cases.

Ohio American serves 200,000 customers. It has made three SIC filings and filed five rate cases since 2003. From 1993 through 2002 it filed five rate cases.

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> cases for its entire utility and three rate cases for selected districts. . . . . Over the same time period the DSIC has been in effect in Pennsylvania, [West Virginia American Water Company] has also filed six base rate cases. Of course, it is difficult to make comparisons between utilities operating in different states, but it does not appear that there is any evidentiary support for the idea that the DSIC will have an impact on how often general rate cases are filed.[42]

DO DSIC SURCHARGES IMPROVE QUALITY OF SERVICE?

Correlating a link between DSIC adoption and service quality improvements based on existing data is difficult. This is because some tie must be found between surcharge access and work that would not have been performed when it was performed but for the surcharge's availability. Since utilities must make capital investments necessary to meet safety and reliability duties as a condition of certification, some tie to the surcharge's use in expediting what would be done anyway must be found in order to judge surcharge effectiveness in improving service quality.[43]

In most jurisdictions finding any link between DSIC adoption and quicker necessary infrastructure investment is illusive. With one possible exception, RAPA staff was unable to find any link showing DSIC availability has speeded up necessary

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[42] July 9, 2010 Supplemental Direct Testimony of Byron L. Harris on behalf of the Consumer Advocate Division of the Public Service Commission of West Virginia in Docket Number 08-0900-42T. http://www.cad.state.wv.us/080900ByronSuppDirect.pdf.

[43] *See* AS 42.05.241 ("A certificate may not be issued unless the commission finds that the applicant is fit, willing, and able to provide the utility services applied for and that the services are required for the convenience and necessity of the public.); AS 42.05.291(a)("Each public utility shall furnish and maintain adequate, efficient, and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.") *See also* Order U-00-115(18) at 12 ("[T]he regulatory covenant does not promise utility owners that they will be able to 'sustain' a utility without supplying equity capital when the utility needs investment.")

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infrastructure investment. The possible exception is Connecticut which requires that a DSIC participant show replacement projects included for surcharge consideration are incremental to the utility's ongoing capital replacement program.

No link has been found in the remaining DSIC jurisdictions. For example, the Pennsylvania Commission's Water & Wastewater Staff were unaware of any documentation or study showing DSIC use correlates with improvements to water quality or quality of service.[44] But since the DSIC has been implemented in Pennsylvania, ratepayers of Pennsylvania's two largest water utilities (both DSIC participants) have added new DSIC surcharges each year, while also increasing base rates virtually every other year.[45] In other words, ratepayers of the two largest Pennsylvania utilities have experienced annual rate increases, but there has been no showing that water quality or quality of service has improved.[46]

UTILITY USE OF DSIC SURCHARGES

Eligible utility use of an available DSIC surcharge shows little wide-spread penetration. As noted earlier, a total of approximately 693 utilities are eligible to use a

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[44] RAPA Staff did receive information from the Pennsylvania Commission showing how many miles of pipe have been replaced for selected utilities. In one example, the Pennsylvania Water Company replaced 25 miles of pipe in 1995 and 81 miles of pipe in 2010. However, Pennsylvania American has 9,900 miles of pipe in its system, and the increase, which is not shown to be a direct result of the DSIC, is replacing less than one percent of its pipe each year.

[45] *See* Appendix F.

[46] RAPA Staff asked NAWC representatives and individuals in each jurisdiction with a DSIC if they were aware of any studies showing that DSIC implementation improved the quality of service and water quality. No one was aware of any study demonstrating such a link.

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DSIC-type surcharge, but research shows only 34 (4.9%) have done so.[47] Of those using a DSIC, the bulk (about 60%) are owned, in whole or in part by one the nation's four largest water companies, Aqua America, American Water Works, United Water Company, and Utilities Inc.

REGULATORY LAG & REALIZING AUTHORIZED RETURNS

Concerns about regulatory lag and difficulties in reaching authorized returns are typical justifications offered by utilities in support of DSIC surcharge adoption. But while efficient ratemaking is an optimal goal, it must be carefully engineered.

Regulatory lag performs an important public interest role in the ratemaking process. It provides an incentive for utilities to operate efficiently and contain costs and it is a necessary byproduct of comprehensive regulatory oversight which must be in place to protect captive consumers from public utility monopoly power.[48] As the Commission put it in 1986, ". . . a reasonable period of regulatory lag which works contrary to a

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[47] Excluding Maine.

[48] *See* Order U-83-74(7) at 13 (addressing the benefits of adhering to a normal rate review processes. The benefits mentioned include creating relatively stable consumer rates, adherence to the matching principle, creating effective opportunities for affected consumer participation in the rate review process, and **"not to be minimized is that under the standard ratemaking approach utilities have a considerable incentive to minimize costs, either to maintain profits or offset other rising costs under existing rates and, thereby, to avoid the necessity of seeking rate relief in formal rate proceedings with their unlimited scope of review and uncertain results. Surcharges, on the contrary, are erratic whenever they are intended to recover on a monthly basis variable current expenses."** [Emphasis added].)

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utility's financial interests is proper to impose on a utility in exchange for the benefits of economic insulation . . ."[49]

Surcharges (including a DSIC) can easily sidestep the safeguards of adequate regulatory oversight and create a substantial danger that consumers will be saddled with excessive rates:

> [A]s a surcharge item, the situation would be lacking the typical dynamic for the utility to minimize costs . . . Indeed, there could be a disincentive to the utility's exploring larger reconfigurations in the event of a mandated reimbursement in order to avoid complications in determining proper allocations to the surcharge account. This is not to suggest that the utility's normal prudence or the Commission's own review efforts would be ineffective checks, or that some sort of notice provision could not be interwoven into an MFRCA surcharge. However, the added value of a utility's traditional incentive to minimize cost is not a factor that should be lightly removed. . . . Moreover, **it should not be forgotten that surcharges** even in fuel and wholesale power situations **are not well received of late (if ever), principally because their presence reduces incentives to minimize or offset cost increases.**[50] [Emphasis added].

Regulatory lag therefore plays a very important role in ratemaking, and it is part of the price tag associated with a grant of monopoly power. Other than an after-the-fact review for prudence,[51] regulatory lag is the only regulatory tool available to protect

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[49] Order U-86-20(3), *reprinted at* 7 APUC 514, 516 (Alaska P.U.C. 1986). This discussion occurred in the context of the Commission's review of a request for interim rate relief.

[50] Order U-83-74(7) at 15.

[51] Historically, utilities in Alaska do not seek a prudence predetermination for planned infrastructure investment. Instead, Alaska's Commission has generally relied on after-the-fact project reviews conducted in the context of a rate case. *See, e.g.*, Order U-10-29(15). There have been exceptions. *See* Order U-10-41(5).

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captive ratepayers because it creates an economic incentive for utilities to curtail unnecessary spending:

> The delay in recovery between when a company incurs capital expenditures and when it recovers a return of and on such expenditures in its base rates is referred to as regulatory lag. In satisfying their obligation to provide safe and reliable service to their ratepayers, companies have the incentive to invest in capital improvements rather than O&M expenses, even if a capital improvement represents a sub-optimal solution as compared to non-capital production factors. Unlike O&M expenses, capital expenditures provide a return to their shareholders when ultimately included in rate base (as stated above, this bias toward capital investment is known as the Averch Johnson effect). **The existence of regulatory lag provides an important counterbalance to the Averch Johnson effect because companies will not earn a return on their investments until their next rate case proceeding. As such, regulatory lag provides the incentive for companies to pursue a more balanced strategy between capital expenditures and O&M expenses in their provision of safe and reliable service to their ratepayers.**[52] [Emphasis added].

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[52] *Petition of Massachusetts Electric Co. and Nantucket Electric Co.*, 2009 WL 4543112 (Mass. D.P.U. 2009). *See also, In re Southern Nevada Water Co.*, 1996 WL 304355 (Nev. P.S.C. 1996)("Among the potential sources of allocative inefficiencies Bonbright cites is the Averch Johnson effect (AJ). The AJ effect suggests that traditional rate base/rate of return regulation biases a regulated firm toward more capital intensive modes of production because of the ability to earn a return on capital investments included in rate base. For instance, in the electric utility industry, utilities are sometimes believed to be biased in favor of building their own generating capacity, rather than purchasing available capacity from other sources. To the extent that this bias has occurred, it would be consistent with the Averch Johnson effect."); *Popowsky v. Pennsylvania Public Utility Commission*, 869 A.2d at 1160 ("The PUC's belief that there is no limit on its authority to approve the use of a surcharge as the means for any utility to recover its costs for any facility addition is contrary to precedent and to sound principles of statutory construction. It means that utilities can recover their capital costs without any incentive to invest wisely and efficiently. Indeed, when recovery is allowed on a cost-plus basis, the incentive is otherwise because the return factor is calculated as a percentage of the capital cost.")

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There can be a tension between regulatory lag and its impact on a utility's achieved return. But in evaluating this tension, two things should be remembered. First, Alaskan utilities have a largely unfettered right to interim rate relief usually implemented within 45 days of filing a request for rate relief.[53] Any discussion of regulatory lag should include interim rate relief's use in Alaska to mitigate its impact.[54] Second, a utility's authorized return is generally viewed as "a ceiling that utilities typically do not actually realize. In other words, although utilities are permitted to achieve a profit margin up to the statutorily authorized rate of return, they typically operate at a level of profitability below this figure."[55]

Regulatory lag therefore serves two important functions. It serves as a protective shield for ratepayers, and it also functions as an economic driver used to incent utilities to make efficient economic decisions which helps utilities migrate towards their authorized returns.[56]

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[53] The Commission currently employs a "not frivolous or obviously without merit" standard. *See* Order U-10-101(7) at 4 – 5.

[54] It is rare to see an Alaska utility rate case filing unaccompanied by a companion request for interim rate relief.

[55] *Southern New England Telephone Co. v. Dep't of Public Utility Control,* 874 A.2d 776 (Conn. 2005). *See also, Re West Virginia-American Water Co.*, Docket No. 10-0920-W-42T at 1 (W.Va. P.S.C., April 18, 2011)("The opportunity of earning a fair ROR is, however, not only a function of Commission approved rates, but also is dependent on the skill and efficiency of utility management. Utilities should stop viewing Commission revenue requirement decreases as an anchor, pulling their return on equity (ROE) down, and start viewing those decisions as a budget target that, if met, will buoy their ROE.") http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=319347&NotType='WebDocket'.

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AFFORDABILITY

Absent in the Utility Group's proposal is any discussion of consumer affordability. This is not a subject that should go unmentioned in review of the Utility Group's surcharge proposal. Even NAWC recognizes that making provision "to assist payment-troubled customers" is a best practice.[57]

Whether the Commission allows implementation of a DSIC or not, Alaskan water and wastewater utility ratepayers can expect steep rate increases in the coming years. For example, AWWU recently projected steep rate increases, even without a surcharge:[58]

Year	Water	Wastewater	Total	5 yr. Inc.
2012 (Actual)	$45.85	$37.35	$83.20	
2017	$67.82	$56.89	$124.71	49.89%
2022	$85.82	$67.30	$153.12	22.78%
2026	$102.64	87.73	$190.37	24.33%

As the table shows, AWWU's residential customers can expect a near 50 percent rate increase in the next five years, which is over three times the 15.9 percent

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[56] The Commission should also be wary about embracing utility claims of under-earning: "[I]n order to test [a utility's] assertion that it did not earn its revenue requirement in the prior years, it would be necessary for Staff to review each of those years and the Commission to resolve disputes for each of those years, essentially holding a complete rate case for each year. Clearly, such a procedure is not feasible." Order U-90-32(4) at 6. *See also, Re Washington Gas Light Co.*, Docket No. 1054, Order No. 14391 at ¶ 9-10 (D.C. P.S.C. 2007)(denying a utility's request for surcharge adoption to remedy the utility's claimed under-recovery of its authorized return.) http://www.dcpsc.org/pdf_files/commorders/orderpdf/orderno_14391_FC1054.pdf.

[57] http://www.naruc.org/Publications/WPF2005report.pdf at 16.

[58] *See* Exhibits GJG-03 and GJG-04 to the Prefiled Testimony of Glenda J. Gibson filed November 11, 2011 in TA137-122/TA134-126.

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total inflation used by the Municipality of Anchorage in its fiscal plans for the same five year period.[59] Affordability is clearly implicated under such circumstances.

Water utilities in many jurisdictions, including Pennsylvania, contribute to programs that help subsidize rates for low income water utility customers. No such protection is afforded to low income Alaskan water utility customers now, nor does the Utility Group propose such a program. Because DSIC adoption can accelerate AWWU's predicted rate increases, some consideration of affordability should accompany consideration of any new surcharge.

COMMENTS ON THE UTILITY GROUP'S PROPOSED REGULATION

There can be no dispute that allowing a DSIC, as a surcharge, would be an exception to the general ratemaking process. Accordingly, the Commission should avoid adopting regulations implementing a DSIC absent a showing of exceptional circumstances.[60] Exceptional circumstances are often best demonstrated in individualized circumstances. Thus, it may be more prudent for any DSIC consideration to be addressed by each utility individually in an adjudicatory docket, rather than in a generic rulemaking docket.

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[59] According to the Municipality of Anchorage's 2012-2017 Fiscal Program, the expected inflation rate for that period is 3.0 percent per year, which equates to a total inflation increase of 15.9 percent over the next five years.

[60] *Madigan v. Illinois Commerce Comm'n*, 2011 WL 4580558 at *8 (Ill. App. 2011)("[B]ecause a rider , by nature, is a method of single-issue ratemaking, it is not allowed absent a showing of exceptional circumstances.")

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For example, as the Commission originally proposed and as the Utility Group suggests, DSIC access is to be limited to plant additions having no "significant impact on revenues or operating costs."[61] This limitation is intended to avoid synchronization or matching problems which normally arise whenever single-issue ratemaking proposals, such as a DSIC, are presented.[62] But no litmus test is given to gauge what is or is not a material or "significant" impact on revenues or expenses. What might be considered *de minimus* to a large utility like AWWU with a larger customer base to spread costs might not be to a small utility like Potter Creek. Such determinations might best be made in individual adjudications, rather than by attempting to fit all water and wastewater utilities in the same regulation box.[63]

Testing claims about prudence or an absence of synchronization problems would also be challenging under the Utility Group's proposed timelines. Under normal

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[61] Order R-11-6(1), App. B at 1, 2, 5.

[62] *Madigan v. Illinois Commerce Comm'n*, 2011 WL 4580558 at *6 ("Single issue ratemaking is prohibited because it considers changes in particular portions of a utility's revenue requirement in isolation, which ignores potentially offsetting considerations and risks understating or overstating the overall revenue requirement.")

[63] Exceptional circumstances justifying surcharge adoption would also likely differ among Alaskan utilities. Unlike many small water utilities, AWWU's capital improvement plan already lays out its timeline for infrastructure investment. AWWU is therefore already making infrastructure investment as it is required to do under AS 42.05.291(a). Surcharge access will not improve service quality because there is no claimed need for surcharge access to make needed improvements. *See* AWWU General Manager Craig Woodard's Prefiled testimony, filed on November 11, 2011 in TA137-122/TA134-126, at Answers 13 – 18. GHU is in a somewhat different but analogous situation. It has already received extraordinary ratepayer subsidies outside of any surcharge to make infrastructure investments. In 2003, the Commission awarded GHU a $5.3 million acquisition adjustment, and earlier an enhanced ROE, in large part because of the utility's plans to upgrade degraded plant it inherited from the City of Fairbanks. *See* Order U-02-13(7) at 5 – 8, and Order U-05-43(15) at 48 – 50.

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guidelines, prudence and synchronization issues are investigated in a rate case which ordinarily provides ample opportunity for discovery and the orderly progression of prefiled testimony. As proposed, this review will now be radically condensed into either 60 or 180 days, and place the initial burden of proof on any party contesting particular cost item's inclusion.[64] Although a burden shift is appropriate in a case where prudence is challenged,[65] we are unaware of any authority that allows such a burden shift for synchronization issues.[66]

The Utility Group's proposed procedure also appears unlikely to result in meaningful review. Within 60 days the Commission must make an initial assessment whether "costs of a specific project or projects qualify for inclusion in a utility's PRISM." But any interested member of the public will need to do so sooner – within 30 days. AS 42.05.411(a). This presumably includes a review of prudence and synchronization matters, as well as a review to ensure all proposed plant addition are

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[64] Order R-11-6(2), App. B at 3, 5.

[65] A utility's request to include costs associated with new plant additions usually occurs in a rate case where a plant addition enjoys a presumption of reasonableness unless a "substantial showing" is made by another party challenging its inclusion in rates. Order U-10-29(15) at 8.

[66] The Utility Group's proposal is internally inconsistent on this point. At Order R-11-6(2), App. B page 3, the Utility Group suggests all initial burdens are placed on parties challenging cost inclusion, whether for prudence or synchronization. However, on App. B page 7, it appears the utility Group recognizes it bears the burden of making a *prima facie* showing that no synchronization issues will arise with the plant proposed to be included. Assuming the later – which is the correct burden placement – the Utility Group then invents a "clear showing" rebuttal standard that is unsupported by law.

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"primarily" dedicated to replacement, improving quality, health or safety improvement.[67] Any unchallenged portion of the surcharge is deemed approved and not subject to refund.[68]

As proposed, any prudence or synchronization challenge will therefore need to be presented by the public even before a right to discovery accrues. It would seem a misstatement to suggest any meaningful prudence or synchronization review can occur within such tight timelines and without discovery. Since AS 42.05.381(a) requires the Commission ensure rates demanded are just and reasonable, the Utility Group's proposed procedure appears to work at cross purposes with the Commission's statutory mandate.

There are five additional flaws with the Utility Group's proposal. First, a cost estimate is used to set the surcharge. There is no true-up.[69] But under prudence and original cost ratemaking requirements, consumers cannot be charged in rates any more than actual cost for invested capital.[70] The Utility Group's recommendation, by

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[67] The proposed regulation does not define or quantify what plant is or is not "primarily" dedicated to these services, or explain why anything that is not specifically dedicated to these services should be allowed in a surcharge at all.

[68] Order R-11-6(2), App. B at 5.

[69] Order R-11-6(2), App. B at 1, 7 ("Inclusion of projects and project costs in a finally approved PRISM surcharge constitutes final approval of the surcharge amounts which are no longer subject to refund to customers.") Obviously if a true-up is used, it should be implemented with interest.

[70] *New England Power Co.*, Op. No. 231, 31 FERC ¶61,047 (1985)("An elementary proposition of utility law and utility regulation, universally recognized, is that public utilities, in the interest of their customers as in their own interest, should be permitted to charge rates which are

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definition, awards a windfall whenever actual plant costs amount to less than estimates provided. The law does not allow what the Utility Group requests. *See* AS 42.05.441(b).

Second, the Utility Group's proposal for demonstrating DSIC eligibility appears impossible to meet. A utility is required to demonstrate that it "did not over-earn its authorized return on rate base as calculated for the most current twelve month period."[71] The Commission has previously held such a test is nonsensical.[72]

Third, the Utility Group's DSIC formula is unsynchronized. The formula used makes no attempt to update rate base to account for plant retirements or accumulated depreciation accruing since a prior rate case.[73] For large utilities, up to three years of plant retirements and accumulated depreciation can be ignored while new plant additions are added. For small utilities, this lack of balance is exacerbated because DSIC eligibility is not tied to the length of time elapsed since a previous rate case. A small utility can be considered DSIC-eligible even though plant accounts and accumulated depreciation have not been reviewed for many years.[74] To the extent any DSIC

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compensatory for the full cost incurred by alert, efficient, and responsible management. It is equally elementary that customers should not be required to pay more than this cost.")

[71] Order R-11-6(2), App. B at 4.

[72] Order U-90-34(4) at 6 ("[I]n order to test [a utility's] assertion that it did not earn its revenue requirement in the prior years, it would be necessary for Staff to review each of those years and the Commission to resolve disputes for each of those years, essentially holding a complete rate case for each year. Clearly, such a procedure is not feasible.")

[73] Order R-11-6(2), App. B at 4.

[74] Order R-11-6(2), App. A at 2.

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regulation is adopted, its initial use should be tied to a current rate case so all plant accounts are current.[75] It appears illogical to suggest otherwise.

Fourth, the Utility Group's proposed DSIC formula improperly uses a utility's previously approved ROR in setting a surcharge.[76] For a large utility, the ROR used in the surcharge formula can be three years old. For a small utility, it could be significantly older.[77] Alaska Supreme Court case law suggests this result would be improper.[78] The ROR used in the formula should instead be tied to the ROR set in a current rate case establishing an entitlement to first use the surcharge, and it should be

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[75] *See* April 28, 2011 Comments of Pennsylvania's Consumer Advocate, Sonny Popowsky, to the Pennsylvania House Consumer Affairs Committee, a copy of which is attached as Appendix G at 5 ("A major reason that utilities are able to make new plant additions between rate cases without having to increase their rates is that traditional base rate making is a two-way street. That is, between rate cases, while a utility is adding new capital investment to the 'rate base' on which is allowed to earn a return, the utility's existing plant is depreciating, which has the effect of reducing the utility's rate base. In a rate case, the Commission looks at both the additions and the subtractions, and establishes a net rate base on which prospective rates are set. **Under a distribution system improvement charge (DISC) . . . however, the Commission looks only at plant additions, without considering the offsetting plant reductions. The DISC thus becomes a one-way street, rather than a two-way street, and allows rate increases even if the utility's overall plant investment is actually declining over time.**" [Emphasis added].)

[76] A stale ROR can include both an outdated capital structure as well as an outdated return on equity component.

[77] Order R-11-6(2), App. B at 6.

[78] *Glacier State Telephone v. APUC*, 724 P.2d 1187, 1192 (Alaska 1986)("The commission has a duty to set a reasonable rate of return for the utility. 'A rate of return may be reasonable at one time, and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally.' [Citation omitted]. **The APUC was obliged to consider the drop in interest rates in the two years since the tariff was filed; it would have done the public a disservice had it ignored the change.**" [Emphasis added].); *see also* Order U-08-157(10)/U-08-158(1) at 37 and 39 (holding it proper to use more recent data to address the growth rate component in a DCF model, and the risk free rate for a CAPM analysis).

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accompanied by an appropriate reduction to reflect reduced risk. Because surcharge availability reduces utility risk, it makes little sense to ignore a surcharge's risk reducing effect when creating a surcharge formula.[79]

Fifth, the Utility Group's proposal is over-inclusive in the plant allowed for surcharge purposes and because no cap is provided. As proposed, virtually any new plant addition would qualify for surcharge application.[80] This sweeping application is substantially greater than the targeted approach first suggested by the Commission.[81] Because surcharge use is an extreme exception to normal ratemaking, it would appear prudent that a cap be employed as is the case in most jurisdictions,[82] and that the surcharge's allowed scope be narrowly tailored to specifically achieve a legitimate *ratepayer benefit* oriented goal.[83]

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[79] *See* Order U-07-76(8) at 71, 80.

[80] R-11-6(2), App. B at 5 ("To qualify for inclusion in a PRISM, a plant addition must consist primarily of plant dedicated to providing service to customers that replaces existing plant, improves the quality of service, increases reliability or redundancy, or promotes public health or safety.")

[81] *See* Order R-11-6(1), App. B at 1 ("For water utilities eligible, property would be USOA Accounts 309 – supply mains, 311 – pumping equipment, 320 – water treatment equipment, 330 – distribution reservoirs and standpipes, 331 – transmission and distribution mains, 333 – services, 334 – meters and meter installations, 335 – hydrants, 336 – backflow prevention devices, and 339 – other plant and miscellaneous equipment. For wastewater utilities, eligible property would be USOA Accounts 360 to 362 – collection sewers, 363 – services to customers, 364 and 365 – flow measuring, 366 and 367 – refuse services, 370 and 371 – receiving wells and pumping equipment, 374 and 375 – reuse, 380 – treatment and disposal equipment, 381 – plant sewers, and 382 – outfall sewer lines.")

[82] Most jurisdictions apply a 5 to a 7.5 percent cap on plant eligible for surcharges.

[83] *Madigan v. Illinois Commerce Comm'n*, 2011 WL 4580558 at * 7 - 8. ("[R]iders should be closely scrutinized because of the issue of single-issue ratemaking. . . . [B]ecause a rider, by nature, is a method of single-issue ratemaking, it is not allowed absent a showing of exceptional circumstances.")

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CONCLUSION

There is little if any objective evidence supporting a conclusion that DSIC surcharge adoption advances the rate at which service quality or reliability improvements are made or that DSIC use reduces rate case frequency or expense. Nor has research disclosed the existence of any objective evidence supporting a conclusion that DSIC surcharge adoption provides any other ratepayer benefits. Instead, surcharge adoption appears to erode established consumer protections and degrade a commission's ability to ensure rates demanded are reasonable. Because DSIC surcharge adoption should be tied to showing an actual *ratepayer-benefit* link, there is little if any justification for employing this extraordinary regulatory tool.

If the Commission concludes otherwise, DSIC adoption creates numerous challenges. Given the magnitude of the matters to be addressed on a tight timeline, it appears that added Commission resources will be needed if a DSIC regulation is implemented. To do otherwise would amount to a surrender of the Commission's duty to ensure utility plant investments are prudent and rates demanded are reasonable. Public policy cannot support this result.

The Utility Group's proposed regulation is also seriously flawed. Its scope is over-inclusive on items allowed, it fails to provide any cap or other reasonable limit on the amount requested, it permits use of a stale ROR at odds with case law and fails to account for reduced risk in the DSIC formula proposed, it is unsynchronized because it fails to require updated plant accounts and accumulated depreciation, it impermissibly

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allows use of cost estimates without any true-up, it employs an impossible-to-use test for eligibility, and it is structured in a way that will deprive the Commission and any interested person from testing the cost items included in a meaningful way.

Respectfully, the Utility Group's proposal for DSIC regulation adoption should be rejected, and this Docket closed.

DATED this 31st day of May, 2012, at Anchorage, Alaska.

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Connecticut General Statutes Annotated Currentness
Title 16. Public Service Companies (Refs & Annos)
Chapter 283. Telegraph, Telephone, Illuminating, Power and Water Companies (Refs & Annos)
§ 16-262w. Water company rate adjustment mechanisms

(a) The Public Utilities Regulatory Authority may authorize a water company to use a rate adjustment mechanism, such as a water infrastructure and conservation adjustment (WICA), for eligible projects completed and in service for the benefit of the customers. A water company may only charge customers such an adjustment to the extent allowed by the authority based on a water company's infrastructure assessment report, as approved by the authority and upon semiannual filings by the company which reflect plant additions consistent with such report. The authority, in consultation with the Office of Consumer Counsel, shall conduct the proceeding in accordance with the provisions of section 16-18a.

(b) On or before ninety days after June 19, 2007, the authority shall initiate a generic docket on what shall be included in a water company's infrastructure assessment report and annual reconciliation reports and the criteria for determining priority of eligible projects. The authority shall provide public notice with a deadline for interested parties to submit recommendations on the report contents and criteria. The authority may hold a hearing on the generic docket but shall issue a decision on the docket not later than one hundred eighty days after the deadline for interested parties to submit their recommendations on the report contents and criteria.

(c) The water company shall file their individual infrastructure assessment report with the authority and such report shall identify the water system infrastructure needs and a water company's criteria for determining priority for eligible projects related to infrastructure. The authority shall address such criteria in its docket initiated pursuant to subsection (b) of this section. Criteria may include, but shall not be limited to, (1) age, material or condition of the facilities; (2) extent and frequency of main breaks or interruption of service; (3) adequacy of pressure; (4) head loss; (5) availability of fire flows; and (6) the potential of such projects to improve system integrity and reliability.

(d) The authority shall approve a water company's individual infrastructure assessment report upon determining that the company has demonstrated through generally accepted engineering practices (1) the infrastructure projects considered for renewal or replacement are eligible projects; (2) such projects will benefit customers by improving water quality, system integrity or service reliability; (3) they adhere to the criteria established for determining priority for infrastructure projects; and (4) there is a sufficient level of investment in infrastructure. The authority may hold a hearing to solicit input on a water company's individual infrastructure assessment report provided a decision on the assessment is made not later than one hundred eighty days after filing. Any such report not approved, rejected or modified by the authority within such one-hundred-eighty-day period shall be deemed to have been approved.

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(e) Notwithstanding the provisions of section 16-19, upon authority approval of a water company's individual infrastructure assessment report, the water company may charge the WICA for eligible projects in addition to such water company's existing rate schedule pursuant to subsection (f) of this section and the procedures and customer notification requirements in subsections (g) and (h) of this section.

(f) The WICA adjustment shall be calculated as a percentage, based on the original cost of completed eligible projects multiplied by the applicable rate of return, plus associated depreciation and property tax expenses related to eligible projects and any reconciliation adjustment calculated pursuant to subsection (j) of this section as a percentage of the retail water revenues approved in its most recent rate filing for the regulated activities of said water company.

(g) A water company may impose the WICA adjustment for eligible projects as a charge or credit on customers' bills at intervals of not less than six months, commencing on either January first, April first, July first or October first in any year. No proposed WICA charge or credit shall become effective until the Public Utilities Regulatory Authority has approved such charges or credits pursuant to an administrative proceeding. The authority may receive and consider comments of interested persons and members of the public at such a proceeding, which shall not be considered a contested case for purposes of title 4, this section or any regulation adopted thereunder. Such administrative proceeding shall be completed not later than thirty days after the filing of an application by a water company or within a time period as otherwise established in the generic docket conducted pursuant to subsection (b) of this section. Any approval or denial of the authority pursuant to this subsection shall not be deemed an order, authorization or decision of the authority for purposes of section 16-35. Notwithstanding the provisions of this section, if the authority has not rendered an approval or denial concerning any such application within the established timeframe, the proposed charges or credits shall become effective at the option of the company pending the authority's finding with respect to such charges, provided the company will refund its customers any such amounts collected from them in excess of the charges approved by the authority in its finding.

(h) Water companies shall notify customers through a bill insert or other direct communications when the adjustment is first applied and the WICA charge or credit shall appear as a separate item on customers' bills.

(i) The amount of the WICA applied between general rate case filings shall not exceed seven and one-half per cent of the water company's annual retail water revenues approved in its most recent rate filing, and shall not exceed five per cent of such revenues for any twelve-month period. The amount of the adjustment shall be reset to zero as of the effective date of new base rates approved pursuant to section 16-19 and shall be reset to zero if the company exceeds the allowable rate of return by more than one hundred basis points for any calendar year.

(j) On or before February twenty-eighth of each year, a water company shall submit to the authority an annual reconciliation report for any WICA charges applied to customers' rates through December thirty-first of the previous calendar year. Such reconciliation report shall identify those projects that have been completed, demonstrate that the WICA charges are limited to eligible projects that are in service and used and useful as of the end of the calendar year, and include any other information required as a result of the generic docket conducted pursuant to subsection (b) of this section. The company shall indicate in its report any significant changes in the extent of infrastructure spending, the priorities for determining eligible projects or the criteria established in the in-

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frastructure assessment report. In addition, the reconciliation report shall compare the WICA revenues actually collected to the allowed amount of the adjustment. If upon completion of the review of the annual reconciliation report the authority determines that a water company overcollected or undercollected the WICA adjustment, the difference between the revenue and costs for eligible projects will be recovered or refunded, as appropriate, as a reconciliation adjustment over a one-year period commencing on April first. The company shall refund the customers with interest for any overcollection but shall not be eligible for interest for any undercollection.

CREDIT(S)

(2007, P.A. 07-139, § 2, eff. June 19, 2007; 2011, P.A. 11-80, § 1, eff. July 1, 2011.)

HISTORICAL AND STATUTORY NOTES

Codification

The 2008 Supplement to the Connecticut General Statutes codified 2007, P.A. 07-139, § 2, as C.G.S.A. § 16- 262w.

2011, P.A. 11-80, § 1, classified to § 22a-2d, established the Department of Energy and Environmental Protection, designated it as a successor department to the Department of Environmental Protection and the Department of Public Utility Control, and provided for a substitution of terms in certain C.G.S.A. sections from "Commissioner of Environmental Protection" to "Commissioner of Energy and Environmental Protection", from "Department of Environmental Protection" to "Department of Energy and Environmental Protection", from "Department of Public Utility Control" to "Public Utilities Regulatory Authority", from "Secretary of the Office of Policy and Management" to "Commissioner of Energy and Environmental Protection", from "Office of Policy and Management" to "Department of Energy and Environmental Protection", from "secretary" to "commissioner", from "department" to "authority", from "Renewable Energy Investment Fund" to "Clean Energy Fund", and, wherever appearing in any public or special act of 2011, or in any section of the general statutes, provided for a substitution of terms from "Department of Environmental Protection" or "Department of Public Utility Control" to "Department of Energy and Environmental Protection", and from Commissioner of Environmental Protection" to "Commissioner of Energy and Environmental Protection".

C. G. S. A. § 16-262w, CT ST § 16-262w

Current through the 2012 Supplement to the Connecticut General Statutes

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C
West's Delaware Code Annotated Currentness
Title 26. Public Utilities
Chapter 1. Public Service Commission
Subchapter III. Rates
§ 314. Water Utility Distribution System Improvement Charge

(a) The following definitions shall apply in this section:

(1) As used in this section, "DSIC rate" refers to distribution system improvement charge.

(2) As used in this section, "DSIC costs" means depreciation expenses and pretax return associated with eligible distribution system improvements.

(3) As used in this section, "DSIC revenues" means revenues produced through a DSIC exclusive of revenues from all other rates and charges.

(4) As used in this section, "eligible distribution system improvements" means new, used and useful water utility plant projects that:

a. Do not increase revenues by connecting the distribution system to new customers; and

b. Are in service; and

c. Were not included in the public utility's rate base in its most recent general rate case; and which

d. Replace or renew water mains, valves, services, meters and hydrants serving existing customers that have reached their useful service life, are worn out, are in deteriorated condition, or which negatively impact the quality and reliability of service to the customer if not replaced or renewed; or

e. Extend mains to eliminate dead ends which negatively impact the quality and reliability of service to the customer; or

f. Relocate existing facilities as a result of governmental actions that are not reimbursed, including but not limited to relocations of mains located in highway rights of way as required by the Department of Trans-

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portation; or

g. Place in service, for the benefit of the customers of the water utility applying for the DSIC rate, water supply sources identified as "A list projects" in the Governor's Task Force Report dated December 2, 1999, to resolve the regional water supply concerns or subsequently added to the "A list projects" by the Delaware Water Supply Coordinating Council, all such added projects to have been so identified by the Delaware Water Supply Coordinating Counsel by December 31, 2002; or

h. Place in service new or additional water treatment facilities, plant or equipment required to meet changes in state or federal water quality standards, rules or regulations.

(5) As used in this section, "pretax return" means the revenues necessary to:

a. Produce net operating income equal to the public water utility's weighted cost of capital as established in the most recent general rate proceeding for the public water utility multiplied by the net original cost of eligible distribution system improvements. At any time the Commission, by its own motion, or by motion of the water utility, Commission staff or the Public Advocate, may determine to revisit and, after hearing without the necessity of a general rate filing, reset a water utility's cost of capital to reflect its current cost of capital. The DSIC rate shall be adjusted back to the date of the motion to reflect any change in the cost of capital determined by the Commission through this process;

b. Provide for the tax deductibility of the debt interest component of the weighted cost of capital; and

c. Pay state and federal income taxes applicable to such income.

(b) Notwithstanding other sections of this subchapter, a public utility providing water service may file with the Commission rate schedules establishing a DSIC rate that will allow for the automatic adjustment of the public water utility's basic rates and charges to provide recovery of DSIC costs on a semiannual basis.

(1) The public water utility shall serve the Division of the Public Advocate's office a copy of its filing at the time of its filing with the Commission. Customers of the public water utility shall be notified of changes in the DSIC rate by including appropriate information with the first bill they receive following any change in the rate.

(2) Publication of notice of the filing is not required.

(3) The effective date of changes in the DSIC rate shall be January 1 and July 1 every year.

(4) The public water utility shall file any request for a change in the DSIC rate and supporting data with the

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Commission at least 30 days prior to its effective date.

(5) The DSIC rate shall be adjusted semiannually for eligible distribution system improvements placed in service during the 6-month period ending 2 months prior to the effective date of changes in the DSIC rate.

(6) The DSIC rate shall be expressed as a percentage carried to 2 decimal places and applied to the total amount billed to each customer under the public water utility's otherwise applicable rates and charges.

(7) The DSIC rate applied between base rate filings shall be capped at 7.5% of the amount billed to customers under otherwise applicable rates and charges, but the DSIC rate increase applied shall not exceed 5% within any 12-month period.

(8) The DSIC Rate shall be subject to audit at intervals determined by the Commission. It will also be subject to annual reconciliation based on a period consisting of the 12 months ending December 31 of each year. The revenue received under the DSIC Rate for the reconciliation period shall be compared to the public water utility's eligible costs for that period with the difference between revenue received and eligible costs for the period recouped or refunded, as appropriate, over a 1-year period commencing July 1 of each year. If the DSIC Revenues exceeded the DSIC eligible costs, such over-collections shall be refunded with interest.

(9) The DSIC Rate shall be reset to zero as of the effective date of new base rates that provide for the prospective recovery of the annual costs theretofore recovered under the DSIC rate.

(10) The DSIC Rate shall also be reset to zero if, in any quarter, data filed with the Commission by the public water utility show that the public water utility will earn a rate of return that exceeds the rate of return established in its last general rate filing or by Commission order pursuant to paragraph (a)(5)a. of this section, if such was determined subsequent to the final order in the water utility's last general rate filing. Further, the DSIC rate shall be reinstated when such data show that the established rate of return is not exceeded and will not be exceeded if the DSIC rate is reinstated and reset.

(11) Any water utility filing for interim rate relief under this section must comply with all reasonable information requests related to its filing, or any other audits or proceedings conducted pursuant to this section and must do so on an expedited basis.

(c) The provisions of this section shall not be available to a water utility subject to a finding of the Commission that the water utility is unable or unwilling to provide safe, adequate and reliable water service to its existing customers.

(d) The Commission may adopt rules and regulations, not inconsistent with this title, that the Commission finds reasonable or necessary to administer a DSIC.

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73 Laws 2001, ch. 138, § 2, eff. July 9, 2001.

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Westlaw Topic No. 405.
C.J.S. Waters §§ 483, 666 to 668, 671 to 676, 681, 684 to 686.

26 Del.C. § 314, DE ST TI 26 § 314

Current through 78 Laws 2012, chs. 204 - 223. Revisions by the Delaware Code Revisors were unavailable at the time of publication.

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Effective: January 1, 2000

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness
Chapter 220. Utilities (Refs & Annos)
Act 5. Public Utilities Act (Refs & Annos)
Article IX. Rates (Refs & Annos)
5/9-220.2. Water and sewer surcharges authorized

§ 9-220.2. Water and sewer surcharges authorized.

(a) The Commission may authorize a water or sewer utility to file a **surcharge** which adjusts rates and charges to provide for recovery of (i) the cost of purchased water, (ii) the cost of purchased sewage treatment service, (iii) other costs which fluctuate for reasons beyond the utility's control or are difficult to predict, or (iv) costs associated with an investment in **qualifying infrastructure plant**, independent of any other matters related to the utility's revenue requirement. A surcharge approved under this Section can operate on an historical or a prospective basis.

(b) For purposes of this Section, "costs associated with an investment in qualifying infrastructure plant" include a return on the investment in and depreciation expense related to plant items or facilities (including, but not limited to, replacement mains, meters, services, and hydrants) which (i) are not reflected in the rate base used to establish the utility's base rates and (ii) are non-revenue producing. For purposes of this Section, a "non-revenue producing facility" is one that is not constructed or installed for the purpose of serving a new customer.

(c) On a periodic basis, the Commission shall initiate hearings to reconcile amounts collected under each surcharge authorized pursuant to this Section with the actual prudently incurred costs recoverable for each annual period during which the surcharge was in effect.

CREDIT(S)

Laws 1921, p. 702, § 9-220.2, added by P.A. 91-638, § 5, eff. Jan. 1, 2000.

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Municipal Corporations ⚷ 710.
Waters and Water Courses ⚷ 203(5), 203(6).
Westlaw Topic Nos. 268, 405.
C.J.S. Municipal Corporations § 1539.

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West's Annotated Indiana Code Currentness
Title 8. Utilities and Transportation
Article 1. Utilities Generally
Chapter 31. Distribution System Improvement Charges
8-1-31-2 "DSIC" defined

Sec. 2. As used in this chapter, "DSIC" refers to distribution system improvement charge.

CREDIT(S)

As added by P.L.94-2000, SEC.1.

LIBRARY REFERENCES

2010 Main Volume

Public Utilities ⚷ 127, 129.
Westlaw Topic No. 317A.
C.J.S. Public Utilities §§ 5, 11, 13, 15, 58 to 61, 76 to 83, 96 to 103.

I.C. 8-1-31-2, IN ST 8-1-31-2

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West's Annotated Indiana Code Currentness
Title 8. Utilities and Transportation
Article 1. Utilities Generally
Chapter 31. Distribution System Improvement Charges
8-1-31-3 "DSIC" costs defined

Sec. 3. As used in this chapter, "DSIC costs" means depreciation expenses and pretax return associated with eligible distribution system improvements.

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As added by P.L.94-2000, SEC.1.

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2010 Main Volume

Public Utilities ⚷ 127, 129.
Westlaw Topic No. 317A.
C.J.S. Public Utilities §§ 5, 11, 13, 15, 58 to 61, 76 to 83, 96 to 103.

I.C. 8-1-31-3, IN ST 8-1-31-3

Current through legislation effective May 31, 2012.

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West's Annotated Indiana Code Currentness
Title 8. Utilities and Transportation
Article 1. Utilities Generally
Chapter 31. Distribution System Improvement Charges
8-1-31-4 "DSIC revenue" defined

Sec. 4. As used in this chapter, "DSIC revenues" means revenues produced through a DSIC exclusive of revenues from all other rates and charges.

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As added by P.L.94-2000, SEC.1.

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Public Utilities ⚷ 127, 129.
Westlaw Topic No. 317A.
C.J.S. Public Utilities §§ 5, 11, 13, 15, 58 to 61, 76 to 83, 96 to 103.

I.C. 8-1-31-4, IN ST 8-1-31-4

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West's Annotated Indiana Code Currentness
Title 8. Utilities and Transportation
Article 1. Utilities Generally
Chapter 31. Distribution System Improvement Charges
8-1-31-5 "Eligible distribution system improvements" defined

Sec. 5. As used in this chapter, "eligible distribution system improvements" means new used and useful water utility plant projects that:

(1) do not increase revenues by connecting the distribution system to new customers;

(2) are in service; and

(3) were not included in the public utility's rate base in its most recent general rate case.

CREDIT(S)

As added by P.L.94-2000, SEC.1.

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Title 8. Utilities and Transportation
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8-1-31-6 "Pretax return" defined

Sec. 6. As used in this chapter, "pretax return" means the revenues necessary to:

(1) produce net operating income equal to the public utility's weighted cost of capital multiplied by the net original cost of eligible distribution system improvements; and

(2) pay state and federal income taxes applicable to such income.

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As added by P.L.94-2000, SEC.1.

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8-1-31-7 "Public utility" defined

Sec. 7. As used in this chapter, "public utility" means a:

(1) public utility (as defined in IC 8-1-2-1(a)); or

(2) municipally owned utility (as defined in IC 8-1-2-1(h)).

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As added by P.L.94-2000, SEC.1.

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Title 8. Utilities and Transportation
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8-1-31-8 Utility filing of rate schedules

Sec. 8. (a) Except as provided in subsection (d), a public utility providing water service may file with the commission rate schedules establishing a DSIC that will allow the automatic adjustment of the public utility's basic rates and charges to provide for recovery of DSIC costs.

(b) The public utility shall serve the office of the utility consumer counselor a copy of its filing at the time of its filing with the commission.

(c) Publication of notice of the filing is not required.

(d) A public utility may not file a petition under this section in the same calendar year in which the public utility has filed a request for a general increase in the basic rates and charges of the public utility.

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As added by P.L.94-2000, SEC.1.

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Water Law ⚷ 2199.
Westlaw Topic No. 405.

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8-1-31-9 Hearing and order

Sec. 9. (a) When a petition is filed under section 8 of this chapter, the commission shall conduct a hearing.

(b) The office of the utility consumer counselor may examine information of the public utility to confirm that the system improvements are in accordance with section 5 of this chapter, to confirm proper calculation of the proposed charge, and submit a report to the commission not later than thirty (30) days after the petition is filed.

(c) The commission shall hold the hearing and issue its order not later than sixty (60) days after the petition is filed.

(d) If the commission finds that a DSIC petition complies with the requirements of this chapter, the commission shall enter an order approving the petition.

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As added by P.L.94-2000, SEC.1.

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Water Law ⚷ 2201(2).
Westlaw Topic No. 405.

I.C. 8-1-31-9, IN ST 8-1-31-9

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8-1-31-10 Petition for change in DSIC

Sec. 10. (a) Except as provided in subsection (b), a public utility may, but is not required to, file a petition for a change in its DSIC not more often than one (1) time every twelve (12) months.

(b) Except as provided in section 15 of this chapter, a public utility may not file a petition for a change in its DSIC in the same calendar year in which the public utility has filed a request for a general increase in the basic rates and charges of the public utility.

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8-1-31-11 Pretax return factors

Sec. 11. In determining an appropriate pretax return, the commission may consider the following factors:

(1) The current state and federal income tax rates.

(2) The public utility's actual regulatory capital structure.

(3) The actual cost rates for the public utility's long term debt and preferred stock.

(4) The public utility's cost of common equity.

(5) Other components that the commission considers appropriate.

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8-1-31-12 Cost of common equity

Sec. 12. The cost of common equity to be used in the calculation of the charge shall be the most recent determination by the commission in a general rate proceeding of the public utility. If the commission finds that the last such determination is no longer representative of current conditions, the commission may make a new determination of the common equity cost rate for use in determining the charge, after notice and hearing. The most recent prior determination shall be used pending any redetermination.

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8-1-31-13 DSIC approval not permitted with certain revenues

Sec. 13. The commission may not approve a DSIC to the extent it would produce total DSIC revenues exceeding five percent (5%) of the public utility's base revenue level approved by the commission in the public utility's most recent general rate proceeding.

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8-1-31-14 DSIC calculation

Sec. 14. The DSIC may be calculated based on a reasonable estimate of sales in the period in which the charge will be in effect. At the end of each twelve (12) month period the charge is in effect, and using procedures approved by the commission, the public utility shall reconcile the difference between DSIC revenues and DSIC costs during that period and recover or refund the difference, as appropriate, through adjustment of the charge.

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8-1-31-15 Utility filing revised rate schedules

Sec. 15. A public utility that has implemented a DSIC under this chapter shall file revised rate schedules resetting the charge if new basic rates and charges become effective for the public utility following a commission order authorizing a general increase in rates and charges that includes in the utility's rate base eligible distribution system improvements reflected in the DSIC.

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8-1-31-16 DSIC filing not general increase in basic rates and charges

Sec. 16. For purposes of IC 8-1-2-42(a), the filing of a DSIC and a change in a DSIC is not a general increase in basic rates and charges.

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8-1-31-17 Adoption of other procedures

Sec. 17. The commission may adopt by rule under IC 4-22-2 or by order other procedures not inconsistent with this chapter that the commission finds reasonable or necessary to administer a DSIC.

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As added by P.L.94-2000, SEC.1.

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Public Utilities ⚷ 149.
Westlaw Topic No. 317A.
C.J.S. Public Utilities §§ 173 to 174, 209.

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PUBLIC Law, Chapter 602

HP1342
LD 1820

Signed on 2012-04-06 00:00:00.0 - Second Regular Session - 125th Maine Legislature

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An Act To Implement Recommendations To Provide Additional Flexibility for Funding Infrastructure Improvements for Water Utilities

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §6105, sub-§4, ¶E, as amended by PL 2003, c. 529, §1, is further amended to read:

E. To provide for a contingency allowance as provided in section 6112; ~~and~~

Sec. 2. 35-A MRSA §6105, sub-§4, ¶F, as enacted by PL 1989, c. 59, §3, is amended to read:

F. To provide for rate adjustments to reflect the cost of anticipated construction of plants or facilities required by the 1986 amendments to the United States Safe Drinking Water Act, Public Law 93-523, or related projects, ~~provided~~ except that rates established under this paragraph ~~shall~~ are not be subject to section 6104 ~~.~~ ; and

Sec. 3. 35-A MRSA §6105, sub-§4, ¶G is enacted to read:

G. To provide for recovery of the amounts necessary to fund the replacement of water system infrastructure. Those funds must be deposited in a capital reserve account and used in accordance with section 6107-A.

Sec. 4. 35-A MRSA §6107-A is enacted to read:

§ 6107-A. Funding for infrastructure improvements for water utilities

Notwithstanding chapter 3, a water utility may fund future infrastructure improvements through recovery in rates and fund completed infrastructure replacement or repairs through the establishment of a surcharge in accordance with this section and rules adopted by the commission. Nothing in this section may be construed to exempt any expenditure by a water utility from review by the commission in accordance with this Title.

1. **Recovery in rates.** A water utility may recover in rates the amounts

necessary to fund the future replacement of water system infrastructure. Those funds must be deposited in a capital reserve account.

2. **Commission review of capital reserve account.** A water utility shall provide to the commission an annual accounting of all revenues deposited into and expenditures made from the water utility's capital reserve account. Money in the capital reserve account is not considered unappropriated retained earnings for the purpose of section 6112, subsection 5.

3. **Infrastructure replacement surcharge.** A water utility may establish and file, pursuant to section 307, a temporary surcharge to allow recovery of the costs of completed replacement or repairs of water system infrastructure. The temporary surcharge may continue until the water utility's next rate case under chapter 3 or rate filing pursuant to sections 6104 and 6104-A and in accordance with section 6105.

If a water utility elects to institute an infrastructure replacement surcharge pursuant to this subsection, the water utility shall file the proposed surcharge with a justification for the implementation of the surcharge with the commission no less than 30 days before the effective date of the surcharge. The commission may investigate the surcharge in accordance with section 1303 to determine if the surcharge is just and reasonable. If the commission investigates the surcharge, the commission shall make its determination within 75 days of the filing and shall approve the surcharge if it is determined to be just and reasonable and deny the surcharge if it is determined not to be just and reasonable.

4. **Limitations.** A water utility may not expend amounts collected pursuant to subsection 1 for any purpose other than infrastructure improvements in accordance with this section and rules adopted by the commission.

5. **Rules.** The commission shall adopt rules to implement this section, including but not limited to rules governing the maximum amount of funds that may be recovered through rates or surcharges under this section, the authorized uses of those funds and reporting requirements and procedures to ensure that this section is being implemented in a manner that is consistent with just and reasonable rate-making principles, including a requirement that utilities submit an infrastructure needs assessment plan when establishing and using a capital reserve account. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

Effective 90 days following adjournment of the 125th Legislature, Second Regular Session, unless otherwise indicated.

Related Pages

Vernon's Annotated Missouri Statutes Currentness
Title XXV. Incorporation and Regulation of Certain Utilities and Carriers
Chapter 393. Gas, Electric, Water, Heating and Sewer Companies (Refs & Annos)
Infrastructure System Replacement Surcharge for Water Corporations (St. Louis County)
393. 1000. Definitions

As used in sections 393. 1000 to 393.1006, the following terms mean:

(1) **"Appropriate pretax revenues"**, the revenues necessary to produce net operating income equal to:

(a) The water corporation's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS; and

(b) Recover state, federal, and local income or excise taxes applicable to such income; and

(c) Recover all other ISRS costs;

(2) **"Commission"**, the Missouri public service commission;

(3) **"Eligible infrastructure system replacements"**, water utility plant projects that:

(a) Replace or extend the useful life of existing infrastructure;

(b) Are in service and used and useful;

(c) Do not increase revenues by directly connecting the infrastructure replacement to new customers; and

(d) Were not included in the water corporation's rate base in its most recent general rate case;

(4) **"ISRS"**, infrastructure system replacement surcharge;

(5) **"ISRS costs"**, depreciation expenses and property taxes that will be due within twelve months of the ISRS

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filing;

(6) **"ISRS revenues"**, revenues produced through an ISRS, exclusive of revenues from all other rates and charges;

(7) **"Water corporation"**, every corporation, company, association, joint stock company or association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water to more than ten thousand customers;

(8) **"Water utility plant projects"** may consist only of the following:

(a) Mains, and associated valves and hydrants, installed as replacements for existing facilities that have worn out or are in deteriorated condition;

(b) Main cleaning and relining projects; and

(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the water corporation.

CREDIT(S)

(L.2003, H.B. No. 208, § A.)

V. A. M. S. 393. 1000, MO ST 393. 1000

Statutes are current with emergency legislation approved through April 2, 2012, of the 2012 Second Regular Session of the 96th General Assembly. Constitution is current through the November 2, 2010 General Election.

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Title XXV. Incorporation and Regulation of Certain Utilities and Carriers
Chapter 393. Gas, Electric, Water, Heating and Sewer Companies (Refs & Annos)
Infrastructure System Replacement Surcharge for Water Corporations (St. Louis County)
393.1003. Rate schedules, procedures to establish or change (St. Louis County)

1. Notwithstanding any provisions of chapter 386, RSMo, and this chapter to the contrary, as of August 28, 2003, a water corporation providing water service in a county with a charter form of government and with more than one million inhabitants may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of the water corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements made in such county with a charter form of government and with more than one million inhabitants; provided that an ISRS, on an annualized basis, must produce ISRS revenues of at least one million dollars but not in excess of ten percent of the water corporation's base revenue level approved by the commission in the water corporation's most recent general rate proceeding. An ISRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1000 to 393.1006. ISRS revenues shall be subject to refund based upon a finding and order of the commission, to the extent provided in subsections 5 and 8 of section 393.1006.

2. The commission shall not approve an ISRS for a water corporation in a county with a charter form of government and with more than one million inhabitants that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three years, unless the water corporation has filed for or is the subject of a new general rate proceeding.

3. In no event shall a water corporation collect an ISRS for a period exceeding three years unless the water corporation has filed for or is the subject of a new general rate proceeding; provided that the ISRS may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

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Infrastructure System Replacement Surcharge for Water Corporations (St. Louis County)
393.1006. Documentation to be submitted--notice to be published--examination of proposal--authorization of commission, when--pretax revenues, factors to be considered--revised rate schedule, filed when--rulemaking authority

1. (1) At the time that a water corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation.

(2) Upon the filing of a petition, and any associated rate schedules, seeking to establish or change an ISRS, the commission shall publish notice of the filing.

2. (1) When a petition, along with any associated proposed rate schedules, is filed pursuant to the provisions of sections 393.1000 to 393.1006, the commission shall conduct an examination of the proposed ISRS.

(2) The staff of the commission may examine information of the water corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1000 to 393.1006, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. No other revenue requirement or ratemaking issues shall be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1000 to 393.1006.

(3) The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed.

(4) If the commission finds that a petition complies with the requirements of sections 393.1000 to 393.1006, the commission shall enter an order authorizing the water corporation to impose an ISRS that is sufficient to recover appropriate pretax revenues, as determined by the commission pursuant to the provisions of sections 393.1000 to 393.1006.

3. A water corporation may effectuate a change in its rate pursuant to this section no more often than two times every twelve months.

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Infrastructure System Replacement Surcharge for Water Corporations (St. Louis County)
393.1006. Documentation to be submitted--notice to be published--examination of proposal--authorization of commission, when--pretax revenues, factors to be considered--revised rate schedule, filed when--rulemaking authority

1. (1) At the time that a water corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation.

(2) Upon the filing of a petition, and any associated rate schedules, seeking to establish or change an ISRS, the commission shall publish notice of the filing.

2. (1) When a petition, along with any associated proposed rate schedules, is filed pursuant to the provisions of sections 393.1000 to 393.1006, the commission shall conduct an examination of the proposed ISRS.

(2) The staff of the commission may examine information of the water corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1000 to 393.1006, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. No other revenue requirement or ratemaking issues shall be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1000 to 393.1006.

(3) The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed.

(4) If the commission finds that a petition complies with the requirements of sections 393.1000 to 393.1006, the commission shall enter an order authorizing the water corporation to impose an ISRS that is sufficient to recover appropriate pretax revenues, as determined by the commission pursuant to the provisions of sections 393.1000 to 393.1006.

3. A water corporation may effectuate a change in its rate pursuant to this section no more often than two times every twelve months.

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4. In determining the appropriate pretax revenues, the commission shall consider only the following factors:

(1) The current state, federal, and local income or excise tax rates;

(2) The water corporation's actual regulatory capital structure as determined during the most recent general rate proceeding of the water corporation;

(3) The actual cost rates for the water corporation's debt and preferred stock as determined during the most recent general rate proceeding of the water corporation;

(4) The water corporation's cost of common equity as determined during the most recent general rate proceeding of the water corporation;

(5) The current property tax rate or rates applicable to the eligible infrastructure system replacements;

(6) The current depreciation rates applicable to the eligible infrastructure system replacements;

(7) In the event information called for in subdivisions (2), (3), and (4) is unavailable and the commission is not provided with such information on an agreed-upon basis, the commission shall refer to the testimony submitted during the most recent general rate proceeding of the water corporation and use, in lieu of any such unavailable information, the recommended capital structure, recommended cost rates for debt and preferred stock, and recommended cost of common equity that would produce the average weighted cost of capital based upon the various recommendations contained in such testimony.

5. (1) An ISRS shall be calculated based upon the amount of ISRS costs that are eligible for recovery during the period in which the surcharge will be in effect and upon the applicable customer class billing determinants utilized in designing the water corporation's customer rates in its most recent general rate proceeding. The commission shall, however, only allow such surcharges to apply to classes of customers receiving a benefit from the subject water utility plant projects or shall prorate the surcharge according to the benefit received by each class of customers; provided that the ISRS shall be applied in a manner consistent with the customer class cost-of-service study recognized by the commission in the water corporation's most recent general rate proceeding, if applicable, and with the rate design methodology utilized to develop the water corporation's rates resulting from its most recent general rate proceeding.

(2) At the end of each twelve-month calendar period that an ISRS is in effect, the water corporation shall reconcile the differences between the revenues resulting from an ISRS and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and a proposed ISRS adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustment of an ISRS.

6. (1) A water corporation that has implemented an ISRS pursuant to the provisions of sections 393.1000 to

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393.1006 shall file revised rate schedules to reset the ISRS to zero when new base rates and charges become effective for the water corporation following a commission order establishing customer rates in a general rate proceeding that incorporates in the utility's base rates subject to subsections 8 and 9 of this section eligible costs previously reflected in an ISRS.

(2) Upon the inclusion in a water corporation's base rates subject to subsections 8 and 9 of this section of eligible costs previously reflected in an ISRS, the water corporation shall immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to ensure that revenues resulting from the ISRS match as closely as possible the appropriate pretax revenues as found by the commission for that period.

7. A water corporation's filing of a petition to establish or change an ISRS pursuant to the provisions of sections 393.1000 to 393.1006 shall not be considered a request for a general increase in the water corporation's base rates and charges.

8. Commission approval of a petition, and any associated rate schedules, to establish or change an ISRS pursuant to the provisions of sections 393.1000 to 393.1006 shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements during a subsequent general rate proceeding when the commission may undertake to review the prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in an ISRS, the water corporation shall offset its ISRS in the future as necessary to recognize and account for any such overcollections.

9. Nothing contained in sections 393.1000 to 393.1006 shall be construed to impair in any way the authority of the commission to review the reasonableness of the rates or charges of a water corporation, including review of the prudence of eligible infrastructure system replacements made by a water corporation, pursuant to the provisions of section 386.390, RSMo.

10. The commission shall have authority to promulgate rules for the implementation of sections 393.1000 to 393.1006, but only to the extent such rules are consistent with, and do not delay the implementation of, the provisions of sections 393.1000 to 393.1006. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

CREDIT(S)

(L.2003, H.B. No. 208, § A.)

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Baldwin's Ohio Revised Code Annotated Currentness
Title XLIX. Public Utilities
Chapter 4909. Public Utilities Commission--Fixation of Rates (Refs & Annos)
Fixation of Rates by Commission; Environmental Compliance

4909.172 Waterworks or sewage disposal system company; infrastructure improvement sur- charge

(A) A waterworks company, or a sewage disposal system company, that is a public utility may file an application with the public utilities commission for approval to collect an infrastructure improvement surcharge, determined in accordance with this section, from customers located in the company's affected service areas and subject to affected schedules filed by the company under section 4905.31 of the Revised Code. The application shall be in such form and contain such information as the commission prescribes. At the time of filing, the company shall serve a copy of the application upon the chief executive of each municipal corporation, the board of township trustees of each township, and the board of county commissioners of each county in which affected customers are located. A company for which a surcharge is authorized under this section may file an application for another such surcharge not sooner than twelve months after the filing date of its most recent surcharge application.

(B) The commission shall provide an opportunity for the filing of comments on an application filed under division (A) of this section. After considering those comments, the commission may authorize a surcharge for the company that is just and reasonable and is sufficient, but does not exceed, the revenue requirement necessary to do both of the following:

(1) Cover such infrastructure plant costs of the company as are described in division (C) of this section, incurred after March 1, 2003, and before the date of filing, and not already reflected in the affected schedules filed by the company under section 4905.31 of the Revised Code;

(2) Provide a fair and reasonable rate of return on the filing date valuation of that particular infrastructure plant.

The surcharge chargeable to each affected customer class of the company shall not exceed three per cent of the rates and charges applicable to the class and in effect on the date the application was filed and, as to the allowed percentage increase, shall be uniform for each such class. The commission shall not authorize a company to have more than three surcharges in effect at any time.

Additionally, the commission shall not authorize a surcharge under this section if it determines that the surcharge causes the company to earn an excessive rate of return on its valuation under section 4909.15 of the Revised Code.

(C) For purposes of this section, a company's costs of infrastructure plant may include depreciation expenses. Such infrastructure plant shall exclude any improvement providing the company with additional revenue other than any minimal revenue associated with the elimination of a dead end, and may consist only of the following capital improvements that the commission determines are used and useful in rendering public utility service:

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(1) In the case of a waterworks company, service lines for, and hydrants, mains, and valves installed as a part of, a replacement project for an existing facility; main extensions that eliminate dead ends to resolve documented water supply problems presenting significant health or safety issues to then existing customers; and main cleaning or relining;

(2) In the case of a sewage disposal system company, mains and lift stations installed as part of a replacement project for an existing facility; main extensions that resolve documented sewage disposal problems presenting significant health or safety issues to then existing customers; and main cleaning, inflow and infiltration elimination, or relining;

(3) Unreimbursed capital expenditures made by the waterworks company, or the sewage disposal system company, for waterworks, or sewage disposal, facility relocation required by a governmental entity due to a street or highway project;

(4) Minimum land or land rights acquired by the company as necessary for any service line, equipment, or facility described in divisions (A)(1) to (3) of this section.

(D) During the period that an authorized surcharge is in effect, the commission, by order and on its own motion or upon good cause shown, may reduce the amount of or terminate a surcharge if it determines that the surcharge causes the company to earn an excessive rate of return on its valuation under section 4909.15 of the Revised Code.

(E) An order issued by the commission deciding an application by a waterworks company or a sewage disposal system company for an increase in rates and charges pursuant to an application filed by the company under section 4909.18 of the Revised Code shall provide for the termination, as of the earlier of the effective date of the increase or the date specified in division (F) of this section, of any surcharges of the company authorized under this section.

(F) All surcharges authorized under this section shall terminate by operation of law not later than December 31, 2014.

(G) The company shall provide notice of any surcharge authorized under this section to each affected customer with or on the customer's first bill containing the surcharge.

(H) The commission may adopt such rules as it considers necessary to carry out this section.

CREDIT(S)

(2003 S 44, eff. 1-6-04)

R.C. § 4909.172, OH ST § 4909.172

Current through all 2011 laws and statewide issues and 2012 Files 70
through 98 of the 129th GA (2011-2012).

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PENNSYLVANIA 2012 LEGISLATIVE SERVICE
One Hundred Ninety-Sixth Regular Session of the General Assembly

Additions are indicated by **Text**; deletions by
~~Text~~.
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~Text~~ .

ACT NO. 2012--11
H.B. No. 1294
PUBLIC UTILITY CODE--OMNIBUS AMENDMENTS

AN ACT Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for Law Bureau, other bureaus, offices and positions, for the burden of proof, for the recovery of the costs of distribution system improvement projects and for civil penalties for violations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 308(b), 308.2(a)(11) and 315(e) of Title 66 of the Pennsylvania Consolidated Statutes are amended to read:

<< PA ST 66 Pa.C.S.A. § 308 >>

§ 308. Bureaus and offices

* * *

(b) **Law Bureau.**--The Law Bureau shall be a multifunction legal staff, consisting of a prosecutory function, an advisory function, a representational function and an enforcement function. The Director of the Law Bureau shall be the chief counsel of the commission and shall serve at the pleasure of the commission. The commission may also, from time to time, appoint such assistant counsel to the commission as may be required for the proper conduct of the work of the Law Bureau. Assistant counsel may be removed by the commission only for good cause. The Law Bureau shall advise the commission on any and all matters. No counsel shall in the same case or a factually related case perform duties in the prosecutory and advisory functions, if such performance would represent a conflict of interest. Except for litigation referred to the Attorney General or other appropriate outside counsel, the Law Bureau solely shall be responsible to represent the commission upon appeals and other hearings in the courts of common pleas and in the Commonwealth Court, Supreme Court or other courts of this Commonwealth or in any Federal court or agency and in actions instituted to recover penalties and to enforce regulations and orders of the commission. If necessary to protect the public interest, the Law Bureau, pursuant to its prosecutorial function, may initiate and participate in proceedings before the commission ~~unless directed by the commission to do so in a proceeding involving transportation, safety, eminent domain, siting, service issues having no impact on rates or ability to pay or assist the Office of Trial Staff in carrying out the duties of the Office of Trial Staff, nor shall any member of the Law Bureau receive assistance from the Office of Trial Staff in the performance of his duties. Except as provided in this section, the Law Bureau may receive assistance from~~

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~~any other bureau or office of the commission as determined to be necessary~~.

* * *

<< PA ST 66 Pa.C.S.A. § 308.2 >>

§ 308.2. Other bureaus, offices and positions

(a) Establishment of other bureaus, offices and positions.--In addition to the specific bureaus established in this part, the commission may establish other bureaus, offices and positions to perform the following functions:

* * *

(11) Take appropriate enforcement actions, including rate proceedings, service proceedings and ~~allocation~~ **application** proceedings, necessary to insure compliance with this title, commission regulations and orders.

* * *

<< PA ST 66 Pa.C.S.A. § 315 >>

§ 315. Burden of proof

* * *

(e) Use of future test year.--In discharging its burden of proof the utility may utilize a **future test year or a fully projected future test year , which shall be the 12-month period beginning with the first month that the new rates will be placed in effect after application of the full suspension period permitted under section 1308(d)(relating to voluntary changes in rates).** The commission shall promptly adopt rules and regulations regarding the information and data to be submitted when and if a future test period or a **fully projected future test year** is to be utilized. Whenever a utility utilizes a future test year or a **fully projected future test year** in any rate proceeding and such future test year or a **fully projected test year** forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the future test year or a **fully projected future test year**, and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data. **Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities), the commission may permit facilities which are projected to be in service during the fully projected future test year to be included in the rate base.**

Section 2. The heading of Chapter 13 of Title 66 is amended and the chapter is amended by adding a subchapter heading to read:

T. 66 ch. 13 pr. 66 Pa.C.S.A. § 1301

CHAPTER 13

RATES AND ~~RATE MAKING~~ DISTRIBUTION SYSTEMS

T. 66 ch. 13 subch. A pr. 66 Pa.C.S.A. § 1301

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SUBCHAPTER A

RATES

Section 3. Section 1307(g) of Title 66 is repealed:

<< PA ST 66 Pa.C.S.A. § 1307 >>

§ 1307. Sliding scale of rates; adjustments

* * *

~~(g) Recovery of costs related to distribution system improvement projects designed to enhance water quality, fire protection reliability and long-term system viability.--Water utilities may file tariffs establishing a sliding scale of rates or other method for the automatic adjustment of the rates of the water utility as shall provide for recovery of the fixed costs (depreciation and pretax return) of certain distribution system improvement projects, as approved by the commission, that are completed and placed in service between base rate proceedings. The commission, by regulation or order, shall prescribe the specific procedures to be followed in establishing the sliding scale or other automatic adjustment method.~~

* * *

Section 4. Section 1311(c) of Title 66 is amended and the section is amended by adding a subsection to read:

<< PA ST 66 Pa.C.S.A. § 1311 >>

§ 1311. Valuation of and return on the property of a public utility

* * *

(c) Segregation of property.--When any public utility furnishes more than one of the different types of utility service, the commission shall segregate the property used and useful in furnishing each type of such service, and shall not consider the property of such public utility as a unit in determining the value of the rate base of such public utility for the purpose of fixing base rates. **A utility that provides water and wastewater service shall be exempt from this subsection upon petition of a utility to combine water and wastewater revenue requirements. The commission, when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.**

* * *

(e) Definition.--As used in this section, the term "utility that provides both water and wastewater service" shall include separate companies that individually provide water or wastewater service so long as the companies are wholly owned by a common parent company.

Section 5. Section 1327(b) introductory paragraph of Title 66 is amended to read:

<< PA ST 66 Pa.C.S.A. § 1327 >>

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§ 1327. Acquisition of water and sewer utilities

* * *

(b) Procedure.--The commission, upon application by a public utility, person or corporation which has agreed to acquire property from another public utility, municipal corporation or person, may approve an inclusion in rate base in accordance with subsection (a) prior to the acquisition and prior to a proceeding under this ~~chapter~~ **subchapter** to determine just and reasonable rates if:

* * *

Section 6. Chapter 13 of Title 66 is amended by adding a subchapter to read:

T. 66 ch. 13 subch. B pr. 66 Pa.C.S.A. § 1350

SUBCHAPTER B

DISTRIBUTION SYSTEMS

Sec.

1350. Scope of subchapter.

1351. Definitions.

1352. Long-term infrastructure improvement plan.

1353. Distribution system improvement charge.

1354. Customer notice.

1355. Review.

1356. Asset optimization plans.

1357. Computation of charge.

1358. Customer protections.

1359. Projects.

1360. Applicability.

<< PA ST 66 Pa.C.S.A. § 1350 >>

§ 1350. Scope of subchapter

This subchapter shall provide an additional mechanism for a distribution system to recover costs related to the repair, improvement and replacement of eligible property.

<< PA ST 66 Pa.C.S.A. § 1351 >>

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§ 1351. Definitions

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Capitalized cost." Costs permitted to be capitalized pursuant to the Uniform System of Accounts and Generally Accepted Accounting Principles.

"Distribution system." A system owned or operated by a utility. The term includes a natural gas distribution company, a city natural gas distribution operation, an electric distribution company, a water utility and a collection system for a wastewater utility.

"Distribution system improvement charge." A charge imposed by a utility to recover the reasonable and prudent costs incurred to repair, improve or replace eligible property that is part of the utility's distribution system.

"Eligible property." Property that is part of a distribution system and eligible for repair, improvement and replacement of infrastructure under this subchapter. Included property shall be as follows:

(1) For electric distribution companies, eligible property shall include:

(i) Poles and towers.

(ii) Overhead and underground conductors.

(iii) Transformers and substation equipment.

(iv) Any fixture or device related to eligible property under subparagraphs (i), (ii) and (iii), including insulators, circuit breakers, fuses, reclosers, grounding wires, crossarms and brackets, relays, capacitors, converters and condensers.

(v) Unreimbursed costs related to highway relocation projects where an electric distribution company must relocate its facilities.

(vi) Other related capitalized costs.

(2) For natural gas distribution companies and city natural gas distribution operations, eligible property shall include:

(i) Piping.

(ii) Couplings.

(iii) Gas services lines and insulated and noninsulated fittings.

(iv) Valves.

(v) Excess flow valves.

(vi) Risers.

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(vii) Meter bars.

(viii) Meters.

(ix) Unreimbursed costs related to highway relocation projects where a natural gas distribution company or city natural gas distribution operation must relocate its facilities.

(x) Other related capitalized costs.