



**A Report to the
Legislature by
the Regulatory
Commission of
Alaska**

**On a Proposal to
Reduce the
Statutory
Timeline for
Tariff Filings that
Change a Utility's
Revenue
Requirement or
Rate Design**

January 17, 2012

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EXECUTIVE SUMMARY

In recent reauthorization legislation (House Bill 24), the legislature directed us to provide a proposal to reduce the 450-day timeline for tariff filings that change a utility's revenue requirement or rate design.¹ In its directive, the Alaska Legislature stated:

LEGISLATIVE INTENT. In order for the legislature to evaluate the desirability of extending the Regulatory Commission of Alaska beyond June 30, 2014, it is the intent of the legislature that, before January 17, 2012, the Regulatory Commission of Alaska shall provide a proposal to the legislature to reduce the statutory timeline for tariff filings that change a utility's revenue requirement or rate design.²

In response to this directive we reviewed our practices in processing tariff filings that change a utility's revenue requirement or rate design. We also reviewed the practices of other utility regulatory commissions and we sought advice from regulated industry and interested persons. Based on that review, we conclude that we should make changes to improve our rate case practice and procedures.

We will require early identification of issues by the parties so that a timeline can be set, in cooperation with the parties, based on the issues in each individual rate case. We have already begun the process of involving utilities and parties in setting rate case timelines.³ Once fully implemented, the changes will provide a smooth transition to shortened timelines for rate cases.

¹H.B. 24, 27th Legislature (AK 2011).

²*Id.*

³*Tariff Advice Letter 51-118*, filed June , 17, 2011, by College Utilities Corporation and Golden Heart Utilities, Inc.; *Tariff Advice Letter 97-97*, filed June , 17, 2011, by College Utilities Corporation and Golden Heart Utilities, Inc. *Proposed Schedule*, filed July 29, 2011, by College Utilities Corporation and Golden Heart Utilities, Inc. in Dockets U-11-77 and U-11-78.

During the period from the date of this submittal, until our next reauthorization, we also intend to complete four open regulations dockets that may reduce the need for frequent rate cases and simplify issues in rate cases making shorter rate cases feasible. We will continue to design and develop regulatory practices that enable generally shorter timelines and we will compile a sound statistical record for legislative consideration before our next reauthorization.

RATE CASE TIMELINE LEGISLATION

Legislation enacted in 2002 established timelines for the issuance of final orders in certain Commission proceedings.⁴ For filings that change a utility's revenue requirement or rate design, the legislature established a timeline of 15 months within which the commission must decide issues in a rate case. The commencement date for the period is the date a complete tariff filing is made. An amendment effective July 1, 2008, substituted "450 days" for "15 months."⁵

CURRENT RATE CASE PRACTICES

We cannot predict when a utility may file a new revenue requirement or rate design. A filing changing a revenue requirement or rate design can be filed by a utility at any time. A utility generally makes such a filing when it determines that a rate change is necessary in order to support its revenue requirement. Sometimes a filing is made at a time required by commission order, usually on a date previously agreed to by the utility and the Attorney General or others. Most often those dates are set out in an order accepting a stipulation.

A complete tariff filing that changes a revenue requirement or rate design must include evidence in support of the filing. By regulation, we have prescribed what must be filed by a utility to support a change in its revenue requirement or its rate

⁴AS 42.05.175.

⁵AS 42.05.175(c).

design. The utility must file support for the costs it seeks to recover and must file other financial information and testimony supporting the revenue requirement or rate design it proposes.

After we determine that the filing is complete (that it contains all the information required by our regulations) we review the filing, and within 45 days we determine whether the tariff filing should be approved as filed or whether it should be suspended and further investigated. If we approve the filing the rate change is effective at the end of the 45 days. If we suspend the filing the chairman designates a commission panel and an administrative law judge to hear and decide the issues presented.

The order suspending the tariff filing establishes the statutory timeline that applies to the filing. Currently, all rate cases are assigned the maximum time for completion allowed by statute, 450 days from the date of a complete tariff filing. It is the responsibility of the assigned administrative law judge and Commissioners on the case to move the case towards a final decision. Early on in a proceeding the administrative law judge usually convenes a prehearing conference where a schedule for the proceeding is established.

The schedule established in a rate case provides for the orderly development of issues in dispute and the process of discovery and preparation for a hearing consumes almost all of the time remaining within the case timeline before a hearing. After a hearing, some time is reserved for briefing and time for Commissioners to analyze the parties' evidence and arguments and reflect as they make their final decision and promulgate an order. Our review reveals that at present, rate cases are rarely finished in substantially less time than the 450-day period unless they are resolved by a stipulation between the parties in the case.

The principal party other than the utility in these types of cases is the Regulatory Affairs and Public Advocacy Section of the Attorney General's Office (RAPA.) RAPA in its role as public advocate is usually the only party opposing rate increases although occasionally there are others. RAPA and other intervenors need adequate time to examine and test a utility's filings and conduct discovery on the financial documents and cost records and the opinions of the utility's experts. RAPA and intervenors also need adequate time to analyze the sometimes very complex studies filed in rate cases. Examples of these complex studies include: depreciation studies, cost of service analyses, and rate design allocations. When RAPA protests a rate increase it must obtain discovery from the utility and its witnesses in order to identify issues and develop credible opposition to new or misapplied doctrines. RAPA then retains its own experts, and prepares and files testimony and compiles exhibits.

It is axiomatic that the utility possesses all the information RAPA or intervenors need as they prepare a case in opposition to a utility proposal. In developing a case in opposition to any particular utility's filing RAPA may seek to expand time to prepare its case. It is common that this expansion of time, seen as a delay by the utility, is seen by RAPA as necessary since it has commitments in other rate cases and does not have unlimited staff or financial resources. RAPA must appropriately allocate its time and capacity for analysis so that its participation in rate cases is focused and directed towards an identifiable ratepayer benefit.

PUBLIC COMMENT ON RATE CASE TIMELINE

We discussed the legislative directive to propose a reduced statutory timeline at our public meeting held on August 10, 2011. We decided to seek public comment on the legislature's directive.⁶ We opened Docket R-11-5 to solicit comments

⁶August 10, 2011, Public Meeting transcripts at 12, 24-25.

on the subject matter of this proposal, and to identify ancillary impacts that should be addressed.

Many comments and suggestions were filed. Taken together, the comments represent a broad spectrum of opinion. We received comments from industry,⁷ the general public, AARP, and RAPA. In addition to a summary of the comments, we provide the complete text of all comments received.

Industry was generally supportive of reducing statutory timelines, suggesting timelines ranging from 180 to 365 days. Most utilities agreed that the complexity of a docket's subject matter should be the predominant consideration when establishing that docket's timeline but that no rate case should take more than 1 year to complete. The comments also reflected an understanding that all parties must have adequate time to prepare a case before a hearing in order for a hearing to be meaningful and so that the hearing would afford a party the full panoply of due process required by law.

RAPA cautioned that statutory timelines need to be sufficiently flexible so that its participation is meaningful, given its small staff and large workload. AARP urged us to carefully consider RAPA's statements in formulating a recommendation because RAPA is typically the only rate case participant looking out for the interests of residential customers.

OTHER COMMISSION PRACTICES

We reviewed the practices of other commissions to determine whether we could learn from their experience how we might reduce the need for frequent rate cases

⁷Anchorage Water and Wastewater Utilities (AWWU), Attorney General (AG), Chugach Electric Association (Chugach), College Utility Corporation/Golden Heart Utilities/Doyon Utilities together as "FSW," ENSTAR, Golden Valley Electric Association (GVEA), Matanuska Electric Association, Inc. (MTA), Municipality of Anchorage d/b/a Municipal Light and Power (ML&P), and TDX Power Inc., on behalf of Tanadgusix Corporation, TDX North Slope Generating (TNSG), Sand Point Generating, LLC (SPG), TDX Adak Generating, LLC (TAG), TDX Manley Generating, LLC (TDXM), together as "TDX."

or reduce the issues considered in rate cases. We examined other commissions' regulations and discussed other commissions' processes with commissioners and staff of those commissions. Based on that review and dialogue, we opened four regulations dockets. The dockets address: the Cost of Capital⁸, a Plant Replacement Surcharge Mechanism,⁹ Discovery,¹⁰ and Rate Case Filing Procedures.¹¹ In further explanation we attach as exhibits materials from those regulations dockets. Each of these proceedings will consider the development and implementation of regulations that will clarify and simplify practice before the commission, improving our process and enabling the work performed by utilities, other parties, and the agency to be more efficient and effective and less costly.

NEW REGULATIONS PROCEEDINGS

Dockets R-10-2/R-11-1, *In the Matter of the Consideration of Adoption of Regulations regarding Discovery.*

This docket was opened to consider the adoption of discovery regulations. We acknowledge that many litigants are concerned about the amount of time and resources consumed during the discovery phase of contested proceedings. The participants in our proceedings are assisting with the development of discovery regulations as we consider matters brought to us in a technical conference and as we examine the best practices of our state courts and of other regulatory commissions.

⁸R-11-4, *In the Matter of Consideration of Regulations Establishing Cost of Capital Policies, Procedures, and Filing Requirements for Economically Regulated Public Utilities.*

⁹R-11-6, *In the Matter of Consideration of a Plant Replacement Surcharge Mechanism for Water and wastewater Utilities.*

¹⁰ ¹⁰R-11-1, *In the Matter of the Consideration of Adoption of Regulations Regarding Discovery.*

¹¹R-12-1, *In the Matter of Consideration of Revisions to Regulations Pertaining to Required Filings in Support of Revenue Requirement Filings and the Consideration of Requiring Utilities Contemplating Revenue Requirement, Rate Design or Complex Filings to Participate in Pre-filing Conferences.*

Docket R-11-3, *In the Matter of the Consideration of the Need for Regulations Regarding Rate Regulation of Water and Wastewater Utilities.*

This proceeding was opened to consider ways to improve our rate and quality of service regulatory practices for water and wastewater utilities. We provided to industry a document highlighting ideas for improvements. We received the document from a national association. The document discusses practices employed by other state utility regulatory commissions. The result of this effort has been encouraging as industry seems eager to participate and come to consensus on measures that may diminish the frequency of filing rate proceedings, reduce the costs of such cases, and may also reduce the adverse impact of regulatory lag.

Docket R-11-4, *In the Matter of Consideration of Regulations Establishing Cost of Capital Policies, Procedures, and Filing Requirements for Economically Regulated Public Utilities.*

In this docket we are considering methods and policies that would increase the opportunity for Alaska public utilities to earn their allowed returns, increase predictability in rate setting, reduce cost and time required to determine the cost of capital component of revenue requirements, while still maintaining a strong and flexible regulatory environment. No comments or reply comments have yet been received in this proceeding. Comments and replies are due to be filed in February 2012.

Docket R-12-1, *In the Matter of Consideration of Revisions to Regulations Pertaining to Required Filings in Support of Revenue Requirement Filings and the Consideration of Requiring Utilities Contemplating Revenue Requirement, Rate Design or Complex Filings to Participate in Pre-filing Conferences.*

At our public meeting of January 11, 2012 we determined that we would open a regulation proceeding to consider the advisability of adopting regulations requiring participation in pre-filing conferences for certain proceedings and to consider revising our regulation governing filing of information in support of a revenue requirement or rate design. We have not yet released our initiating order in this proceeding. As we consider the adoption and revision of regulations we will seek comment on a number of proposals including mandatory filing of certain documents commonly sought during discovery. Earlier filing of materials by the utility in a rate case would make it easier to transition to shorter rate case timelines.

We do not believe it appropriate at this time to designate the kinds of rate cases that could or should be resolved in a period as short as six months.

PROPOSED NEW RATE CASE PRACTICES

We propose to change our practices to gradually reduce the time it takes us to resolve rate cases. Resolution in this context means final orders disposing of all issues presented in the rate case filings. We intend to achieve a shortened time for our final orders in both those instances where we decide all contested issues in a fully adjudicated rate case and for those instances where we accept stipulations of the parties resolving all contested issues.

Alaska Statute 42.04.070(a)(3) requires the chair of the commission to “set a date by which time the matter should be completed.” Our practice has generally been to set that date coincident with the statutory timeline, without regard to the complexity of the docket or the positions of the parties in the docket. By doing so, the parties in a proceeding have the greatest possible latitude to adjust their schedules as they determine how to develop the evidence in the proceeding. Further, by establishing the maximum allowable timeline, the timeline will not later be adjusted.

Parties normally propose or establish on their own the dates by which actions necessary to develop the case in orderly fashion are to be undertaken or concluded. Parties may, if they chose, move a case forward towards resolution somewhat faster. By the same token we are able to calendar hearing dates and schedule our own workload for greatest efficiency as we process numerous rate cases and consider other often complex utility matters, many on requests for expedited consideration. Both we and the parties benefit from this practice because hearing dates are known early on and time and resources can be appropriately allocated. Nevertheless, we have studied the comments from industry and the public and determined to change this practice to provide parties with an opportunity for earlier hearings and decisions.

Following notice to the utility community and the public, by this proposal and through public meeting discussion, our chairman will begin to employ existing statutory authority to establish docket timelines based on factors that are readily ascertainable soon after the filing of a Tariff Advice Letter. These factors include but are not limited to the complexity of the filing, the magnitude of the proposed adjustment in rates, and whether there is a significant change in proposed capital structure, debt cost, or return on equity of the utility. We will consider comments by affected ratepayers or potential intervenors. We will consider already scheduled workload and our staffing commitments, and will be attentive to other factors as they are brought to our attention. We will give the parties an opportunity to comment on an appropriate timeline but reserve the final decision to the chairman. He will employ sound judgment developed from experience in processing rate cases.

The Commission anticipates informing the utility community and the public about this change at a public meeting in February 2012 and implementing the changes immediately after the public is informed. The Commission believes this change in

practice will result in docket timelines that properly allow for well developed records, address due process considerations, and allow for carefully reasoned decisions on the contested issues in each proceeding. This change alone should result in immediate movement towards a shorter time between the date a complete filing is made and a final order is published. We expect this effort at customizing docket timelines to reduce most rate proceeding timelines to between 270 and 365 days as generally recommended by industry, while still allowing the commission to consider the needs of RAPA and others for some flexibility in the time necessary to develop and present their cases, so that those who advocate on behalf of themselves or ratepayers generally can continue to meaningfully participate and appropriately protect the interests they represent.

We do not agree with the comments that suggest that RAPA prioritize proceedings and choose not to participate in low priority proceedings based on time available and its staffing constraints. RAPA alone, in the exercise of its independent judgment, must choose which proceedings merit its involvement. Every record is better as a basis for a decision if it is more completely developed. And, every record is better developed when RAPA participates.

We do not agree with comments claiming that RAPA's workload will not be affected by shortening timelines. If there were no pending rate cases on the date of change to shorter timelines, this might be true. However, the AG is currently participating in rate cases which already have a 15 month timeline. As new rate cases are filed and those rate cases are assigned shorter timelines, we believe that RAPA will be greatly impacted as it moves to comply with the new shortened timelines while still participating in the ongoing 15-month cases. Therefore, as timelines are shortened, adverse impacts on all, including RAPA, must be minimized.

No participant in a rate proceeding before us should bear a disproportionate share of the burden that will inevitably result from an immediate shift to

shorter timelines. Adverse impacts must be mitigated where possible in the interests of assuring fairness and due process. That, we believe, can be accomplished with gradual and sensibly managed change to shorter timelines. We also note that RAPA has a caseload in which it actively participates beyond rate cases. RAPA's participation confers benefit upon the public in many realms. RAPA is an important part of the utility regulatory process in Alaska.

Our proposed new practice of customizing timelines, when combined with the completion of our best practice regulations efforts, should allow the present situation, as described by industry, to be measurably improved. For the future, implementing a reduced timeline on a case-by-case basis should assist in developing a factual foundation for assessing how best to adjust statutory timelines. As the legislature next considers our reauthorization, we will report our experience with shortened timelines.

The Commission has not determined at this time whether these changes in practice will require additional staff. That is a possibility and will be reported on at a later date.

With each new suspension order the commission will, soon after the action suspending a filing for investigation, convene a prehearing conference to require early identification of rate case issues. Parties will be encouraged to settle discrete issues if possible at an early juncture in the proceeding and, as necessary, settlements may be facilitated. At prehearing conferences the parties will be encouraged to stipulate to mutually agreeable timelines for a proceeding and allowed to argue what timeline should be attached to the rate case if an agreement is not achieved. Administrative Law Judges will act as discovery masters when called upon, and may be assigned in some proceedings to hear the case and issue a proposed decision.

CONCLUSION

We have advanced for the legislature's review a carefully considered proposal which we believe will immediately begin to reduce timelines fairly and in a reasonable fashion, on a case by case basis, over the next two years. In the process of reducing timelines we have pledged to also develop criteria that can be used to classify rate cases into categories for which different timelines are appropriate. All rate cases are not the same. The minimum time to develop and decide one rate case, while still affording all parties full due process, is different from the minimum time required to similarly process a different and obviously more complex rate case.

We have not previously considered separating rate cases into different timeline categories. Rather we have assigned to all a 450-day timeline, allowing each case the full time permitted by law. The commenter's on the legislature's directive that we propose changes to this practice have indicated that 450 days is a period of time too long for most or all cases. We find it appropriate, over the coming two years, to assign a timeline customized to the case and to the parties' ability to meaningfully develop and contest the issues in each rate case, so that all parties are afforded fairness and appropriate due process but that rate cases are routinely decided sooner than the current 450 days.

The practices we are proposing are permitted within our current scope of statutory authority. We will assess how these changes may impact our requirements for additional staffing and further report when that study is concluded. We request that the legislature accept our proposal in lieu of enacting new timeline legislation at this time.

T.W. Patch
Chairman,
Regulatory Commission of Alaska