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2023 May 26, 2:22PM
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF VEOLIA WATER IDAHO INC. FOR AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR WATER SERVICE IN THE STATE OF IDAHO	)	CASE NO. VEO-W-22-02 ANSWER TO PETITION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to Idaho Public Utilities Commission ("Commission") Rule of Procedure 331 (IDAPA 31.01.01.331), Micron Technology, Inc. ("Micron") hereby submits this Answer to Veolia Water Idaho, Inc.'s ("Veolia") Petition for Reconsideration and Clarification ("Petition"), which was filed on May 19, 2023.

ANSWER TO PETITION

LEGAL STANDARD

1. Reconsideration

"Reconsideration allows the petitioner to bring to the Commission's attention any question previously determined and thereby affords the Commission an opportunity to rectify any mistake

or omission."[1] Specifically, Rule 331.01 requires that petitions for reconsideration "must specify why the order or any issue decided in it is unreasonable, unlawful, erroneous or not in conformity with the law." The Commission may deny reconsideration without further proceedings.[2] Alternatively, the Commission may grant reconsideration by reviewing the existing record, by written briefs, or by evidentiary hearing.[3]

2. Commission Action

Commission action will be upheld "unless it appears that the clear weight of the evidence is against its conclusions or that the evidence is strong and persuasive that the Commission abused its discretion."[4] A court "will not displace the Commission's findings of fact when faced with conflicting evidence, 'even though the [c]ourt would have made a different choice had the matter been before it de novo.'"[5] The burden is squarely on the challenging party to demonstrate that the Commission's conclusions are unsupported by the evidence in the record.[6]

ARGUMENT

Veolia seeks clarification on its final approved revenue requirement and reconsideration on two points: its awarded return on equity ("ROE") and general notions of regulatory lag. Micron does not oppose Veolia's request for clarification regarding the revenue increase figure and agrees with Veolia that Order No. 35762 likely contains a transcription error on that point. However, the Commission should deny Veolia's Petition for Reconsideration regarding ROE and regulatory lag.

[1] *In the Matter of the Application of Idaho Power Company for Authority to Establish New Schedules for Residential and Small General Service Customers with On-Site Generation*, Case No. IPC-E-17-13; Order No. 34147, *29-30 (Sep. 21, 2018) (citing *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879 (1979))
[2] I.C. § 61-626.
[3] IDAPA 31.01.01.332.
[4] *Hulet v. Idaho PUC*, 138 Idaho 476, 478 (2003).
[5] *Id.* (quoting *Rosebud Enterprises, Inc. v. Idaho PUC*, 128 Idaho 609, 618 (1996)).
[6] *Id.*

The Commission's decision on these points was supported by substantial evidence in the record after consideration of all party positions. Veolia fails to carry is burden to demonstrate that the order is "unreasonable, unlawful, erroneous or not in conformity with the law."

Therefore, the Petition as to ROE and regulatory lag should be denied.

1. The Commission's final order setting a 9.25 percent awarded ROE is supported by substantial evidence and should be affirmed.

"Questions of rate of return are matters which raise extremely complicated issues. These issues are within the area of expertise, and their resolution a function of the Commission."[7] In setting a rate of return, the Constitution permits a "broad zone of reasonableness."[8] A court will uphold the Commission's decision so long as the awarded ROE "may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection to the relevant public interests."[9]

Here, Veolia makes two arguments in support of its request to reconsider the Commission's 9.25 percent ROE award: (1) the Commission referenced Veolia's wholly owned subsidiary status and (2) Veolia's assertion that 9.25 percent is not in line with other water utilities in Idaho or the region. The Commission should reject both arguments on their individual merit and as a basis to reconsider the Commission's otherwise thorough ROE analysis. By isolating two points of the Commission's decision, Veolia forgets that "the Constitution does not bind rate-making bodies to

[7] *Indus. Customers of Idaho Power v. Idaho PUC*, 134 Idaho 285, 291 (2000).
[8] *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 128 (1975).
[9] *Id.* at 127.

the service of any single formula or combination of formulas."[10] When the Commission's order and the record are considered as a whole, only one result remains: denying reconsideration.

a. The Commission's consideration of Veolia's corporate structure was neither error nor the only evidence supporting a 9.25 percent awarded ROE.

The Commission should reject Veolia's assertion that the Commission's final order erred in considering Veolia's corporate structure. First, the Commission's consideration of Veolia's corporate structure was not the only basis for the Commission's decision; substantial evidence exists to support a 9.25 percent awarded ROE.

The relevant portion of the Commission's decision reads:

> In reaching its decision, the Commission notes that a ROE of 9.25% falls within the ranges determined by Staff, Micron, and the Company's own ROE calculations when not adjusted by the Company's adders. The Commission is not persuaded by Company's arguments regarding the application of the Hamada Formula, and the associated adjustments to its ROE calculations, to resolve alleged financial risk difference between market value cost rates and book value cost rates. Similarly, the Commission is not persuaded by the Company's risk analysis and size comparison to the proxy group that ignores the Company's status as a wholly owned subsidiary.
>
> The Commission finds that a ROE of 9.25% will allow the Company to earn a return "generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding, risks and uncertainties." *Bluefield*, 262 U.S. at 692. The Commission also finds that the associated rate of return will be "reasonably sufficient to assure confidence in the financial soundness of the utility" and adequate, "to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." *Id.* at 693.[11]

[10] *Indus. Customers of Idaho Power v. Idaho PUC*, 134 Idaho 285, 290 (2000) (quoting *City of Los Angeles v. Public Utilities Comm'n*, 542 P.2d 1371, 1383 (Cal. 1975)); *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 128 (1975) ("[T]he Commission is not constitutionally bound to base its decision solely on the 'comparable earnings' and 'capital attraction' tests."); *see also In the Matter of the Application of PacifiCorp dba Rocky Mountain Power for Approval of Changes to its Electric Service Schedules*, Case No. PAC-E-10-07; Order No. 32224, *40-41 (Apr. 18, 2011).

[11] Order No. 35762, p. 9.

Dissecting these important paragraphs, the Commission set an awarded ROE of 9.25 percent because (1) 9.25 percent was within the reasonable ranges of all parties to present cost of capital testimony after adjustment to remove adders, (2) Veolia's use of the Hamada model was unconvincing, (3) Veolia's ROE adjustments were unpersuasive, (4) Veolia's risk analysis was uncredible, and (5) Veolia's size comparison to the proxy group failed to consider its corporate structure. All of the above individually and collectively represent substantial evidence to support the Commission's awarded ROE recommendation in this case and leads to the conclusion that a 9.25 percent ROE satisfies constitutional requirements. Importantly, Veolia does not take issue with the first four bases supporting the Commission's decision.

Second, the Commission can and, in this case, should consider Veolia's corporate structure in setting a reasonable return. In attacking the last reason supporting the Commission's decision, Veolia asserts—without support—that the Commission improperly considered Veolia's corporate structure in evaluating its risk compared to other utilities.[12] However, a brief survey of regulatory decisions reveals that commissions regularly consider corporate structure in evaluating a reasonable return. For example, in a water rate case for Illinois-American Water Company ("IAWC"), the Illinois Commerce Commission considered facts markedly similar to those presented in Veolia's Petition. Specifically, IAWC requested a risk adjustment to reflect risk associated with IAWC's small size.[13] Illinois Commerce Commission Staff argued that "IAWC is a wholly-owned subsidiary within a much larger organization and, therefore, [IWAC's] inclusion of business risk adjustment based on the size of IAWC is unwarranted."[14] The Illinois

[12] Petition, p. 4.
[13] *Illinois-American Water Company; Proposed General Increase in Water and Sewer Rates*, Docket No. 07-0507, *182 (Ill. Commerce Comm. July 30, 2008).
[14] *Id.* at *183.

Commerce Commission considered IWAC's corporate structure in setting a reasonable return, concluding:

> In this case, however, the common stock of IAWC is owned by American Water and American Water raises any necessary common equity for IAWC. In the Commission's view, the proposition that ratepayers should pay a "premium" due to IAWC's small size when there has been no showing, or even suggestion, that the shareholders of American Water, who essentially own the assets of IAWC, require a premium is unjustifiable.[15]

Accordingly, the Illinois Commerce Commission considered the overall corporate structure in setting a reasonable return for IWAC, just like the Commission did in this case for Veolia. While Veolia argues that the Commission should ignore the corporate structure of Veolia in setting an awarded ROE, the weight of authority—which goes back decades[16]—and common sense dictate otherwise.

Finally, customers pay costs associated with Veolia's association with its parent company and are therefore entitled to the benefits of such affiliation. Veolia alleges that "Veolia customers benefit from its status as a subsidiary in various ways: Veolia Water Idaho does not need its own separate executive team, accounting team, HR team, and computer systems."[17] However, Veolia neglects to mention that Veolia customers *pay* for these benefits. Veolia includes approximately $4.4 million of parent company services and charges in its cost of service.[18] These affiliate services mitigate Veolia's standalone operating risks and in turn, its investment risk. Therefore, the 9.25

[15] *Id.* at *244.
[16] *See e.g.*, *Application of Mid-State Telephone Company for a Rate Increase*, Docket No. 2323, *23 (Tex. PUC June 12, 1979) ("Because a parent has complete control over a wholly owned subsidiary, an investment in the subsidiary is less risky than an outside investment."); *Application of D.C. Transit System, Inc., for Authority to Increase Fares*, Application No. 396, Docket No. 131, Order No. 684, p. 33 (WMATC Mar. 13, 1967) ("We conclude that the company faces less risk than most transit companies because of its size, *its position in the holding company corporate structure of which it is a part*, its prospects for future growth in its transit operations, and, finally, the cushion provided by the increasing value of its real estate.") (emphasis added).
[17] Petition, p. 5.
[18] *See* Petition, Attachment 1, Line 21.

percent awarded ROE is fair and reasonable given the actual investment risk of Veolia which operates as an affiliate of its parent company.

Accordingly, the Commission's consideration of Veolia's corporate structure was reasonable, and even if set aside, substantial evidence exists to support a 9.25 percent awarded ROE. Therefore, the Commission should deny Veolia's Petition.

b. That Veolia's awarded ROE *may* be below other utilities is not a sufficient basis to categorically reject the Commission's final order.

Veolia mistakenly asserts that its awarded ROE must match that of other utilities in Idaho or the region. However, the Idaho Supreme Court has rejected this argument. Specifically, the Idaho Supreme Court has stated:

> Our examination of the rates of return earned by the comparable companies (which, of course, were deemed comparable to Intermountain by application of criteria which is necessarily inexact and arbitrary to some degree) shows that their rates of return vary over a broad spectrum. The Constitution permits a "broad zone of reasonableness" in rates of return, *and we will not hold that any rate of return lower than the precise average rate of return of comparable companies* or beneath the rate of return that expert witnesses testify is necessary *under the* "capital attraction" or "comparable earnings" test *is necessarily beyond the "broad zone of reasonableness" permitted by the Constitution*.[19]

While comparison to other utilities may be a helpful data point in setting a reasonable return, Idaho does not mandate strict adherence. But even setting this precedent aside, Veolia's argument fails for two reasons. First, Veolia attempts to add evidence to an evidentiary record that is closed. Particularly, Veolia supports its argument that it would have the lowest awarded ROE in the area with reference to an attachment to its Petition. Veolia does not cite where in the record this information is found, and it should not now be permitted to inject new evidence without opportunity for parties to fully respond.

[19] *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 128 (1975) (emphasis added).

Second, while Veolia argues that the Commission did not make factual findings comparing a 9.25 percent ROE to other utilities, the Commission did include facts relevant to Staff's comparable earnings model supporting a 9.25 percent awarded ROE. Specifically, the Commission relied on Staff's comparable earnings model, stating:

> The 2021 ROE results ranged from 3.51% to 17.31% with an average of 9.78%. The 2020 ROE results ranged from 1.23% to 13.42% with an average of 8.94%. The 2019 ROE results ranged from 2.63% to 13.99% with an average of 9.02%. The average of all the results together is a ROE of 9.25% with a median of 10.26%.[20]

Veolia's Petition glosses over the fact that the Commission's awarded ROE determination in this case matches precisely the average ROE under Staff's comparable earnings test.

Moreover, key components of an awarded ROE analysis include whether the awarded ROE will allow the utility to maintain financial integrity and attract capital.[21] "So long as the IPUC did not exceed its jurisdiction and provided that *the end result* of the methods used by the IPUC to compute a utility's rate of return produce a 'fair, reasonable or sufficient' result, the court's inquiry is at an end."[22] While Veolia complains about the methods the Commission used (*i.e.*, consideration of corporate structure and purported non-consideration of ROE's of entities in the region), Veolia does not allege, much less mention, that the Commission's *end result* would produce an unfair, unreasonable, or insufficient return by risking Veolia's financial integrity or precluding it from raising capital.

[20] Order No. 35762, p. 7.
[21] *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 128 (1975).
[22] *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 99 Idaho 374, 379 (1978) (emphasis added); *see also Panhandle Eastern Pipe Line Co. v. Federal Power Com.*, 324 U.S. 635, 649 (1945) (affirming an awarded ROE of 6.5 percent and holding: "The question on review is not the method of valuation which was used but the *end result* obtained since the issue is whether the rate fixed is 'just and reasonable.'") (emphasis added).

In sum, Veolia has the burden to demonstrate that the Commission's decision was unreasonable, unlawful, erroneous or not in conformity with the law. Veolia has failed this standard, ignoring the substantial evidence in the record that supports the Commission's decision in this case. Therefore, the Petition should be denied.

2. Veolia's general concerns over regulatory lag do not justify reconsideration.

Veolia argues that the Commission did not adequately consider regulatory lag in (1) setting a historical test year ended December 31, 2022, (2) employing average of period rate base, (3) disallowing an amount for cash working capital, and (4) rejecting Veolia's proposed DSIC mechanism. Veolia's Petition on these matters amounts to nothing more than disagreement with the Commission's decision and precedent on these issues.

Historical versus future test periods, average versus year end rate base, basis and amount of cash working capital, and propriety of rider recovery are all things within the Commission's legislative function. "In performing such a function within its area of expertise, the Commission may draw its own conclusions from the facts without the aid of expert testimony and may make determinations contrary to the uncontradicted opinions of the experts."[23] In other words these are policy determinations that set foundational ratemaking principles. And the Commission's policy determinations have been consistent on these points across multiple utility proceedings over the years. Indeed, Veolia recognizes that "year-end cutoff for rate base, use of the average of monthly averages, and similar decisions find some support in Commission precedent." [24] As described by Staff witnesses Donn English and Travis Culbertson, the Commission has (1) employed a fairly strict view to making adjustments to historical test year values,[25] (2) approved or mandated the use

[23] *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 126 (1975) (internal quotations omitted).
[24] Petition, p. 15.
[25] Direct Testimony of Donn English, p. 8 (citing Order No. 25880).

of average rate base in every litigated rate case since 2003,[26] (3) rejected inclusion of cash working capital where, as here, the request is not sufficiently supported,[27] and (4) declined to allow alternative ratemaking treatment for capital investments.[28]

While regulatory lag is an important consideration in ratemaking, the record in this case shows that the Commission reasonably considered Veolia's concerns regarding regulatory lag when issuing its decision consistent with past Commission precedent. Importantly, Veolia proposed a test year period of the 12-month historic period ending June 30, 2022, and a nine-month adjustment period ending on March 31, 2023 (*i.e.*, the week before the evidentiary hearing in this case). Although the Commission did not allow adjustments up until March 31, 2023, *it did* adopt a test year with six months of adjustments through December 31, 2022, as recommended by Commission Staff.

The record does not support reconsideration of the Final Order due to Veolia's policy disagreements with the Commission's decisions. Indeed, utility ratemaking is not intended to be an exercise in expense reimbursement. Rather, ratemaking requires a comprehensive examination of test year revenues and expenses. The Commission's Final Order reasonably considered all parties' positions on the issue of regulatory lag and issued a decision consistent with the record.

Therefore, the Commission should deny the Petition.

REQUEST FOR RELIEF

[26] *Id.* at pp. 11-12 (citing Order No. 29505).
[27] *Id.* at p. 18 (citing Order No. 33757).
[28] Direct Testimony of Travis Culbertson, pp. 19-20 (citing Order No. 34090).

WHEREFORE, Micron respectfully requests that the Commission deny Veolia's Petition for Reconsideration. In the alternative, if the Commission finds that Reconsideration is warranted, it should establish additional procedures in this case to permit the parties to fully brief the issues presented in Veolia's Petition.

Respectfully submitted this May 26, 2023.

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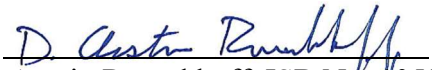
By: 

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2023, a true and correct copy of the within and foregoing ANSWER TO PETITION FOR RECONSIDERATION AND CLARIFICATION was served in the manner shown to:

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