Office of the Secretary
Service Date
June 20, 2023

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** **ORDER NO. 35821**

INTRODUCTION

On September 30, 2022, Veolia Water Idaho, Inc. ("Company" or "Veolia") filed an Application with the Idaho Public Utilities Commission ("Commission") requesting authorization to raise the rates it charges for water service. The Company requested an October 31, 2022, effective date.

On October 20, 2022, the Commission issued a Notice of Application, Notice of Suspension of Proposed Effective Date, and Notice of Intervention Deadline. Order No. 35569. Subsequently, the Commission granted intervention to Ada County; Sharon Ullman, pro se; Micron Technology, Inc.; and the city of Boise City (collectively "Intervenors"). Order Nos. 35589 and 35604.

On December 15, 2022, the Commission issued a Notice of Schedule setting forth submission deadlines for Staff, Intervenor, and Company written testimony. Order No. 35628. On February 21, 2023, the Commission issued a Notice of Schedule, Notice of Customer Hearing, and Notice of Technical Hearing. Order No. 35683.

On March 27, 2023, the Commission held a Customer Hearing. On April 4, 2023, the Commission held a Technical Hearing at which all Intervenors participated.

On April 28, 2023, the Commission entered Final Order No. 35762, which provides in summary:

> This Order establishes the revenue requirement and rates for Veolia Water Idaho, Inc. ("Company" or "Veolia"). The Commission establishes a rate base for the Company of $255,162,220, and a revenue requirement of $56,157,933. Attachment A. The Commission approves a 9.25% return on equity [("ROE")], and an overall 6.91% rate of return. This $2,756,227 revenue increase will increase customer rates by 7.06%, to be implemented equally across the board to all rate components and customer classes, Residential, Commercial, Public Authority, and Private Fire Service. The Commission denies the Company's request to implement a Distribution System Improvement Charge.

Order No. 35762 at 1.

PETITION FOR RECONSIDERATION

On May 19, 2023, the Company filed a Petition for Reconsideration and Clarification ("Petition"). The Company requests: (1) clarification on the authorized revenue increase of $2,756,277; (2) reconsideration on the awarded 9.25% ROE; and (3) reconsideration on the issue of regulatory lag. Petition at 16.

ANSWER TO PETITION FOR RECONSIDERATION

On May 26, Micron filed an Answer to Petition for Reconsideration and Clarification ("Answer"). Micron does not oppose the Company's request for clarification on the authorized revenue increase of $2,756,277; however, Micron argues that the Commission should deny the Company's request for reconsideration regarding ROE and regulatory lag. Answer at 2.

COMMISSION FINDINGS AND DECISIONS

Veolia is a water corporation and a public utility, as defined under Title 61 of the Idaho Code, and provides water service to the public in Idaho. *Idaho Code* §§ 61-125, and -129. The Commission has jurisdiction over the Company and this matter. *Idaho Code* §§ 61-501, -502, -503, -507, -520, -523, and -622.

In a general rates case, the Company's intrastate revenue requirement, and every component of it, both rate base and expense, are at issue. IDAPA 31.01.01.124.01. The Commission may grant, deny, or modify the revenue requirement requested and may find a revenue requirement different from that proposed by any party is just, fair, and reasonable. *Id.*

The Company's retail rates and charges, both recurring and non-recurring, including those of special contract customers, are at issue, and every component of every existing and proposed rate and charge is at issue. IDAPA 31.01.01.124.02. The Commission may approve, reject, or modify the rates and charges proposed and may find that rates and charges different from those proposed by any party are just, fair, and reasonable. *Id.*

The Commission has the authority to grant or deny reconsideration pursuant to Idaho Code section 61-626(2). Reconsideration allows any interested person to bring to the Commission's attention any question previously determined, and it affords the Commission an opportunity to rectify any mistakes or omissions. *Washington Water Power Co., v. Kootenai Environmental Alliance,* 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). Commission Rule of Procedure 331.01 provides:

> Petitions for reconsideration must set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is *unreasonable, unlawful, erroneous or not in conformity with the law*, and a

> statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.

IDAPA 31.01.01.331.01 (emphasis added). Any person may petition the Commission to clarify an order under Rule 325, IDAPA 31.01.01.325. A petition for clarification may be combined with a petition for reconsideration. *Id*.

I. Commission Authorized $2,756,277 Revenue Increase.

The Company argues that the $2,756,227 revenue increase identified in the first paragraph of Order No. 35762 is a mathematical or transcription error, and the Company contends that the correct number is $3,701,726. Petition at 3. The Company argues that this is confirmed by calculations using the other amounts contained within Order No. 35762, and the Company requests that the Commission clarify that Order No. 35762 authorizes a revenue increase of $3,701,726. *Id.* In its answer, Micron agrees with the Company's position. Answer at 2.

Having reviewed the record and the arguments on reconsideration, the Commission finds that the Company is correct. $2,756,227 represents the revenue deficiency prior to grossing up for taxes, and the correct number is $3,701,726. The Commission grants the Petition on this issue.

II. Commission Authorized 9.25% ROE.

The Company presents two arguments on reconsideration with respect to the Commission authorized 9.25% ROE.

First, the Company argues that the Commission authorized 9.25% ROE was driven by the Company's status as a subsidiary within the larger Veolia company structure. Petition at 3. The Company contends that authorizing an ROE based upon the size and geographical footprint of the Company's parent companies, rather than the Company, is problematic. Petition at 4.

Second, the Company argues that the Commission authorized ROE is significantly lower than other water utilities in Idaho and the Pacific Northwest; therefore, the Commission authorized ROE is inconsistent with the standards set forth in the United States Supreme Court case of *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923), under which the Company is entitled to receive a return similar to other businesses: (1) at the same time; (2) in the same geographic area; and (3) with similar risks and uncertainties. *Id.*

A. The Company's Status as a Subsidiary as a factor in ROE.

The Company argues that the Commission authorized ROE must account for a utility's size when evaluating risk and comparing to a proxy group, even when that utility is a wholly owned

subsidiary. Petition at 4. The Company contends that the fact that the Company's parent companies own other utilities with customers in other states does not offset the risk inherent in the Company's 105,000-customer footprint in the Treasure Valley. *Id.* at 5.

The Company argues that the proxy group of water utilities should properly compare utilities of similar sizes with similar risks; however, Staff's witness incorrectly included the Company's great-great grandparent, Veolia Environnement S.A., within the proxy group for the comparable earnings analysis. *Id.* at 6.

The Company argues that the question at hand is what return on equity an investor in the Company would require to invest in the Company, not to invest in the Company's great-great grandparent, Veolia Environnement S.A. *Id.* at 7. The Company contends that the relevant business unit, the relevant customer base, the relevant product line, and the relevant geographical footprint is that of the Company, not the parent company or companies. *Id.*

The Company argues that Staff's inclusion of the Company's parent companies in Staff's analysis is flawed, and that the Company's analysis properly applies precedent and financial principles and does not ignore the Company's status as a subsidiary. *Id.* at 7-8.

The Company requests that the Commission reconsider the authorized ROE as requested in the Petition, whether through issuing a revised order, additional proceedings to allow presentation of additional evidence on this issue, or as the Commission otherwise sees fit. *Id.*

In its Answer, Micron notes that the Commission authorized a 9.25% ROE because: (1) 9.25% was within the reasonable ranges of all parties to present cost of capital testimony after adjustment to remove adders; (2) the Company's use of the Hamada model was unconvincing; (3) the Company's ROE adjustments were unpersuasive; (4) the Company's risk analysis was uncredible; and (5) the Company's size comparison to the proxy group failed to consider its corporate structure. Answer at 5.

Micron argues that the Company does not take issue with the first four bases supporting the Commission's decision, and that all of the bases individually, and collectively, represent substantial evidence to support the Commission's awarded ROE. *Id.* Specifically, Micron argues that the Commission can, and should, consider the Company's corporate structure in setting a reasonable return, and Micron contends that the Company fails to support its assertion that the Commission improperly considered the Company's corporate structure in evaluating its risk compared to other utilities. *Id.*

Micron argues that customers pay costs associated with the Company's association with its parent company and are therefore entitled to the benefits of such affiliation. Answer at 6. Micron argues that the Commission's consideration of the Company's corporate structure was reasonable. Answer at 7. Micron concludes that even if the Company's corporate structure was set aside, substantial evidence exists to support a 9.25% ROE, and the Commission should deny the Company's Petition. *Id.* at 7.

Having reviewed the record and the arguments on reconsideration, the Company's argument is without merit.

First, Staff's testimony and recommended ROE was based on more than just the Company's status as a subsidiary. Commission Final Order No. 35762 provides:

> Staff proposes a ROE of 9.00%. Tr. vol. III, 814; Terry Ex. 119, Sched. 5. Staff provided testimony concerning the state of the economy, the Company's status as a wholly owned subsidiary, the application of the Hamada Formula in the calculation of a ROE, and Staff's selection of a proxy group for its analysis. Tr. vol. III, 801. Staff utilized the Comparable Earnings Model, the DCF model, and CAPM methods to calculate a proposed ROE. *Id.* Staff used a proxy group consisting of the same seven publicly traded companies selected by the Company in its comparable group, with the addition of Veolia Environnement S.A. to estimate Staff's proposed ROE. *Id.* at 807-08; Terry Ex. 119, Sched. 1.

Order No. 35762 at 7. The Company's status as a subsidiary, and the inclusion of Veolia Environment S.A. in Staff's calculations were only two of the many factors presented by Staff in its recommendation. Additionally, Staff's recommendation was only one of three full recommendations, including the Company and Micron, that the Commission considered in its Final Order.[1]

Second, the Company has not presented any argument or authority to show that the Commission authorized 9.25% ROE and resulting rate of return is unjust, unreasonable, or confiscatory. As stated previously the Commission considered many factors when setting the ROE at 9.25% and the Commission's determination was based upon the calculation of a reasonable and fair rate of return.

> [T]he questions of cost of equity and rate of return are matters which raise extremely complicated issues. Deciding these questions is a function of the Idaho Public Utilities Commission and these questions are within the Commission's area

[1] Even if the Commission considered the Company's status as a subsidiary in reaching its decision, the Idaho Supreme Court has already determined that the distinction between a wholly owned subsidiary and a non-subsidiary is a valid consideration for rate setting purposes. *Gen. Tel. Co. of The Nw. v. Idaho Pub. Utilities Comm'n*, 109 Idaho 942, 945, 712 P.2d 643, 646 (1986).

> of expertise. The Commission has the power and the duty to set rates of return within a broad zone of reasonableness.

Utah Power & Light Co. v. Idaho Pub. Utilities Comm'n, 102 Idaho 282, 285, 629 P.2d 678, 681 (1981) (internal citations and quotations omitted). "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas." *Fed. Power Comm'n v. Nat. Gas Pipeline Co. of Am.*, 315 U.S. 575, 586, 62 S. Ct. 736, 743, 86 L. Ed. 1037 (1942).

"By long standing usage in the field of rate regulation the 'lowest reasonable rate' is one which is not confiscatory in the constitutional sense." *Id.* at 585, 62 S. Ct. at 742, 86 L. Ed. 1037. "The guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 299, 109 S. Ct. 609, 615, 102 L. Ed. 2d 646 (1989).

The "Court's scope of review on appeal in cases of this type is to determine only if the Commission regularly pursued its authority and whether the constitutional rights of the utility were violated by the fixing of rates which were unjust, unreasonable and thus confiscatory." *Utah Power & Light Co. v. Idaho Pub. Utilities Comm'n*, 102 Idaho 282, 284, 629 P.2d 678, 680 (1981). The Court's "purpose is not to analyze each step of the rate-setting process to determine whether the regulatory agency was correct in its decision, but to look at the overall effect of the rate fixed to determine whether the return to the utility is reasonable and just." *Intermountain Gas Co. v. Idaho Pub. Utilities Comm'n*, 97 Idaho 113, 120, 540 P.2d 775, 782 (1975).

> It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences.

Fed. Power Comm'n v. Hope Nat. Gas Co., 320 U.S. 591, 602, 64 S. Ct. 281, 288, 88 L. Ed. 333 (1944).

The Company has failed to carry its burden to show that the authorized 9.25% ROE and resulting rate of return is unjust, unreasonable, or confiscatory. The Commission denies the Petition on this issue.

B. Comparable ROEs in Idaho, the Pacific Northwest, and the Country.

The Company argues that the Commission's findings on the authorized ROE are inconsistent with the standards set forth in the United States Supreme Court case of *Bluefield*,

under which the Company is entitled to receive a return similar to other businesses: (1) at the same time; (2) in the same geographic area; and (3) with similar risks and uncertainties. Petition at 4.

Specifically, the Company argues that the Commission did not make factual findings that other companies "in the same part of the country" are earning an ROE of 9.25%; that other companies "at the same time" are earning an ROE of 9.25%; and that companies with similar "risks and uncertainties" are earning an ROE of 9.25%. *Id.* at 8. The Company contends that the Commission must make factual findings that are both supported by evidence in the record and sufficient to enable judicial review, and that the evidence in this record does not support the Commission's conclusion. *Id.*

First, The Company argues that a 9.25% ROE is not generally being made in the same general part of the country as Veolia. *Id.* The Company contends that 9.25% appears to be the lowest authorized ROE in Idaho; the lowest ROE in the Pacific Northwest; and on the very low end of authorized ROE in the entire country for water companies in jurisdictions with comparable ratemaking regimes. *Id.* at 10. The Company submitted an Attachment to the Petition summarizing ROEs for utilities in Idaho, the Pacific Northwest, and around the country. *Id.*

Second, the Company argues that at this point in time, economic conditions include high inflation and high interest rates, and that this economic environment supports a higher ROE than ROEs granted in lower-interest-rate, lower-inflation environment. *Id.* at 10-11. The Company contends that the record indicates that water companies are considered by investors to be more risky than electrical or natural-gas utilities; that the risk to water utilities has increased in recent years; and that the risk to the Company is greater than companies with larger footprints. *Id.* at 11. The Company argues that this supports an ROE greater than 9.25%. *Id.* at 12.

In conclusion, the Company argues that the evidence in the record does not support a finding that the Commission authorized 9.25% ROE is the same as the ROE being made at the same time, in the same general part of the country, as investments in other business undertakings of similar risk. *Id.* The Company requests that the Commission reconsider the authorized ROE, whether through issuing a revised order, holding additional proceedings to allow presentation of additional evidence on this issue, or as the Commission otherwise sees fit. *Id.*

In its answer, Micron argues that the Company is mistaken when it asserts that its awarded ROE must match that of other utilities in Idaho or the region. Answer at 7. Micron contends that in *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 128 (1975), the Idaho Supreme Court rejected this argument. Answer at 7. Micron argues that while comparison to other

utilities may be a helpful data point in setting a reasonable return, Idaho does not mandate strict adherence. *Id.*

Micron argues that the Commission did include facts relevant to Staff's comparable earnings model supporting a 9.25% awarded ROE; specifically, the Commission relied on Staff's comparable earnings model. *Id.* at 8. Further, Micron contends that key components of an awarded ROE analysis include whether the awarded ROE will allow the utility to maintain financial integrity and attract capital. *Id.*

Micron argues that the Company does not allege that the result of the authorized ROE would produce an unfair, unreasonable, or insufficient return by risking the Company's financial integrity, nor preclude the Company from raising capital. *Id.* Micron concludes that the Company has the burden to demonstrate that the Commission's decision was unreasonable, unlawful, erroneous or not in conformity with the law, and the Company has failed to do so by ignoring the substantial evidence in the record that supports the Commission's decision. *Id.* at 9.

Having reviewed the record and the arguments on reconsideration, the Company's argument is without merit. As an initial matter, as explained above, the Company has failed to carry its burden to show that the authorized 9.25% ROE and resulting rate of return is unjust, unreasonable, or confiscatory. The Company argues that the Commission's findings on the authorized 9.25% ROE are inconsistent with the standards set forth in the United States Supreme Court case of *Bluefield*, under which the Company is entitled to receive a return similar to other businesses: (1) at the same time; (2) in the same geographic area; and (3) with similar risks and uncertainties. Petition at 4. The Commission disagrees.

In reaching its decision on the authorized ROE and rate of return, the Commission explained:

> To determine a fair and adequate rate of return, the Commission is guided by United States Supreme Court decisions. In *Bluefield Water Works & Improvement Company v. West Virginia Public Service Commission*, the Supreme Court stated:
>
> > A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that 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; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should

> be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. 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.

Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679, 692–93, 43 S. Ct. 675, 679, 67 L. Ed. 1176 (1923).

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Fed. Power Comm'n v. Hope Nat. Gas Co., 320 U.S. 591, 603, 64 S. Ct. 281, 288, 88 L. Ed. 333 (1944) (internal citation omitted). As a result of these Supreme Court decisions, three primary standards have evolved for determining a fair and reasonable rate of return: (1) the financial integrity or credit maintenance standard; (2) the capital attraction standard; and (3) the comparable earnings standard. Order No. 30722 at 29.

Order No. 35762 at 5. The Commission acknowledged the foundation set by *Bluefield* and the resulting evolution of the analysis for determining a fair rate of return. The Commission reasoned:

> To determine a fair ROE, the Commission is guided by the standards set forth in the above Supreme Court decision: (1) the financial integrity or credit maintenance standard; (2) the capital attraction standard; and (3) the comparable earnings standard. Order No. 33757 at 7-8. The Commission has previously explained that there are:
>
> > various methods for determining a fair ROE, including DCF analyses, the Comparable Earnings method, Risk Premium analyses, and the Capital Asset Pricing Model. Each method attempts to estimate a sufficient ROE to attract free market investors into buying the Company's stock. In summary:
> >
> > - A DCF method assumes an investor buys stock at a price reflecting the present value of the future cash the investor expects to receive from dividends and the ultimate sale of the stock. Since future dollars are worth less than present dollars, the future cash flow is discounted back to the present at the investor's required ROR;
> > - A Comparable Earnings method evaluates returns earned by other companies, including utilities, to quantify an investor's

> expected return, taking into account the risks associated with a particular investment;
>
> - A Risk Premium method starts with the ROR for a low-risk investment—such as government or utility bonds—and adds a premium based on the relative risk associated with a utility's stock; and
> - A Capital Asset Pricing Model, measures risk in relation to the market as a whole. As markets change new concerns develop in disparate financial circles related to the calculations used to determine the cost of equity.
>
> While each of these methods can be useful in estimating a utility's ROE, as with other analytical tools used in ratemaking, these methods only imperfectly predict the Company's future requirements and performance. Further, the ROE allowed by a regulatory agency is but one factor that a prudent investor might consider when deciding whether to buy the Company's stock.

Id. at 8.

Order No. 35762 at 8-9. On April 4, 2023, the Commission presided over a Technical Hearing in which the Commission heard and considered approximately four hundred (400) pages of expert witness testimony from Staff, the Company, and Micron specifically on the issue of ROE and fair rate of return. After considering the record before it, the Commission stated in its Final Order:

> 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.

Id. at 9.

On reconsideration, the Company now argues that the Commission must consider newly submitted evidence concerning ROEs authorized for other Idaho Utilities, ROEs for Utilities in the Pacific Northwest, and ROEs for Nationwide Water Utilities. Attachment 2 to the Petition.

The Company's argument is without merit, and there is no clearer evidence of this than the Company's own Application and testimony in this case. During the Technical Hearing on April 4, 2023, the Company presented expert testimony on the issue of ROE and fair rate of return. Tr. vol. II, 244-363. The Company's own expert specifically testified as to *Bluefield*'*s* principles and application in the context of determining ROE and fair rate of return. Tr. vol. II, 253. Noticeably

absent from the Company's own expert testimony is any mention of the utilities the Company now claims are necessary under *Bluefield* for the Commission to consider when making a finding establishing a fair ROE and fair rate of return.[2]

Bluefield and its progeny provide the history, foundation, and guiding principles that have formed the modern-day analysis of a fair rate of return. The Commission considered all testimony provided by three independent experts and the various methods they used for determining a proposed ROE and fair rate of return including, among other things, DCF analyses, the Comparable Earnings method, Risk Premium analyses, and the Capital Asset Pricing Model. After considering the record, the Commission issued a Final Order authorizing a 9.25% ROE and finding that ROE satisfies the guiding principles established in the *Bluefield* decision.

The Company disagrees with the Commission's decision and has now chosen to ignore the history and accepted application of the guiding principles contained in *Bluefield* and adopted into Idaho case law[3], ignore the record showing the Commission's analysis of the relevant methods for determining ROE and fair rate of return as presented by all experts during the Technical Hearing, and the Company now presents a meritless argument on reconsideration that is singularly focused on the technical wording of the *Bluefield* decision, and inconsistent with the Company's own position and expert testimony.[4]

The Commission denies the Petition on this issue.

III. Regulatory Lag

The Company argues that the Commission's failure to acknowledge and address regulatory lag while setting rates can provide, and has provided, a basis to overturn the decisions of the Commission. Petition at 12. The Company cites to *Utah Power & Light Co. v. Idaho Pub. Utilities Comm'n*, 102 Idaho 282, 629 P.2d 678 (1981).

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[2] We note a possible exception. The Company's expert selected SJW Corp. as part of the Company's Comparable Group. Tr. vol. II, 267. On reconsideration, the Company now requests that the Commission consider San Jose Water Co. Attachment 2 to the Petition at 3. It appears that San Jose Water Co. may be a subsidiary of SJW Corp. If so, the Company initially requested the Commission consider the parent company, and now requests the Commission consider the subsidiary.

[3] *See Intermountain Gas Co. v. Idaho Pub. Utilities Comm'n*, 97 Idaho 113, 540 P.2d 775 (1975); *Agric. Prod. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976); *Idaho Power Co. v. Idaho Pub. Utilities Comm'n*, 99 Idaho 374, 582 P.2d 720 (1978); *Utah Power & Light Co. v. Idaho Pub. Utilities Comm'n*, 105 Idaho 822, 673 P.2d 422 (1983); *Application of Citizens Utilities Co.*, 112 Idaho 1061, 739 P.2d 360 (1987).

[4] Even if the Commission inartfully articulated its findings with respect to the principles in *Bluefield*, as explained above, "[t]he Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas." *Fed. Power Comm'n v. Nat. Gas Pipeline Co. of Am.*, 315 U.S. 575, 586, 62 S. Ct. 736, 743, 86 L. Ed. 1037 (1942).

The Company contends that the Commission made a number of decisions that contribute to excessive regulatory lag including: (1) establishing a test year ending December 31, 2022, which did not include within rate base investments that the Company made during the first four months of 2023; (2) not accepting the value of rate base as of December 31, 2022, but instead averaging the value of the rate base, resulting in a value of rate base that approximates the value of rate base in the middle of June, 2022; (3) entirely disallowing working capital, which would be calculated using one of three standard methods and included in rate base; and (4) disallowing the proposed Distribution System Improvement Charge mechanism. Petition at 13.

The Company argues that the combination of the Commission's decisions on rate base, when applied to the economic circumstances, precludes the Company from having an opportunity to actually recover the authorized rate of return due to the pace of capital investments and inflation. *Id.* at 14-15.

The Company admits that the Commission's individual decisions with respect to the year-end cutoff for rate base, use of the average of monthly averages, and similar decisions are supported by Commission precedent; however, the Company argues that the individual issues cannot be evaluated in isolation. *Id.* at 16. The Company argues that when taken as a whole, and applied to these economic circumstances, the Commission must address and account for regulatory lag taking into account current rates of inflation and high levels of capital investment. *Id.*

In its answer, Micron argues that 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, and that the Commission's policy determinations have been consistent on these points across multiple utility proceedings over the years. Answer at 9.

Micron contends that the record shows that the Commission reasonably considered the Company's concerns regarding regulatory lag when issuing its decision consistent with past Commission precedent. *Id.* at 10.

Micron concludes that the record does not support reconsideration of the Final Order due to the Company's policy disagreements with the Commission's decisions, and the Commission's Final Order reasonably considered all parties' positions on the issue of regulatory lag and consistent with the record. *Id.*

Having reviewed the record and the arguments on reconsideration, the Company's argument is without merit. The Commission once again notes that as an initial matter the Company

has failed to carry its burden to show that the authorized 9.25% ROE and resulting rate of return is unjust, unreasonable, or confiscatory.

The Company argues that the Commission is required to specifically make findings that acknowledge and address regulatory lag while setting rates. The Company is incorrect. The Company cites exclusively to *Utah Power & Light Co. v. Idaho Pub. Utilities Comm'n*, 102 Idaho 282, 629 P.2d 678 (1981); however, the Company omits the context of the Court's decision in *Utah Power & Light Co.*:

> Here, however, the Commission eliminated from Utah Power's allowable return on equity a 1% attrition allowance. It is undisputed that a rate of return incorporating such attrition or regulatory lag was within the zone of "reasonableness" in the prior year and was so ordered by the Commission. It also appears undisputed that the factors of inflation and an expansionistic construction program continue to exist and apparently were not considered by the Commission. Hence, that portion of the Commission's ruling eliminating the 1% previously allowed regulatory lag or attrition is without foundation in the evidence and is set aside.

Utah Power & Light Co. v. Idaho Pub. Utilities Comm'n, 102 Idaho 282, 285, 629 P.2d 678, 681 (1981). The Court in *Utah Power & Light Co.* considered the issue of whether the Commission had adequately supported its decision to remove a 1% attrition allowance in setting new rates. The Court determined that the Commission had not provided adequate findings to support the removal of the 1% attrition allowance, and the Court held that the Commission must support such a decision with adequate findings.

The Court did not hold that the Commission must specifically acknowledge and address regulatory lag in its findings while setting rates, nor did the Court hold that an attrition allowance is mandatory in instances of high inflation or other economic factors. This was further supported when the Court considered a similar case two years later wherein the Commission denied a request for a 3% attrition allowance but failed to make adequate findings.

> Albeit the commission stated certain conclusions regarding the attrition problem, we discern that the commission likely was unwilling to consider such an allowance for attrition or regulatory lag in any event. **We do not state that an attrition allowance will now be mandatory in every public utility rate order**, but we hold that the order at issue here is unclear as to the reason for the denial.

Utah Power & Light Co. v. Idaho Pub. Utilities Comm'n, 105 Idaho 822, 827, 673 P.2d 422, 427 (1983) (emphasis added).

In context, these two cases simply confirm the basic principle that the Commission must support its specific decisions with adequate findings and consideration, not that the Commission must specifically make findings that acknowledge and address regulatory lag while setting rates.

In this case there was no preexisting attrition allowance that the Commission disallowed, nor did the Company request a specific attrition allowance for the Commission to consider. The Commission is not required to specifically acknowledge and address regulatory lag in its findings while setting rates.

With respect to the Company's invitation on reconsideration for the Commission to reevaluate its precedent in support of its decisions on the year-end cutoff for rate base, use of the average of monthly averages, and similar issues, the Commission declines to do so.

The Commission denies the Petition on this issue.

ORDER

IT IS HEREBY ORDERED that the Petition is granted in part and denied in part.

IT IS FURTHER ORDERED that the Company's Petition is granted with respect to the amount of authorized annual base revenues. The Company is authorized to recover an additional $3,701,726 in annual base revenues. This Order hereby modifies Order No. 35762.

IT IS FURTHER ORDERED that the Company's Petition is denied with respect to all other issues.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this case may appeal to the Supreme Court of Idaho within forty-two (42) days pursuant to the Public Utilities Law and the Idaho Appellate Rules. *Idaho Code* § 61-627; I.A.R. 14.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 20th day of June 2023.

ERIC ANDERSON, PRESIDENT

JOHN R. HAMMOND JR., COMMISSIONER

EDWARD LODGE, COMMISSIONER

ATTEST:

Jan Noriyuki
Commission Secretary

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