SENATE BILL 506
PUBLIC UTILITIES – REGULATORY ASSETS – PROHIBITION
SENATE FINANCE COMMITTEE
FEBRUARY 16, 2021

TESTIMONY OF FORMER COLORADO PUBLIC UTILITY COMMISSIONER FRANCES A. KONCILJA

POSITION: FAVORABLE

Senate Bill 506 is, in my opinion, a necessary and reasonable protection of consumers that balances the interests of the shareholders of an investor- owned utility with the interests of the ratepayers.

It is un understatement to say that the Covid-19 pandemic has dealt an extraordinary blow to our economy. The loss of jobs and the inability of working people to pay for family necessities, including food, housing and utilities has been staggering. The Federal Reserve has ordered the country's 33 largest banks to suspend stock buyback programs, limit dividend payments to shareholders and submit plans for maintaining enough of the capital needed to survive an economic downturn. Investor- owned utilities, on the other hand, are taking none of these actions and regulators are not even exploring these actions. Instead, utilities are requesting that regulators around the country adopt accounting orders that will ultimately shift most of their COVID related costs to customers, while at the same time, retaining any benefits, such as low interest rates, reduced operating costs and possibly government loans. Under the utility approach, the shareholders get the benefits and ratepayers pay the costs. To add insult to injury, the utilities are asking for a rate of return or carrying costs on these "COVID costs." Senate Bill 506 simply makes it clear that investor -owned utilities will not make a profit on these costs.

How did we get to this absurd result that utility shareholders win, and utility customers lose, when governors were trying to protect utility customers? Knowing that the loss of jobs would make it almost impossible for residential and small business customers to pay their utility bills, governors around the country, including Governor Polis in my home state of Colorado, attempted to protect consumers from utility shut-offs by issuing executive orders pausing disconnections and ordering reconnections. The ink was barely dry on these orders when investor- owned utilities in Colorado and around the country requested seemingly benign "accounting orders" to shift the economic pain of the pandemic to their customers and ask for a "return" on these costs, while at the same time ignoring or rather pocketing the savings from the pandemic.

What are the likely savings for the utilities-- Reduced operating costs during this economic downturn because numerous businesses are reducing operations, and some are closed—perhaps permanently; Lower cost of debt on some of their financing. (However, utilities will continue to collect the cost of debt from their last rate case, even if some of their actual cost of debt is much lower. If the differential is large enough, the utility will stay away from filing a rate case and absorb all of these savings to benefit shareholders); Utilities and or their unregulated entities may receive payments or other benefits from the various COVID relief bills.

However, none of these potential savings are even being discussed in these "accounting order" cases.

Is there a legitimate reason that utilities should make a profit on these costs? Let us look at how the utilities fared in the pandemic year's earnings reports? Despite the claimed reduction in revenue and increased costs, the Colorado utilities beat their earnings projections and continued to declare dividends. I believe that your Maryland utilities also performed well.

Why should the utilities, as opposed to other businesses, be immune from many of the economic downturns from COVID? There is no indication that the utilities are doing any of the things that other companies are doing--freezing compensation, reducing or freezing executive compensation, delaying dividend payments to shareholders. Why is it in the public interest to allow utilities to keep COVID related savings for shareholders while customers bear the burden of the majority of the costs? Why should utilities earn a profit on these costs? There is no legitimate economic reason.

The utilities are correct in describing in their filings that the effects of COVID are unprecedented and unexpected. However, that is exactly why regulators should be cautious in approaching these requests and should also order the creation of a regulatory liability to track all of the savings. Once the regulators have all the information as to costs and savings, rational economic decisions can be made as to who bears or shares the **net** costs of this pandemic.

Senate Bill 506 will go a long way to protect consumers by making it clear that utilities cannot make a profit on the costs of the pandemic. Hopefully, your regulators will also look at the savings that benefited the utilities during this pandemic.

Thank you, Madame Chair. I ask for a favorable committee report on SB506.

Frances Koncilja is a former Commissioner on the Colorado Public Utilities Commission, finishing her term in March 2020. Before that, she had been a trial attorney, handling complex commercial disputes and bankruptcies. She is now advising clients at Koncilja Public Utility Law and Strategy, LLC and can be reached at fkoncilja@koncilja.com