April 9, 2019


Commissioners and Interested Parties,

I respectfully dissent. I am disappointed with both the procedure that resulted in interim rates in this case and the Commission’s failure to address important ratemaking principles that were raised in the 17-0257 case.

I will continue to maintain that the process of setting interim rates under Commission Rule 14-2-103(B)(11)(a) should have never applied to the EPCOR rate case, 17-0257. The Recommended Opinion and Order in this interim rate case is premised on the fact that no final order has been issued in the 17-0257 rate case. That must be the case because the Commission failed to issue a final order that “disposes of all issues involved in all parts or phases of the proceeding” as required by Rule 14-2-103(B)(11)(a). The rules do not contemplate for rate applications to simply lapse because Commissioners fail on their initial attempt to find consensus.

The decision in the interim rates case must concede the fact that the 17-0257 case is still an open case, otherwise the company would not have access to interim rates at all. Interim rates under Rule 14-2-103(B)(11)(a) are premised upon a company’s pending rate request. Given that background, I was surprised to discover that Chairman Burns disagreed not only with me but with the Recommended Opinion and Order that he subsequently approved about the procedural posture of 17-0257. Chairman Burns indicated at the open meeting that he believed the Commission did, in fact, make a final decision in the 17-0257 case when it failed to pass the Recommended Opinion and Order. He made it clear to me that he would not be placing the 17-0257 case on any future agenda because he considered the underlying rate case to be finished. If it is the case that the Commission had no intention of ever readressing 17-0257 then it further underscores my position that interim rates are entirely inappropriate in this circumstance. If 17-0257 was effectively a closed case, then the company’s only options would be to file a new rate case or seek emergency rate relief—neither happened here. Instead, we were left pretending that the 17-0257 case was an open case in order to give a plausible account for allowing the company interim rates under Rule 14-2-103(B)(11)(a).

In my mind, this was an abuse of our process. It was not borne out by the company or any of the parties, but rather by a failure of the Commission to issue a decision on the 17-0257 case. The Commission should not have moved the case into the interim rates process. Instead, we should have debated the case until the Commissioners could come to a majority decision. In the future, there will be cases that may result in the Commissioners voting to reject a recommended opinion and order. That is not the conclusion Commission of the case. The rules require the Commissioners to issue a majority opinion.
I offered several amendments in the interim rates case that addressed the revenue requirement. Although the interim rates decision did not make a specific fair value finding, the revenue requirement determined in the 17-0257 case was used as the baseline for the interim rates. It was clear to me that the Commission would still need to address in the interim case the concerns raised with the revenue requirement in the 17-0257 case. As my amendment that would have addressed the revenue requirement failed, I believe the Commission did not adequately balance the interests of the ratepayers with those of the company.

The passage of the interim rates resulted in a large rate increase for several EPCOR districts. In my view, this increase was not just and reasonable because it was based on a revenue requirement calculation that included excessive amounts of post-test-year plant without taking into consideration offsetting post-test-year revenues. Because the Commission failed to pass my amendment to limit the post-test-year plant to a just and reasonable policy, EPCOR customers will see a significant and inappropriate increase in rates. To those customers, it will not matter that our Commission has deemed these increases as “interim” rates. The Commission has no plans to revisit the record that these interim rates were based on to determine whether the interim rates were justified or excessive. And, just like any other rates, these interim rates will be in place permanently until replaced by the next rate case. In this instance, the next rate case may not be decided until as late as 2021. I am disappointed that the Commission was not able to address the revenue requirement in a principled way that could have avoided the rate shock that many customers will experience as a result of this case.

It is my sincere desire that in all future cases the Commission fulfill its responsibility to issue a final order as required by our rules and that the final order only include rates that are just and reasonable as required by our Arizona State Constitution.

Respectfully,

Commissioner Justin Olson
On this 9th day of April, 2019, the foregoing document was filed with Docket Control as a Correspondence From Commissioner, and copies of the foregoing were mailed on behalf of Justin Olson, Commissioner - A.C.C. to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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