City Attorney Briefing

2018 Tariff Filing Hearing

June 12, 2018

The City Council's authority to establish rates, charges and regulations for utility services is contained within the Colorado Constitution, Colorado Statutes, the Colorado Springs City Charter, the City Code and the City Council's Rules and Procedures.

RATE-SETTING STANDARDS

Article 20 of the Colorado Constitution provides the City Council with the authority to establish electric, natural gas, water, and wastewater rates, charges and regulations. Article 6 of the City Charter provides authority to operate the electric, natural gas, water, and wastewater systems.

Under Colorado Revised Statute § 31-35-402 (1)(f), the rate-setting decisions of the City Council in water and wastewater matters are not subject to outside regulatory review. City Code §12.1.108(F) provides that water and wastewater rates for customers inside and outside of municipal limits must be in such amounts as the City Council, in its discretion, determines to be reasonable and appropriate in light of all circumstances.

As to water service for customers outside municipal limits, Colorado courts have affirmed surcharges that are not cost based under the discretion

offered by Colorado Revised Statute § 31-35-402. Rates will not be found to unjustly discriminate among customers provided that there is a rational basis underlying any differences in charges between customers and customer classes.

The power to establish tariffs for electric and natural gas service provided inside municipal limits lies exclusively with the City Council. City Code § 12.1.108(E) directs the City Council to establish rates for electric and natural gas service that are just, reasonable, sufficient and not unduly discriminatory. Under Colorado Revised Statute § 40-3.5-102, the City Council's rate-setting decisions for electric and natural gas customers outside of municipal limits are not subject to prior review by the Colorado Public Utilities Commission if the rates and charges are identical to those imposed on municipal residents.

Typically, rates are considered just and reasonable if the rates balance:

1) the utility's interest in the recovery of legitimately incurred costs and a reasonable return on its investment dedicated to utility service, and

2) the customers' interest in being assessed charges that approximate the costs associated with the provision of utility service.

QUASI-JUDICIAL ROLE

Part 4 of the Rules and Procedures of City Council, together with § 12.1.108 of the City Code, set forth the process that governs the City Council's hearing today. In setting rates, charges and regulations for electric, natural gas, water, and wastewater services, City Council is acting in a quasi-judicial role. Unlike actions taken in your legislative role, such as adoption of an ordinance, your decision to establish rates must be based on the record before you. The written materials you have received, as well as the oral presentations and testimony at this public hearing, will constitute the record of the proceeding.

Today, you will hear the 2018 Tariff Filing, which involves tariff proposals for electric, natural gas, water and wastewater services, as well as a proposal to modify the Utilities Rules and Regulations. There are no proposed changes to rates.

At this point in the rate proceeding, I would request that the City Council move to suspend Part 4 (I) (c) of the Rules and Procedures of City Council, Post-Hearing Procedures, for this rate hearing, which will dispense with the need for a decision and order and which will allow the City Council to immediately consider the tariff proposal and revisions at the conclusion of this public hearing for an July 1, 2018 implementation.

CITY ATTORNEY EX PARTE POLL

At this point in the proceedings, if City Council members have received any Ex Parte communications, I would ask that you indicate those communications for the record.

(THE CITY COUNCIL MEMBERS MAY GIVE YOU COPIES, WHICH WILL BE PLACED INTO THE RECORD AFTER THE HEARING.)

UTILITIES' PRESENTATION BEGINS