Cost Increase Due to Climate Change

Senate Bill 88 follows similar legislation passed in Colorado, Maine, and Connecticut. This legislation was partly a response to high utility bills. However, it is unlikely that SB 88 would significantly impact utility bills. Natural gas, water, and electric bills are increasing due to cost burdens introduced by climate change. Regulators have attempted to keep rates low by reducing infrastructure costs for many years. In the past, tree-trimming, infrastructure maintenance, new facilities, and upgrades to prepare for harsher climate conditions could be deferred. Now, jurisdictions that address climate change must accept the costs of cumulative climate disasters and implement infrastructure without delays. This is why costs will continue to rise. SB 88 does not address the root cause of increasing costs.

Normal and Necessary Expenses for Large-Scale Businesses

Large businesses, whether regulated or unregulated, find it necessary to engage in lobbying, political influence activities, participate in national trade associations, and advertise. Many also make charitable contributions. These are standard business practices, and their associated expenses are essential parts of the American business system. SB 88 does not eliminate these necessary and standard activities and associated expenses; it simply prevents their recovery through rate cases. These activities are not optional, as they are essential parts of the participation of large-scale organizations in the American economy. Just as democracy and freedom require fully functioning administrative institutions, being prepared for climate change requires fully functioning natural gas, water, and electric utilities. SB 88 would impose additional burdens on these necessary business activities.

Costs are Already Fully Documented and Fully Open to Inspection

In the US and Canada, regulation relies on cost-of-service studies to determine rates, informed by economic theory. The Bonbright principles guide this regulatory practice, ensuring that utility rates are not higher than necessary, are understandable, change gradually, and do not favor any customer group. These principles include Simplicity, Understandability, Public Acceptability, Feasibility of Application, Meeting Revenue Requirements, Providing Revenue Stability, Minimal Change, and Fair Apportionment according to Cost Causation, allowing flexibility in cost recovery.

SB 88 Changes would Break the Integrity of the Cost-of-Service Calculation and the American Regulatory Compact

In US regulatory practice, SB 88 fails to recognize certain costs for revenue recovery that are included in the cost-of-service study. These costs are essential for accurately calculating production expenses. Excluding them would compromise this calculation, resulting in unfair utility rates. Therefore, rates should reflect actual costs to maintain fairness and align with market expectations.

Cost Should be Actual Cost of Production plus a small Mark-Up

In the 1200s, St. Thomas Aquinas studied Aristotle's concept of "corrective justice" from 350 BC, using a Latin translation develop from copies in Arabic saved by Arabian scholars when Western libraries were lost during the Dark Ages. Aquinas defined a fair price as the cost of production plus a small markup. Boyd linked this to economic value and utility rates, where commission determinations set fair, just, and reasonable rates based on actual cost of production plus a small.[1]

SB 88 departs from American practice by excluding certain necessary business costs from cost-of-service study results, violating the US regulatory compact (and being unjust to the producer according to Aquinas).

Certain Inappropriate Provisions

SB 88 includes inappropriate provisions that micromanage the utility, interfere with officer movements, and attempt to penalize the company by comparing its expenditures to smaller parties not responsible for energy production and delivery. Utilities require complex coordination and technical expertise, making it impractical to operate under such restrictions for public benefit.

(1) Micromanagement of compensation for a member of the company board (Section 2, 13)
(2) Covering travel, lodging, entertainment or food or beverage for a member of the board of directors or an officer of the company (Section 2, #10)
(3) Use of an aircraft owned, leased or chartered for a member of the board of directors or and officer of the company (Section 2, #11)
(4) Limitation of costs for participation in contested proceedings (section 3, #1)
(5) Establishing a maximum amount of costs and expenses incurred by an electric or gas company may recover from ratepayers as a proportion to the amount of costs and expenses incurred by the CUB, or an intervenor in preparing for, attending, participating in, or appealing a contested proceeding. (Section 3, #2(c)).

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[1] Boyd, William, Just Price, Public Utility, and the Long History of Economic Regulation in America. 35 Yale Journal on Regulation 721 (2018), U of Colorado Law Legal Studies Research Paper No. 18-19, UCLA School of Law, Public Law Research Paper No. 18-31, Available at SSRN: https://ssrn.com/abstract=3176224.

Finally, Section 6 is an emergency provision: "…being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist (to take effect on passage of the legislation). This does not appear to be straightforward. The emergency is not clearly explained, and the legislature should express its actions in plain language that citizens can understand. The legislation may not significantly affect rates but could potentially negatively impact the companies involved.

Just Price vs. Distributive Justice

SB 88 confuses fair pricing with distributive justice. Fair pricing should be based on cost-of-service studies and infrastructure needs, ensuring full cost recovery. Excluding normal business costs is not appropriate.

Distributive justice involves regulating wealth and income, not utility rates.

The "energy burden" measures inability to pay by dividing household energy costs (excluding transportation) by household income. This ratio effectively indicates need, though other factors can also be considered.

While a useful indicator, "energy burden" as a term tends to deflect attention from the fact that the cost of energy developed by the utility and reviewed by the public utility commission is fair, just, and reasonable - *It is the real cost of service* and *it is incorrect to characterize cost of production with a small adder as an energy justice problem – in history since about 1200, and in current American regulation, the cost of production plus a small adder is the fair cost*. Similarly, it can be said that households face a "food burden," a "housing burden," a "medical services burden," a "transportation burden" and all other normal household costs may be labeled as burdens. When we label all areas of household cost as "burdens" the nature of the situation becomes clearer: what all these burdens have in common is the *denominator of the fraction – household income*.

The core problem is not the cost of energy – that cost, even though it may be higher than we would like, is an attempt to develop the fair cost of energy, based on calculation methods that are correctly based on cost-of-service and cost-causation, using standard methods and data that can be inspected. Results and calculations are reviewed and approved by the public utility commission.

The real problem is the allocation of household income in the United States which results from a job structure in which a high percentage of US households receive insufficient income to pay normal household bills (of which energy bills are only a minor part). In fact, in 2022, in the US, *forty-two percent (42%) of households received insufficient income to meet necessary bills* as measured by the United Way ALICE threshold. Of this group 13% of households in the US were in poverty as measured by the federal poverty level, and 29% more also had insufficient income to pay necessary bills.[2].

While "energy burden" is a useful indicator, it often diverts attention from the fact that the cost of energy developed by utilities and reviewed by public utility commissions is fair, just, and reasonable. It reflects the actual cost of service and should not be misconstrued as an issue of energy justice. Historically, since around 1200, and in current American regulation, the cost of production plus a minor increment has been considered the fair cost.

Similarly, households could be said to face burdens related to food, housing, medical services, transportation, and other typical household expenses. Labeling all these areas as "burdens" underscores the underlying issue: *the common denominator is household income*.

The fundamental problem is not the cost of energy itself, even though it may be higher than desired. This cost represents an attempt to determine the fair cost of energy based on standard methods and verifiable data. These calculations are reviewed and approved by the public utility commission.

The real issue lies in the allocation of household income in the United States, stemming from a job structure where a significant percentage of US households earn insufficient income to cover normal household expenses, including energy bills. In 2022, 42% of households in the US had insufficient income to meet necessary expenses according to the United Way ALICE threshold. Within this group, 13% of households were below the federal poverty level, while an additional 29% also lacked sufficient income to pay necessary bills.

The concerns of people submitting comment in support of SB 88 are real and need to be taken into account. The concerns expressed here are also real, and we need then utilities as allies in trying to survive climate change. Due to climate change, utility costs – natural gas, water, and electric – costs will rise. The effectiveness of SB 88 as currently written will be about zero, but it will burden companies.

[2] United for ALICE.org, *2024 National Report, Alice Essentials Index 2024, Measuring Inflation for Basic Needs*, P. 3.