

§ 62-133.1B. Water and Sewer Investment Plan ratemaking mechanism authorized.

(a) Notwithstanding the methods for fixing water and sewer rates under G.S. 62-133 or G.S. 62-133.1, upon application by a water or sewer utility in a general rate proceeding, the Commission may approve a Water and Sewer Investment Plan. A Water and Sewer Investment Plan, as filed by a water or sewer utility, shall include performance-based metrics that benefit customers and ensure the provision of safe, reliable, and cost-effective service by the water or sewer utility. For purposes of this section, "Water and Sewer Investment Plan" means a plan under which the Commission sets water or sewer base rates, revenue requirements through banding of authorized returns as provided in this section, and authorizes annual rate changes for a three-year period based on reasonably known and measurable capital investments and anticipated reasonable and prudent expenses approved under the plan without the need for a base rate proceeding during the plan period.

(b) The Commission may approve a Water and Sewer Investment Plan proposed by a water or sewer utility only upon a finding by the Commission that the plan results in rates that are just and reasonable and are in the public interest. In reviewing any application under this section, the Commission shall consider whether the water or sewer utility's application, as proposed, (i) establishes rates that are fair both to the customer and to the water or sewer utility, (ii) reasonably ensures the continuation of safe and reliable utility services, (iii) will not result in sudden substantial rate increases to customers annually or over the term of the plan, (iv) is representative of the utility's operations over the plan term, and (v) is otherwise in the public interest. In approving an application submitted under this section, the Commission may impose any conditions in the implementation of a Water and Sewer Investment Plan that the Commission considers necessary to ensure that the utility complies with the plan, and that the plan and associated rates are just, reasonable, and in the public interest, and the plan reasonably ensures the provision of safe, reliable, and cost-effective service to customers.

(c) Any rate adjustment allowed under a Water and Sewer Investment Plan approved pursuant to this section shall not, on an annual basis for years two and three of the plan, exceed five percent (5%) of the utility's North Carolina retail jurisdictional gross revenues for the preceding plan year. Upon a petition to the Commission, the Commission may consider the addition of unplanned emergency capital investments that must be undertaken during a plan term to address risk of noncompliance with primary drinking water or effluent standards, or to mitigate cyber or physical security risks, even if such expenditures would cause the above-referenced cap to be exceeded.

(d) Any rate adjustment mechanism authorized pursuant to G.S. 62-133.12 or G.S. 62-133.12A shall be discontinued during the term of any Water and Sewer Investment Plan. The utility may file for a rate adjustment mechanism authorized pursuant to G.S. 62-133.12, which shall not become effective before the end of the Water and Sewer Investment Plan. No capital improvements recovered through a Water and Sewer Investment Plan may be included for recovery in a rate adjustment mechanism authorized pursuant to G.S. 62-133.12.

(e) The Commission shall, after notice and an opportunity for interested parties to be heard, issue an order ruling on the water or sewer utility's request to adjust base rates under G.S. 62-133, denying or approving, with or without modifications, a water or sewer utility's proposed Water and Sewer Investment Plan. An approved plan shall be effective no later than the end of the maximum suspension period pursuant to G.S. 62-134(b).

(f) At any time, for good cause shown and after an opportunity for hearing, the Commission may modify or terminate an approved Water and Sewer Investment Plan if modification or termination is determined to be in the public interest.

(g) The Commission shall establish banding of authorized returns on equity for Water and Sewer Investment Plans approved pursuant to this section. For purposes of this section, "banding of authorized returns" means a rate mechanism under which the Commission sets an authorized
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return on equity for a water or sewer utility that acts as a midpoint and then applies a low- and high-end range of returns to that midpoint under which a water or sewer utility will not overearn if within the high-end range and will not underearn if within the low-end range. Any banding of the water or sewer utility's authorized return shall not exceed 100 basis points above or below the midpoint. [The following applies:]

- (1) If a water or sewer utility exceeds the high-end range of the band that is approved by the Commission, the water or sewer utility shall refund or credit earnings above that high-end range to customers in a manner to be prescribed by rules adopted by the Commission pursuant to subsection (i) of this section.
- (2) If a water or sewer utility falls below the low-end range of the band that is approved by the Commission, the utility may file a general rate case.

(h) The Commission shall annually review a water or sewer utility's earnings to ensure the utility is not earning in excess of its allowable return on equity for reasonable and prudent costs to provide service. For purposes of measuring a water or sewer utility's earnings under any mechanisms, plans, or settlements approved under this section, the utility shall make an annual filing that sets forth the utility's earned return on equity for the prior 12-month period.

(i) The Commission shall adopt rules to implement the requirements of this section, including rules to:

- (1) Establish procedures for filing a Water and Sewer Investment Plan under this section.
- (2) Require reporting on an annual basis of performance-based metrics and evaluation of those metrics' results to ensure the utility continues to perform in a safe, reliable, and cost-effective manner.
- (3) Develop banding of authorized returns. In setting a midpoint authorized rate of return on equity for banding of authorized returns pursuant to this section, the Commission may consider any decreased or increased risk to a water or sewer utility that may result from having an approved Water and Sewer Investment Plan.
- (4) Establish a procedure for the water or sewer utility to annually refund or credit to customers excess earnings above the high end of the authorized band of returns.
- (5) Establish a methodology to annually review the costs subject to the adjustment mechanism, including the opportunity for public hearings.

(j) On or before July 1, 2026, the Commission shall report to the Joint Legislative Commission on Energy Policy on the impacts of each Water and Sewer Investment Plan approved by the Commission pursuant to this section for a water or sewer utility. At a minimum, the report shall include a Plan's impact on rates for customers of the applicable utility, the number of customers disconnected for nonpayment in the four years prior to Commission approval of a Plan for the applicable utility, the number of utility customers disconnected for nonpayment after approval and implementation of the Plan to the date the report is submitted, and the amount of utility earnings under an approved plan. In consultation with the Department of Environmental Quality, the Commission shall also report on any impacts to drinking water quality of utility customers or to surface or groundwater resources from Plans implemented by water and sewer utilities. The report may include any other information the Commission deems relevant, and shall include any Commission recommendations for legislative action. (2021-23, s. 25; 2021-149, s. 1(a).)