

MEMORANDUM

Date: August 25, 2020

Re: Utility Charitable Contribution Rules

Question Presented

This memo describes how each of the 50 states plus the District of Columbia require utilities to account for charitable contributions.

Summary of Results

Forty-three states plus the District of Columbia prohibit utilities from classifying charitable contributions as “operating expenses” in rate cases, which means that utility shareholders rather than customers must bear the costs of charitable contributions. Three states (KS, MN, VA) require that the cost of charitable contributions be split 50/50 between shareholders and ratepayers. Only three states besides Illinois (Maine, Michigan and Texas) allow utilities to consider charitable contributions as an operating expense if the Commission deems them “reasonable.”

Results

A. Alabama

- No statute, rule, or regulation restricts donations or requires disclosure.
- Charitable contributions are not permitted as an operating expense. *Ala. Power Co. v. Ala. Pub. Serv. Comm'n*, 359 So. 2d 776, 779-80 (Ala. 1978).

B. Alaska

- Alaska Stat. § 42.05.381 generally prohibits public utilities from recovering the costs of political contributions or public relations in rates.
- The Regulatory Commission of Alaska has said that charitable contributions cannot be recovered in rates. *In the Matter of the Investigation into the 1998 Revenue Requirement Study Filed by Matanuska Elec. Ass'n, Inc., & Its Use of the Simplified Rate Filing*

Process Under As 42.05.381(e) & 3 Aac 48.700-3aac 48.790, No. 13, 2001 WL 34779640 (RCA Jan. 12, 2001).

C. Arizona

- For investor-owned utilities, the shareholders must bear the cost of charitable contributions, but charitable contributions are allowed as operating expenses for cooperatives. *In the Matter of the Application of Sulphur Springs Valley Elec. Coop., Inc. for A Hearing to Determine the Fair Value of Its Prop. for Ratemaking Purposes, to Fix A Just & Reasonable Return Thereon, to Approve Rates Designed to Develop Such Return & for Related Approvals.*, No. 71274, 2009 WL 2983260 (Ariz. C.C. Sept. 8, 2009), *amended sub nom. In the Matter of the Application of Sulphur Springs Valley Elec. Coop., Inc. for A Hearing to Determine the Fair Value of Its Prop. for Ratemaking Purposes, to Fix A Just & Reasonable Return Thereon, to Approve Rates Designed to Develop Such Return & for Related Approvals.*; *in the Matter of the Application of Sulphur Springs Valley Elec. Coop., Inc. for an Order Instituting A Moratorium on the New Connections to the V-7 Feeder*, No. 71794, 2010 WL 2864931 (Ariz. C.C. July 12, 2010).

D. Arkansas

- The Public Service Commission is reluctant to allow charitable contributions in determining rates, and the expense is disallowed unless the company can demonstrate a tangible benefit to all its customers. *Re Sw. Bell Tel. Co.*, 22 P.U.R.4th 209, 214 (Ark. P.S.C. Sept. 1, 1977); *Re Sw. Bell Tel. Co.*, 27 P.U.R.4th 493 (Ark. P.S.C. Jan. 15, 1979).

E. California

- The Supreme Court of California ruled that charitable contributions cannot be charged against ratepayers but emphasized that this policy does not prohibit the utility from making charitable donations. *Pac. Tel. & Tel. Co. v. Pub. Utils. Com.*, 62 Cal. 2d 634, 668-69 (1965).

F. Colorado

- No statute, rule, or regulation limits a utility's charitable contributions or requires disclosure.
- The Public Utilities Commission determined that charitable contributions could not be charged to ratepayers but emphasized that public utility corporations should contribute to charity. *In the Matter of the Application of Pub. Serv. Co. of Colorado for A Determination by This Comm'n That It Is Entitled to Additional Elec. & Gas Revenues, & Authorizing It to File New Elec. & Gas Rates & Tariffs to Provide A Fair Rate of Return.*, No. 24900, 1971 WL 223887 (Colo. P.U.C. Oct. 4, 1971).
- Some language in *In Re Qwest Communications Int'l* indicates that the Public Utilities Commission did not have jurisdiction over charitable contributions not paid by the ratepayers.

- The Public Utilities Commission originally required that CenturyLink commit to a certain level of charitable contributions, but the dissent argued that the Public Utilities Commission did not have jurisdiction over charitable contributions not paid by the ratepayer. *In Re Qwest Communications Int'l, Inc.*, 10A-350T, 2011 WL 1234770 (Colo. P.U.C. Jan. 3, 2011).

G. Connecticut

- Charitable contributions are not limited, but they may not be a deductible expense for rate making purposes. *S. New England Tel. Co. v. Pub. Utilities Comm'n*, 29 Conn. Supp. 253, 274 (Super. Ct. 1970); *Re Connecticut Nat. Gas Corp.*, 37 P.U.R.4th 287 (Conn. D.P.U.C. June 25, 1980); *Application of Sju Group & Connecticut Water Serv., Inc. for Approval of Change of Control*, No. 19-04-02, 2019 WL 4305820, *31 (Conn. D.P.U.C. Sept. 4, 2019).

H. Delaware

- The Public Service Commission has decided that charitable donations are not necessary for the provision of a utility's service and that the costs should be borne by shareholders. *In Re Artesian Water Co., Inc.*, No. 04-42, 2006 WL 1815091 (Del. P.S.C. May 9, 2006).

I. District of Columbia

- No statute, rule, or regulation has limited charitable donations or required disclosure.
- The court and Public Service Commission determined that the cost of charitable donations must be borne by shareholders rather than ratepayers. *Washington Gas Light Co. v. Pub. Serv. Comm'n of Dist. of Columbia*, 450 A.2d 1187, 1231 (D.C. 1982).

J. Florida

- No statute, rule, or regulation has limited charitable contributions or required disclosure.
- Based on state rules and subsequent court decisions, in a rate case, charitable contributions cannot be recovered through rates. Fla. Admin. Code Ann. r. 25-30.433; *S. Bell Tel. & Tel. Co. v. Florida Pub. Serv. Comm'n*, 443 So. 2d 92, 96 (Fla. 1983).

K. Georgia

- No statute, rule, or regulation has limited charitable contributions or required disclosure.
- The Public Service Commission determined that charitable contributions cannot be borne by ratepayers, though it emphasized that it did "not desire to deter the company from doing its civic duty." *Re Atlanta Gas Light Co.*, 63 P.U.R.4th 346 (Ga. P.S.C. Sept. 26, 1984); *See Re S. Bell Tel. & Tel. Co.*, 63 P.U.R.4th 146 (Ga. P.S.C. Sept. 26, 1984).

L. Hawaii

- No statute, rule, or regulation has limited charitable contributions or required disclosure.

- The Public Utilities Commission determined that charitable contributions are disallowed for rate-making purposes. *Re Hawaii Elec. Light Co., Inc.*, 54 P.U.R.4th 83 (Hawai'i P.U.C. May 27, 1983).

M. Idaho

- No statute, rule, or regulation has limited charitable contributions or required disclosure.
- Charitable contributions are disallowed as operating expenses unless the company can show that the expenses were incurred solely on behalf of its ratepayers. *Re Idaho Power Co.*, 29 P.U.R.4th 183 (Idaho P.U.C. Mar. 22, 1979).
- This was confirmed in *Intermountain Gas Co.*, which disallowed expenses related to charitable sponsorships because it was primarily image-enhancing and benefited the Company and its shareholders rather than its customers. *In the Matter of the Application of Intermountain Gas Co. to Change Its Rates & Charges for Nat. Gas Serv. in the State of Idaho*, No. 33757, 2017 WL 1740485 (Idaho P.U.C. Apr. 28, 2017), *order corrected*, No. INTG1602, 2017 WL 2021309 (Idaho P.U.C. May 10, 2017), and *order corrected*, No. INTG1602, 2017 WL 2377160 (Idaho P.U.C. May 26, 2017), and *on reconsideration*, No. 33879, 2017 WL 4119596 (Idaho P.U.C. Sept. 14, 2017).

N. Illinois

- The relevant rule dictates that:
 - “It shall be proper for the Commission to consider as an operating expense, for the purpose of determining whether a rate or other charge or classification is sufficient, donations made by a public utility for the public welfare or for charitable scientific, religious or educational purposes, provided that such donations are reasonable in amount. In determining the reasonableness of such donations, the Commission may not establish, by rule, a presumption that any particular portion of an otherwise reasonable amount may not be considered as an operating expense. The Commission shall be prohibited from disallowing by rule, as an operating expense, any portion of a reasonable donation for public welfare or charitable purposes.” 220 Ill. Comp. Stat. Ann. 5/9-227.

O. Indiana

- No statute, rule, or regulation has limited charitable contributions.
- The Public Service Commission cannot allow charitable contributions as an operating expense. *Petition of the Bd. of Directors for Utilities of the Dep't of Pub. Utilities of the City of Indianapolis, As Successor Tr. of A Pub. Charitable Tr., d/b/a Citizens Gas & Coke Util. for Auth. to Increase Its Rates & Charges for Gas Util. Serv. & for Approval of A New Schedule of Rates & Charges Applicable Thereto, Approval Under Ic 8-1-2.5 of an Alternative Regulatory Plan Implementing an Uncollectible Expense Adjustment*, No. 42767, 2006 WL 7345346, *24 (Ind. U.R.C. Oct. 19, 2006), *order corrected*, No. 42767, 2006 WL 7345347 (Ind. U.R.C. Nov. 21, 2006), and *on reh'g sub nom. In Re Bd. of Directors for Utilities of Dept. of Pub. Utilities of City of Indianapolis*, 42767, 2007 WL 2593559 (Ind. U.R.C. Aug. 29, 2007), *supplemented sub nom. Petition of the Bd. of*

Directors for Utilities of the Dep't of Pub. Utilities of the City of Indianapolis, As Successor Tr. of A Pub. Charitable Tr., d/b/a Citizens Gas & Coke Util. for Auth. to Increase Its Rates & Charges for Gas Util. Serv. & for Approval of A New Schedule of Rates & Charges Applicable Thereto, Approval Under Ic 8-1-2.5 of an Alternative Regulatory Plan Implementing an Uncollectible Expense Adjustment, No. 42767, 2008 WL 9832666 (Ind. U.R.C. Aug. 7, 2008).

P. Iowa

- No statute, rule, or regulation has limited charitable contributions or required disclosure.
- Charitable contributions are excluded from a utility's cost of service. *Davenport Water Co. v. Iowa State Commerce Comm'n*, 190 N.W.2d 583, 608 (Iowa 1971); *Re Iowa-Illinois Gas & E. Co.*, 100 P.U.R.3d 1 (Iowa S.C.C. June 21, 1973).

Q. Kansas

- The Commission's policy on contributions to charitable, civic, and social organizations is that it can disallow specific contributions that are found unreasonable or inappropriate and that it can disallow up to 50% of contributions. Kan. Stat. Ann. § 66-1,236 (West) ("For the purposes of determining just and reasonable rates, the commission may adopt a policy of disallowing a percentage, not to exceed 50%, of utility dues, donations and contributions to charitable, civic and social organizations and entities, in addition to disallowing specific dues, donations and contributions which are found unreasonable or inappropriate."); Kan. Stat. Ann. § 66-101f (West); Kan. Stat. Ann. § 66-1,193 (West) (same rule for telecommunications public utilities); Kan. Stat. Ann. § 66-1,206 (West) (same rule for natural gas public utilities).
- Other than that, no statutes, rules, or regulations limit charitable contributions or require disclosure.

R. Kentucky

- In rate adjustment cases, utilities must submit summary schedules for the base and forecasted period that include charitable contributions. 807 Ky. Admin. Regs. § 5:001.
- No statute, rule, or regulation limits charitable donations.
- The Public Service Commission has determined that utilities are free to make charitable contributions, but that the expense must be borne by stockholders rather than ratepayers. *S. Cent. Bell Tel. Co. v. Pub. Serv. Comm'n*, 702 S.W.2d 447, 452 (Ky. Ct. App. 1985); *In the Matter of: Application of Louisville Gas & Elec. Co. for Approval of an Alternative Method of Regulation of Its Rates & Services in the Matter of: Application of Kentucky Utilities Co. for Approval of an Alternative Method of Regulation of Its Rates & Services*, No. 98-426, 1999 WL 35149521 (Ky. P.S.C. Aug. 11, 1999); *In Re River Bluffs, Inc.*, No. 2007-00433, 2007 WL 4191909, *3 (Ky. P.S.C. Nov. 28, 2007).

S. Louisiana

- The Louisiana Utilities Restoration Corporation, which finances utility system restoration costs, cannot make charitable contributions. La. Stat. Ann. § 45:1313.
- Other than that, no law, rule, or regulation regulates charitable contributions by utilities.
- The Public Service Commission has determined that charitable contributions cannot be charged to operating expenses. *Ex Parte Breaux Bridge Tel. Co.*, 41 P.U.R.3d 260 (La. P.S.C. Oct. 27, 1961).

T. Maine

- Maine law explicitly says that utilities cannot recover costs for political activities and contributions, institutional advertising, promotional advertising, and promotional allowances, but says that the rule does not restrict the Commission's power in rate cases to disallow other expenses that are unjust, unreasonable, excessive, or unwarranted. Code Me. R. tit. 65-407 Ch. 83, § 5.
- Maine law also allows a public utility to grant free service or reduced rates for charitable purposes. Me. Rev. Stat. tit. 35-A, § 703 (West).
- The Public Utilities Commission has discretion to decide whether charitable contributions can be included as operating expenses for rate making purposes. *New England Tel. & Tel. Co. v. Pub. Utilities Comm'n*, 390 A.2d 8, 55 (Me. 1978).

U. Maryland

- According to Maryland law, charitable contributions “will not be allowed for rate making purposes in rate matters.” Md. Code Regs. 20.07.04.08.
- This was confirmed by Public Service Commission decisions. *Chesapeake & Potomac Tel. Co. of Md. v. Pub. Serv. Comm'n*, 230 Md. 395, 414–15 (1963); *Re Chesapeake & Potomac Tel. Co. of Maryland*, 20 P.U.R.4th 74, 103 (Md. P.S.C. May 5, 1977).
- Charitable contributions by utilities are not otherwise restricted or regulated.

V. Massachusetts

- No statute, rule, or regulation limits a utility's charitable contributions or mandates any disclosure.
- The Department of Public Utilities “excludes charitable contributions from the cost of service absent evidence that such giving is reasonable and provides a direct benefit to ratepayers.” *Re Berkshire Gas Co.*, No. 92-210, 1993 WL 254886, *22 (Mass. D.P.U. Mar. 31, 1993), *clarified on denial of reconsideration sub nom. In Re Berkshire Gas Co.*, D.P.U. No. 92-210-B, 1993 WL 559863 (Mass. D.P.U. Oct. 19, 1993).
 - That standard was also articulated in *Petition of Milford Water Co., Pursuant to G.L. C. 164, 94, & G.L. C. 165, 2, for Approval of A Gen. Rate Increase As Set Forth in M.D.P.U. No. 18a & M.D.P.U. No. 20.*, No. 12-86, 2013 WL 4772857, *1 (Mass. D.P.U. Aug. 30, 2013), *on reconsideration sub nom. Petition of Milford Water Co., Pursuant to G.L. C. 164, S 94, & G.L. C. 165, S 2, for Approval of A Gen. Rate Increase As Set Forth in M.D.P.U. No. 18a & M.D.P.U. No. 20.*, No. 12-86-A, 2013 WL 6383116 (Mass. D.P.U. Nov. 27, 2013).

W. Michigan

- The Public Service Commission has discretion in individual cases to allow or disallow operating expense deductions for charitable contributions. In the past, they have allowed operating expense deductions for contributions to institutions with broad effects that impacted most if not all ratepayers, but disallowed operating expense deductions for contributions to educational institutions. *Detroit Edison Co. v. Pub. Serv. Comm'n*, 127 Mich. App. 499, 524 (1983).
 - They were also allowed for a program where consumers “chose to contribute directly to certain nonprofits engaged in providing energy assistance to low and fixed-income consumers.” *In Re Consumers Energy Co.*, 246 P.U.R.4th 177 (Mich. P.S.C. Dec. 22, 2005).

X. Minnesota

- According to Minnesota statute, the Public Utilities Commission shall allow only 50% of charitable contributions that it deems prudent as operating expenses for public utilities. Minn. Stat. Ann. § 216B.16 (West).
 - Prudent contributions that qualify include those to “a community chest, corporation, organization, trust, fund, association or foundation, organized and operating for religious, charitable, philanthropic, benevolent, scientific, veteran rehabilitation service, literary, artistic, educational, civic or patriotic purposes or for the prevention of cruelty to children or animals.” Minn. Stat. Ann. § 300.66 (West).
 - The rule for telecommunications utilities is the same. Minn. Stat. Ann. § 237.075 (West).
- In addition, telephone utilities in rate change cases must “file a schedule of charitable contributions made or to be made by the telephone company during the test year for which the company seeks reimbursement. The schedule must show the recipient, the Minnesota company amount, the jurisdictional amount, and the amount for which the telephone company seeks reimbursement. The company shall also provide testimony and evidence that the contribution is prudent and complies with Minnesota Statutes, section 290.21, subdivision 3, clause (b) or (e). Charitable contributions include in-kind contributions such as donated employee time and other noncash contributions.” Minn. R. § 7810.8635.

Y. Mississippi

- Mississippi law gives the Public Service Commission the authority to allow reasonable charitable or civic contributions as cost of service in its regulations. Miss. Code. Ann. § 77-3-79 (West).
- However, the Commission has determined that they shall not be allowed as a cost of service. 39 Code Miss. R. Pt. I, R. 1:22.

- “1. Charitable or civic contributions shall not be allowed as cost of service. The Commission finds that passing on a public utility's charitable or civic contributions to ratepayers in the present difficult economic environment would be unreasonable, unfair, imprudent and contrary to the public interest. Allowing recovery of such contributions through rates would not promote adequate, reliable and economical service to all citizens and residents of the state and would contribute to rates that would neither be just nor reasonable.
- 2. A public utility may offer a mechanism on customer's bills that would allow the customer the opportunity to donate money, voluntarily, to charitable or civic organizations on a month-by-month basis in an amount determined by the customer.
- 3. All public utilities shall file an annual report detailing the contributions collected through any voluntary mechanism offered by the utility on the customer's bill and how such contributions were expended.” 39 Code Miss. R. Pt. I, R. 1:22.
- This was confirmed by recent Commission decisions, which emphasized that public utilities are encouraged to give to charity, but that ratepayers should not bear the cost. *In Re: Proposal of the Mississippi Pub. Serv. Comm'n to Possibly Amend Certain Rules of Practice & Procedure*, No. 2010AD421, 2011 WL 1455426 (Miss. P.S.C. Mar. 23, 2011).

Z. Missouri

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- Public Service Commission decisions have determined that charitable contributions are disallowed in determining rates and that ratepayers should not bear the cost. *In Re Missouri Gas Energy*, 207 P.U.R.4th 488 (Mo. P.S.C. Mar. 6, 2001).

AA. Montana

- The Public Service Commission does not permit a utility's charitable contributions to be recovered through rates. *See In the Matter of Nw. Energys Application for Auth. to Increase Retail Elec. Util. Serv. Rates & for Approval of Elec. Serv. Schedules & Rules & Allocated Cost of Serv. & Rate Design*, No. 2018.02.012, 2019 WL 7837301 (Mont. P.S.C. Dec. 20, 2019).

BB. Nebraska

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- The Public Service Commission has determined that contributions to charitable or educational institutions cannot be included as operational expenses in rate cases. *In Re Aquila, Inc.*, No. NG-0041, 2007 WL 2805321 (Neb. P.S.C. July 24, 2007), *decision clarified on denial of reh'g sub nom. In Re Aquila*, No. NG-0041, 2007 WL 2805707 (Neb. P.S.C. Aug. 14, 2007).

CC. Nevada

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- The Public Service Commission has said that utilities should contribute to the community, but that the cost of charitable contributions should be borne by shareholders. *Re Cent. Tel. Co.-Nevada*, No. 91-7026, 1992 WL 402072 (Nev. P.S.C. Jan. 7, 1992).

DD. New Hampshire

- Public utilities are permitted to give free or reduced rate service to charitable organizations. N.H. Rev. Stat. Ann. § 378:15.
- Charitable contributions are not permitted as an operating expense and should not be borne by ratepayers. *Re Energynorth Nat. Gas Inc.*, 77 N.H.P.U.C. 354 (N.H.P.U.C. July 20, 1992).
- The Commission may not "require a specified level of charitable giving by a utility" in merger approvals. *In Re Pub. Serv. Co. of New Hampshire*, 85 N.H.P.U.C. 758, *48 (N.H.P.U.C. Dec. 6, 2000); *See Pennichuck Water Works, Inc.*, 94 N.H.P.U.C. 442 (N.H.P.U.C. Aug. 13, 2009).

EE. New Jersey

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- The New Jersey court has decided that utilities are not prevented or discouraged from charitable giving, but that "the mandate of Title 48 for just and reasonable rates precludes the captive ratepayer from subsidizing those costs." *In re N.J. Am. Water Co.*, 169 N.J. 181, 196-97, (2001). In other words, they are disallowed as operating expenses.

FF. New Mexico

- According to New Mexico law,
 - "A. Contributions or donations to any political candidate, any political party, any religious cause, or any social, recreational, or fraternal organization shall not be allowed as a cost of service.
 - B. Dues in professional or trade associations and subscriptions to publications shall be allowed as a cost of service by a utility provided these dues contribute to the professional education and standing of the company's employees for whom the dues shall be paid.
 - C. Contributions, donations, dues, subscriptions, and membership fees other than those included... above will not be included in the determination of cost of service unless a utility affirmatively demonstrates that such expenditures are reasonable. Maintenance of full and adequate accounting for each expense shall be a prerequisite to allowance of any expenditure in rates under this part. Maintenance of corporate good will or good corporate citizenship is an

insufficient reason for inclusion of these expenditures in determining a utility's cost of service.” N.M. Admin. Code § 17.3.350.

- Subsequent Public Service Commission cases have confirmed that charitable contributions are disallowed as a cost of service. *El Paso Elec. Co. v. New Mexico Pub. Serv. Comm'n*, 1985-NMSC-085, ¶ 2, 103 N.M. 300, 302, 706 P.2d 511, 513 (1985); *Re Rules & Regulations Covering Rate Case Treatment of Certain Expenses*, 30 P.U.R.4th 338, 343 (N.M.P.S.C. Aug. 27, 1979).

GG. New York

- New York has disallowed utility companies to recover charitable contributions in rates because it violates ratepayers’ First Amendment right not to associate with personally offensive causes. *Cahill v. Pub. Serv. Comm'n*, 542 N.Y.S.2d 394, 396 (1989), *aff'd*, 76 N.Y.2d 102, 556 N.E.2d 133 (1990).

HH. North Carolina

- No state statutes, rules, or regulations limit a utility’s charitable contributions or require disclosure.
- The North Carolina Utilities Commission “has long held that charitable contributions by public utilities are not a cost of service that can be recovered from ratepayers. In other words, charitable contributions are utility expenditures that must be recorded below the line and paid from shareholders' earnings.” *In the Matter of Petition for Rulemaking Proceeding to Consider Proposed Rule to Establish Procedures for Disclosure & Prohibition of Pub. Util. Lobbying, Advert. & Other Expenditures*, No. M-100, 2019 WL 4170064, *5 (N.C.U.C. Aug. 29, 2019).

II. North Dakota

- No state statutes, rules, or regulations limit a utility’s charitable contributions or require disclosure.
- The North Dakota Public Service Commission disallows charitable contributions in rate cases. *Re N. States Power Co.*, 139 P.U.R.4th 348 (N.D.P.S.C. Dec. 15, 1992), *on reconsideration*, 141 P.U.R.4th 452 (N.D.P.S.C. Apr. 7, 1993).

JJ. Ohio

- No state statutes, rules, or regulations limit a utility’s charitable contributions or require disclosure.
- The Public Utilities Commission has decided that charitable contributions are not a cost of rendering the public utilities service and are disallowed as operating expenses; that decision was affirmed by the court. *Cleveland Elec. Illuminating Co. v. Pub. Utilities Comm'n of Ohio*, 69 Ohio St. 2d 258, 262, 431 N.E.2d 683, 686 (1982).

KK. Oklahoma

- Oklahoma law has said that charitable contributions are excluded from operating expenses allowable for rate making purposes for water service utilities. Okla. Admin. Code 165:65-13-6. (All gifts, donations, and contributions made by the regulated utility shall be treated as “below the line” expenses and excluded from operating expenses allowable for rate making purposes; including, but not limited to the following: (1) Contributions to charitable, religious, or educational institutions or associations. (2) Contributions to civic, community, social, or public welfare organizations or associations...”).
- According to Oklahoma law, corporations have the power to “[m]ake donations for the public welfare or for charitable, scientific or educational purposes, and in time of war or other national emergency in aid thereof.” Okla. Stat. Ann. tit. 18, § 1016 (West). This rule also applies to utilities. *State v. Oklahoma Gas & Elec. Co.*, 536 P.2d 887, 892 (Okla. 1975).
 - That case said that the Commission’s policy that charitable contributions were not allowed as operating expenses did not violate the law giving corporations the power to make charitable contributions. However, it did indicate that it would be invalid to limit the amount a utility can give to charity. *Id.*

LL. Oregon

- No state statutes, rules, or regulations limit a utility’s charitable contributions or require disclosure.
- However, the Public Service Commission does not allow charitable contributions as an operating expense. *In the Matter of Nw. Nat. Gas Co., DBA Nw Nat. Application for Approval of Corp. Reorganization to Create A Holding Co.*, 342 P.U.R.4th 155 (Or. P.U.C. Dec. 28, 2017).

MM. Pennsylvania

- According to Pennsylvania law, for rate change cases in front of the Public Utility Commission, utilities must submit schedules for the test year and the 12 months following the test year showing the charitable and civic contributions it made by recipient and the amount if claimed as an expense. 52 Pa. Code § 53 Exhibit C.
- The Public Utilities Commission has determined that ratepayers should not bear the costs of a utility’s charitable contributions, though it hoped that utilities would continue to make those contributions. *Pennsylvania Pub. Util. Comm’n v. Roaring Creek Water Co.*, No. R-00932665, 1993 WL 855877, *7–8 (Pa. P.U.C. Dec. 2, 1993).

NN. Rhode Island

- No state statutes, rules, or regulations limit a utility’s charitable contributions or require disclosure.
- Initially, charitable contributions were allowed as an operating expense if they were reasonable and incurred for a purpose directly beneficial to ratepayers. *Providence Gas Co. v. Burman*, 119 R.I. 78, 100 (1977).

- However, more recently, the Public Utilities Commission has said that utility donations cannot be funded through rates. *In Re: The Narragansett Elec. Co. d/b/a Nat'l Grid - Elec. & Gas Distribution Rate Filing in Re: The Narragansett Elec. Co. d/b/a Nat'l Grid Proposed Power Sector Transformation Vision & Implementation Plan*, No. 4770, 2020 WL 2486930, *12 (R.I.P.U.C. May 5, 2020).

OO. South Carolina

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- However, the Public Service Commission does not allow charitable contributions as an operating expense. *In Re: Application of Duke Energy Progress, LLC for Adjustments in Elec. Rate Schedules & Tariffs*, 351 P.U.R.4th 239 (S.C.P.S.C. May 21, 2019), reconsideration granted in part sub nom. *In Re: Application of Duke Energy Progress, LLC for Adjustments in Elec. Rate Schedules & Tariffs & Request for an Accounting Order*, No. 2018-318-E, 2019 WL 5401005 (S.C.P.S.C. Oct. 18, 2019).

PP. South Dakota

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- However, the Public Utilities Commission has decided that while utilities are free to make charitable contributions and fund them through stockholder's funds, the cost cannot be borne by ratepayers. *Re Nw. Bell Tel. Co.*, 3 P.U.R.4th 473 (S.D. Cir. Ct. Dec. 6, 1973); *Re Minnesota Gas Co.*, 32 P.U.R.4th 1, 29 (S.D.P.U.C. Sept. 26, 1979); *Re Nw. Bell Tel. Co.*, 68 P.U.R.4th 436, 443 (S.D.P.U.C. July 31, 1985).

QQ. Tennessee

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- The Public Service Commission does not allow charitable contributions in rate cases. *In Re: Petition of Chattanooga Gas Co. to Place into Effect A Revised Nat. Gas Tariff*, 97-00982, 1998 WL 35628746 (Tenn. P.S.C. Oct. 7, 1998).

RR. Texas

- Charitable or civic contributions are permitted as a cost or expense to the level approved by the regulatory authority for electric utilities. Tex. Util. Code Ann. § 36.061 (West).
 - “(b) The regulatory authority may allow as a cost or expense:
 - (1) reasonable charitable or civic contributions not to exceed the amount approved by the regulatory authority; and
 - (2) reasonable costs of participating in a proceeding under this title not to exceed the amount approved by the regulatory authority.” Tex. Util. Code Ann. § 36.061 (West).

- In rate setting hearings, gas utilities have to present evidence on “the amounts expended during the test year, with the corresponding amount for each, for business gifts, entertainment, charitable or civic contributions; institutional advertising; conservation advertising; consumption-inducing advertising; and other advertising.” 16 Tex. Admin. Code § 7.501.
- P.U.C. SUBST. R. 23.31(b) also allows charitable or civic contributions as a cost or expense for rate-making purposes, but the utility must demonstrate that the contributions are reasonable and beneficial to the community. *In Re Cent. Power & Light Co.*, No. 14965, 1996 WL 33403541 (Tex. P.U.C. Jan. 25, 1996); *In Re Cent. Power & Light Co.*, No. 14965, 1997 WL 1070358 (Tex. P.U.C. Oct. 16, 1997); *In Re Reliant Energy*, No. 22355, 2001 WL 1869949 (Tex. P.U.C. Oct. 4, 2001), *subsequently aff'd in part, rev'd in part sub nom. Reliant Energy, Inc. v. Pub. Util. Comm'n of Texas*, 153 S.W.3d 174 (Tex. App. 2004).

SS. Utah

- According to Utah law, in a rate case application, the applicant must provide “[f]or the Base Year and the Test Period, a list of contributions for charitable and political purposes, if any, included in accounts other than below the line. [The applicant must i]ndicate the amount of the expenditure, the recipient of the contribution, and the specific account in which the expense is included in the filing. [The applicant must a]lso identify for the Base Year and the Test Period the amounts of contributions for charitable and political purposes charged to the utility from affiliates in accounts other than below the line accounts.” Utah Admin. Code r. § R746-700-22.
- The Public Service Commission does not allow charitable contributions to be included as a recoverable expense in ratemaking cases. *Salt Lake Citizens Congress v. Mountain States Tel. and Tel., Co.*, 846 P.2d 1245, 1251 (Utah 1992); *In the Matter of the Consideration of the Rescission, Alteration, or Amendment of the Certificate of Auth. of All Am. to Operate As A Competitive Local Exch. Carrier Within the State of Utah*, No. 08-2469-01, 2009 WL 2701461, *2 (Utah P.S.C. Aug. 24, 2009).

TT. Vermont

- No state statutes, rules, or regulations limit a utility’s charitable contributions or require disclosure.
- The Public Utility Commission has said in previous decisions that utilities should make charitable contributions, but that they should not be included as an operating expense. *Re Cent. Vermont Pub. Serv. Corp.*, 49 P.U.R.4th 372 (Vt. P.S.B. Sept. 16, 1982); *Re New England Tel. & Tel. Co.*, 62 P.U.R.4th 503 (Vt. P.S.B. Oct. 5, 1984); *Re Cent. Vermont Pub. Serv. Corp.*, 113 P.U.R.4th 220 (Vt. P.S.B. May 31, 1990), *amended sub nom. Tariff Filing of Cent. Vermont Pub. Serv. Corp.*, No. 5372, 1990 WL 666798 (Vt. P.S.B. June 29, 1990).

UU. Virginia

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- The State Corporation Commission currently permits recovery of one-half the amount of charitable contributions in cost of service. *In Re Washington Gas Light Co., Virginia Div.*, 164 P.U.R.4th 186 (Va. S.C.C. Sept. 28, 1995); *Application of Appalachian Power Co. for an Increase in Electric Rates*, No. PUE-2006-00065, 2007 WL 9361060, *40 (Va. S.C.C. Mar. 28, 2007).

VV. Washington

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- The Utilities and Transportation Commission does not allow charitable contributions to be included as an operating expense. *Jewell v. Washington Utilities & Transp. Comm'n*, 90 Wash. 2d 775, 780 (1978).
 - That aspect of *Jewell* is still cited as good law. *See Washington Utilities & Transp. Comm'n, Complainant v. Nw. Nat. Gas Co., Respondent.; in the Matter of the Petition of Nw. Nat. Gas Co. for an Accounting Order Authorizing Deferred Accounting Treatment of Certain Costs Associated with the Smart Energy Program.*, No. 04, 2008 WL 4616785 (Wash. U.T.C. Oct. 14, 2008).

WW. West Virginia

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- The Public Service Commission encourages that utilities make reasonable charitable contributions, but has decided that they must be borne by shareholders rather than ratepayers and does not approve them as an expense item for rate-making purposes. *Re Chesapeake & Potomac Tel. Co. of W. Virginia*, 28 P.U.R.4th 120, 123 (W. Va. P.S.C. Oct. 12, 1978). *In Re Hope Gas, Inc.*, No. 08-1783-G-42T, 2009 WL 4912694, *36 (W. Va. P.S.C. Nov. 20, 2009).

XX. Wisconsin

- According to Wisconsin law, "charitable contributions and other donations not related to providing utility service" are not permitted to be included in the calculation of actual return on common equity for the utility. Wis. Admin. Code PSC § 116.01.
- Other than that, no state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- The Public Service Commission "has had a long standing policy that charitable contributions are to be at shareholder, not ratepayer expense." *Application of Wisconsin Power & Light Co. to Increase Retail Rates for Elec., Nat. Gas & Water Serv.*, No. 6680-UR-104, 1989 WL 1793949 (Wis. P.S.C. Nov. 9, 1989).

YY. Wyoming

- No state statutes, rules, or regulations limit a utility's charitable contributions or require disclosure.
- The Public Service Commission has decided that voluntary charitable contributions should be encouraged, but that they should be funded through shareholder contributions. *In Re Kinder Morgan, Inc.*, No. 10437, 2006 WL 4130480 (Wyo. P.S.C. Dec. 4, 2006).
- However, the Commission reviews deductions for charitable contributions for reasonableness for cooperatives. *In Re High Plains Power, Inc.*, No. 10020-32-CR-06, 2008 WL 6153728 (Wyo. P.S.C. Oct. 17, 2008).