

Inclusion of Future Costs in Connection Charges

by John Ghilarducci

When revising or developing capital facilities charges, Washington cities continue to face the following key question: *“Can the cost of planned future facilities be included in the cost basis of the charge?”* It appears from recent work performed by FCS Group that support is growing for including future costs in this calculation.

Capital facilities charges (often called connection charges) are one-time fees imposed as conditions of service. Their purpose is to recover an equitable share of the capital investment incurred by a utility. The “future cost” component is based on the cost of planned capital outlays needed to expand system capacity to serve a growing customer base.

Connection charge law as it applies to cities (RCW 35.92.025) is somewhat ambiguous on the issue of including the costs of future facilities in the connection charge calculation. While language in the law as it applies to water and sewer districts (RCW 57.08.010) specifically authorizes districts to include the cost of future facilities in the charge calculation, language in the city law does not. (To be included in district charges, future facilities must be contained in an adopted comprehensive plan with plans for construction within ten years.) Although city statute does not contain this explicit authorization, it does not forbid the inclusion of future costs in the calculation.

Specifically, RCW 35.92.025 grants cities the authority to make charges for connecting to water and sewer systems¹. It further authorizes cities to charge property owners a connection fee, which the city legislative body determines proper, "in order that such property owners shall bear their equitable share of the cost of such system."

When working with Washington cities, we have made a practice of asking for the legal opinion of the city attorney on this issue. In 1996, we received several opinions, which we believe support the inclusion of certain future facilities costs in the capital facilities charge calculation². Notably, Hugh Spitzer of Foster Pepper & Shefelman states, “We are of the opinion that both cities and water (and, by the same logic, sewer) districts have ample authority to include the cost of future facilities so long as the impact of each new customer is clearly documented by engineers and/or financial consultants

¹It is assumed that “sewerage” facilities include storm drainage facilities.

²We have received 1996 opinions from the following: Hugh Spitzer, Foster Pepper & Shefelman; Oskar Rey, City of Kirkland; and David Svaren, City of Burlington.

and the local utility expressly relies on professional studies by those engineers or consultants in adopting that component of the capital facilities charge.”

Mr. Spitzer further states that “Washington courts have upheld the ability of governmental utilities to include future capital costs in the determination of connection charges when no express grant existed.” He cites both *Hillis Homes v. Public Utility District No. 1 of Snohomish County* and *Lincoln Shiloh Association v. Mukilteo Water District* as leading cases supporting this viewpoint. In both cases, the court noted favorably that the capital facilities charge in question was established to pay only for those improvements needed to serve new customers.

When establishing capital facilities charges, the following steps are very important:

- projecting the overall cost of improvements;
- projecting the capacity of the improvements;
- determining the necessity of the improvements to serve new customers; and
- demonstrating a direct linkage between the cost of improvements and the necessity of those facilities to serve the customers who are being charged for their development.

In conclusion, support seems to be growing for including certain (not all) planned future facilities costs in the calculation of capital facilities charges for city water, sewer, and stormwater services, although care must be taken to allocate eligible costs appropriately. We encourage our municipal clients to provide this background information for their respective city attorneys when requesting a legal opinion on this issue.

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For more information on this subject, send an email to: johng@fcsgroup.com.