

How to Participate in a Utility Rate Case

*Hint: This isn't
"Law and Order"*

First, a little history

- State regulatory commissions came into existence in the early 1900s with the advent of gas, electric and telephone franchised monopolies.
- Without multiple providers, rate regulation was devised as a substitute for competition.

Utility Rate Cases are “cyclical”

- Electric utilities are highly capital intensive operations;
- Electrical utilities come in for rate cases when they build new plants or make extensive upgrades to existing plants;
- Utilities also file rate cases seeking rate increases when borrowing costs are high or they are experiencing extraordinary costs (storm damage).

Many contentious rate cases during the late 1970s and early 1980s

- Big period of construction for electric utilities, especially of nuclear facilities;
- Double digit interest rates.

1990s and early 2000s

- Few rate cases.
- Utilities under rate increase moratoriums as customers still absorbing increases due to new plant construction;
- Utilities able to benefit from disparity between tax treatment of depreciation and book value of depreciated facilities.

Last five years

- Plants built in 1970s and 1980s need to be upgraded or replaced due to environmental regulations;
- More generation plants fired by natural gas brought online because of its abundance and because natural gas plants are needed to offset wind generation when the wind doesn't blow;
- Technological advances such as smart grids provide utilities with much needed real time data, but these advances necessitate plant upgrades as well as new back office systems that allow the utility to utilize the data collected.

Who Can Participate In a Utility Rate Case?

Parties to Utility Rate Cases

- Public Utility Commission Staff – represents expert staff witnesses and “the public generally:”
- Consumer counsel – represents residential and small business customers;
- Other intervenors, such as large commercial customers.

K.S.A. 66-1223 Consumer counsel, powers.

The consumer counsel may do the following:

- (a) Represent residential and small commercial ratepayers before the state corporation commission;
- (b) function as an official intervenor in cases filed with the state corporation commission, including rate increase requests;
- (c) initiate actions before the state corporation commission;
- (d) represent residential and commercial ratepayers who file formal utility complaints with the state corporation commission;
- (e) intervene in formal complaint cases which would affect ratepayers; and
- (f) make application for a rehearing or seek judicial review of any order or decision of the state corporation commission.

Intervention is required to participate
in “technical” portion of rate case

- Commission holds “public” hearings to hear comments from affected ratepayers;
- No intervention required to appear at public hearings;
- Intervention is required to participate in “technical” hearing, to participate in discovery, to file testimony and to cross-examine witnesses.

In regulatory parlance, you must be an “intevenor” to participate in a utility rate case

- Must research state statutes to see what is required to be an “intervenor.”
- An excellent option is to contact the consumer counsel in a particular state to either partner with them or to use them as a resource on effective participation in a rate case.
- www.nasuca.org

Kansas Intervention Rules typical

- Found at K.A.R. 82-1-225
- Petition to intervene in rate case must be submitted in writing;
- Petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or that petitioner qualifies as an intervenor under any provision of law.

In Kansas, the AARP has participated in a number of rate cases. Although they have retained their own counsel, the AARP counsel has worked closely with the counsel for the Citizen's Utility Ratepayer Board, Kansas' consumer counsel.

Other State Examples

Missouri

- 4 CSR 240-2.075
 - Must be filed within 30 days after commission issues order giving notice of case
 - Must include legal name of association, person or entity seeking to intervene;
 - Must include street and mailing address, email address, fax and telephone numbers;
 - Must include a statement of proposed intervenor's or new member's interest in the case and reasons for seeking intervention;
 - Must include a statement as to whether the proposed intervenor or new member supports or opposes the relief sought or that the proposed intervenor or new member is unsure of the position it will take

Washington

- **WAC 480-07-355**
- Must file written petition for leave to intervene at least three business days before the initial hearing date or prehearing conference.
- Contents must include petitioner's name and address;
- Person's interest in the proceeding;
- Petitioner's position with respect to the matters in controversy.
- Whether the petitioner proposes to broaden the issues in the proceeding, and if so, a statement of the proposed issues and an affidavit or declaration that clearly and concisely sets forth the facts supporting the petitioner's interest in broadening the issues;
- The name and address of petitioner's attorney or other representative, if any. Attorneys and other party representative must separately file their notice of appearance as required by WAC 4800-07-345

Pennsylvania

- 52 Pa Code § 5.72 Eligibility to intervene
 - A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.
 - (1) A right conferred by statute of the united States or of the Commission;
 - (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding;
 - (3) Another interest of such nature that participation of the petitioner may be in the public interest;

**Anatomy
of a
Rate Case**

Rate Case Applications

- Must clearly state aggregate annual revenue increase sought;
- Number and classifications of customers affected
- Average per customer increase sought in dollars and cents;
- Summary of reasons for filing application;

Filing contents spelled out in state statutes or regulations

- Must file extensive schedules detailing:
 - Plant Investments;
 - Accumulated provision for depreciation, amortization and depletion;
 - Working capital;
 - Capital and cost of money; financial and operating data;
 - Test year and pro forma income statements;
 - Test year and pro forma income statements;
 - Depreciation and amortization;
 - Taxes;
 - Allocation rations;
 - Filings made at the Securities and Exchange Commission;

Utility rate case starts with identification of a test year

- Utility must submit data for test year;
- Utility must submit data for 3 calendar years prior to test year;
- Utility must submit data for 12-month period preceding test year.

Timeline for rate case filings

- Typically state public utility commissions have a set number of days between date rate case is filed and date it must issue final order granting, denying or granting in part rate increase requests.
- KS – 240 days;
- Failure to act within statutory deadline results in rates going into effect in full, as requested by the utility.

Typical rate case

- Within a week or two after filing, Commission sets procedural schedule;
- an intense period of discovery occurs with commission staff and other retained consultants filing “data requests;”
- Data requests “drill down” into the details of the filing;
- Hearing date is set 180 – 210 days after filing is made;
- Commission then has 30-60 days after conclusion of hearing to produce its final order.

Use of Prefiled Testimony

- Most states do not utilize “live” direct examination;
- Utility submits “prefiled” testimony;
- Witnesses submits questions and answers which likely would have been asked as direct testimony;
 - witness’ name and address;
 - brief summary of the person’s credentials (or can be appended as an exhibit);
 - discussion of various schedules that are part of the rate case filing;
- Public utility commission staff experts (accountants, economists, engineers) also submit “prefiled” testimony questioning either certain test year expenditures, rate of return proposed by utility or expenditures associated with plant expenditures.
- Other intervenors also submit “prefiled” testimony which focuses on portions of the case that is the focus of their advocacy.
- Usually due about day 150 – 180 days from initial utility filing or three weeks before hearing.
- Utility may be permitted to file “rebuttal” testimony.

Rate cases consist of two parts

- 1. Determining the Revenue Requirement
- 2. Rate Design

- Policy issues also are addressed in the context of a rate case.
- In recent years, they often have included such issues as the fuel mix a utility uses to produce electricity... i.e., what percentage of power should a utility obtain from wind and/or renewables as opposed coal

Revenue Requirement

The Basic Formula

- Revenue Requirement is calculated by determining operating expenses plus a rate of return on property, plant and equipment.

- $RR = OE + r (RB)$

- RR = Revenue Requirement
- OE = Operating Costs and Maintenance Costs
- r = rate of return on investment
- RB = Rate Base

Examples of Operating Costs

- General and administrative expenses
- Payroll
- Pension costs
- Taxes other than income taxes, such as ad valorem (property) taxes

Examples of Maintenance Costs

- Coal, railroad transportation of coal
- Natural gas
- Nuclear fuel

Property, Plant and Equipment

- Cost of generating plants, less depreciation
- Cost of transmission facilities, less depreciation
- Cost of distribution plant, less depreciation
- Cost of other facilities used to provide service to customers

Rate of Return on Investment

- In the utility industry, rate of return on investment is generally synonymous with cost of capital;
- Included are
 - The utility's cost of debt
 - The utility's cost of preferred stock
 - The utility's cost of common equity

Two famous court cases,
one in 1923 and one in
1944, established the legal
criteria for a fair rate of
return

A public utility's allowed rate of return:

- should be sufficient to maintain the utility's financial integrity;
- should enable the utility to attract additional capital on reasonable terms;
- should be equal to that earned by other companies with comparable risks.

Rate Base

- Investor supplied plant facilities and other investments required in supply utility service to customers.
- Basically anything that can be depreciated, such as facilities and vehicles.

Rate Base can be controversial

- Must be “used and useful.”
- Only plant currently providing or capable of providing utility service to customers is included in rate base.
- Must be “prudent.”
- Commission looks at the decision-making process used by the utility and whether there were cost overruns that could have been anticipated.
- Utilities sometimes request allowances for construction work-in-progress (CWIP) to help with cash management issues during construction;

Trend now towards “pre-approval” of major capital expenditures

- As the result of many cost overruns associated with the construction of nuclear plants commenced during the 1970s, which actually went on-line in the 1980s, the whole concept of prudence in the context of rate cases came into being.
- Now many utilities come to the state public utility commissions seeking prior approval before making significant additions to plant.

Rate Design

- Once the actual dollar amount of the revenue requirement is determined, the focus shifts to rate design;
- This is where rates are apportioned between residential, commercial and large industrial customers.
- Large industrial customers either retain their own counsel or form a consortium, hire counsel, and represent their interests in rate cases.
- Residential and small commercial customers are represented by the consumer counsels in the various states.

How rates are apportioned between customer classes

- Initial rate case application must include test year revenues under existing and proposed tariffs;
- Average number of customers served under each tariff or rate classification during test year;
- Number of units sold;
- Base revenue;
- Additional revenue from riders, fuel or purchased power clauses;
- Revenue per unit sold;
- Proposed tariff revenue and proposed revenue per unit;
- Dollar and percentage increases based on hypothetical granting of application as submitted;

Some states have adopted tariffs that offer special rates for low income customers

- Kansas has rejected low income rates stating that such a rate is “unduly discriminatory” because it forces other classes of customers to pay higher rates;
- Some resistance to low income rates because of “cold weather rule” and financial assistance available to customers to assist with payment of utility bills;
- In KS capped at \$300 per year. Administered by Department of Children and Families.

Electric Rates Definitely Trending Upward

- Adding wind and other renewable generation capabilities to portfolio;
- Build New Transmission Super-Highway (both AC and DC);
- Build natural gas turbine generators in conjunction with wind generation;
- Make environmental upgrades on existing plants;
- Replace existing plant that can't be upgraded;
- Create and install carbon capture and storage system;
- Rebuild aging distribution system;
- Create and install smart grid;
- Install smart meters;
- Install new back-office telemetry and communication systems to interface with smart grid and smart meters.

Very important to participate in utility rate cases as an intervenor

- Permits you to have access to complete filing, although intervenors are required to sign “non-disclosure” agreements to obtain access to confidential materials;
- Permits counsel to cross-examine witnesses in technical hearings;
- Permits participation in settlement discussions.

Partnering with consumer counsel

- Most consumer counsels hire expert witnesses to examine the revenue requirements portion of utility filings.
- Consumer counsel may or may not advocate for low income rates.
- Advocates for low income rates could focus on rate design or other policy issues affecting their constituencies.

- Presented by:

- Rachel Lipman Reiber

- Rachel Lipman Reiber, LLC

- 11032 S. Whitetail Lane

- Olathe, KS 66061

- (913) 226-6762

- rachelreiber@att.net

- Former Assistant General Counsel and Commissioner – Kansas Corporation Commission

- Former Attorney Advisor - Federal Energy Regulatory Commission

- Former Director of Regulatory Affairs - Sprint Corporation

- Former Vice President of Regulatory and Government Affairs - Everest Connections

- Credits to:

- David Springe - Kansas Citizens' Utility Ratepayers Board

- Darryl Tietjen – Public Utility Commission of Texas