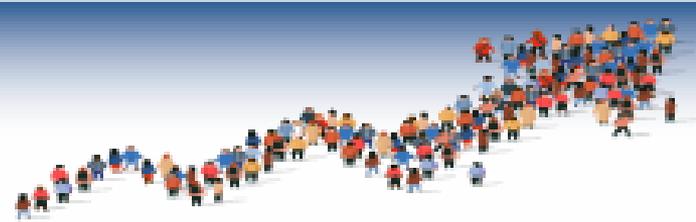


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NATIONAL ENERGY & UTILITY AFFORDABILITY COALITION



# How to Participate in a Utility Rate Case

Rachel L. Reiber

# First, a little history

- State regulatory commissions came into existence in the early 1900s with the advent of gas, electric and telephone franchised monopolies.
- The regulation of rates charged by monopoly utilities was devised as a substitute for competition.

# Utility Rate Cases are “cyclical”

- Electric utilities are capital intensive operations with generation plants powered by nuclear, coal, natural gas or wind facilities.
- Electric utilities generally file for rate cases every three years; however, rate cases may be filed more frequently 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 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 nuclear plant construction.
- Utilities able to benefit from disparity between tax treatment of depreciation and book value of depreciated facilities.

# 2010-2020

- 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

- The public utility that files the application for a rate increase
- The staff of the public utility commission, which includes attorneys, accountants, economists and engineers.
- Their duty is to represent “the public generally”
- Consumer counsel – represents residential and small business customers
- Other intervenors, such as large commercial customers.

# 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.

# What does it mean to be an Intervenor?

- Intervenor may initiate and receive discovery; they may file testimony; they may cross-examine witnesses, and if the case is settled instead of being litigated, intervenors may participate in settlement negotiations.
- Intervenor who wish to challenge a state public utility commission's decision may appeal as prescribed by that state's statutes.

**In Kansas, the consumer counsel is the Citizens Utility Ratepayer's Board (CURB). CURB's mission is set forth in 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
- (f) make application for a rehearing or seek judicial review of any order or decision of the state corporation commission

# Kansas Intervention Rules typical

- 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 another 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 State:

- Summary of reasons for filing application
- Aggregate annual revenue increase sought
- Number and classifications of customers affected
- Average per customer increase sought in dollars and cents

# 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
  - Depreciation and amortization
  - Taxes
  - Allocation ratios
  - Filings made at the Securities and Exchange Commission

# Additional Filing Requirements

- Must include test year revenues under existing and proposed tariffs; some commissions require data for 1-2 years preceding test year
- 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

# Strict time schedule for issuance of Commission decisions after filing

- 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; focus is on cross-examination
- As part of its application, utility submits “prefiled” testimony of company witnesses, including CEO; CFO; engineers and rate specialists.
- Witnesses submit 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 reasons for requested rate increase and explanation of the various schedules that are part of the rate case filing
- Public utility commission staff experts (accountants, economists, engineers) also submit “prefiled” testimony questioning test year expenditures, rate of return proposed by utility or necessity of costs associated with plant expenditures.
- Other intervenors also submit “prefiled” testimony that pertains to portions of the rate case that is the focus of their advocacy.
- Staff and intervenor testimony due about 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.

# 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 either have staff or retain consultants to analyze utility rate case 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.

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# Utility litigation for fun and profit

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Ohio Partners for Affordable Energy

## 44 WHAT IS OHIO PARTNERS FOR AFFORDABLE ENERGY, AND WHY DOES IT WORK ON UTILITY CASES?

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- OP&E's corporate purpose is to advocate on behalf of low- and moderate-income families.
- A key to affordability is to ensure utility expenditures and rates don't get out of hand.
- Utility litigation allows organizations to protect and expand consumer protections.
- Litigation and legislative advocacy can create and expand utility weatherization and energy efficiency programs, and fuel funds.
- Cases provide an opportunity to develop other affordability programs.
- Litigation provides a forum to promote lowest cost generation and distribution options, including solar and wind.

## 45 THE CLASSIC RATE CASE AND MODERN VARIATIONS

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- Rate cases are the way rates are set in states with traditional regulation. These are monopoly utilities that are vertically integrated.
- About 50% of states have deregulated: energy rates are set through the competitive market and authorize third-party vendors (marketers) to sell electricity or natural gas.
  - Rate cases are limited to distribution and transmission costs.
- Single-issue ratemaking – pulls defined expenditures out of the rate case process and regulates separately. This makes distribution rates variable.
  - Infrastructure replacements and upgrades with multiyear authorizations. These investments are ultimately incorporated into rate base in a rate case.
  - Fuel riders, bad debt trackers, public benefits fund riders are all examples.

## 46 OTHER TYPES OF COMMISSION PROCEEDINGS

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- Rules and Rule Review dockets:
  - Consumer Protections
    - Example – disconnection notice requirements.
  - Market Monitoring
  - Service and Safety Standards
  - Marketer Operating Standards
- Rider Dockets
  - Infrastructure
  - Payment Assistance
  - Energy Efficiency/Demand Response and Renewable Energy

## 47 KEEP AN EYE ON THE LEGISLATURE

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- Legislatures authorize the regulatory framework.
- Clean Energy Standards
- Low-Income Programs
  - Example – Percentage Income Payment Plans – IL; Ohio; Virginia
- Consumer Protections
  - Example – Efforts to make bilateral contracts between marketer and residential/small commercial customers illegal.
- Alternatives to Rate Cases
  - Example – Capitol Expenditure Programs

## 48 WHY LEVERAGE ADDITIONAL LOW-INCOME FUNDING?

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- Serve more needy clients!
  - Weatherization Assistance Program (WAP) is only 22.4% of the funding spent on low-income weatherization. LIHEAP is the majority at 41.3%. Leveraged funds account for 36.3%
- Expand available measures, including new and innovative technologies and health & safety funding.
- Improve the health and wellbeing of families – priceless, but value of the lost time, doctors bills, and other costs is more than \$14,000.
- Protect what is often a family's only asset and stabilize affordable housing stock. Stabilize neighborhoods and improve education outcomes.
- Provide funding stability for subgrantees and their contractors.

## 49 LEVERAGING HELPS MEET PUBLIC POLICY GOALS

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- Air quality goals – State Implementation Plans
- Energy Efficiency Resource Standards
- Preserve affordable multifamily housing
- Reduce migration of low-income families
  - Helps family members retain employment
  - Improves educational outcomes
  - Reduces homelessness
- Neighborhood revitalization – community weatherization.

# WEATHERIZATION LEVERAGING AUTHORITY

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## 42 USC § 6864A PRIVATE SECTOR

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### INVESTMENTS

*Financial assistance provided under this section may be used for—*

- (1) the **negotiation of such partnerships**, agreements and other arrangements;*
- (2) the **presentation of arguments** before State or local agencies;*
- (3) **expert advice** on the development of such partnerships, agreements, and other arrangements; or*
- (4) other activities reasonably associated with the **development and initial implementation** of such arrangements.*

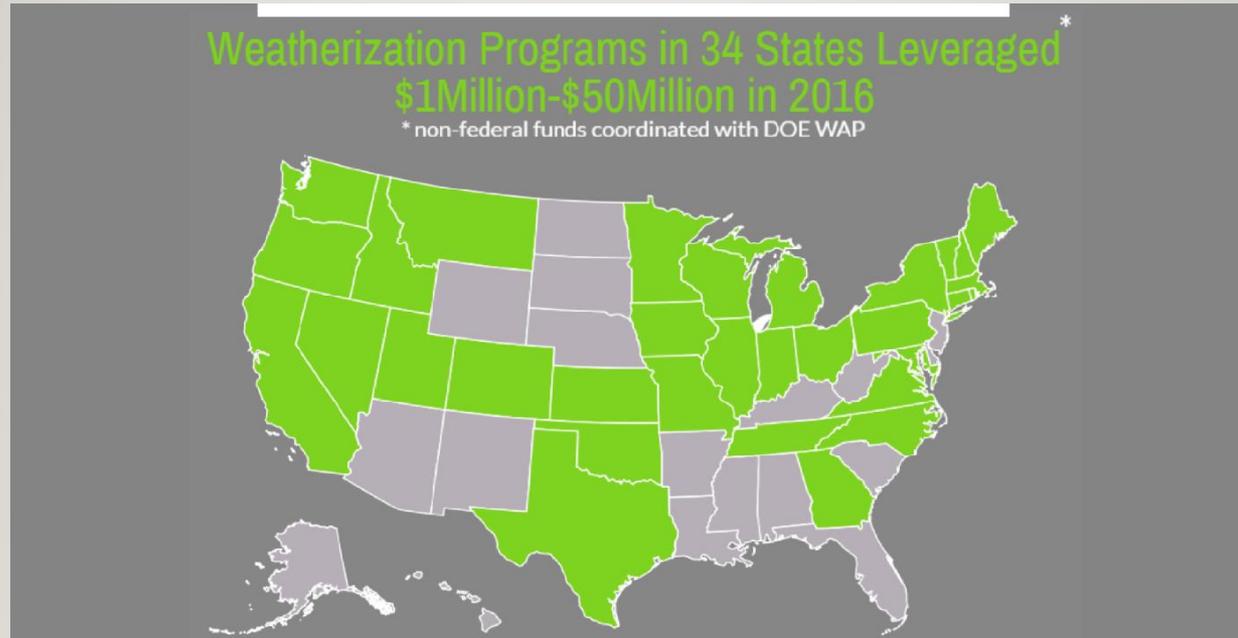
## 51 LIHEAP LEVERAGING AUTHORITY – ASSURANCE 16 & LEVERAGING -- 42 USC § 8624 & 8626

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- (16) use up to 5 percent of such funds, at its option, to provide services that encourage and enable households to reduce their home energy needs.
- (2) A state may expend funds allocated under this title as are necessary, not to exceed:
  - 0.08 percent of such allocation or \$35,000 each fiscal year, whichever is greater,
  - To identify, develop, and demonstrate leveraging programs...

## 52 WHAT STATES ARE ACTIVELY LEVERAGING FUNDS?

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## 53 LEVERAGING OPPORTUNITIES

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- Any state where utilities are building new powerplants or have pulled the plug on building a plant.
  - Every new coal or nuclear plant under construction is at least 200% over budget.
  - South Carolina; Georgia; Mississippi.
  - Argument: need to protect low income customer from impacts of rate hikes.
- States that have just passed legislation to bail out uncompetitive powerplants or significantly subsidize green energy.
  - In much of the country, states are choosing to bailout coal and nuclear plants that can't compete.
  - Illinois; New Jersey; Ohio.

## 54 LEVERAGING OPPORTUNITIES II

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- States that are moving to 50-100% renewables and putting comprehensive Demand Side Management Programs into place.
  - Low income customers are at least 20% of all residential customers; there needs to be equity in program funding.
  - Make homes 'zero net energy ready'.
  - Our clients are not good candidates for rooftop solar, but a heat pump water heater or high efficiency heat pump can be huge.
- States that are embarking on smart grid rollouts.
  - Deployment significantly increases bills; weatherization can offset the cost.
  - Tendency of disconnections to increase when smart meters are deployed. Weatherization and bill payment assistance helps mitigate this problem.
  - Opportunity to help low income customers use data and demand response to reduce bills.

# 55 FINDING ALLIES FOR YOUR EFFORTS

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- Utilities.
- Industrial customer groups.
- Small business advocacy groups.
- State consumer counsels.
- Consumer protection advocacy organizations.
- Legal aid or other groups serving low income clients.
- Environmental organizations.
- Engage clients and other customers.
- Energy Efficiency for All (EEFA) coalitions – 12 states.

# 56 THANK YOU!

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OPAE Energy Services provides expert witness and consulting services on leveraging, program design, and program management.

# Continuing the Learning

NASUCA (the National Association of State Utility Consumer Advocates) has 55 member offices in 43 states and the District of Columbia, Barbados, Puerto Rico, and Jamaica.

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