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CASE NO. AW-2011-0330
REVIEW OF RATE CASE EXPENSE MATTERS
STAFF REPORT
AUGUST 2013

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Data Center
Missouri Public
Service Commission

Introduction

On April 27, 2011, the Commission issued an Order establishing Case No. AW-2011-0330, and within this docket directed its Staff to investigate the Commission's current rules and practices regarding recovery of rate case expense in rates by Missouri utility companies. In particular, the Commission asked whether the current policy of generally allowing rate recovery of the entire amount of a utility's incurred rate case expense should be changed either by assigning some portion of these costs to the utility's shareholders, or instituting an overall "cap," or limit, on the amount of recovery of rate case expense in rates by utilities. The Commission stated its concern over rate case expense issues was tied to testimony presented in recent rate cases and the recent escalation in the amount of claimed rate case expenses by Missouri utilities. As part of its investigation into these matters, the Staff was directed to investigate the practices of other public utility commissions regarding rate recovery of rate case expense. Lastly, the Staff was directed to file a report on its findings regarding this topic.

Definition and Background

Rate case expense can be defined as all incremental costs incurred by a utility directly related to an application to change its general rate levels. These applications are usually initiated by the utility, but rate case expenses may also be incurred as a result of the filing of an earnings complaint case by another party. The largest amounts of rate case expense usually consist of costs associated with use of outside witnesses/consultants and outside attorneys by the utility in the rate case process.

Outside witness/consultant costs are incurred within the rate case process when a utility hires a non-employee consultant to sponsor a position for the utility, or to aid another witness in sponsoring a rate case position. Consultants may be hired for this purpose because the utility does not employ any individuals with what it views as sufficient expertise or experience to support the desired position, or because the utility believes the consultant would have greater credibility in presenting the position than in-house personnel would. In Missouri, almost all utilities hire outside witnesses to sponsor their rate of return/return on equity positions in rate cases. Most utilities also hire consultants to sponsor

** Denotes Highly Confidential Information **



depreciation studies when such studies are offered as part of the company's case. Consultants have handled many other issues for the utilities in rate cases as well, including such areas as pension/retiree health benefit costs, cash working capital and payroll incentive compensation.

Outside attorney costs are incurred within a rate case when a utility hires a non-employee attorney to represent the company before the Commission in the rate case proceeding. Outside attorneys may handle all of the utility's case, or assist in-house company counsel in this respect. Some Missouri utilities do not employ in-house counsel, thus necessitating use of outside attorneys in rate proceedings for those companies.

Though normally significantly less in amount than costs for outside witnesses and counsel, utilities also incur rate case expenses related to such items as rate case-related overtime for employees, travel costs for evidentiary hearings and local public hearings, copying expenses, and postage costs associated with required special mailings to customers. However, base labor costs for utility employees involved in rate case proceedings should not be categorized as rate case expense as such costs are already included in rates as part of normal payroll expense, and labor costs associated with rate case activity by employees (with the exception of overtime) are not considered truly incremental in relationship to the rate case filing.

Prior Commission Precedent

In the past, the Missouri Commission has treated rate case expense as an ordinary utility cost that should be included in customer rates if prudently incurred. In Case No. ER-83-49, *Kansas City Power & Light Company*, the Commission stated that "The Commission is still of the opinion that a reasonable level of rate case expense should be properly allowed as an expense for ratemaking purposes.

A proper allowance is a reasonable level on a normalized basis...." In Case No. ER-83-14, *Missouri Cities Water Company*, the Commission commented, "Rate case expenses are not extraordinary expenses to be amortized, but are ordinary expenses that should be included in a Company's cost of service at a reasonable level calculated upon historic data, adjusted if necessary for known and measurable changes."

The Commission has disallowed recovery of rate case expense in the past on the grounds that such costs were unreasonable, excessive and imprudent expenditures. For example, in Case No. GR-2004-0209,

Missouri Gas Energy, the Commission disallowed use of outside counsel whose hourly rates were in excess of that commonly charged by outside attorneys used in rate cases before the Commission.

The Commission stated:

The company is entitled to present its case and the Commission will not lightly intrude into the company's decisions about how best to present its case. However, the Commission has a responsibility to ensure that the expenses that the company submits to its ratepayers are reasonably and prudently incurred. Otherwise the company could take a cost-is-no-object approach to its rate case presentation, secure in the knowledge that the ratepayers would be required to pay for any cost that the company might incur.

In Case No. WR-93-212, *Missouri-American Water Company*, the Commission disallowed excessive outside attorney costs included in rate case expense, and stated:

The Commission does not want to put itself in the position of discouraging necessary rate cases by discouraging rate case expense. The operative words, here, however, are necessary and prudently incurred. The record does not reflect efforts at cost containment and consequently it does not support that these expenses have been prudently incurred.

At various times in the past 30 years, parties have proposed possible sharing of rate case expense between a company's shareholders and ratepayers, usually on a 50/50 basis. In Case Nos. EO-85-185 and EO-85-224, *Kansas City Power & Light Company* (the Wolf Creek Generating Unit nuclear case), The Office of the Public Counsel ("Public Counsel" or OPC) made such a sharing proposal. The Commission responded, "While the Commission believes Public Counsel's arguments have some merit, the Commission notes that its adoption of the Public Counsel's normalization provision is a type of sharing of rate case expense. The Commission will continue to evaluate the concept of sharing of rate case expense in the future."

In Case No. ER-85-265, *Arkansas Power & Light Company*, also a case in which the utility sought inclusion of a nuclear generating unit in its rate base, OPC again made a proposal for 50/50 sharing of rate case expenses. In its Order, the Commission stated that "The Commission considers the rate case expenses associated with the nuclear power plants to be abnormal and not representative of normal rate case expense for a utility." Further, in response to the increase in rate case expense caused by what the Commission determined were multiple premature rate filings by Arkansas Power & Light, intended to

protect shareholders by reducing regulatory lag, the Commission stated, "The Commission considers the sharing of rate case expense appropriate in this case since Company has increased its rate case activity to protect shareholders.... The Commission will therefore adopt Public Counsel's proposed disallowance of one-half of rate case expense."

In a recent *Missouri Gas Energy* (MGE) rate proceeding, Case No. GR-2009-0355, the Commission rejected a proposal by OPC to share MGE's rate case expense between ratepayers and shareholders on a 50/50 basis. However, in doing so, the Commission stated:

OPC's assertion that both the company and the shareholder benefit from rate case expense has merit in that shareholders do receive a portion of the benefits and should be willing to pay for a portion of the company's rate case expense. The record is not developed on the issue, but there is a strong public policy argument that requiring the company to bear some portion of the rate case expense would incentivize the company to more aggressively manage its rate case expense.

Staff is unaware of any cases in which a party has advocated imposition of a direct "cap" on recovery of rate case expenses, or in which the Commission has ruled on such a proposal.

In at least one proceeding (Case No. WR-92-85, *Raytown Water Company*), the Commission has ordered capitalization of rate case expenses that were directly related to the utility seeking inclusion in rate base of a significant capital project.

Current Staff Position on Rate Case Expense

In recent cases, Staff has taken the position that all prudent rate case expenses be allowed recovery in utility rates, normalized over an appropriate period. Staff has opposed recent proposals by OPC to disallow all costs associated with outside attorneys and witnesses, and "share" the remaining rate case expenses equally between utility customers and shareholders.

Once a reasonable level of expense is established, Staff will then generally propose to "spread" the cost over a multi-year period in order to include the expense in rates at a normal level, since rate cases are generally not filed every year by Missouri utilities. This multi-year period typically ranges from two to

four years for larger utilities, based upon an expected interval period between rate case filings for that particular utility.

Staff Investigation of Rate Case Expense Matters

In response to the Commission directive to investigate the treatment of rate case expense in Missouri in Case No. AW-2011-0330, Staff sent a data request to all major¹ Missouri utilities seeking information regarding their incurred rate case expenses associated with Missouri filings initiated within the calendar years of 2006 through 2010. Staff has included several attachments to this report that summarize the rate case expense information provided in response by the utilities.

Staff also compiled a questionnaire on rate case expense matters and, with the assistance of the National Association of Regulatory Utility Commissions (NARUC) Subcommittee on Accounting and Finance, sent it all of the other 50 public utility commissions (PUCs). A copy of all of the survey responses received is also attached to this report.

Recent Experience with Incurred Rate Case Expense in Missouri

Attachment 1 to this report is a summary of the information provided by the major Missouri utilities through data request responses in this docket, regarding their actual rate case expenses for cases initiated from 2006 to 2010, with cost data for each company and each filed rate case broken out separately. Rate case expense in Attachment 1 is broken out into three categories: "outside attorney/legal costs," "outside consulting/ witness costs," and "other." Then, to allow for a better comparison of rate case expenses totals between utilities of varying types and sizes, Staff has provided statistics concerning the ratio of incurred rate case expense by utility for each rate case to (a) its total number of customers at the time of the rate filing, (b) the amount of rate relief sought by the utility in each case, and (c) the amount of its rate increase ordered by or approved by the Commission in each case.

Attachment 2 contains a summary of the information presented in Attachment 1 in aggregate, both on an individual utility basis and by industry.

¹ Smaller Missouri utilities, primarily water and sewer service providers, can incur rate case expense in the context of informal rate proceedings. However, the rate case expense issues that may arise in informal rate proceedings are usually of a significantly different nature than the issues typically present in larger company rate proceedings, and Staff has not addressed small company rate case expense issues in this report.

Attachment 3 presents selected information regarding the rate case expense amounts projected by large utilities for cases filed in calendar years 2011 and in 2012. Because of the timing of these rate proceedings, Staff does not possess the same level of detail regarding the total actual rate case expense incurred by each utility in these cases as is shown for the earlier rate cases presented in Attachments 1 and 2. However, Staff believes that the comparative rate case expense ratio results shown on Attachment 3 for each utility filing cases in 2011 and 2012 is generally consistent with the ratios shown for these companies concerning their 2006 – 2010 rate case filings on Attachments 1 and 2.

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Based upon the information shown in Attachments 1, 2 and 3, Staff notes that there appears to be “economies of scale” related to incurred rate case expense by utilities. In other words, rate case expense tends to cost less on a per customer basis the larger the utility. This makes some intuitive

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sense; it should not cost significantly more to perform a rate of return study for a larger utility than a smaller one, but the larger utility will be able to spread that cost over a greater number of customers.

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Another tendency noted in the rate case expense data reviewed by Staff is that electric utilities on average incur greater amounts of this cost on a per-customer basis than natural gas or large water utilities.

PUC Questionnaire

A total of 50 public utility commissions received Staff's questionnaire, and responses were received from 22 agencies. All of these responses can be found in Attachment 4 to this report.³ Of the 22 commissions that sent a response, four PUCs responded to Staff's questions by stating that rate case expense was essentially a non-issue in their jurisdictions due to use of incentive or formula rate regulation in those jurisdictions. Of the remaining PUCs, most indicated that their policy towards recovery of rate case expense was very similar to the current policy of the Missouri Commission – no sharing or cap on the total amount of recovery of this item, and all prudent expenditures allowed recovery. In several instances, Staff went beyond the survey responses and performed additional research to obtain information on other states' rate case expense policies.

Here are some of the different approaches to rate case expense policy that Staff has discovered via the questionnaire or other research:

Arizona – Based upon a review of recent rate orders in this jurisdiction, Arizona appears to apply a rigorous test of reasonableness to incurred rate case expenses. A utility's rate case expense total is compared to those of similar utilities that have filed recent rate cases, and any increase in expense over those earlier totals is subject to disallowance unless the utility can justify the differential.

³ The first page of Attachment 4 contains the questions sent to the PUCs, and the remainder of the attachment consists of the responses to the questionnaire by the commissions, presented in alphabetical order.

Colorado – In recent cases, the Colorado Staff has proposed recovery of expenses through a separate rate “element.” This method is equivalent to recovery via a rate rider mechanism. The Colorado Staff’s proposal was that the utility would recover escalating percentages of its incurred rate case expense over the period of recovery; i.e., 10% in Year One, 20% in Year Two, 30% in Year Three, 40% in Year Four. The rate element would terminate once total recovery was achieved by the utility.

In a 2011 rate case, the Colorado Staff also argued for “sharing” of rate case expense, with the amount to be assigned to shareholders based upon the difference between the utility’s requested return on equity and the return on equity ultimately ordered by the Colorado PUC.

To Staff’s knowledge, the Colorado PUC has never directly ruled on either the Colorado Staff’s “rider” or “sharing” proposals for handling rate case expense outlined above. In a recent order (Docket No. 11AL-387E, Black Hills/Colorado Electric Utility Company), the Colorado PUC stated, “In past rate proceedings, the Commission has recognized rate case costs to be legitimate expenses that are appropriate for rate recovery. However, we also recognize that shareholders may directly benefit from the successful litigation of rate proceedings and as a matter of equity there is merit in investigating whether the Company’s investors should share in the responsibility for covering rate case expenses.”

New York – This jurisdiction uses a fully forecasted test year for major utilities to set rates. Among the items forecast is the utilities’ rate case expenses. For ratemaking purposes, this projected amount effectively serves as a cap on rate case expense recovery, because the amount is never “trued-up” or reconciled to actual expenditures.

Texas – Rate case expenses are recovered through a rider/surcharge mechanism, usually over a period of one to three years. Once full recovery is achieved, the surcharge is eliminated from customer bills.

Kansas/KCPL Rate Case Expenses

As KCPL operates in both Kansas and Missouri, that company filed rate cases in both jurisdictions in 2010 that were primarily intended to recover capital costs and operating expenses associated with the Iatan 2 generating plant addition. And, as in Missouri, KCPL incurred substantial rate case expenses in Kansas as a result of its filing. In Kansas, KCPL sought to recover a total of \$7.6 million in recovery of rate case expenses associated with this case. In its initial Order in KCPL’s Iatan 2 case in Kansas (Docket No. 10-KCPE-415-RTS), the Kansas Corporation Commission (KCC) granted KCPL recovery

of a portion of its incurred rate case expenses, but also ordered certain disallowances to this cost. Both KCPL and other parties to this rate proceeding filed for rehearing on this issue.

The KCC granted rehearing on rate case expense issues, and ordered the parties to conduct a more thorough analysis of this expense in the rehearing phase. Additional testimony was submitted, and hearings held, on this one issue. In its rehearing order, *Order on Rate Case Expense*, issued January 18, 2012 in Docket No. 10-KCPE-415-RTS, the KCC ordered larger disallowances of KCPL's incurred rate case expense than it had in the initial phases of the latan 2 rate case. The KCC noted that, counting both outside attorneys and consultants, over 90 individual "timekeepers" charged their labor to KCPL's rate case expense in an amount exceeding 25,000 hours. The KCC stated that, "These numbers shock the conscience of the Commission."

The KCC disallowed the costs associated with a significant number of hours incurred by both outside attorneys and consultants in the KCPL latan 2 rate case on the grounds of duplication of effort, failure to adequately support the charges in the vendors' invoices (i.e., use of "block billing" which did not break out charges by issue), and other reasons. The KCC also repriced the hourly rates charged by the attorneys and consultants to what it believed was the current rate for experienced "local" attorneys and consultants; this rate was calculated to be between \$275 to \$300 dollars per hour. Ultimately, the KCC awarded KCPL approximately \$4.5 million in recoverable rate case expenses (to be amortized over four years), compared to the total expense claimed by KCPL of approximately \$7.6 million.

In the rehearing phase of the rate case, the KCC declined to adopt the Kansas consumer advocate agency's proposal for 50/50 sharing of rate case expenses, stating "Although we recognize our decision apportions responsibility for rate case expenses between ratepayers and shareholders, we decline to adopt a general policy that formally apportions rate case expense as CURB suggests."

The issues in the KCPL Missouri and Kansas latan 2 rate cases, while similar in many respects, were not identical. Therefore, there were some differences in the types and amount of rate case expense incurred by KCPL between its two retail jurisdictions. ** _____

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Staff Comments and Recommendations

Staff asserts that rate case expense can benefit both utility shareholders and customers, albeit in different ways. A utility and its shareholders directly benefit from this expense because these costs are incurred in order to increase a utility's revenues and, ultimately, its profitability. Customers benefit generally from being served by financially healthy utilities, which is bolstered in part by the ability of a utility to periodically seek increased rates to recover increasing expenses and earn a return on investments in their systems. In addition, utility customers can also be said to benefit indirectly from rate case expense in that it is a necessary byproduct of the customer protection requirement that all rate changes be approved by regulators before going into effect.

In light of this perceived benefit to customers, and because it is reasonable to assume that utilities must incur some level of rate case expense in order to obtain necessary rate changes, Staff has recommended in the past that prudently incurred rate case expense should be recoverable in rates by utilities. The policy question raised by the Commission in its Order establishing this docket is, should all such expenses be recoverable in rates or only a portion of them?

Staff's first concern with current regulatory treatment of rate case expense in Missouri is that the review process may be overly focused on questions of "prudence" of this cost. The reasonableness of the overall level of expense should also be considered, in Staff's opinion, before recovery is allowed in rates. It may have been prudent (from its perspective) for KCPL/GMO to incur the amount of rate case expense these companies did in their 2010 rate filings in general, and in defense of its later 2 capital costs in particular, but was it reasonable to charge that entire amount to its customers? Staff asserts that a further determination in rate proceedings that rate case expense not be excessive in amount should be considered separately from a strict review of prudence.

Another Staff concern in how rate case expenses are currently treated in Missouri is that the current approach provides utilities with what appears to be a potentially significant and arguably inappropriate financial advantage over other participants in the rate case process. For all other parties in the rate case process, including Public Counsel, industrial interveners, municipalities and cooperatives, labor unions, other governmental agencies (such as the Attorney General's office and Department of Natural Resources) and Staff, the level of their participation in rate proceedings, including decisions regarding the hiring of outside consultants and attorneys, is constrained to some point by budgetary and other

financial restrictions. However, utility companies, if they can justify the expenditures as prudent, can pass on large amounts of rate case expense costs on to their customers for reimbursement. In short, utilities' incurred expenses are potentially fully fundable by a third party, a practice that does not inherently encourage reasonable levels of cost containment regarding rate case expense decisions by utilities. Restricting inquiries concerning recovery of rate case expense to questions of prudence does not adequately address this particular concern, in Staff's opinion.

A third concern of Staff in this area is that utilities may be incurring rate case expense in the categories of outside witness/consultant costs and outside attorney costs without meaningful analysis of whether the company possesses sufficient expertise to keep those functions in-house and its rate case expenses to a minimal level. While Staff has not agreed with OPC's recent position of disallowing all, or almost all, of a utilities' total external rate case expenses on these grounds, Staff believes this concern warrants greater attention in future rate case audits.

Finally, Staff is concerned that utilities may have also have an inappropriate financial advantage regarding expenses associated with court appeals of Commission orders. Costs incurred by utilities to appeal adverse decisions by the Commission are typically reflected in rates if determined to be prudently incurred.⁴ In many instances, the financial interests of utility shareholders and utility customers are not aligned in the court appeal process. A more equitable approach that assigns all or part of the expenses associated to court appeals by the utility to its shareholders should be considered.

There are two separate approaches that can be employed to determine an appropriate allowance for rate case expense recovery from ratepayers. The first is to conduct an after-the-fact examination of this cost in rate proceedings, which may include review of documentary support, cost control measures, and reasonableness of decisions to hire outside consultants and counsel; with all steps performed in order to prevent unreasonable, excessive and imprudent costs from being passed on to customers. This is the current approach used by Staff, and its success necessarily depends upon having sufficient audit time and resources in order to perform this type of review as well as the cooperation of the utility in allowing reasonable access to its records. The rehearing order in the KCPL's Iatan 2 Kansas case discusses the difficulty KCC Staff and other parties had in that jurisdiction in both the initial and

⁴ Such costs are usually reflected in a rate case as a "legal cost," and are not treated as rate case expense per se.

rehearing phases of the rate case in obtaining the necessary documentation to adequately review that company's rate case expenses.

An alternative approach to primary reliance on after-the-fact reviews of rate case expense is to introduce "structural incentives" to this process. These measures would be intended to function as an upfront incentive for utilities to reasonably limit their rate case expenditures. The Commission discussed several of these incentives in its April 27, 2011 Order in this docket. One is "sharing," which entails allocating incurred rate case expenses between utility shareholders and their customers through a pre-set percentage, perhaps a 50/50 basis. Another approach is use of "caps," specifying some rate case expense value in dollars, or as a percentage (for example, a calculation based upon a set amount of rate case expense per customer, or the amount of rate case expense compared to rate case increase request amount), above which no or limited recovery from ratepayers can be obtained. For example, a dollar cap of \$1 million could be used, or a cap of \$3.00 per customer could be ordered, as a structural incentive to discourage extravagant levels of rate case expense. Use of caps would probably be more difficult to establish for ratemaking purposes than use of a sharing approach, because there may need to be multiple cap levels employed for different types and sizes of utilities, given the advantage larger utilities have in this area due to economies of scale. The "cap" approach could be combined with a "sharing" approach as well; for example, starting a 50/50 sharing at a certain level of expense, while allowing 100% recovery below the cap limit. The Commission could consider use of a different percentage for sharing purposes than 50/50 under the "sharing" approach, but the shareholders' assigned share of this expense should be material enough to influence a utility's decision-making on its rate case expense totals.

It should be noted that use of ratios to potentially limit recovery of rate case expense based upon the amount of rate relief sought or granted may have different impacts on gas utilities, compared to electric and water utilities, if the same ratios are applied across the board to all major utilities in Missouri. This is because electric and water utilities file for rate changes based upon their entire cost of service, while gas utilities exclude their largest expense, the cost of purchased gas, from their general rate requests. The smaller cost base upon which gas utilities seek rate relief in Missouri means that rate case expense caps tied to rate relief amounts, if applied uniformly to all utility industries, may have the effect of restricting recovery of gas utility rate case expenses more than those of the electric and water utility industries.

If the Commission wished to tie a rate case expense cap to a percentage of the amount of rate relief requested or granted in each case, Staff recommends that the Commission use the ratio tied to the percentage of the rate increase sought by the utility, since this amount is known throughout the duration of the rate case process, unlike the amount of the increase ultimately granted by the Commission.

Use of an incentive approach to rate case expense, such as sharing, may be assumed to require somewhat less review of rate case expense in rate proceedings, both because utilities will probably incur less expense in this area than they otherwise would, and the amount of shared expense (or the amount below the "cap" level) could be presumed to some degree to be reasonable. But some review of questions of prudence would likely remain, still necessitating a level of regulatory review of rate case expense in rate proceedings even if structural incentives are used.

Another potential "structural incentive" approach to rate case expense would be to tie a utility's percentage recovery of this cost to the percentage of its rate increase request it is successfully awarded by the Commission. For example, a utility might expend \$1 million in rate case expense in the course of seeking a \$50 million rate increase. If, after hearings and litigation, the company was ultimately awarded only \$25 million in rate relief, then its rate case expense recovery amount would be set at \$500,000. This approach would provide an incentive for a utility to file a "tight" case that would be easier to process, as well as encourage pre-filing discussions with other parties regarding new rate case proposals to attempt to gain consensus beforehand. This approach could also encourage settlement of rate cases to minimize the risk of unrecovered rate case expense for the utilities.

Another approach for the Commission's consideration would be a variation of the method used in court cases to assign legal fees to the losing party in a proceeding. In this approach, a "lodestar" amount of rate case expense recovery for a particular rate case and utility would be set by establishing a reasonable hourly rate for the attorney/witness and a reasonable number of hours spent on rate case matters. The lodestar amount would be the "presumptive" total of rate case expense allowed in rates for a particular witness or attorney in a case, with any amount above the lodestar value subject to disallowance unless the utility could justify its inclusion in rates. The utility would be responsible for the

initial calculation of this amount, subject to challenge by Staff or other parties. The Commission would make the final determination if there is a dispute between the parties.

Under this approach, the “reasonable rate” used in the lodestar valuation could be the prevailing market rate for attorney or consultant services in a given area. The “reasonable hours” part of the equation would start with the actual hours worked, but could be adjusted to eliminate hours associated with unnecessary duplication of services (i.e., superfluous attorneys watching rate case proceedings from the audience), or to exclude unnecessary or unused attorneys and consultants, or to exclude time spent on issues in which the utility did not prevail, or for any other reason necessary to protect ratepayers from unreasonable exactions of rate case expense. Attachment 5 to this report contains a more complete description of this approach to determining allowable rate case expenses in a rate proceeding.

Staff also recommends that large amounts of rate case expense directly tied to rate recognition or defense of large capital additions be considered for different rate treatment than other types of rate case expense. In those instances, capitalization of the rate case expense into the cost of the construction project should be ordered by the Commission, or use of an extended normalization period for recovery of the expense in rates, such as ten years. This approach would have mitigated the impact on customers of the very large costs expended by KCPL and KCPL-GMO to justify inclusion of the Iatan 2 generating station in their 2010 rate cases.

Finally, Staff recommends that the Commission adopt a policy of assigning all or a part of expenses associated with appeals of its decisions by utilities to shareholders.

Summary

In summary, Staff recommends that the Commission consider employing structural incentive measures in rate cases to provide utilities with stronger incentives to reasonably limit their rate cases expenses to appropriate and necessary levels. These measures may include:

- 1) A sharing of rate case expense between utility customers and shareholders on a 50%/50% basis, or other appropriate sharing percentage, from the first dollar of rate case expense incurred;

- 2) A sharing of rate case expense between utility customers and shareholders on a 50/50 basis on expenditures exceeding \$1 million; or, alternatively, a 50%/50% sharing of rate case expenses exceeding \$3.00 per customer in a rate proceeding;
- 3) Allowing recovery of rate case expense in direct proportion to the amount of rate relief granted for a utility as a percentage of the total rate increase sought;
- 4) Establishing a presumptive level of recoverable rate case expense for a utility, with any amount above that level subject to disallowance unless justified (i.e., the “lodestar” approach);
- 5) Employ capitalization treatment, or use of an extended normalization period, for rate case expenses directly associated with major capital additions; and
- 6) Adoption of a policy of assigning all or part of utility expenses associated with appeals of Commission decisions by the utility to shareholders.

ATTACHMENT 1

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ATTACHMENT 2

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IN ITS ENTIRETY

ATTACHMENT 3

HAS BEEN DEEMED

HIGHLY CONFIDENTIAL

IN ITS ENTIRETY

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
 - A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.
- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? b) Does your agency allow amortization treatment of rate case expenses? c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing?
- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.
- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?
- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Response to the NARUC Accounting and Finance Subcommittee's request on behalf of Missouri Public Service Commission for recovery, in customer rates, for rate case expenses*:

*NOTE: We have not had a regular rate case in many years since most of our large utilities are on a formulated rate mechanism.

In rate cases before the formulated method, the following would apply:

1. The Alabama Public Service Commission allows recovery of all prudently incurred rate case expenses.
2. Rate case expenses are recovered over a multi-year period usually. The time frame for recovery is not necessarily the same. We do allow amortization of these expenses. We would not allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing.
3. None
4. Methods for recovery of rate case expenses are a result of state statute.
5. Contact person with general knowledge of rate case matters is:
Robert E. Reed, Mgr. of Natural Gas Section
(334) 242-92698
Robert.Reed@psc.alabama.gov

Please send us a copy of the results of this survey to the above contact person.

Rate Case Expense Inquiry
Regulatory Commission of Alaska Response

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
- A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.

a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? Yes, the Commission allowed rate case expense to be recovered in the year it was incurred. See Order U-08-157(10)/U-08-158(10).

If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? Yes, the Commission allowed rate case expense to be spread out over a multi-year period. Generally, the period is the number of years until the utility's next revenue requirement filing is due, which is generally 3 to 5 years.

b) Does your agency allow amortization treatment of rate case expenses? Yes, the Commission allows amortization of rate case expenses.

c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing? Yes and no, depends on the circumstance. Yes: See Order U-07-076(8)/U-07-077(8). No: See Order U-05-43(15)/U-05-44(15); U-06-138(4)/U-06-139(4)9.

2) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.

Electric:

- Docket U-06-134, Chugach Electric Association. Order Number 23 accepted the compliance filing (in compliance with a Commission-approved settlement agreement) that was filed on 5/28/2008, which reflected amortization of rate case expenses over 5 years.
- Docket U-09-080, Chugach Electric Association. Order 9 accepted the compliance filing (in compliance with a Commission-approved settlement agreement) that was filed on 9/30/2009, which reflected amortization of rate case expenses over 4 years.

Gas:

- Docket U-09-069, ENSTAR Natural Gas Company. In this docket the Commission accepted a "black box" settlement agreement. Enstar proposed to amortize rate case expense of \$750,000 over a 5-year period (See Dieckgraeff prefiled testimony in TA177-4). The AG proposed to amortize rate case expense of \$400,000 over a 5 year period (see Smith Testimony). Because of the "black box" settlement agreement, the Commission does not know what was actually settled on.

Water and Sewer:

- Docket U-08-157/158, Anchorage Water and Wastewater Utility. The Commission allowed the utility to recover the expense in the year it was incurred. See Order 10.
- Docket U-06-076/077, Golden Heart Utilities and College Utilities. The Commission allowed amortization over a three year period.

Rate Case Expense Inquiry
Regulatory Commission of Alaska Response

- 3) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?
Commission Precedent.
- 4) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Rich Gazaway, Advisory Section Manager
richard.gazaway@alaska.gov
(907)263-2164

1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:

- A) Allow recovery of all prudently incurred rate case expenses; Yes
- B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism; No
- C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established; No
- D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); No or
- E) Any other approach, including a brief description of that methodology or mechanism. Colorado's most recent completed rate case, with SourceGas, Docket 10AL-455G, Decision # R10-1268. In this case staff recommended SourceGas would recover all actual costs of this rate case through a separate component of the General Rate Schedule Adjustment (GRSA) rider. (Staff will be provided actual receipts each year at the time the GRSA rider is adjusted.) The rate case expense component of the GRSA Rider shall be a regulatory asset to be amortized over four years. The regulatory asset shall be recovered in a graduated adjustment of 10% the first year, 20% the second year, 30% the third year, and 40% in the fourth year until fully recovered. Upon full recovery, the rate case expense component of the GRSA Rider would terminate. If a rate case requesting an increase in the revenue requirement is filed by the Company prior to full recovery of rate case expenses, the Company agreed that it will not include any such un-recovered rate case expenses in the subsequent filed rate case.

2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? Spread out, usually amortized over 2 or 3 years. If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? Varies case by case b) Does your agency allow amortization treatment of rate case expenses? Yes, as mentioned above the rate case expenses are usually amortized over 2 or 3 years with a rolling balance mechanism and a negative rider if the Company does not file a subsequent rate case over the amortization period.

However there is an active rate case with Public Service Company of Colorado, Docket 10AL-963G, in which staff and Public Service have a settlement in principal. In the tentative settlement the rate case

expenses are to be in base rates amortized of 3 years. If the Company files a subsequent rate case prior to the 3 years the Company must file a Negative GRSA rider to end the expenses being collected from ratepayers. (This Case is ending the rolling balance that previously Public service had. c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing? Yes, up until the SourceGas case mentioned previously.

- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities. Here are the last few rate cases for you review.

Atmos Energy –Docket 09AL-507G – Decision # R09-1381

Public Service – Docket 09AL-299E – Decision # C09-1284

Black Hills – Docket 10AL-008E – Decision # R10-0793

Here is a link to our website <http://www.dora.state.co.us/puc/#> the link to our e-filing system is on the list on left hand side.

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding? Up until the SourceGas case, Commission precedent predominately.
- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary. Sandi Kahl, sandi.kahl@dora.state.co.us, 303-894-2873

Bolin, Kim

From: Stewart Courtney A. (DOS) [Courtney.Stewart@state.de.us]
Sent: Wednesday, June 01, 2011 2:44 PM
To: Oligschlaeger, Mark*; Bolin, Kim
Cc: Terri Carlock
Subject: RE: Rate Case Expense Survey

DELAWARE

Good Afternoon –

In Delaware, rate case expenses are normalized over some period of time – depending on the frequency of rate cases of the utility. The commission has reduced rate case expenses under certain circumstances – i.e., the use of an expensive expert witness testifying on an unusual (or very infrequent) subject. There is no state statute, Commission rulemaking, Commission precedent, or other formal proceeding that determines how rate case expense will be treated.

Our response didn't really fit into any of the categories since it really does vary on a case by case basis. I hope this answer helps in your survey.

If you need to follow-up with someone from the Delaware Commission, please contact Susan Neidig, our senior regulatory policy administrator at susan.neidig@state.de.us or (302) 736-7500.

Courtney Stewart
Public Utilities Analyst
Delaware Public Service Commission
861 Silver Lake Blvd.
Cannon Bldg, Suite 100
Dover, DE 19904
302-736-7532

From: Terri Carlock [<mailto:Terri.Carlock@puc.idaho.gov>]
Sent: Thursday, May 19, 2011 6:25 PM
To: Staff Subcommittee on Accounting & Finance
Cc: mark.oligschlaeger@psc.mo.gov; kim.bolin@psc.mo.gov
Subject: [afmembers] Rate Case Expense Survey
Importance: High

[REPLY TO for the message author only, REPLY TO All for the entire list.]

Missouri has asked for assistance from the Subcommittee and representatives from all states to complete a survey on rate case expense.

The cover letter, questionnaire and order to review this issue are attached. Please provide your responses as soon as possible and before June 10, 2011 if possible.

Please send your response to mark.oligschlaeger@psc.mo.gov or kim.bolin@psc.mo.gov with a copy to me at Terri.Carlock@puc.Idaho.gov.

We will also summarize the results at an upcoming Accounting & Finance meeting.

Thank You for your assistance.

Terri Carlock
Chair NARUC Accounting & Finance
Idaho Public Utilities Commission
Deputy Administrator Utilities Division
PO Box 83720
Boise, ID 83720-0074

(208) 334-0356
Terri.Carlock@puc.Idaho.gov

You are currently subscribed to afmembers as: courtney.stewart@state.de.us.

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(It may be necessary to cut and paste the above URL if the line is broken)

or send a blank email to leave-2689812-97272.59935163330e9eb89442568536e65d15@naruc.org

FLORIDA PUBLIC SERVICE COMMISSION
RATE CASE EXPENSE QUESTIONNAIRE RESPONSE

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
- A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.

RESPONSE: Allow recovery of all prudently incurred rate case expenses.

- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? b) Does your agency allow amortization treatment of rate case expenses? c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing?

RESPONSE: a) Spread over a multi-year period that varies case by case (3-5 years) and included in base rates.

b) Yes. For water and wastewater utilities, base rates are reduced at the conclusion of the amortization period.

c) In some instances, unamortized rate case expenses from a prior rate case may be included in current rate case expenses.

- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case

MAY 26, 2011

FLORIDA PUBLIC SERVICE COMMISSION
RATE CASE EXPENSE QUESTIONNAIRE RESPONSE

expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.

RESPONSE: Florida Power & Light Company Rate Case -- Docket No. 080677-EI

– Order No. PSC-10-0153-FOF-EI (p.163).

Progress Energy Florida, Inc. Rate Case -- Docket No. 090079-EI

– Order No. PSC-10-0131-FOF-EI (p.126).

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?

RESPONSE: Commission precedent established in prior orders.

- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

RESPONSE: John Slemkewicz – jslemkew@psc.state.fl.us – (850) 413-6420

Please provide a copy of the results received from other state commissions to the above person.

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses: (IPUC response underlined and in bold)
- A) **Allow recovery of all prudently incurred rate case expenses;**
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.
- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? b) Does your agency allow amortization treatment of rate case expenses? c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing?

Rate case expenses are treated on a case-by-case basis. These expenses can be amortized. This amortization will vary depending upon the company as the amortization period will generally be an approximation of the time between rate changes but no less than five years for companies that do not file frequent rate changes. Recovery in a subsequent rate case filing of rate case expense incurred in a prior rate case is unlikely to be recoverable unless a deferral has been established.

- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.

The standard for rate case expense is allowance of prudently incurred expenses. No citations are attached.

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?

The Commission has consistently found that prudent and reasonable costs for a Company to file and litigate a rate case before them is an expense properly recoverable in rates. There is no specific statute and/or rulemaking specifically regarding rate case expenses. As noted previously, the treatment of rate case expenses is determined on a case-by-case basis through Commission Order if explicit treatment is ordered.

- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Terri Carlock, Deputy Administrator, Utilities Division (208) 334-0356

Terri.Carlock@Puc.Idaho.gov

Bolin, Kim

From: Taber, Pam [PTaber@urc.IN.gov]
Sent: Tuesday, May 31, 2011 11:22 AM
To: Oligschlaeger, Mark*; Bolin, Kim
Cc: Terri Carlock
Subject: RE: STATE QUERY - F&C NARUC Subcommittee Rate Case Expense Survey

Indiana no longer regulates telecom rates.

INDIANA

Pamela D. Taber, CPA
Director Communications
Indiana Utility Regulatory Commission
317-232-2755

From: James Ramsay [mailto:jramsay@naruc.org]
Sent: Friday, May 27, 2011 3:17 PM
To: Grace.Salazar@alaska.gov; Scott, Roxanne L.; Stacey.k.djou@hawaii.gov; Taber, Pam; Ridgway, John [IUB]; Sandy Reams; eve.gonzalez@la.gov; Thomas.Besette@state.ma.us; Katherine.collier@psc.state.ms.us; c.garbacz@psc.state.ms.us; GENE.HAND@NEBRASKA.GOV; anthony.centrella@bpu.state.nj.us; lee.huffman@state.nm.us; ijs@nd.gov; Witmer, Joseph; Darryl.tietjen@puc.state.tx.us; George.Young@state.vt.us
Subject: STATE QUERY - F&C NARUC Subcommittee Rate Case Expense Survey
Importance: High

TO: ALASKA Grace Salizar
CALIFORNIA - Roxanne Scott
HAWAII - Stacey.k.djou@hawaii.gov
INDIANA - ptaber@urc.in.gov
IOWA - John.Ridgway@iub.iowa.gov
KANSAS - S.Reams@kcc.ks.gov
LOUISIANA - eve.gonzalez@la.gov
MASSACHUSETTS - Thomas.Besette@state.ma.us
MISSISSIPPI Katherine.collier@psc.state.ms.us c.garbacz@psc.state.ms.us
NEBRASKA - Gene Hand
NEW JERSEY anthony.centrella@bpu.state.nj.us
NEW MEXICO lee.huffman@state.nm.us
NORTH DAKOTA - ijs@nd.gov
PENNSYLVANIA - Joe Witmer
TEXAS - Darryl.tietjen@puc.state.tx.us
VERMONT - George Young

FROM: Brad Ramsay - NARUC General Counsel

RE: SURVEY/STATE QUERY BY NARUC COMMITTEE ON ACCOUNTING AND FINANCE

NOTE - this was originally posted to the F&A listserve - but they do not have members from each of your states - if you are NOT the right person to respond to this request, please forward to the person who can. THANKS and have a great weekend. BRAD RAMSAY

Missouri has asked for assistance from the Subcommittee and representatives from all states to complete a survey on rate case expense.

The cover letter, questionnaire and order to review this issue are attached. Please provide your responses as soon as possible and before June 10, 2011 if possible. Please send your response to mark.oligschlaeger@psc.mo.gov or

kim.bolin@psc.mo.gov with a copy to me at Terri.Carlock@puc.Idaho.gov. We will also summarize the results at an upcoming Accounting & Finance meeting.

Thank You for your assistance.

Terri Carlock
Chair NARUC Accounting & Finance
Idaho Public Utilities Commission
Deputy Administrator Utilities Division
PO Box 83720
Boise, ID 83720-0074

(208) 334-0356
Terri.Carlock@puc.Idaho.gov

Bolin, Kim

From: James Ramsay [jramsay@naruc.org]
Sent: Tuesday, May 31, 2011 12:13 PM
To: Oligschlaeger, Mark*; Bolin, Kim; Terri.Carlock@puc.Idaho.gov
Subject: FW: once more - WITH ATTACHMENTS --- STATE QUERY - F&C NARUC Subcommittee Rate Case Expense Survey

Here is Iowa's response....brad

From: Ridgway, John [IUB] [mailto:John.Ridgway@iub.iowa.gov]
Sent: Tuesday, May 31, 2011 11:52 AM
To: James Ramsay; Grace.Salazar@alaska.gov; Scott, Roxanne L.; Stacey.k.djou@hawaii.gov; ptaber@urc.in.gov; Sandy Reams; eve.gonzalez@la.gov; Thomas.Bessette@state.ma.us; Katherine.collier@psc.state.ms.us; c.garbacz@psc.state.ms.us; GENE.HAND@NEBRASKA.GOV; anthony.centrella@bpu.state.nj.us; lee.huffman@state.nm.us; ijs@nd.gov; Witmer, Joseph; Darryl.tietjen@puc.state.tx.us; George.Young@state.vt.us
Subject: RE: once more - WITH ATTACHMENTS ---- STATE QUERY - F&C NARUC Subcommittee Rate Case Expense Survey

Iowa is rate deregulated for all companies.

TO: ALASKA Grace Salizar
CALIFORNIA - Roxanne Scott
HAWAII - Stacey.k.djou@hawaii.gov
INDIANA - ptaber@urc.in.gov
IOWA - John.Ridgway@iub.iowa.gov
KANSAS - S.Reams@kcc.ks.gov
LOUISIANA - eve.gonzalez@la.gov
MASSACHUSETTS - Thomas.Bessette@state.ma.us
MISSISSIPPI Katherine.collier@psc.state.ms.us c.garbacz@psc.state.ms.us
NEBRASKA - Gene Hand
NEW JERSEY anthony.centrella@bpu.state.nj.us
NEW MEXICO lee.huffman@state.nm.us
NORTH DAKOTA - ijs@nd.gov
PENNSYLVANIA - Joe Witmer
TEXAS - Darryl.tietjen@puc.state.tx.us
VERMONT - George Young

FROM: Brad Ramsay - NARUC General Counsel

RE: SURVEY/STATE QUERY BY NARUC COMMITTEE ON ACCOUNTING AND FINANCE

NOTE – this was originally posted to the F&A listserve – but they do not have members from each of your states – if you are NOT the right person to respond to this request, please forward to the person who can. THANKS and have a great weekend. BRAD RAMSAY

Missouri has asked for assistance from the Subcommittee and representatives from all states to complete a survey on rate case expense.

The cover letter, questionnaire and order to review this issue are attached. Please provide your responses as soon as possible and before June 10, 2011 if possible. Please send your response to mark.oligschlaeger@psc.mo.gov or

kim.bolin@psc.mo.gov with a copy to me at Terri.Carlock@puc.Idaho.gov. We will also summarize the results at an upcoming Accounting & Finance meeting.

Thank You for your assistance.

Terri Carlock
Chair NARUC Accounting & Finance
Idaho Public Utilities Commission
Deputy Administrator Utilities Division
PO Box 83720
Boise, ID 83720-0074

(208) 334-0356
Terri.Carlock@puc.Idaho.gov

Response of Kansas Corporation Commission Staff
Sandy Reams s.reams@kcc.ks.gov
Jeff McClanahan j.mcclanahan@kcc.ks.gov

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
 - A) Allow recovery of all prudently incurred rate case expenses; Yes.
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism; No.
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established; No.
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism. Actual reasonable and prudent rate case expense is allowed to be recovered.
- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? Response: Spread out over a period of time, typically the time period between rate cases. For energy utilities, the recovery period is typically 3 years. For rate-of-return regulated carriers, the recovery period is typically 5 years. If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? It may vary. See also response to (a). b) Does your agency allow amortization treatment of rate case expenses? Yes. c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing? Yes. However, Staff has recently changed its position and argued against inclusion of prior rate case expenses. In addition, Staff is in the process of reevaluating its and the Commission's policies, so this may change.
- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities. Telecom: Docket No. 01-SNKT-544-AUD, 9/11/01 Order, para. 131: <http://estar.kcc.ks.gov/estar/ViewFile.aspx?Id=f4a0ef1e-31c5-4340-b214-aff1d46785e5>
Energy: Kansas City Power & Light; Docket No. 10-KCPE-415-RTS: <http://estar.kcc.ks.gov/estar/portal/kcc/page/docket-docs/PSC/DocketDetails.aspx?DocketId=ebafe7ac-86a5-4ce7-be21-17f693467658>

Response of Kansas Corporation Commission Staff
Sandy Reams s.reams@kcc.ks.gov
Jeff McClanahan j.mcclanahan@kcc.ks.gov

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding? Commission decisions.
- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Jeff McClanahan, Chief Auditor, j.mcclanahan@kcc.ks.gov (785)271-3212.

1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:

A) Allow recovery of all prudently incurred rate case expenses;

The LPSC as a general rule would allow recovery of all prudently incurred rate case expenses. Most of our large electric IOUs and Gas companies operate under Formula Rate Plans or Rate Stabilization Plans.

B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;

C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;

D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or

E) Any other approach, including a brief description of that methodology or mechanism.

2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe?

In Recent decisions, this Commission has allowed the recovery of rate case expenses in the year incurred and over a multi-year period. The determining factor is the amount of money involved, and whether it will create an undue burden on the ratepayer. In rate cases for the small water and wastewater companies, that cost is usually recoverable in the same year, however for the large electric and gas companies, that cost is usually recovered over a multi-year period, and is decided on a case by case basis. However, for those large companies operating under a formula rate plan where they are required to file annually, the level of recoverable expenses is based on prudently incurred test year levels and are not amortized. Depending on the issue or proceeding under review, the Commission has in the past allowed recovery of rate case expenses utilizing both recovery methods; (recovery of rate case expenses in the year in which they were incurred) and (recovery over a multi year basis

b) Does your agency allow amortization treatment of rate case expenses? Not in large electric IOU rate cases. They are either rolled into the FRP amounts or they use the test year rate case expenses to set future rates. To the extent that the FRP expenses contribute to the need for a rate increase, they are subject to the sharing provisions of the FRP. The Commission has allowed amortization treatment of rate case expenses for smaller gas and water and sewer cases. However, the amortization period depends of the amount of costs involved and what timeframe the Commission believes to be reasonable for both the ratepayers and the company.

c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing?

This is something the Commission may have allowed in previous filings, however, I am not aware of a situation where this Commission allowed recovery of rate case expenses from a prior year filing in a subsequent year filing.

- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.

To the best of my knowledge, the only issue that may have arisen regarding the recovery of reasonable and prudently incurred rate case expenses, other than an examination of whether they are reasonable, is the timeframe recommended for recovery of such expenses, where the company wanted a shorter timeframe for cost recovery compared to what was recommended to the Commission. As stated earlier, as a general rule, the Commission will allow recovery of reasonable and prudently incurred rate case expenses.

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?

The Louisiana Commission derives its jurisdiction and power from the La. Constitution, thus no state statute directs specific ratemaking treatment for operating expenses such as rate case expenses. Commission precedent has established the treatment. Rate case application request filed with the Louisiana Public Service Commission by utilities subject to LPSC jurisdiction are handled through formal docketed proceedings.

- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Mr. Brandon M. Frey
Deputy General Counsel
Louisiana Public Service Commission
P. O. Box 91154
602 N. 5th Street
Baton Rouge, LA 70802
Telephone No. (225) 342-9888
Brandon.frey@la.gov

Mr. Stan Perkins
Audit Director
Louisiana Public Service Commission
P. O. Box 91154
602 N. 5th Street
Baton Rouge, LA 70802
Telephone No. (225) 342-1438
Stanley.perkins@la.gov

MISSISSIPPI

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
- A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.

Response: A

- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? b) Does your agency allow amortization treatment of rate case expenses? c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing?

Response: It has been nearly 10 years since we have had a general rate case because our utilities generally operate under formulary rate plans. In previous rate cases, rate case expenses have generally been amortized over 10 years. In formulary rate plan filings, rate filing expenses are generally included in the test period when incurred.

- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.

Response: None.

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?

Response: Commission precedent.

- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Response: Virden Jones
virden.jones@psc.state.ms.us
(601) 961 - 5800

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
 - A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.
- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? b) Does your agency allow amortization treatment of rate case expenses? c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing? A. multi-year B. generally over several years C. yes the unamortized portion.
- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities. N/A
- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding? Commission precedent
- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary. Eric Eck (406) 444-6183.

Bolin, Kim

From: James Ramsay [jramsay@naruc.org]
Sent: Tuesday, May 31, 2011 12:20 PM
To: Oligschlaeger, Mark*; Bolin, Kim; Terri.Carlock@puc.idaho.gov
Subject: FW: once more - WITH ATTACHMENTS ---- STATE QUERY - F&C NARUC Subcommittee Rate Case Expense Survey

From new jersey....brad

From: Centrella, Anthony [mailto:Anthony.Centrella@bpu.state.nj.us]
Sent: Tuesday, May 31, 2011 11:46 AM
To: James Ramsay; Grace.Salazar@alaska.gov; Scott, Roxanne L.; Stacey.k.djou@hawaii.gov; ptaber@urc.in.gov; Ridgway, John [IUB]; Sandy Reams; eve.gonzalez@la.gov; Thomas.Besette@state.ma.us; Katherine.collier@psc.state.ms.us; c.garbacz@psc.state.ms.us; GENE.HAND@NEBRASKA.GOV; lee.huffman@state.nm.us; ijs@nd.gov; Witmer, Joseph; Darryl.tietjen@puc.state.tx.us; George.Young@state.vt.us
Subject: RE: once more - WITH ATTACHMENTS ---- STATE QUERY - F&C NARUC Subcommittee Rate Case Expense Survey

New Jersey regulates all 3 of our ILECs under incentive/price cap regulation. We have not had a rate case in 20 years therefore my response to each question would have to be N/A.

Anthony Centrella

TO: ALASKA Grace Salizar
CALIFORNIA - Roxanne Scott
HAWAII - Stacey.k.djou@hawaii.gov
INDIANA - ptaber@urc.in.gov
IOWA - John.Ridgway@iub.iowa.gov
KANSAS - S.Reams@kcc.ks.gov
LOUISIANA - eve.gonzalez@la.gov
MASSACHUSETTS - Thomas.Besette@state.ma.us
MISSISSIPPI Katherine.collier@psc.state.ms.us c.garbacz@psc.state.ms.us
NEBRASKA - Gene Hand
NEW JERSEY anthony.centrella@bpu.state.nj.us
NEW MEXICO lee.huffman@state.nm.us
NORTH DAKOTA - ijs@nd.gov
PENNSYLVANIA - Joe Witmer
TEXAS - Darryl.tietjen@puc.state.tx.us
VERMONT - George Young

FROM: Brad Ramsay - NARUC General Counsel

RE: SURVEY/STATE QUERY BY NARUC COMMITTEE ON ACCOUNTING AND FINANCE

NOTE - this was originally posted to the F&A listserv - but they do not have members from each of your states - if you are NOT the right person to respond to this request, please forward to the person who can. THANKS and have a great weekend. BRAD RAMSAY

Missouri has asked for assistance from the Subcommittee and representatives from all states to complete a survey on rate case expense.

The cover letter, questionnaire and order to review this issue are attached. Please provide your responses as soon as possible and before June 10, 2011 if possible. Please send your response to mark.oligschlaeger@psc.mo.gov or kim.bolin@psc.mo.gov with a copy to me at

Terri.Carlock@puc.Idaho.gov. We will also summarize the results at an upcoming Accounting & Finance meeting.

Thank You for your assistance.

Terri Carlock
Chair NARUC Accounting & Finance
Idaho Public Utilities Commission
Deputy Administrator Utilities Division
PO Box 83720
Boise, ID 83720-0074

(208) 334-0356
Terri.Carlock@puc.Idaho.gov

RESPONSES TO RATE CASE EXPENSE QUESTIONNAIRE

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
- A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.

ANSWER: Response A) is closest to New Mexico's standard with regard to litigated rate case expenses, although there is an additional requirement that the utility bears the burden of also proving that the expenses are reasonable, including itemization of costs although the costs may be estimates.

- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? b) Does your agency allow amortization treatment of rate case expenses? c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing?

ANSWER: a) To my knowledge the Commission has not approved recovery of rate case expenses in the year incurred; rates have always been designed to recover such expense over a multi-year period. The recovery period can vary depending primarily on historic frequency of a particular utility's rate case applications, but three (3) years is the normal period of designed recovery. b) Yes, normal practice is to expense the approved rate case costs/years of designed recovery, while rate-basing 1/2 the approved rate case cost as an unamortized balance. c) No, in any subsequent rate case there is no expensing of prior rate case costs, and any unamortized balance is removed from rate base going forward.

- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.

ANSWER: Case History associated with NMSA 1978 § 62-13-3 provides "Rate case expenses. – By removing the presumption of reasonableness with respect to litigation expenses, the legislature did not intend to preclude the pragmatic practice of estimating rate case expenses, but intended that utilities demonstrate the reasonableness of rate case expenses, whether estimated or actual." PNM Gas Services v. New Mexico Public Utility Commission, 2000-NMSC-012, 129 N.M. 1, 1 P.3d 383. "Because the enactment of Subsection B was intended to effect a change in the policy of with respect to litigation expenses, a gas utility failed to carry its burden of proving that the amount of its requested rate case expense was reasonable and prudent by presenting only a budget-based estimate with no itemization of costs or evidence of reasonableness." (id.)

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?

ANSWER: Statute is the basis. NMSA 1978 § 62-13-3 provides: "B. In any commission rate proceeding in which the utility seeks rates to recover adjusted test-year litigation expenses there shall be no presumption that the litigation expenses are prudent. Nothing in this section shall be construed to create or imply a presumption of prudence for any utility expenditures not addressed in this section." Similarly, Section C of the same statute defines "litigation expenses" as all attorneys' fees, consulting fees and other costs of litigation, including in-house expenditures. Beyond this, the Commission's practice regarding recovery of prudent rate case expenses is to address each on a case by case basis, although the norm is to amortize over three (3) years.

- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

ANSWER: Steve Schwebke, P.E., Gas, Water, Wastewater Engineering Bureau Chief.

Steve.schwebke@state.nm.us (505) 827-6971

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
- A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism. NY utilizes fully forecast rate years and typically, we allow a reasonable level of projected rate case expenses in rates. This projected level of rate case expenses in essence provides a "cap" on expenses because it is not reconciled to actual costs. If a utility exceeds its projected rate case expenses, it would absorb the amounts spent in excess of those allowed rates. In a rate case, typically historical rate case expenses form the basis for projected expenses allowed in rates. Those expenses will often be adjusted to: reflect an averaging of several years costs, remove abnormal activity (normalize), or add changes in cost estimates (e.g., inflation).
- 2)
- a. In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? For major utilities, typically rate case costs are projected and recovered in one year (assumes that the utility will file annual rate cases). For smaller utilities that are unlikely to file annual rate cases and because of the materiality of rate case expenses, they may be spread over a number of years intended to represent the expected number of years between rate filings.
 - b. If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? If a major utility is involved in a multi-year rate plan, then the recovery of the projected rate case expenses will be often spread over the term of the rate plan. For smaller utilities, rate case expenses are often spread over 3-5 years, intended to represent the expected number of years between rate filings.

Response of the New York State Department of Public Service

- c. Does your agency allow amortization treatment of rate case expenses? Because of the materiality of rate case costs for smaller utilities sometimes deferral and amortization is allowed but that would depend on the facts and circumstances.
- 3) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing? No. Normally larger utilities would not be allowed to recover rate case costs of a prior rate filing in a subsequent rate filing.
- 4) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities. The latest decisions on rate case expenses for our larger utilities have not been policy type decisions; rather they are generally routine decisions on adjustments to normalize the rate case expense forecasts (e.g., to remove double counted costs). We did have one settlement on rate case expenses in 2002 (see Case 02-G-0003) where a gas utility agreed to lower its rate case expenses due to concerns about affiliate allocations and the extraordinary nature of the case (note: settlements are not usually considered as setting precedent).

<u>Case Number</u>	<u>Date</u>	<u>Utility</u>	<u>Type</u>	<u>Description</u>
08-E-0539	4/24/09	Con-Ed	Litigated	PSC denied ALJ adjustment to rate case expenses made due to allegations of a deficient rate filing.
02-G-0003	12/23/02	Corning Gas	Settled	Corning's estimate of \$260,000 was limited to \$200,000 due to concerns about affiliate allocations and the extraordinary nature of the issues in the case.

- 5) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding? No, the Commission has no formal ratemaking policy concerning the recovery of rate case expenses. They are treated much like any other expense in a rate case.
- 6) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Our contact person and person to provide a copy of your completed results is:

Thomas A. D'Ambrosia-Chief
Office of Accounting and Finance
Thomas_dambrosia@dps.state.ny.us
585-724-8826

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
- (A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.
- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? Normally a 3 to 5 year period. However, given the transmission and generation build-out going on—3 years will probably be the norm for awhile. b) Does your agency allow amortization treatment of rate case expenses? Yes. c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing? It has in the past.
- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities. Not provided but could be if really necessary.
- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding? None of the above. Each case stands on its own.
- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Mike Diller
 mdiller@nd.gov
 701-328-4079

Bolin, Kim

From: DOUGHERTY Michael [michael.dougherty@state.or.us]
Sent: Friday, June 03, 2011 10:38 AM
To: Bolin, Kim
Cc: Terri Carlock
Subject: Rate case expenses

Kim,

Please see my quick responses:

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
 - A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.

Basically, A).

- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? b) Does your agency allow amortization treatment of rate case expenses? c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing?

We usually deal with "incremental" rate case expenses with water utilities, this is not an issue with energy utilities. These are basically amortized over a period of 3 – 6 years depending on the level of expenses. Three is the norm. On subsection c), the answer is yes, if the utility comes in prior to expiration of the amortization period. The remaining amount is then added in to the current rate case expense. I believe this only occurred once.

- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.

<http://apps.puc.state.or.us/orders/2011ords/11-146.pdf>

Please see pages 6-8 (mainly second paragraph in *Findings of Fact* on page 7). This was a very unique case (water is extremely contentious), and we have never seen levels like this. Mostly we are amortizing accounting and copying fees over a period of three years. See Attachment A of the Stipulation that shows \$235 in Account 666, in the following order.

<http://apps.puc.state.or.us/orders/2011ords/11-025.pdf>

4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?

Commission precedent

Although this is not addressed specifically in Staff's Rate Case Manual, it is referred to under the "Normalizing Adjustment" section:

Normalizing Adjustments

Normalizing adjustments develop or restore normal recurring cost and revenue relationships representative of the period when rates from the docket will be in effect. Nonrecurring expenses are unusual expense variations due to some extraordinary or nonrecurring event in a test period that materially distort a utility's normal financial position. Some adjustments are for events that happened during the recorded period. Other adjustments are for events that happened after the end of the recorded period. Examples of nonrecurring expenses include:

1. Extraordinary repair expenses for property damaged by storm, fire, or other disaster;
2. Corporate relocation costs (for example, moving expenses);
3. Acquisition expenses due to mergers and property purchases;
4. Start-up costs for major data processing systems and for corporate restructuring;
5. Write-offs due to extraordinary or premature plant retirements; and
6. Unusual expenses due to litigation and rate case activity.

I probably should add a paragraph to explain this in the manual.

5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Please see below. Thanks - Mike

Michael Dougherty

Program Manager

Corporate Analysis & Water Regulation

Oregon Public Utility Commission

(503) 378-3623

michael.dougherty@state.or.us

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
- A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.

Answer of SC Public Service Commission (SCPSC): A-Allow Recovery

- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? **Answer of SC Public Service Commission: The Commission usually allows recovery spread out over a number of years on a case by case basis. The time period is usually three (3) to five (5) years.** b) Does your agency allow amortization treatment of rate case expenses? **Answer of SC Public Service Commission: Yes. It is usually a three to five year amortization period.** c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing? **Answer of SC Public Service Commission: This has been done previously in instances where prior case expenses have not been fully amortized. This is evaluated on a case by case basis.**
- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities. **Answer of SC Public Service Commission: The most recent electric decisions amortized rate case expenses over five (5) years. A link to the orders is provided below:**
- <http://dms.psc.sc.gov/pdf/orders/71AE18B8-F2ED-1DCB-A3379422E55C9F93.pdf>
<http://dms.psc.sc.gov/pdf/orders/4C6CF981-EE74-928E-68FBF7973BF9CA00.pdf>

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding? **Answer of SCPSC: Commission Precedent found in various orders.**
- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary. **Answer of SCPSC: Tom Ellison (803) 896-5203 or Lynn Ballentine (803) 896-5162. Tom.ellison@psc.sc.gov or lynn.ballentine@psc.sc.gov**

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
- A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.

ANSWER: A

- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? b) Does your agency allow amortization treatment of rate case expenses? c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing?
- a) Our commission has spread out recovery of rate case expenses over a multi-year period. The amortization period varies from case to case.
 - b) Yes.
 - c) No, unless a tracker mechanism was approved in the last general rate case.
- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.

ANSWER: All general rate cases in the last five years have been resolved through settlement.

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?

ANSWER: Commission precedent.

- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Jon.Thurber@state.sd.us, (605) 773-3201

- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
- A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.

The PUCT allows recovery of all prudently incurred and properly documented rate case expenses. This is accomplished through a rider/surcharge for actual expenses approved by the Commission.

- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? b) Does your agency allow amortization treatment of rate case expenses? c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing?

In past cases, amortization treatment was allowed; however due to the current practice of a separate rider/surcharge, amortization is no longer necessary. Generally the rider or surcharge is utilized for a period of one to three years, but varies from case to case. Once the approved amount is recovered, the surcharge is removed from the utility's tariff. The recovery period is based on the time period that rates are expected to be in effect.

Expenses incurred subsequent to a final order or other cut-off date may be deferred and recovered in a future rate case if requested in the current proceeding.

- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate

case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.

The following dockets can be accessed on the PUCT's website:

PUC Docket No. 36530 –Application of ONCOR Electric Delivery Company for Rate Case Expenses pertaining to PUC Docket No. 35717

PUC Docket No. 37744 – Application of Entergy Texas, Inc. for Authority to Change Rates and Reconcile Fuel Costs

PUC Docket No. 37772 –Application of Southwest Electric Power Company for Rate Case Expenses pertaining to PUC Docket No. 37364

PUC Docket No. 38771 – Remand of Docket No. 33734 (Application of Electric Transmission Texas, LLC for Regulatory Approvals and Initial Rates)

PUC Docket No. 38880 –Application of Texas-New Mexico Power Company for Rate Case Expenses severed from PUC Docket No. 38480

Docket No. 39127—Request for Rate Case Expenses Severed from Docket No. 38339.

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?

Methods utilized are the result of statute (the Public Utility Regulatory Act or "PURA") and development through Commission precedent.

- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

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- 1) Which of the following best describes your agency's recent approaches and decisions regarding rate recovery of rate case expenses:
- A) Allow recovery of all prudently incurred rate case expenses;
 - B) Share or allocate rate case expenses between the Company's shareholders and its customers. If applicable, please provide the details of the sharing methodology or mechanism;
 - C) Use of a "cap" mechanism to set a maximum allowable amount of recovery of rate case expenses for a utility in a single rate proceeding. If applicable, please provide details on how the cap amount is established;
 - D) Inclusion of rate case expenses in customer rates through a "tracker" mechanism (defined as a rate mechanism that compares actual incurred expense amounts to the level of the expenses included in utility rates, with any under or over-recovery charged to or flowed back to customers at a later time); or
 - E) Any other approach, including a brief description of that methodology or mechanism.

Answer: A

- 2) a) In recent decisions has your agency allowed recovery of rate case expenses in the year incurred, or to spread out rate recovery over a multi-year period? If the latter, can the period over which expenses are spread vary from case to case, or is the period always the same timeframe? b) Does your agency allow amortization treatment of rate case expenses? c) Does your agency allow recovery of expenses incurred in a prior rate case in a subsequent rate case filing?

Answer: The Public Service Commission of Wisconsin (PSCW) utilizes a forward-looking test year, with forecasted rate case expenses being recovered during the test year. The major investor-owned electric and gas utilities are on a biennial rate case period and the test year forecasts of rate case expenses may be normalized over the biennial period. In general, Wisconsin does not allow retroactive ratemaking except in cases when deferral authorization is requested for unusual, significant, and non-recurring items. The PSCW has treated rate case expenses as normal, recurring costs that are forecasted and they have not been the subject of any utilities' deferral authorization requests.

- 3) If possible please provide citations to recent key decisions (within the last five years) made by your agency and/or in the court system concerning rate case expense issues in your jurisdiction, or any earlier decision you believe to be an important precedent regarding your agency's current treatment of rate case expenses. We would particularly be interested in those decisions involving your larger electric and natural gas utilities.

Answer: None noted.

- 4) Have the methods or mechanisms utilized by your agency regarding the recovery of rate case expenses been the result of a state statute, Commission rulemaking, Commission precedent, or other formal proceeding?

Answer: Commission precedent

- 5) If possible, please provide a name, e-mail address and phone number of an employee at your agency with general knowledge concerning rate case expense matters in your jurisdiction, so that we can make follow-up contacts for clarification purposes or additional information, if necessary.

Answer:

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In traditional cost-of-service ratemaking, the reasonable and prudent operational and maintenance expenses that are recovered from the ratepayers through rates include rate case expenses such as attorneys' fees, expert witnesses' fees and other litigation expenses. However, just as the shareholders can have gold-plated fixtures in the executive washroom as long as they foot the additional cost, there may be a point beyond which additional rate case expense must be borne by the shareholders alone. In wrestling with this difficult ratemaking issue, the Commission may find the fee-setting practices of the federal courts to be instructive.¹ Of particular use, there are many reported cases and law review articles providing guidance on every step of the process.

In the world of federal civil litigation, many statutes include fee-shifting provisions that require the losing party to foot the winning party's legal fees and litigation expenses. One example is the general-purpose civil rights statute, 42 U.S.C. § 1983 (1871), the relevant fee-shifting provision being § 1988 (1976).

Section 1988 provides, in pertinent part:

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections . . . , the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of

¹ See generally, Mark R. Brown, "A Primer on the Law of Attorney's Fees Under § 1988," *The Urban Lawyer*, 663 (Fall 2005).

this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

The § 1988 attorney's fee award is expressly committed to the trial court's sound discretion;² however, the Supreme Court has held that an award is mandatory barring "special circumstances."³ Second, the award by its language is limited to a "reasonable attorney's fee."⁴ Third, this particular fee-shifting statute excludes litigation expenses except expert witness fees in certain limited instances.⁵

How is a § 1988 fee award made? First, "prevailing party" does not generally include the successful defendant in civil rights litigation.⁶ The attorney or attorneys for the prevailing parties must submit *itemized* time records and expense receipts to the court.⁷ The judge winnows through them and excludes any charges or expenses that she deems unreasonable.⁸ Second, a reasonable hourly rate is determined by a survey of what practitioners charge for the sort of work involved in the area where the case was tried.⁹ The reasonable hourly rate is determined from the survey data and is applied to the scrutinized log of hours and a presumptive award established, the so-called "lodestar."¹⁰ Finally, this amount is adjusted upwards or downwards to reflect factors

² *Keslar v. Bartu*, 201 F.3d 1016, 1017 (8th Cir. 2000).

³ See *Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 402-03 (1968).

⁴ 42 U.S.C. § 1988(b).

⁵ 42 U.S.C. § 1988(c).

⁶ *Brown supra*, 664.

⁷ *Jenkins v. Kansas City Missouri School District*, 525 F.3d 682, 682 n. 1 (8th Cir. 2008) ("travel expenses and other out-of-pocket expenses that a law firm normally would bill to its client are more properly characterized as part of an attorney fee award").

⁸ The judge is considered to be an expert with respect to the reasonableness of attorneys' fees. *Holland v. City of Gerald*, 2013 WL 16883000 (E.D. Mo., Apr. 18, 2013), slip op. at *2.

⁹ *Moysis v. DTG Datanet*, 278 F.3d 819, 828-829 (8th Cir. 2002) ("As a general rule, a reasonable hourly rate is the prevailing market rate, that is, the ordinary rate for similar work in the community where the case has been litigated.")

such as the difficulty of the issues; the degree of success achieved; and the degree to which one party or another is deemed to have needlessly prolonged the proceedings.¹¹

The Supreme Court made a list of 12 factors to consider:

(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client under the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.¹²

In federal civil litigation practice, the attorney for the prevailing party may collect *both* the lodestar amount from the loser and whatever fee his employment contract specifies from his client. Likewise, if this method was adopted for rate case use, the lodestar amount would be placed into rates as a cap on what could be exacted from ratepayers. The company’s attorney would still be free to collect whatever the employment contract specified from the shareholders.

To summarize: well-established Federal fee-shifting mechanisms provide a model that could be adapted to use by the Commission in rate cases. Under this model, a presumptive amount of allowable rate case expense is determined by multiplying the reasonable hours expended by a reasonable fee. This “lodestar” amount may then be adjusted up or down to reflect other significant considerations, including as a reward or penalty for specific litigation behavior. In applying this model in the rate case context, the Commission might:

¹⁰ *Holland v. City of Gerald*, *supra*, 2013 WL 1688300 at *4.

¹¹ *Id.*, at *3.

¹² *City of Riverside Park v. Rivera*, 477 U.S. 561, 568 n. 3 (1986).0

- Exclude from revenue requirement time and expenses devoted to issues on which the company did not substantially prevail;
- Reduce the time considered for reimbursement to reflect unnecessary duplication of services; e.g., superfluous attorneys watching the proceedings from the audience;
- Reduce expenses to exclude the cost of unused or superfluous experts and consultants;
- Make other adjustments in order to protect ratepayers from unreasonable exactions for rate case expense.