

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Working Case to)
Consider Policies to Improve)
Electric Utilities Regulation) **Case No. EW-2016-0313**
)

INITIAL COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW the Office of the Public Counsel (“OPC” or “Public Counsel”) and offers the following written suggestions regarding possible ways the Public Service Commission (“Commission”) may improve the way they regulate electric utilities as follows:

In the June 8, 2016 Order opening this Workshop, the OPC – among other stakeholders – were urged by the Commission to provide comments “as detailed as possible” in regards to this subject. As the Order was issued to cover a large and diverse topic, our comments today are relatively broad and offered only as an opportunity to discuss a plethora of issues and ideas with basic examples provided as a means of moving forward. OPC is hopeful this workshop will serve as a starting point into a larger conversation where it can continually provide its relevant information, as well as responses to others’ submitted information, to allow the Commission the ability to review all angles on this subject.

Our initial comments are structured to address public statements made by members of the Commission as well as investor-owned utilities (“IOU”) that the concept of “regulatory lag” is problematic in nature and must be fixed. The OPC respectfully disagrees with this. Regulatory lag is perhaps the most necessary component involving cost of service regulation. Not only does this concept serve as a useful purpose in regulating and rewarding these IOU’s, but also that the time period has given the OPC, as well as other stakeholders, an opportunity to closely scrutinize data and evidence provided in the course of rates cases that, in turn, have saved Missouri

ratepayers tens of millions of dollars a year. The OPC does offer a number of questions to the Commission that will allow us to fully understand the concern raised by some regulated utilities. Regardless, the OPC does have a number of potential fixes to the discovery and procedural rules of a rate case with the potential of shaving months off the process while still ensuring necessary and essential customer protections.

Further, the OPC encourages conversations about performance-based ratemaking as long as ratepayer protections are observed and codified. While OPC ultimately believes the current system is a proper, sufficient system of performance-based review of the utilities, we also recognize things can always be improved upon and other governments have provided leadership in moving regulation into the future. There has also been success in many cases of doing this while ensuring customers are adequately protected. Ultimately, the OPC knows the potential for additional federal regulations and the evolving market will require modifications to the current system that will either need to be addressed by the Commission itself or the Missouri Legislature.

The OPC would also like to note states such as New York have set aside two-years of coordinated, facilitated dialogue to make sense of the changing regulatory landscape in an attempt to reach consensus. As our state is in a unique position of having this conversation right before Presidential and gubernatorial administrations change, now is the appropriate time to consider doing so in order for this conversation to be paramount in stakeholders' minds.

Regulatory Lag: The Concept, the Benefits, and Potential Customer-Minded Reform

In utility ratemaking, there is an inherent time lag between when the utility makes new investments or increases its costs and when it recovers those costs in rates. "Regulatory lag" is due in part to the formal contested case processes used to review and approve rate cases and the

complexity of the issues and volume of information prepared and under regulatory scrutiny. Moreover, in some states, rates are set based on historical costs and usage, not forecasted amounts. Using historical information increases the regulatory lag occurs because utilities need to wait to prepare the filing until the historical costs are known. Freezing rates for the period of the lag imposes penalties for inefficiency, excessive conservatism, and wrong guesses. It also offers rewards for the inverse: companies can for a time keep the higher profits they reap from a superior performance and have to suffer the losses for a poor one.

Purportedly, there is consensus that excessive lag should be avoided as it can discourage needed investments and increase administrative costs. A number of states have instituted and explored approaches to limit regulatory lag in order to create an alternative regulatory process that encourages more investments. Putting aside the issue of whether more investment is always warranted, the Commission should be cognizant that increased exposure to potential stranded or imprudent assets necessitates that the risk be balanced between both shareholders and ratepayers. Consequently, many of the mechanisms designed to reduce regulatory lag should also equip the Commission with the power to Order refunds in the event that the utility collects more than just and reasonable rates would allow.¹

Missouri currently has a statutory requirement known as the “file and suspend” method for rate case filings. Under Section 393.150 RSMo, the Commission can suspend the initial implementation of a requested rate change for a period of 120 days beyond the stated tariff effective date. If a hearing on the rate change request cannot be concluded within the initial period of suspension, the Commission may extend the time of suspension for a further period not

¹ 23 states permit refund of revenues based on shortened rate case timelines, interim rates, or rate adjustment mechanisms. See Attachment One, *State Regulatory and Statutory Practices Summary*.

exceeding six months. This traditionally has produced rate case proceedings of 11 months in Missouri. Upon a fifty-state survey, Missouri does incredibly well in turning these cases around.²

Missouri also utilizes a historical test year to set a normalized amount for cost and expenditures for the utility moving forward. Typically, an historical test year is the latest calendar year; however, a test year can be any prior twelve-month period of audited information. The presence of a statute requiring new capital expenditures to be in service and used and useful before they can be collected in rates, drives the need in part, to utilize a historical test year for Missouri.³

The combination of the “file and suspend method” as well as the requirement that capital expenditures be in service and used and useful before they are included in rates, leads to regulatory lag. Regulatory lag is not, in and of itself, inherently bad for the utility. The Commission recognizes that there are shared benefits, as well as risks, that run to both shareholders and ratepayers.⁴ Regulatory lag can serve to make the utility more efficient and more prudent, as well as provide the utility with retained benefits from synergies.⁵ Regulatory lag is a phenomenon which naturally occurs in ratemaking because the regulatory ratemaking process lags behind the actual costs and revenues incurred by the utility. *See* James C. Bonbright *et al.*, “Principles of Public Utility Rates”, 96 (2nd ed. 1988). When a utility is under-recovering revenues, regulatory lag can be seen as deleterious to the utility. *Noranda Alum., Inc., et al., v. Union Elec. Co. d/b/a Ameren Mo.*, 2014 Mo. P.S.C. Lexis 882, *29-30 (2014). When a utility is

² Regulatory Research Associates, Inc. form Joint response from Consumers Energy, DTE Energy, and MEGA from http://www.michigan.gov/documents/energy/Additional_Questions_4-6_response_from_DTE_Consumers_and_MEGA_420067_7.pdf.

³ RSMo. §393.135.

⁴ Kansas City Power and Light Request for a General Rate Increase, Case No. ER-2010-0356, Report and Order May 4, 2011.

⁵ *Id.*

over-recovering revenues, regulatory lag can be seen as deleterious to the customer. *Id.* Traditional regulatory ratemaking is predicated on the idea that over a sufficient period of time the benefits and detriments of regulatory lag balance for both the utility and the consumer; sometimes a utility will over-recover, sometimes it will under-recover. *See* Alfred E. Kahn, The “Economics of Regulation: Principles and Institutions”, 48 (1989). In effect, regulatory lag creates the “quasi-competitive environment” that mimics how competitive firms operate and ensures that natural monopolies are not abusing their power.

There is also the added, necessary benefit this time will allow the Public Service Commission Staff (“Staff”), OPC, or other shareholders, an opportunity to catch problems and concerns with rate cases with the potential of saving Missouri ratepayers from excessive costs for an essential service. As an example, the Empire Electric case (ER-2016-0023) was filed to include the capital costs of the Heat Recovery Steam Generator (“HRSG”) at Riverton 12. Adding the HRSG converted Riverton 12 from combustion turbine generation to a more efficient combined cycle generation and added more capacity. Empire timed the filing of the case expecting that the HRSG would become operational after the test year but before the true-up date. This is done to reduce the regulatory lag for a large capital expense. It was Empire’s expectation the HRSG would be found used and useful for service by June 1 and new rates would go into effect before September 14 – a lag of just three and a half months.

The Staff’s direct case included an estimate of the capital costs of the HRSG because most of the costs had already been expended by Empire. However, the fuel costs included in Staff’s direct case were estimated using the less efficient combustion turbines, i.e. fuel costs were higher than they would be with a combined cycle plant included. Prior to the true-up filing, Empire proposed a settlement. Staff responded with a counter-offer based on its direct case. Staff

had estimated fuel costs with Riverton 12 as a combined cycle plant for its direct case class cost-of-service study. For this class cost-of-service study, Staff estimated the more efficient combined cycle would reduce fuel and purchased power costs net of off-system sales by \$11 million.

Another example where Staff caught a significant issue due to the time allowed for discovery involved Missouri-American Water Company (“MAWC”) in their most recent rate case – WR-2015-0301. In that matter, Staff noticed a large amount of overtime incurred on MAWC’s books during October of 2015. Staff learned this was the result of unusually high levels of premature failure rates associated with approximately 97,000 meters that had defective magnetic design or problems with other components of the meter resulting in either no recorded usage or lower-than-actual usage meter readings. Without this information, MAWC billed customer based on the prior year. Some 22,000 meters were replaced between August 2015 and January 2016 at a cost of \$7.1 million, accounting for the significant work required in the October date.

As Staff did not learn of this until February of 2016, there was little time to adequately investigate the matter resulting in an investigatory docket opened to do so. It is the opinion of OPC that this significant issue would not have been caught by the Staff had an expedited rate case schedule been ordered. OPC offers these two cases as another example of why regulatory lag benefits not only the ratepayer but parties such as Staff as to allow them proper time to investigate all matters.

With the use of such tools as update periods, true-up periods, and adjustments for “known and measurable” changes outside of the test year and true-up period, regulatory lag in Missouri has been greatly reduced. The aforementioned tools are all tools at the Commission’s disposal and do not require legislative intervention.

When allowed to work as designed, regulatory lag provides the Commission with the ability to set rates that are fair, reasonable and unbiased with no predetermined winners or losers.

Regulatory lag, if that is a concern, can also be reduced within the current statutory framework governing the Commission with modifications to its discovery rules. With many of the larger regulated utilities, there are a core set of common questions requested through the data request process. If these common set of questions were provided to the utility during the 60-day notification prior to the filing of a rate change request, then those responses would be provided as part of the initial application.

Discovery response periods for responding to data request can also be reduced to encourage quicker conclusion of the rate case proceeding. Currently under 4 CSR 240-2.090(2) (C), parties have twenty days initially to respond to a data request. Data request response time could be shortened to ten, twelve, or fourteen calendar days. Eliminating the requirement that parties have to come to the utility to view highly confidential or proprietary information without a showing by the utility of substantial risk of harm would also reduce time, as well as tax payer expense, to review the material.

Regulatory lag can also be reduced within the current statutory framework governing the Commission with modifications to the rules on testimony filings. Currently, IOU's file their direct testimony, then all other parties file their direct, then parties file rebuttal, and then parties file sur-rebuttal. In order to speed this process up, non-utility parties should be required to file their direct and their rebuttal testimony at the same time. This will move things along faster and lead to a decrease in repetitive filings as well as allowing issues to be joined earlier.

There are other modifications to the Commission's discovery rules which could eliminate delay in the rate case process should the Commission seek to revise those rules without any

threat to ratepayer protection and have the potential to reduce a rate case from one to two months.

Further, the Commission should consider a two-step rate increase to cover expected post-order capital additions and identifiable expenses within a specified period of time, after audit to establish in-service date of capital additions and incurrence of identified expenses. Offsets to capital additions such as additional depreciation on rate base assets and additional deferred income taxes should be used as a deduction from allowable gross investment.

Finally, a change made internally for the Commission would be to allow parties in a rate case, complaint, *et al* to notice up motions for hearing rather than allowing this to be set by a regulatory law judge or by the Commission in some cases. The Commission could also create regulations that motions must be heard within a set period of time or establish a Commission version of “Law Day” where routine motions could be noticed up and heard. This would give power to the parties to move cases forward and expedite the litigation aspect of these cases.

It should be emphasized that even if the IOU’s are potentially exposed to some short-term risk that their expenses grow faster than normal, they are ultimately in control of when they file for rate increases to offset this risk. In contrast, ratepayers have no such defense.

As a general guiding principal, if one of the purposes of the working docket is to address regulatory lag, the OPC would request the Commission pose the following questions to the regulated utilities for response:

1. Provide a listing of all capital projects that have been abandoned due to regulatory lag?
2. Provide the source of information upon which you rely to show that regulatory lag impacts your ROE?

3. Please explain why regulatory lag cannot be reduced within the current statutory framework that governs the Commission?
4. Would you support changes in the Commission rules requiring mandated data requests be provided at the time a rate change application is filed?
5. Would you support changes in the Commission rules requiring shortened discovery response periods to expedite the review process?
6. Would you support changes to the Commission's rules on requiring travel to view highly confidential and proprietary information?

Many of the regulatory lag reduction mechanisms are already in place and available for both the Commission as well as the utility's use. Finding answers to the questions posed above will permit all parties and stakeholders to evaluate the impact on our regulated utilities by the presence of regulatory lag.

As dialogue continues to be explored to find common ground between stakeholders, OPC would like to emphasize that context should be at the forefront in discussing any radical departure. Missouri is a vertically integrated state that has traditionally enjoyed lower electric rates than are deregulated counterparts. Equally relevant, Missouri's IOU's have benefitted from favorable regulatory treatment as evident by the acquisition premium offered recently to Empire Electric, the all-time high valuation of American Water, the windfall shareholder success for KCPL, GMO and Ameren Missouri in its Cycle I MEEIA programs, and Spire's earnings and aggressive acquisitions to date.

Performance-Based Metrics

In the conversation circling the proposed electric legislation from the 2016 Legislative Session, there was references to performance-based ratemaking (PBR). While the OPC took the

position the aforementioned legislation did not actually address PBR as it simply re-labeled formula ratemaking as such, we believe this is a subject worthy of more dialogue. Incentive-based regulation can include decoupling measures (that would require aggressive consumer protection measures such as “claw-back” provisions and rate case moratoriums), revenue-cap regulation, or any form of regulation tied to specific performance incentives, such as reliability of service or achievement of specified resource objectives. OPC has reviewed a number of states including California, Oregon, Washington, Wisconsin, Michigan, New York, and Hawaii as well as the United Kingdom and found a number of ideas worth exploring within this workshop that will be further provided. For the time being, we will focus on a few examples from other states as well as specific policies the OPC believes will offer said consumer protections.

As a caveat, the following is offered by the OPC only as a point to begin conversation. Our intention is to continue revising our thoughts on the issue of adding additional performance-based ratemaking through this process and, as we learn more, may end up making additional recommendations as well as critiques of material we’ve outlined below. In the spirit of open dialogue, we are hopeful other interested parties will respect our efforts to participate in a dialogue and not view these thoughts as official OPC policy.

In a May 18, 2015 editorial in the *Utility Dive* web magazine titled “Why Utilities Should Push for Performance-Based Regulation”, authors Ron Lehr and Michael O’Boyle state “(PBR) adds alternative sources of revenue to an otherwise stagnant business model subject to flat or shrinking demand for electricity service, and links shareholder value to customer value by financially rewarding utilities for achieving the outcomes customers want from electricity service. This provides new opportunity for utilities to increase returns and reduce risks if they provide the outcomes customers want, creating a win-win for customers and shareholders.”

As an example, the State of New York has engaged in a closely-watched review of utility regulations through a project called Reforming the Energy Vision (REV) closely modeled after the Revenue=Incentives+Innovation+Outputs (RIIO) model applied in the United Kingdom. The first steps toward aligning utility shareholder value with customer and societal goals are suggested as follows:

1. Enhanced customer knowledge and tools that will support effective management of the total energy bill
2. Market animation and leverage of customer contributions
3. System-wide efficiency
4. Fuel and resource diversity
5. System reliability and resiliency
6. Reduction of carbon emissions

This proceeding was separated into two tracks, with Track One focused on developing distributed resource markets, and Track Two focused on reforming utility ratemaking practices. These six public policy goals form the basis for new ratemaking practices under Track Two, which seeks to “align utilities' financial interests with the objectives of reform.” The New York Public Service Commission (“NY PSC”) staff released the Track Two proposal, using three tools to align utility shareholder value with the original goals: earnings incentive mechanisms, measuring - but not monetizing - other performance metrics, and reforming the "clawback" mechanism.

Earnings incentive mechanisms supplement the rate of return with basis-point adjustments tied to performance, using the shareholder “value engine” to increase $(r-k)$ as performance improves. The NY PSC staff recommends that peak reduction, energy efficiency, customer engagement and information access, affordability, and interconnection be measured and monetized as earnings incentive mechanisms. Additional performance metrics will be measured but not monetized. Tracking these metrics encourages some management focus, offers an

incremental step toward possible future monetization, and provides stakeholder transparency. Carbon emissions, despite being a main REV objective, are notably measured but un-monetized. The PSC staff also proposes reforming the “claw-back” mechanism whereby capital expenditures are adjusted in each rate case. Rather than punish utilities for revising capital expenses downward, the new claw-back model would allow utilities to keep the difference between planned capital expenditures and cheaper third-party solutions.⁶

A general consensus of the term “claw-back” is a provision that prevents unjust enrichment between ratepayers and the IOU’s. For the purposes of this discussion, such provisions could include audits that could be commenced by any interested party to be submitted to the Commission for review and applied as described above. This could include rate case moratoriums as what is often proscribed in New York State as a part of Agreements and Stipulations. Anything that triggers an immediate review rather than simply saying a party can “file a complaint.” This has proven an ineffective process for protecting Missouri rate payers.

There are obvious concerns about manipulating data and information that should also be addressed in these regulations. Metrics could be redefined to exclude energy sold at a loss or energy from a unit that is operated out of merit order. This pitfall can be quickly remedied by ensuring that regulators carefully monitor how well performance incentive mechanisms are achieving their intended results, and step in quickly to make necessary adjustments, particularly where an incentive is clearly being gamed. In addition, the potential for gaming makes it all the more important that financial rewards and penalties are set conservatively in the beginning, and

⁶ Danielle Spiegel-Feld & Benjamin Mandel, *Reforming Electricity Regulation in New York State: Lessons from the United Kingdom* (<http://guarinicenter.org/wp-content/uploads/2015/01/RIIO-Roundtable-Report1.pdf>) (January 2015).

only increased once regulators and utilities gain experience with the performance incentive mechanism. Manipulation can be more difficult to detect, particularly when data are collected and analyzed by the utility. To reduce the risk of manipulation, verification methods should be adopted and independent third parties used to collect, analyze, and verify data where practical. Complex data analysis techniques should be avoided due to transparency issues. See *Utility Performance Incentive Mechanisms – A Handbook*, page 56.

According to the article “From Old to New: How Rethinking Regulation Can Deliver a Smarter Electricity System”, authors Sonia Aggarwal, Steve Kihm, and Ron Lehr outline five ideas that could transform regulation into a forward-looking system creating customer and societal value and that should be considered by this Commission moving forward:

1. Engage stakeholders to consider which customer and societal values are most important for the regulated electric sector, driving toward quantitative metrics for performance in each category. (This *Synapse* handbook found here and can be provided to the Commission upon Request as it is voluminous.);
2. Improve estimates of the utility cost of equity to reflect the minimum markup on money received from shareholders. This value should set the lower bound for the return on equity allowed to utilities;
3. Research the benefits in each of the value categories to estimate total benefits. This value should set an upper bound for the incentives offered to utilities that deliver these values;
4. Consider the difference between the cost of equity and the current return on equity. This is the money motivating shareholders and utility management, and represents the existing or baseline incentive for performance against which future incentives should be measured; and
5. Consider alternative ways to deliver the performance portion of utility revenues, aside from adjustments to rate of return, keeping in mind that direct shareholder incentives (or, better yet, “shared savings” programs where some incentive goes to shareholders and some flows back to the customer) may provide the most direct connection to intended performance.

Conclusion

The OPC believes there is great benefit to a continued conversation on improving electric regulatory matters and a combination of (1) tightening discovery and internal

procedural rules; (2) modifying testimony schedules; (3) creating a two-step rate process; (4) adopting PBR measures with adequate consumer protections; and (5) asking substantial questions of all relevant stakeholders is a welcome place to start.

Again, we would also urge the Commission – if it intends to significantly reform electric ratemaking cases – to issue a moratorium on such cases until a new approach is finalized.

WHEREFORE the Office of the Public Counsel submits these Comments.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 8th day of July 2016:

/s/ James M. Owen

State Regulatory and Statutory Practices Summary

- 1 state provides that the proposed rates may be placed into effect, subject to refund, and orders are issued under statutory time constraints. Order to be issued within 10 months.
- 4 states provide that an interim rate increase may be placed into effect, subject to refund, and orders are issued under statutory time constraints. Orders to be issued from 6 to 12 months.
- 2 states provide that the proposed rates automatically go into effect, not subject to refund, and orders are issued under statutory time constraints. Orders to be issued from 6 to 12 months.
- 1 state provides that an interim rate increase may be placed into effect, subject to refund, however a financial emergency must exist and orders are issued under statutory time constraints. Orders to be issued within 9 months.
- 6 states provide that an interim rate increase may be placed into effect, subject to refund, and orders are issued under regulatory time constraints. Orders to be issued from 6 to 12 months.
- 11 states provide that an interim rate increase may be placed into effect, subject to refund, however a financial emergency must exist and orders are issued under regulatory time constraints. Orders to be issued from 8 to 11 months.
- 5 states provide that the proposed rates may be placed into effect, subject to refund, and orders are issued under regulatory time constraints. Order to be issued from 4 to 6 months.
- 4 states provide that the proposed rates automatically go into effect permanently if no decision is made, and orders are issued under regulatory time constraints. Orders to be issued from 10 to 13 months.
- 1 state provides that the proposed rates automatically go into effect if no decision is made, subject to refund, and orders are issued under regulatory time constraints. Order to be issued within 7 months.
- 1 state provides that an interim increase becomes permanent if final decision is not issued within 10 months, and may implement the remainder of any requested increase, subject to refund. Order to be issued under regulatory time constraints.
- 1 state provides that rates may not be placed into effect subject to refund, and orders are issued under regulatory time constraints.

Matrix of States' Regulatory Practices

State	Mandatory Action Periods	Revenues Subject to Refund	Test Year	Average Regulatory Lag
Arkansas	Commission must decide a rate case within 10 months of the filing. By law, the Commission must issue a decision within 60 days of a request for an interim increase.	If the Commission has not issued a final decision for the rate case at the end of the 10 month period, the company may place the proposed rates into effect, under bond and subject to refund. Also, interim surcharges may be implemented subject to refund.	Test period may consist of six months of actual and six months of projected data at the time of the filing. Commission is required to consider "known and measurable" changes for the 12 months following the end of the test period.	Commission must decide a rate case within 10 months of the filing.
Delaware	Utilities may place modest interim rate hikes into effect, under bond, 60 days after the filing date.	If the Commission has not issued a final decision for the rate case at the end of the 7 month period, the company may place the requested increase (that does not exceed 15%) into effect, subject to refund.	Commission relies on an average rate base for a test period that is partially forecast at the time of the filing. Known and measurable adjustments to test period data are permitted.	Commission attempts to complete rates cases within 7 months of the filing.
District of Columbia	There is no statutory time limit within which the Commission must act on rate cases; however the Commission has set 9 months for completing such proceedings.	Interim rate hikes may be implemented subject to refund if a financial emergency exists.	Commission relies on an average original-cost rate base and has allowed filings based upon partially-forecasted data.	There is no statutory time limit within which the Commission must act on rate cases; however, the Commission has set 9 months for completing such proceedings.
Florida	A requested increase becomes effective at the expiration of a 60 day period unless suspended by the Commission. The Commission is permitted to suspend a rate case for a maximum of 8 months from the filing date. In most cases the Commission issues verbal decisions 1 month prior to the end of the 8 month suspension period and the final written order issued near the end of the 8 month period.	Any interim increase is collected subject to refund.	Commission generally relies on an average original-cost rate base. In permanent rates cases, the Commission generally utilizes test period that are fully or partially forecasted at the time the rate decision are issued. The Florida Supreme Court has upheld the right of the Commission to used projected data in deciding rate cases.	8 months.

Matrix of States' Regulatory Practices

State	Mandatory Action Periods	Revenues Subject to Refund	Test Year	Average Regulatory Lag
Georgia	Utility must give 30 days notice when filing for a rate increase. The Commission may suspend the proposed rate increase for a maximum of 5 months, bringing the total elapsed time to 6 months.	If no action has come from the Commission at the end of the 6 month period, the utility may place the into effect under bond and subject to refund.	Statutes require electric and gas companies to file rate cases based on projected data. The electric rate case test years must be partially forecasted at the time of decision, whereas the test periods for gas companies must be fully forecasted at the time of a rate decision.	6 months.
Hawaii	There is no statutory time limit within which a rate case must be completed. However, the Commission is legislatively required to "make every effort" to issue a decision within 9 months following the filing date. An interim increase is required within 1 month after the expiration of the 9 month period to reflect any increase to which the Commission believes the utility is entitled.	Interim increases are subject to refund with interest.	Commission rules provide for rate cases that are filed between January and June to be based on a 12 month period ending June 30 of the following year, and rate cases filed between July and December to be based upon a test year ending December 31 of the following year.	Most recent rate cases have been well over a year in duration.
Illinois	Utility rate case decision must be issued within 11 months of filing. Interim rate increases are allowed only after a strong showing of financial need by the utility.	Interim rate increases are allowed and are collected subject to refund.	Rate cases may be based on historical, current or future test years.	Utility rate case decision must be issued within 11 months of filing.
Indiana	No statutory time limit for Commission action on rate cases, the Commission has established a 10 month target for decision in major cases. The Commission may authorize interim rate increases if a financial emergency exists.	Interim rate increases are subject to refund under an emergency situation.	Rate cases have generally been decided on the basis of a historical test period, with adjustments for known and measurable changes expected to occur within 1 year after the end of the test period.	Commission has established a 10 month target for decisions in major cases.

Matrix of States' Regulatory Practices

State	Mandatory Action Periods	Revenues Subject to Refund	Test Year	Average Regulatory Lag
Iowa	Commission is required to render a final rate case decision within 10 months of the filing date, but may extend the case by 6 months to resolve new generating capacity issues. Commission must act on a petition for an interim increase within 90 days of the filing. If the Commission does not issue a final decision in 10 months, any interim increase becomes permanent, and the company may implement the remainder of any requested increase, subject to refund.	The implementation of the remainder of any requested increase is subject to refund.	Commission utilizes an average original-cost rate base for a historical test period, with adjustments for known and measurable changes, within 12 months from the filing date.	Commission is required to render a final rate case decision within 10 months of the filing date.
Kentucky	Utilities must notify the Commission of the filing of their rate case at least 4 weeks prior to filing. The Commission can suspend rates for up to 6 months from the proposed effective date. If the Commission does not issue a final order within 10 months of the original date of the filing, the proposed rates become permanent.	If the Commission has not issued a final decision in the 6 months the proposed rates are put into effect, subject to refund.	Commission generally utilizes a historical test period for known and measurable changes. However, statutes permit utilities to forecast test periods.	Can range from 6 to 10 months.
Louisiana	The Commission is constitutionally required to act on a rate case within 1 year of the filing date. Interim rate changes may be authorized.	If the Commission does not act within 1 year, the utility may implement a proposed rate increase, under bond and subject to refund. Also, if interim rate changes are authorized, they are subject to refund.	Commission generally relies on an average net original-cost rate base for a historical test period.	The Commission usually decides rate cases within 6 to 12 months.

Matrix of States' Regulatory Practices

State	Mandatory Action Periods	Revenues Subject to Refund	Test Year	Average Regulatory Lag
Maine	A large utility must give 60 day notice to filing for an increase in base rates and a company must file at least 30 days prior to the requested effective date. Interim increases are permitted if the Commission finds that the utility will experience financial harm.	The Commission may implement interim rates, subject to refund.	Commission generally relies on an average net original-cost rate base for a historical test period.	The Commission may suspend rates for a maximum of 8 months unless good cause is shown, resulting in a maximum rate case processing time of 9 months from the date of filing.
Maryland	Utility is required to give 30 days notice when filing for a rate change. The Commission may allow interim rate changes, however the utilities have rarely requested such action.	If there is no Commission action after 210 days, the utility may place the rates into effect, subject to refund.	The Commission relies on test periods that are fully historical at the time rate decisions are issued. Filings are usually based on partially forecasted data, which is updated to actual during the course of the proceeding.	The Commission may initially suspend rates for 150 days beyond the 30 day notice period and then for an additional 30 days.
Michigan	There is no specific time period in which the Commission must issue decision, however, there is statutory guidance indicating that the Commission should issue decision within 9 months. A Public Service Commission Administrative Guideline calls for all cases to be completed within 9 months from the date of filing unless good cause exists to extend the schedule to 12 months.		Most rate cases are based on fully-forecasted test periods, but the test periods have been partially historical at the time decisions have been issued.	Can range from 9 to 12 months.
Mississippi	The Commission must decide a rate case within 120 days of the filing of a Notice of Intent. Interim increases are rarely authorized.	If a decision is not forthcoming within the prescribed time, the full requested increase may be implemented, under bond, on a temporary basis.	By law, a utility may propose a rate change using a projected test period beginning with the proposed effective date of the new rates.	120 days.

Matrix of States' Regulatory Practices

State	Mandatory Action Periods	Revenues Subject to Refund	Test Year	Average Regulatory Lag
Missouri	If the Commission has not issued a final decision within 11 months of the initial filing, the proposed rates become effective as filed and are not subject to refund.		Rate cases are typically filed based on historical or partly forecasted test period data, which are updated during the course of the proceeding to reflect actual results. Limited post test period known and measurable changes may be recognized.	11 months.
Montana	Commission must issue a final decision in a rate case within 9 months of the date of the filing.	If no order is issued, the utility may place the rates into effect, subject to refund.	Commission relies on historical test period, adjusted for known and measurable changes within 12 months beyond the end of the test period.	Commission generally issues interim rate changes within 2 to 4 months after the date of the filing, however final decision must be made within 9 months.
Nevada	Commission must act within 30 days of a rate case filing to suspend it for a maximum 5 month period. If the Commission does not issue a final order at the end of the total statutory period, the rates become effective.		Commission relies on test periods that are less than 1 year old by the date of the decision.	6 months.
New Jersey	A utility is required to give 30 days notice of the proposed effective date of a rate filing. The Commission may suspend the rates for up to 8 months.	The Commission may allow utilities to implement interim increases, however, a finding of irreparable harm is generally required.	Test period is fully historical when the rate decision is issued. Most cases are filed on the basis of partly projected data, with known and measurable changes.	8 months.
New Mexico	Commission must act to suspend proposed rates within 30 days of a rate filing or the tariffs become effective. If the Commission does not issue a final decision 3 months after the original 10 month period, the rates become permanent and are no longer subject to refund.	If the Commission does not render a decision within 10 months of the filing, the rates may be placed into effect, under bond and subject to refund.	Historical test period, adjusted for known and measurable changes.	Can range from 10 to 13 months.

Matrix of States' Regulatory Practices

State	Mandatory Action Periods	Revenues Subject to Refund	Test Year	Average Regulatory Lag
New York	The Commission must issue a decision within 11 months of the Company's initial filing.	Interim rate increases are permitted only when a utility can establish that its ability to raise additional capital and to maintain service would be impaired in the absence of the increase.	Fully forecasted test period.	The Commission must issue a decision within 11 months of the Company's initial filing.
North Carolina	Utility must submit the rate petition 30 days prior to the requested effective date. The Commission is required to act within 9 months of the requested effective date.	If there is no Commission action within 6 months, the rates may be placed into effect (not to exceed 20% increase), under bond and subject to refund.	Historical test period, adjusted for known and measurable changes.	Can range from 6 to 10 months. The Commission has acted on permanent rate requests within the 6 month period.
North Dakota	Commission must act to suspend proposed rates within 30 days of a utility's filing. The Commission has 7 months from the date of suspension to issue a final order.	The Commission may allow interim increases, to be implemented under bond and subject to refund with interest.	Statutes permit filing rate cases utilizing a historical, current, or future test period. Historically the Commission has adopted test periods that were partially or fully-forecasted at the date of decision.	Maximum period is 8 months.
Ohio	A utility is required to give 30 days notice prior to requesting a rate increase. A utility may not tender a Notice of Intent to file a new rate case until the Commission has completed action on a previous case or until 275 days have elapsed since the filing of a prior application, whichever occurs sooner.	The Commission may allow an interim increase if the utility demonstrates the existence of a financial emergency.	Statutes require that the test year conclude within 9 months after the filing of a rate case. The Commission denies recognition of adjustments that do not become known within the test period.	
Oklahoma	By law, the Commission must issue a decision within 180 days of the filing of a rate case. Interim rate increases are permitted at the Commission's discretion.	Interim increase are permitted at the Commission's discretion.	The Commission has generally relied on a year end rate base for a historical test period, with known and measurable changes occurring within 6 months of the end of the test year.	6 months.

Matrix of States' Regulatory Practices

State	Mandatory Action Periods	Revenues Subject to Refund	Test Year	Average Regulatory Lag
Oregon	Within 30 days following the rate filing, the Commission may suspend a requested increase for an initial period of not more than 6 months. The Commission may then suspend rates for an additional 3 months, bringing the maximum rate case processing time to 10 months from the date of filing. The Commission is legislatively able to approve interim rates, however, interim increases are generally not granted unless the utility is under severe financial stress.	The Commission is legislatively empowered to approve interim rates. However, interim increases are generally not granted "unless the utility is under severe financial stress."	Recent rate proceedings have generally used partially or fully forecasted test periods. The Commission has also adopted pro forma normalizing adjustments to the test year.	Can range from 6 to 10 months.
Pennsylvania	Utility is required to provide 60 days notice when filing a rate case. The filing is then suspended for up to 7 months, bringing the maximum elapsed time from filing to decision to 9 months. A utility may seek an interim increase to maintain financial stability and service reliability.	A utility may seek an interim increase if necessary to maintain financial stability and service reliability.	In accordance with state statutes, the Commission relies on an original cost year-end rate base, for a future test year.	9 months.
Rhode Island	The Commission must suspend rate cases within 30 days of the date of filing or proposed rates become effective. The maximum suspension period is 6 months. The Commission must issue a final order within 90 days of the end of hearings.	The Commission has statutory authority to permit interim increases, subject to refund, but has rarely done so.	The Commission has generally relied an average original cost rate base for a historical test period for "known and measurable" changes to a forward looking rate year.	7 months from the date of filing.

Matrix of States' Regulatory Practices

State	Mandatory Action Periods	Revenues Subject to Refund	Test Year	Average Regulatory Lag
South Dakota	By statute, the PUC staff must issue rate case decisions within 6 months of the filing date. After 6 months, the utility may implement the proposed rates subject to refund. An order must be issued within 1 year of the filing date or interim rates become permanent.	After 6 months, the utility may implement the proposed rates subject to refund.	The PUC has relied on an average original cost rate base for a historical test period, but has permitted certain known and measurable post-test year adjustments.	6 months.
Tennessee	The Commission must act upon a rate case within 9 months after filing. If no rate action has occurred after 6 months, the utility may place the proposed rates into effect, subject to refund. Historically, rate cases have been decided in 6 months. The Commission has authority to grant interim increase if a financial emergency exists, but has rarely done so.	The Commission has authority to grant interim increases if a financial emergency exists, but rarely does so.	Historical test years and average rate base valuations have usually been relied upon. Also, known and reasonably anticipated changes are allowed.	Can range from 6 to 9 months.
Texas	A utility is required to submit a complete filing 35 days prior to the proposed effective date. The Commission may suspend the rate increase for 150 days from the proposed effective date, bringing the total elapsed time from the date of the filing to 185 days. If no decision is forthcoming, the proposed rates may be placed into effect subject to refund. The 185 day period may be extended by 2 days for each day of hearings beyond 15 days.	If no decision is forthcoming, the proposed rates may be placed into effect subject to refund.	The Commission has generally relied on a year end original cost rate base for a historical test period with adjustments permitted for post test year plant additions and retirements, under certain circumstances. However, the electric unbundled rate cases required by the 1999 restructuring law utilized a forecast test period.	6 months.

Matrix of States' Regulatory Practices

State	Mandatory Action Periods	Revenues Subject to Refund	Test Year	Average Regulatory Lag
Vermont	Investor-owned utilities are permitted to place requested rates into effect if the Commission has not acted within 7 months of the effective date of the proposed tariffs. A utility must provide 45 day notice from the filing date to proposed effective date when filing a rate case. Temporary increases are permitted.	If the Commission does not act to deny a temporary rate request, the proposed increase may be placed into effect, subject to refund.	The Commission has generally relied on an average original cost rate base for a historical test period for "known and measurable" adjustments for the first year the rates will be in effect.	7 months.
Virginia	The Commission may suspend rates for no more than 150 days from the date a general rate case filing is determined to be complete. The Commission adopted updated rate case rules on 7/28/00. The rules continue to provide for expedited rate proceedings, which are essentially make-whole proceedings, and are allowed once per year.	If not decision is forthcoming within 150 days, the utility may place the entire rate increase into effect, subject to refund with interest.	The Commission relies upon a year end original cost rate base for a historical test period, with materials and supplies valued on a 13-month average basis.	5 months.
Washington	A utility is required to provide a minimum of 30 days notice prior to the effective date of the proposed rate increase. The Commission may suspend rates for a maximum of 10 months from the proposed effective date. In the event the Commission has not issued an order within the 10-month suspension period, and if the suspension period has not been waived, the rate changes becomes effective on a prospective basis.		The Commission generally relies upon average original-cost rate base valuations for test periods which are approximately 1 year old at the date of decision. The Commission commonly adjusts test periods for known and measurable changes. The Commission has, at times, adopted attrition allowances, positive or negative.	10 months.

Matrix of States' Regulatory Practices

State	Mandatory Action Periods	Revenues Subject to Refund	Test Year	Average Regulatory Lag
West Virginia	A utility must notify the Commission 30 days prior to filing for a rate increase, and the application must be filed 30 days prior to the proposed effective date. The Commission may suspend the filing for up to 270 days from the proposed effective date. If an order is not issued by the end of the suspension period, the proposed rates may be implemented, without refund obligation.	Interim increases are permitted, subject to refund, at the Commission's discretion.	The Commission has traditionally relied upon an average original-cost rate base for a historical test period, but permits "known and measurable" post-test year adjustments.	9 to 10 months.
Wisconsin	There is no statutory time limit within which the Commission must act on rate cases, however, the Commission has decided most recent case in less than 1 year.	Interim rate increase may be permitted subject to refund.	The Commission generally relies on an average original-cost rate base for a fully-forecasted test period.	1 year or less.
Wyoming	The Commission is required to issue a rate case decision within 10 months of the original filing date.	The Commission has authority to grant temporary increases, under bond and subject to refund; however, such increases have only been authorized following a showing of an immediate financial need.	The Commission generally relies upon a year-end original-cost rate base for a historical test period, updated to reflect known and measurable changes. However, the use of a forecasted test year is not prohibited by law.	10 months or less.