

APPEAL PROCESS

The Iowa Utilities Board as a Judge and an Advocate

NARUC Energy Regulatory Partnership Program

The Public Services Regulatory Commission of Armenia
and The Iowa Utilities Board



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BOARD HAS MANY ROLES

- Policy makers and implementers.
- Administrative.
- Advisors to the Legislature.
- Participants in national organizations to protect and advocate for Iowa's interests.
- In rate cases and other contested or trial-like cases, the Board acts as a judge.



RATE CASES

- Electric or gas company files a request for increased rates with the Board.
- Other parties participate:
 - Consumer Advocate.
 - Industrial companies or groups—generally participate on selected issues, such as amount of the revenue increase or rate design.
 - Other groups may participate—low income representatives, environmental groups, and others.



Rate Cases Cont ...

- All parties file documents with the Board before the hearing containing their witnesses' testimony and exhibits.
- A hearing is held before the Board where the parties can cross-examine or question each others' witnesses regarding their prefiled testimony. The Board may also ask the witnesses questions. The Chair of the Board acts as the judge and rules on any objections to evidence, after consulting with the other Board Members.



Rate Cases Cont ...

- After the hearing is over, the parties file briefs containing a summary of their factual and legal arguments.
- The Board reviews all the information and issues a written decision deciding each issue in the rate case. A majority of the Board must agree on each issue.



AFTER THE BOARD'S DECISION

- The Board's decision can be appealed by any party to two different courts.
- The first appeal is to a District Court, where one judge hears the appeal.
- No new evidence is generally allowed, and the District Court reviews the evidence presented to the Board to see if its decision is supported by fact and law.



After The Board's Decision Cont ...

- The second appeal is to the Iowa Supreme Court, which consists of seven judges.
- The Supreme Court reviews the decisions of the District Court and Board to see if they are supported by fact and law. The Iowa Supreme Court has the last word on the rate case decision. Again, oral arguments and briefs are submitted to the Iowa Supreme Court – no new evidence is heard.



BOARD'S DIFFERING ROLES

- In making the rate case decision, the Board acts as an impartial judge.
- After the decision and once there is an appeal to district court, the Board takes on another role and acts as an advocate supporting its decision.
- The Board presents factual and legal arguments in court that support its decision.



Board's Role After Its Decision Cont ...

- Many issues in a rate case, typically only a few are appealed.
- Depending on the appeal, Consumer Advocate may support the Board's decision on some of the issues and oppose it on others. The same is true of any other parties.
- In other words, the Board's supporters and opponents on appeal may change issue by issue.



EXAMPLES OF COURT APPEALS

- In a 1984 case, the Board disallowed some utility costs because it was determined the utility had excess generating capacity. The utility appealed because it thought the Board denied too many costs, the Consumer Advocate and an intervenor group appealed because they thought the utility should have been penalized more. On that issue, only the Board advocated for its decision.



Example of Court Appeals Cont ...

- In that same case, another issue on appeal was the return on equity. The Board and the utility argued in favor of the Board's decision, while the Consumer Advocate and an intervenor group argued for a lower return than the Board granted. Iowa-III. Gas and Electric Co. v. Iowa State Commerce Comm'n, 347 N.W.2d 423 (Iowa 1984).



Example of Court Appeals Cont ...

- In another case involving an excess capacity adjustment, the utility again thought the Board denied too many costs while the Consumer Advocate argued that more costs should be disallowed. Consumer Advocate and the Board agreed on another issue on appeal, which involved funds for a construction project. OCA v. Utilities Board, 449 NW2d (Iowa 1989).



COURT DECISION

- The District Court and Supreme Court can affirm the Board's decision on an issue, reverse the decision, or send it back to the Board for further proceedings, with some instruction. If the case is sent back to the Board, the Board takes off its advocate's hat and once again becomes the judge.
- The Supreme Court gives great deference to the Board's decisions. Nearly all disputes in the field of administrative law, like the Board's decisions, are won or lost at the agency level. Judicial review of agency action is confined to correction of errors of law. Iowa-Illinois Gas and Electric Co. v. Iowa State Commerce Comm'n, 412 N.W.2d 600, 604 (Iowa 1987).



QUESTIONS?



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