

REGULATORY DECISION-MAKING DURING RATE REVIEWS



NARUC Energy Regulatory Partnership Program

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and
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Topics

- ❖ Steps during Rate Cases
- ❖ Board Decision Process



Principles that Guide Decision and Process

- ❖ Statute sets time limit for decision 7 months from suspension of tariff or start of investigation
- ❖ Board must make decision based on record
- ❖ Department of Public Service represents interests of the State



Schedule

❖ Basic steps are:

- Tariff Filing, Petition for Investigation, or Board initiation
- Prehearing Conference
- Intervention by Parties
- Public Hearing
- Discovery
- Filing of Testimony
- Hearings (Can have separate hearings on direct and rebuttal cases or combined)
- Briefs
- Board Decision

❖ Typical schedule shown in handout



Schedule (cont'd)

- ❖ If the case is assigned to a Hearing Officer instead of the Board hearing it directly, there are a few more steps in the process after the parties file briefs:
 - Hearing Officer issues Proposal for Decision
 - Parties file comments, requests for Oral Argument
 - Oral Argument before the Board (if the Board grants a request)
 - Board decision



Public Notice

- ❖ Board provides formal public notice* of all hearings, including status conference, prehearing conference
- ❖ All Orders provided to parties and interested persons. In many cases, also to the press (depending on interest)
- ❖ Now working on expanding public notice for public hearings (more use of local newspapers)



Public Hearing

- ❖ For a substantial number of Board cases, including most rate cases, Board holds public hearing
- ❖ Advance notice to public
- ❖ Generally, entire hearing is devoted to hearing public concerns
- ❖ Utility and/or public advocate may introduce issues
- ❖ At times, will allow public to ask questions of company
- ❖ Vermont Interactive Television can be used as tool



Information Flow

- ❖ Board receives the following information
 - Cost of Service Filing
 - Written Testimony (usually 2 sets from each party)
 - Discovery Responses (these are not part of the evidentiary record unless we or another party make them an exhibit)
 - Briefs (usually 2 sets from each party)
 - Also routine procedural filings (schedule, interventions, etc.)
 - Compliance filings (after final Order is issued)
- ❖ Board can and will request parties to address specific issues in testimony (not in every case)



Information Flow – Confidential Information

- ❖ Companies regularly have information that they claim would cause competitive harm if disclosed
- ❖ To allow exchange of information, parties generally execute protective agreements, which the Board then approves through a Protective Order
 - Unless asked, at this stage, Board generally does not review whether particular information should be kept confidential
- ❖ If party wants to use confidential information at hearing, must make showing as to why it should be kept confidential



Hearings

- ❖ Held after all testimony is filed
- ❖ Since parties file all testimony in writing in advance, hearings are cross-examination and Board questions
- ❖ In typical rate case for large utility, hearings take about 1 week (on average)
- ❖ Hearings are open to the public; occasionally it is necessary to briefly close the hearings to discuss confidential information



Settlements

- ❖ Utility and Public Advocate may reach settlement
 - Board may accept, reject, or condition
 - Intervenors may or may not support
- ❖ Settlements reduce litigation and foster cooperative resolution, but, they may also provide less transparency



Board Decisions

- ❖ By law, Board must make decision based solely on evidence in the record
- ❖ Board applies its expertise in reaching those decisions
- ❖ Public input (from public hearings and comments) is not considered part of the evidentiary record. Instead, Board considers it in weighing testimony and asking questions
- ❖ Ex parte communications



Board Decisions (cont'd)

- ❖ In PSB practice, staff will usually make recommendations
 - Board then accepts, modifies, rejects
- ❖ Basic decision rules are the same that we explained in Macedonia
 - Just and reasonable rates (fairness)
 - Consistency with past practice
 - Disallow imprudent or non-use-and-useful costs
- ❖ Common elements (examples)



Board Decisions (cont'd)

- ❖ Board decision-making and writing of decision often compressed
- ❖ After briefs, usually have 4-6 weeks at most to issue decision
- ❖ Rate case Orders are often substantial (100 pp.)
- ❖ Frequently issue press release to assist in public understanding