

Electric Rate Cases

Lansing, Michigan
May 4, 2015

Presented by Robert W. Kehres, Director

Regulatory Affairs Division, MPSC

Beginnings of Utility Regulation

- Traced to British Common Law under the reign of King James as espoused by Lord Chief Justice Matthew Hale, [c. 1670.]
- In Munn v Illinois, 94 US 113 (1876), a case dealing with grain elevators, the US Supreme Court stated:
 - “...we find that when private property is ‘**affected with a public interest, it ceases to be *juris privati* only.**’ Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. **When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good.**”

Social Compact

- Obligation to serve all customers' needs
- Just and reasonable rates
- Abundant, safe, and reliable service

- Right to recover all reasonable and prudently incurred costs
- Opportunity to earn a reasonable rate of return on its capital investments

Ultimate Legal Basis for Ratemaking Authority

- US Constitution, Amendment V., states:
 - “...nor shall private property be taken for public use, without just compensation.”

Ratemaking Principles

- The Commission is not bound to the use of any single formula or combination of formulae in determining rates.
- The ratemaking function involves the making of pragmatic adjustments.
- Although rates must be just and reasonable, it is the result reached, not the method employed, which is controlling.

Major Substantive Laws Governing the Commission

- Railroad Act (1909)
- Transmission of Electricity Act (1909)
- Public Utilities Commission Act (1919)
- Certificates of Convenience and Necessity Act (1929)
- **Public Service Commission Act (1939)**
- Protection of Underground Facilities (1974)
- **PSCR & GCR Cases (Act 304 of 1982)**
- Michigan Telecommunications Act (1991)
- Electric Transmission Line Certification Act (1995)
- Customer Choice and Reliability Act (2000)
- Video Franchising Act (2006)

Current Statutory Authority to Regulate Rates

- Act 3 of 1939 (MCL 460.6 & 460.6a) gives the MPSC the power and jurisdiction to:
 - Regulate all public utilities in the state except a municipally owned utility, the owner of a renewable resource power production facility, or member-regulated cooperatives.
 - Regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of public utilities.
 - Hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public utilities.
 - MCL 460.6a deals primarily with rate case processing.

Major Procedural Laws governing the Commission

- **Administrative Procedures Act (1969)**
 - Open Meetings Act (1976)
 - Freedom of Information Act (1976)
 - Costs of Regulating Utilities Act (1972)
-
- Also, MAHS has administrative rules that apply to Commission contested cases.

Provisions of MCL 460.6a

- General Concepts
- Application Filing Requirements
- Interim Relief
- Other Provisions

Rate changes must be approved by the MPSC

- A gas or electric utility shall not increase its rates and charges or alter, change, or amend any rate or rate schedules, the effect of which will be to **increase** the cost of services to its customers, without first receiving commission approval as provided in this section. MCL 460.6a(1).
- *Reading between the lines, if an order does not increase rates, then the Commission can approve it without notice or a hearing.*
 - Rate decreases
 - Entirely new rates

Rate decreases are approved without hearings

- An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing.

Required support for an application

- The utility shall place in evidence facts relied upon to support the utility's petition or application to increase its rates and charges, or to alter, change, or amend any rate or rate schedules. MCL 460.6a(1).
- *Our laws provide that existing rates are presumed to be just and reasonable, so the burden of proof is on the utility to establish that an increase is warranted.*

Notice to the Public

- The commission shall require notice to be given to all interested parties within the service area to be affected, and all interested parties shall have a reasonable opportunity for a full and complete hearing.
 - Newspaper publication throughout the utility’s service territory.
 - Letters send by first-class mail to all cities, towns, counties, and villages.
 - Intervenors in prior rate cases.

Definitions

- "Full and complete hearing" means a hearing that provides interested parties a reasonable opportunity to present and cross-examine evidence and present arguments relevant to the specific element or elements of the request that are the subject of the hearing.
- "General rate case" means a proceeding initiated by a utility in an application filed with the commission that alleges a revenue deficiency and requests an increase in the schedule of rates or charges based on the utility's total cost of providing service.

Test Year – Historical vs Projected

- A utility may use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges. (Act 286 of 2008).
- *In 1989, the Commission expressed its preference for rates to be set on the basis of historic costs and revenues, adjusted for known and measurable changes.*

Rate Case Filing Requirements

- A petition or application is considered complete if it complies with the rate application filing forms and instructions adopted under subsection (6).
- If the application is not complete, the commission shall notify the utility of all information necessary to make that filing complete.
- *Starting in 1973, the Commission has always required utilities to adhere to rate case filing requirements.*

Importance of completeness of the application

- The commission shall notify the utility within 30 days of filing, whether the utility's petition or application is complete.
- A petition or application is considered complete if it complies with the rate application filing forms and instructions adopted under subsection (6).

Penalty for incomplete filing

- If the application is not complete, the commission shall notify the utility of all information necessary to make that filing complete.
- If the commission has not notified the utility within 30 days of whether the utility's petition or application is complete, the application is considered complete.

Subsequent Amendment to the Application

- If a utility makes any significant amendment to its filing, the commission has an additional 12 months from the date of the amendment to reach a final decision on the petition or application.
- If the utility files for an extension of time, the commission shall extend the 12-month period by the amount of additional time requested by the utility.

A Rate Case and a PSCR Case may be combined

- The commission may hold a full and complete hearing to determine the cost of fuel, purchased gas, or purchased power separately from a full and complete hearing on a general rate case and may be held concurrently with the general rate case. The commission shall authorize a utility to recover the cost of fuel, purchased gas, or purchased power only to the extent that the purchases are reasonable and prudent.

Historical Interim Rate Increase Methods

- No Mechanism (Why?)
- Partial and Immediate Rate Relief (pre-2008)
- Self Implementation (2008-2015?)
- ??????????????????

Self Implementation

- If the commission has not issued an order within 180 days of the filing of a complete application, the utility may implement up to the amount of the proposed annual rate request through **equal percentage increases** or decreases applied to all base rates.

Prevent or delay of self-implementation of rates

- For good cause, the commission may issue a temporary order preventing or delaying **[or modifying]** a utility from implementing its proposed rates or charges.

Too much Interim Relief

- If a utility implements increased rates or charges under this subsection before the commission issues a final order, that utility shall refund to customers, with interest, any portion of the total revenues collected through application of the equal percentage increase that exceed the total that would have been produced by the rates or charges subsequently ordered by the commission in its final order.

Self-implementation Refunds

- The commission shall allocate any refund required by this section among primary customers based upon their pro rata share of the total revenue collected through the applicable increase, and among secondary and residential customers in a manner to be determined by the commission.

Interest on self-implementation refunds

- The rate of interest for refunds shall equal 5% plus the London interbank offered rate (LIBOR) for the appropriate time period.
- For any portion of the refund which, exclusive of interest, exceeds 25% of the annual revenue increase awarded by the commission in its final order, the rate of interest shall be the authorized rate of return on the common stock of the utility during the appropriate period.

Limitation on start of self-implementation relief

- If the utility uses projected costs and revenues for a future period in developing its requested rates and charges, the utility may not implement the equal percentage increases or decreases prior to the calendar date corresponding to the start of the projected 12-month period.

Prohibition on future recovery of self-implementation interest

- Any refund or interest awarded under this subsection shall not be included, in whole or in part, in any application for a rate increase by a utility.

One year time limit to process a rate case.

- Except as otherwise provided in this subsection, if the commission fails to reach a final decision with respect to a completed petition or application to increase or decrease utility rates within the 12-month period following the filing of the completed petition or application, the petition or application is considered approved.
- ***No final order – no appeal process!!!!!!***

Show Cause Authority

- Nothing in this section impairs the commission's ability to issue a show cause order as part of its rate-making authority.

Automatic Adjustment Clauses Not Allowed

- The commission shall not authorize or approve adjustment clauses that operate without notice and an opportunity for a full and complete hearing, and all such clauses shall be abolished.

Adjustment Clauses Require a Hearing

- There shall be no increase in rates based upon changes in cost of fuel or purchased gas unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of fuel or purchased gas.
- Act 304 of 1982

Once approved, the rates charged under an adjustment clause cannot be altered without a hearing

- The rates charged by any utility pursuant to an automatic fuel or purchased gas adjustment clause shall not be altered, changed, or amended unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of the fuel or purchased gas.

Temporal Rate Case Limitation & Anti-pancaking

- A utility shall not file a general rate case application for an increase in rates earlier than 12 months after the date of the filing of a complete prior general rate case application.
- A utility may not file a new general rate case application until the commission has issued a final order on a prior general rate case or until the rates are approved under subsection (3).

Rulemaking Authority

- The commission shall adopt rules and procedures for the filing, investigation, and hearing of petitions or applications to increase or decrease utility rates and charges as the commission finds necessary or appropriate to enable it to reach a final decision with respect to petitions or applications within a period of 12 months from the filing of the complete petitions or applications.

Rate Case Processing

Step 1 - A General Rate Case Application

- Almost always, the utility files the rate case according to its own schedule.
- Sometimes, the Commission orders a utility to show cause why its rates should not be reduced.
- Very rarely, a customer tries to file a complaint to reduce a utility's rates.

Step 2 -- Docketing of the Application

- An application is assigned a Docket Number and entered into the MPSC's **electronic filing system**.
- The Executive Secretary notifies the MAHS, who assigns an independent Administrative Law Judge (ALJ).
- The Executive Secretary also notifies the MPSC's Staff and a case coordinator is assigned.

Step 3 -- Notice

Newspaper publication throughout the utility's service territory.

Letters send by first-class mail to all cities, towns, counties, and villages.

Intervenors in prior rate cases.

Notice will give the date of the prehearing conference, amount of the proposed increase, and how to intervene.

Step 4 -- Discovery

- Discovery is a well-established part of American Legal Jurisprudence.
- Parties may send written interrogatories to any other party.
- Discovery goes on throughout the proceeding.
- Normally, receiving party must respond (or object) within 14 days.
- Objections are ruled on by the ALJ.
- **Staff has right to audit company's books.**

Step 5 – Interventions by Parties (U-15245)

- Attorney General Michael A. Cox (retired)
- The Kroger Company
- The Association of Businesses Advocating Tariff Equity
- The Michigan Retailers Association
- Michigan Environmental Council & Public Interest Research Group in Michigan
- The Midland Cogeneration Limited Partnership
- AARP Michigan
- Dow Corning and Hemlock Semiconductor Corporations
- Energy Michigan
- the National Energy Marketers Association
- Constellation New Energy
- Phil Forner.
- The Commission Staff also participated in the proceedings.
- [One “delayed” intervenor, MML, took case as it was.]

Step 6 -- Initial Prehearing Conference

- At the first prehearing conference the ALJ grants the petitions to intervene.
- ALJ also sets a schedule for the remainder of the proceedings.
- Other intervenors are given a chance to file their petitions to intervene later.
- The utility may object to the interventions.

Step 7 – Informal comments

- Rule 413 of MAHS's Rules of Practice and Procedure before the Commission allows anyone to appear at a hearing or to submit written comments.
 - These comments are placed in the record, but are not record evidence.
 - Those making Rule 413 comments are not sworn as witnesses and cannot be cross-examined.
 - Such comments may be received at any time.

Step 8 -- Motions

- It has been said that the only limitation on the scope of a motion is the imagination of the attorney filing the motion.
- Typical motions include:
 - Protective orders
 - Forcing answers to discovery
 - To strike testimony
 - Revise the schedule

Step 9 – Self-implementation

- Utility must disclose how much it intends to self implement, supported by a witness' testimony.
- Other parties may also present a witness, or just take a position.
- The ALJ conducts a hearing.
- The Commission decides whether to deny, delay, or modify the self-implementation amount.

Admissible Evidence

- Must be relevant to the subject matter.
- Admissibility of evidence is determined by the same standard applicable to civil trials heard by a judge.
- Agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

Step 10 -- Filing of Staff and Intervenor “direct” testimony on final rate relief (U-15245)

- The Staff -- 19 witnesses.
- ABATE -- 2 witnesses.
- Kroger -- 1 witness.
- MML – 3 witnesses.
- Attorney General – 3 witnesses.
- Energy Michigan – 1 witness.
- CNE – 1 witness.
- NEMA – 1 witness.
- Dow/Hemlock – 1 witness.
- ABATE – 1 witness.
- MEC/Pirgim – 4 witnesses.
- Mr. Forner – 1 witness.

Step 11 -- Filing of “rebuttal” testimony by all parties. (U-15245)

- Consumers – 11 witnesses.
- Staff – 1 witness.
- Dow/Hemlock – 1 witness.
- CNE – 1 witness.
- Attorney General – 1 witness.

Steps 12 through 17

- The Evidentiary Hearing (1-2 weeks)
- Briefs (4 weeks)
- Reply Briefs (2 weeks)
- ALJ's Proposal for Decision (4-6 weeks)
- Exceptions (2-4 weeks)
- Reply to Exceptions (1-2 weeks)

Standards for Commission Decisions

- The Commission speaks only through its orders.
- Orders in contested cases must be supported by record evidence.
- Orders must be in writing and available to the public.
- Orders must contain sufficient findings of fact and conclusions of law as to permit review by an appellate court.

The end of the process

- Step 18 – RAD Staff drafts the proposed final order.
- Step 19 – Commissioners review the draft and makes changes.
- Step 20 – Order issued at a public meeting.
- Step 21 – Rehearing.
- Step 22 – Appeal.

Thank you!!!!

QUESTIONS?