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Techniques for Analyzing the Impacts of Certain Electric-Utility Ratemaking and Regulatory-Policy Concepts

Regulatory Laws and Policies

August 1980

Prepared for:
U.S. Department of Energy
Economic Regulatory Administration
Office of Utility Systems

Under Contract No. AC01-78RG06428

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Prepared for:
U.S. Department of Energy
Economic Regulatory Administration
Office of Utility Systems
Washington, D.C. 20461

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New York, New York 10004
Under Contract No. AC01-78RG06428

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PREFACE

This document, Regulatory Laws and Policies Affecting Implementation of PURPA Standards for Electric Utilities, is one in a series of reports prepared by Stone & Webster Management Consultants, Inc., under contract to the U.S. Department of Energy (DOE contract AC01-RG06428). The general purpose of this contract was to identify, describe, and apply techniques for analyzing the impacts of certain electric utility concepts. This report is a legal study prepared for Stone & Webster by Schiff Hardin & Waite to provide a review of the substantive and procedural laws of each regulatory jurisdiction that may affect implementation of the PURPA standards, and to summarize the current state of consideration and implementation of policies and rate designs similar or identical to the PURPA standards by state regulatory agencies and nonregulated utilities.

This report is divided into three sections. The first section, the Introduction, summarizes the standards promulgated by PURPA and the results of the legal study. The second section, State Regulatory Law and Procedure, summarizes for each state or other ratemaking jurisdiction, (1) general constitutional and statutory provisions affecting utility rates and conditions of service, (2) specific laws or decisions affecting policy or rate design issues covered by PURPA standards, and (3) statutes and decisions governing administrative procedures, including judicial review. A chart showing actions taken on the policy and rate design issues addressed by PURPA is also included for each jurisdiction, and citations to relevant authorities are presented for each standard. State statutes or decisions that specifically define a state standard similar or identical to a PURPA standard, or that refer to one of the three PURPA objectives, are noted. The charts are specifically designed to be read in conjunction with the narrative summaries. The indications on the charts of the specific actions taken in any particular state with respect to a PURPA standard are fully explained in the text and notes. For example, an indication on a chart that a standard has been "implemented" may mean implemented on a state-wide basis or, alternatively, simply in a specific rate proceeding as indicated in the references. The second section is based primarily on an independent review of relevant state constitutional provisions, statutes governing regulation of public utilities and administrative procedure, judicial decisions, rules and regulations of state regulatory agencies, and decisions of regulatory agencies published between January 1, 1974 and November 1, 1979. This independent review utilized published legal sources, supplemented by the results of a written survey of state regulatory agencies conducted in cooperation with Stone & Webster and authorized by the Department of Energy and the Office of Management and Budget. It should be noted, however, that a number of jurisdictions failed to respond to the survey. Where information from other sources is unavailable, statements on recent developments have been taken from publications such as Public Utilities Fortnightly, Electrical Week, and the National Association of Regulatory Utility Commissioners Bulletin.

The third section, Nonregulated Electric Utilities, summarizes information available on nonregulated utilities, i.e., publicly or cooperatively owned utilities which are specifically exempted from state regulation by state law. (See Appendix A for a list of electric utilities covered by Titles I and III of PURPA.) The summary for each utility follows the pattern used in the second section. The third section is based on the results of a survey authorized by the Department of Energy. In addition, a number of respondents submitted copies of regulatory or ratemaking ordinances, resolutions, or decisions.

INTRODUCTION

Title I of the Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617 (November 9, 1978) ("PURPA" or "the Act") requires each state regulatory agency having jurisdiction over electric utility rates, and certain publicly owned and cooperatively owned electric utilities not subject to Commission regulation, to consider the merits of six rate design issues, five regulatory policy issues, and one socioeconomic issue, and to further consider whether to adopt or implement concepts which the Act denominates as "Federal standards". These "standards" are established in Sections 111(d) and 113(b) of the Act and for simplicity may be summarized as: (1) rates based on cost of service, (2) prohibition of non-cost-justified declining block rates, (3) time-of-day rates if cost-effective, (4) seasonal rates, (5) interruptible rates, (6) load management techniques if cost-effective, (7) prohibition of master metering if cost-effective, (8) periodic review of automatic adjustment clauses, (9) dissemination of rate schedule information to consumers, (10) procedures for termination of service, and (11) exclusion of promotional and political advertising expenses in rate determinations. Section 114 of the Act requires consideration as to implementation of "lifeline" rates.

Title II of PURPA, Section 210 of the Act, requires utilities to offer to interchange power with certain cogeneration and small power production facilities. These rules are to be designed to remove or preclude institutional or other barriers to small power production - the existence of which PURPA assumes and effect of which PURPA assumes to be adverse to the policy objectives of PURPA and the Federal Power Act.

Title I of PURPA is an action forcing law. Its purpose is to require that the various state agencies and nonregulated utilities determine whether implementation of each of the federal standards (except procedures for service termination) would serve one or more of the three policy objectives set forth in Section 101 of the Act. These are (1) conservation of energy, (2) efficient use of resources, and (3) equitable rates. Utility service termination is assumed to be a matter of state or local concern in the first instance.

Since PURPA is an action forcing statute, Section 101's objectives supplement, but do not preempt, otherwise applicable state law. For example, if a state regulatory agency or utility has no power under state law to implement a Section 111 or Section 113 standard, and implementation is otherwise considered appropriate, PURPA supplies the necessary authority. On the other hand, PURPA does not require implementation of any standard inconsistent with state law (Section 117).

For purposes of this report, the federal standards established by Sections 111(d) and 113(b), lifeline rates under Section 114, and the prohibition of discriminatory rates for energy interchanges with cogeneration or small producers under Section 210 are collectively referred to as "the PURPA standards" or "the standards".

This report is limited to a summary and analysis of state law affecting implementation of the PURPA standards. Other factors, such as economic, political, or demographic constraints, are considered only to the extent that they have been

explicitly recognized in state utility law or policy. The assignment to the legal advisor did not cover these other matters and they do not appear for that reason.

As this report shows, in the last several years a significant number of state regulatory agencies have considered regulatory policies and undertaken utility rate designs that appear similar to the PURPA standards. In some cases such investigations and innovations commenced prior to the enactment of PURPA and in others occurred at least in part because of PURPA. Several utility commissions have already implemented several of the federal standards and are actively considering others either on a case-by-case or generic basis. However, references to particular ratemaking or regulatory policy standards considered by regulatory authorities does not necessarily mean all requirements of PURPA have been met.

Most commissions have broad discretion under state law to investigate and regulate utility rates and to set such rates as are "just and reasonable." Thus, with a few exceptions, the commissions generally have not found that their ability to implement PURPA standards in the pursuit of PURPA objectives is significantly hampered by state law.

However, in certain areas some state commissions or state courts have declared that state law would prohibit implementation, or otherwise restrict consideration, of PURPA standards. For example, most state laws regulating utilities contain provisions prohibiting unjust discrimination or unreasonable preferences among customers similarly situated with respect to rates. Such provisions have been interpreted in several jurisdictions to preclude the use of certain types of lifeline rates. Rates that specifically apply to low-income, elderly or handicapped persons -- or to some other group perceived to be disadvantaged -- are particularly susceptible to attack on the grounds of discrimination.

Antidiscrimination statutes may similarly limit a commission's ability to implement special termination procedures for groups such as the ill and elderly. At least one state court and a number of intervenors have indicated their belief that selective implementation of time of use rates might also violate such statutes.

Another form of "lifeline" rate provides for relatively low rates for the first block of energy used by all customers in a given classification. Since there are no rate differences among customers within a single class, this structure is less subject to a challenge based on discrimination. It is generally accepted that utilities may establish reasonable customer classifications and rates may vary from class to class.

The administrative procedures of all state commissions are subject to minimum due process standards, including the right of affected parties to notice and an opportunity to be heard. The amount of discretion vested in commissions with respect to when to hold hearings on rate matters, the kind and extent of notice which must be given to the public of such matters and hearings, and the degree of participation in the rate-making process allowed to members of the public or other interested groups, varies from state to state. The decisions reviewed indicate that intervention is common and that consumer and welfare groups as well as industrial intervenors are regularly heard.

STATE REGULATORY LAW AND PROCEDURE

ALABAMA

Public utilities operating in Alabama are required by statute to furnish "adequate service to the public" and also to "make such reasonable improvements, extensions, and enlargements of [their] plants, facilities and equipment as may be necessary to meet the growth and demand of the territory which [they are] under the duty to serve."¹ The rates and charges for the services rendered "shall be reasonable and just to both the utility and the public."² The Alabama Public Service Commission (the "Commission") is granted general supervisory power over all persons, firms and corporations operating utilities in the state.³ Any affected party may file a complaint with the Commission that "any rate, service regulation, classification, practice or service in effect or proposed to be made effective is in any respect unfair, unreasonable, unjust or inadequate, or unjustly discriminatory, or unduly preferential, or constitutes unfair competition, or that service is inadequate or cannot be obtained...."⁴ The Commission, in providing for comprehensive classification of service, may consider "the quantity used, the time when used, the purpose for which used or any other reasonable consideration."⁵

The Commission is mandated to consider all relevant facts in fixing just and reasonable rates.⁶ While it has never been the policy of the Commission to develop rates strictly on the basis of cost of service⁷, the Commission has considered cost of service studies in rate-making determinations in the past.

The Commission has in the past recognized the justification for declining block rates.⁸ Recent Commission policy, however, is to discourage the use of such rates.¹⁰ The Commission has ordered Alabama Power Company, the state's largest utility, to examine the feasibility of time-of-day rates and load management programs; the utility has concluded that such proposed rates would not generate enough savings to offset implementation costs.¹¹ Seasonal rates have been approved by the Commission.¹² In addition, optional interruptible rates for large industrial users and certain commercial consumers have also received Commission approval.¹³ Lifeline rates have been considered by the Commission but have not been adopted.¹⁴

The Commission has no policy concerning master metering of multi-unit dwellings.¹⁵ Automatic energy adjustment clauses are permitted,¹⁶ and there is no requirement that a hearing be held on the adjustment clause before the adjustment becomes effective.¹⁷ The statute and the rules and regulations of the Commission contain provisions designed to increase the amount of rate schedule information available to consumers.¹⁸ The rules and regulations also provide for at least five days' written notice and other restrictions for the utility to discontinue service to consumers for non-payment of service bill.¹⁹ Advertising expenses are allowed as "operating expenses" for rate-making purposes provided they are not determined to be "non-productive advertising."²⁰ Thus, promotional efforts to improve load factor and to improve system efficiency, as well as advertising to promote industrial development, if reasonable in amount, would be allowed as an operating expense.²¹ The Commission has not yet adopted a policy for rates for consumers with solar, wind, or small generation facilities.²²

The Commission must give ten days notice of the time and place of any hearings or investigations.²³ Every person, firm, corporation, co-partnership, association or organization affected by a proceeding may by petition intervene and become a party to any proceeding.²⁴ No order affecting any rate or service shall be made unless a public hearing has been held.²⁵

Each of the Commission's members may issue subpoenas for the production of books and records.²⁶ The Commission may require that a utility produce its books and records for examination.²⁷

Any final action or order of the Commission may be appealed to the circuit court of Montgomery County.²⁸ No new or additional evidence may be introduced in the circuit court.²⁹ The Alabama Code provides that decisions of the Commission are prima facie just and reasonable and will not be overturned unless it appears that the Commission erred in its application of the law or that the decision is not supported by substantial legal evidence.³⁰ Any party may appeal to the Supreme Court of Alabama from the judgment of the circuit court.³¹

1. Ala. Code §37-1-49 (1977).
2. Id. §37-1-80.
3. Id. §37-1-34.
4. Id. §37-1-83.
5. Id. §37-1-51.
6. Birmingham Electric Co. v. Alabama Pub. Serv. Comm'n, 254 Ala. 140, 47 So.2d 455 (Sup. Ct. Ala. 1949).
7. Re Alabama Power Co., 83 P.U.R.3d 321, 344 (1969).
8. See e.g., Re Alabama Power Co., supra note 7, at 346-49.
9. Re Alabama Power Co., supra note 7, at 346.
10. NARUC Survey, "Ratemaking," Table 61(b).
11. ELECTRICAL WEEK, p. 6-7 (September 4, 1978) (Alabama Power Co. stated that the cost difference between peak-demand generation and off-peak generation is not that great and not enough savings could be achieved to offset the implementation costs).
12. Re Alabama Power Co., 97 P.U.R.3d 371, 381 (1973); Alabama Public Service Commission, Order No. 17261 (April 26, 1977).
13. NARUC Survey, "Ratemaking," Table 61(b).
14. NARUC Survey, "Ratemaking," Table 61(b).
15. NARUC Survey, "Ratemaking," Table 61(b).
16. See e.g., Re Alabama Power Co., supra note 12, at 378.
17. NARUC Survey, "State Regulation of Energy Adjustment Clauses," Table 6(a).
18. Ala. Code §§ 37-1-82 (1977); General Rules Applying to Public Electric, Gas and Water Utilities in the State of Alabama, Docket No. 15957, Rules 3 and 14, pp. 2 and 5 [hereinafter "General Rules"].
19. General Rules, Rule 11, pp. 4-5.
20. See Re Alabama Power Co., supra note 12, at 377; Alabama Power Co. v. Alabama Pub. Serv. Comm'n, 359 So.2d 776 (Sup. Ct. Ala. 1978).
21. Re Alabama Power Co., supra note 12, at 377.
22. NARUC Survey, "Rate Structure Revision," Table 61(c).
23. Ala. Code §§ 37-1-86 (1977).

- 24. Id. §37-1-87.
- 25. Id. §37-1-96.
- 26. Id. §37-1-63.
- 27. Id. §37-1-82.
- 28. Id. §37-1-120.
- 29. Id. §37-1-124.
- 30. Id.
- 31. Id. §37-1-132.

ALABAMA

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service				X		<u>Re Alabama Power Co., 83 P.U.R. 3d 321, 344-349 (1969)</u> ¹	<u>Birmingham Electric Co. v. Alabama Pub. Serv. Comm'n</u> , 245 Ala. 140, 47 So.2d 455, 459 Sup. Ct. 2 (Ala. 1949).		
Declining Block Rates - Restructuring				X		<u>Re Alabama Power Co., 83 P.U.R. 3d 321, 346 (1969)</u> ²			
Time-of-day Rates				X ³					
Seasonal Rates			X	X		<u>Re Alabama Power Co., 97 P.U.R. 3d 371, 381 (1973)</u> .			
Interruptible Rates			X ⁴	X					
Load Management ⁵									
Lifeline Rates				X ⁶					
Master Metering ⁹									
Automatic Adjustment Clauses			X	X		<u>Re Alabama Power Co., 97 P.U.R. 3d 371, 378 (1973)</u> , ⁷			
Information to Consumers					Ala. Code tit. 48, §§ 55, 56 (1978)	<u>General Rules applying to Public Electric, Gas and Water Utilities in the State of Alabama</u> Docket No. 15957, Rules 3 and H, pp. 2 and 5. (hereinafter "General Rules")			

ALABAMA (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Termination: Notice Provision			X	X		<u>General Rules</u> , Rule 11, pp. 4-5 ⁸			
Endangering Health Provision ⁵									
Exclusion of Advertising	X			X		<u>Re Alabama Power Co.</u> , 97 P.U.R. 3d 371, 377 (1973) ⁹	<u>Alabama Power Co. v. Alabama Pub. Ser-v. Comm'n</u> , 359 So.2d 776 (Sup. Ct.Ala. 1978)		
Small Electric Systems ⁵									

1. See text accompanying nn. 6-8 of discussion.
2. See text accompanying nn. 9-10 of discussion.
3. See text accompanying n. 11 of discussion.
4. See text accompanying n. 13 of discussion.
5. See text accompanying n. 11 of discussion.
6. See text accompanying n. 14 of discussion.
7. See text accompanying nn. 16-17 of discussion.
8. See text accompanying n. 19 of discussion.
9. See text accompanying n. 15 of discussion.

ALASKA

By statute, the Alaska Public Utilities Commission has the power to "make or require just, fair and reasonable rates, classifications, regulations, practices, services and facilities for a public utility."¹ Utilities may not grant unreasonable preferences or advantages to any customer or subject any customer to an unreasonable prejudice or disadvantage.² However, the Alaska Supreme Court has held that since only unreasonable discrimination is unlawful, discrimination based on justified differences in the cost of service or which is otherwise within the zone of reasonableness is permissible.

The Commission must publish reports, orders, decisions, and regulations to inform the public or affected customers "when appropriate",³ and may order a utility to notify the public of tariff filings by publication, individual notice, or other appropriate methods.

Alaska Utilities have presented evidence to the Commission that their declining block rates are cost justified, and have implemented interruptible rates for certain large, industrial users.⁶ In reviewing a Commission order approving seasonal and interruptible rates, the Supreme Court held that interruptibility was a proper contract feature of seasonal rates, but rejected the particular rates at issue because the Commission's decision approving such rates was not supported by substantial evidence.

Fees for connection, disconnection or transfer of service cannot exceed actual cost plus a profit not to exceed a certain percentage established by the Commission.⁸

The Commission's policy is to discourage master metering.⁹

One Commission opinion has expressed approval of cost-of-service pricing and indicated that such pricing encourages conservation. The decision rejected a proposal that would have resulted in industrial users subsidizing residential users by an increased amount. The commission said:

The commission believes that the utility customer must be made aware through the rate structure of the costs incurred by the utility to provide the desired service. In this way conservation may be encouraged and long-run cost savings to the utility and its customers may be effected through readjustment of load.¹⁰

The Commission requires two days written notice prior to a utility's termination of service. A thirty day extension may be granted in cases of illness supported by a physician's letter,¹¹ and termination is not permitted if the temperature is 0 degrees or below.

Generic hearings and rate proceedings are governed by the Commission's rules of practice and procedure.¹² The Commission must give parties reasonable notice of the date, place, and nature of hearings¹³ and all hearings are public, with free access for news media.¹⁴

Petitions for leave to intervene in Commission proceedings will be entertained only in those cases that are to be decided upon an evidentiary record after notice and hearing.¹⁵ Intervention is permitted by any party with a statutory right to intervene and any person whose intervention will be conducive to the ends of justice and who will not unduly delay the conduct of such proceeding.¹⁶

The Commission may issue subpoenas duces tecum and other process to compel the production of documents.¹⁷ The records of a public utility are only available for public inspection by statute, rule or order of the Commission, enforcement of a subpoena duces tecum or other legal process, or by prior voluntary consent of the utility.¹⁸

The administrative adjudication procedures of the Alaska Administrative Procedure Act do not apply to adjudicatory proceedings of the Commission except that final administrative determinations are subject to judicial review under the Act.¹⁹ If an appeal is not taken from a final order, the Commission may apply to the Superior Court for enforcement.²⁰

1. Alaska Stat. § 42.05.141(3) (1978)
2. Id. § 42.05.391 (1978). See also id. §§ 42.05.291; 42.05.301; 42.05.381 (1978)
3. Jager v. State, 537 P.2d 1100 (1975).
4. Alaska Stat. § 42.05.201 (1978).
5. Id. § 42.05.411; 3 ACC 48.280(e) (1978).
6. NARUC Survey, "Ratemaking", Table 61(b).
7. Jager v. State, 537 P.2d 1100 (1975).
8. Alaska Stat. § 42.05.381(c) (1978).
9. NARUC Survey, "Ratemaking", Table 61(b).
10. Re Golden Valley Electric Ass'n, 17 P.U.R.4th 175, 190 (1976)
11. U.S. Department of Energy, The Energy Consumer 10, Vol. 1, No. 5 (1979).
12. 3 Alaska Administrative Code, Part 5, ch. 48, 52 (1974) (hereinafter cited as "AAC").
13. 3 ACC 48.150(a) (1973).
14. Id. 48.150(o).
15. Id. 48.110.
16. Id.
17. Alaska Stat. § 42.05.151(c) (1978).
18. 3 AAC 48.050.
19. Alaska Stat. § 42.05.161 (1978).
20. Id. § 42.05.551.

ALASKA

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service				X		<u>Re Golden Valley Electric Associa- tion, Inc., 17 P.U.R.4th 175 (1976)</u> ¹			<u>Conservation, Re Golden Valley Electric Associa- tion, Inc., 17 P.U.R.4th 175 (1976)</u> ¹
Cost Justification for Declining Block Rates ²				X					
Seasonal Rates				X			<u>Jager v. State, 537 P.2d 1100 (S.Ct. Alaska 1975)</u> ³		
Interruptible Rates			X	X			<u>Jager v. State, 537 P.2d 1100 (S.Ct. Alaska 1975)</u> ³		
Master Metering ⁴				X					
Information to Consumers				X	Alaska Statutes, §42.05.411; 3 ACC 48.280 (e)				
Termination: Notice Provision ⁵				X					

1. See text accompanying nn. 3, 10 of the discussion.
2. See text accompanying n. 6 of the discussion.
3. See text accompanying n. 7 of the discussion.
4. See text accompanying n. 9 of the discussion.
5. See text accompanying n. 11 of the discussion.

ARIZONA

The Arizona Constitution creates the Arizona Corporation Commission (the "Commission") and declares that it "shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations"¹ The Commission has the power to supervise and regulate every public service corporation in the state, and to do everything that is "necessary and convenient" in the exercise of its power and jurisdiction.² When it finds that the rates, classification or practices are "unjust, discriminatory, or preferential, illegal or insufficient" it must determine and prescribe rates itself.³

Public service corporations' charges must be "just and reasonable", and their service "adequate, efficient and reasonable."⁴

The Commission's rules require that utilities submit cost of service analyses and studies if the utility is in a segment of the utility industry that recognizes cost of service studies as important tools for rate design, and the costs incurred by the utility are likely to vary significantly from one defined segment of customers to another.⁵ These rules specify in detail the information required, and provide schedules on which to submit the information.

The Commission has approved declining block rates, although apparently it discourages them.⁶ Time-of-day rates have been implemented on an experimental basis, in a program sponsored by the Federal Energy Administration.⁶ There are regular seasonal rates in effect for electric utilities.

Commission rules mandate that no natural gas distributor may provide service to any new "Large Non-residential Customer"⁷ except on an interruptible basis, subject to curtailment or cessation without notice and prior to curtailment of any loads other than interruptible ones, and also restricts other consumption to interruptible bases.¹⁰ However, there is no equivalent policy on interruptibility, and no provision for interruptible rates (or other load management techniques), for electric utilities.¹¹ The thrust of the provisions applying to gas distribution seems not to be conservation or load management so much as a practical approach to dealing with anticipated shortages.¹²

Lifeline rates have been implemented experimentally in Arizona.¹³ Under the test rates, if a residential customer used less than 700 Kwh per month, the customer charge would be forgiven.

The Commission has promulgated rules dealing with master metering in trailer courts. Master meters may be installed, but each occupant must be billed for "his proportionate share of that portion of the bill rendered by the utility to the court operator which is attributable to all of the court occupants." In such billing consideration must be given to the number of electrical and/or gas appliances used by each occupant.¹⁴

Although the Arizona code states that public service corporations may not raise their rates "except upon a showing before the commission and a finding by

the commission that an increase is justified,"¹⁵ an opinion by the Attorney General states that the Corporation Commission has jurisdiction to authorize the use, by electric corporations under its jurisdiction, of automatic adjustment or escalator clauses.¹⁶ In a recent case, the Arizona Court of Appeals discussed automatic adjustment clauses,¹⁷ noting that they have been upheld where they were initially adopted as part of the utility's rate structure at a full hearing in accordance with all statutory and constitutional requirements, and were designed to insure that, through adoption of a set formula geared to a specific, readily identifiable cost, the utility's profit or rate of return does not change.¹⁸ The Court emphasized that a utility's net income should not change under the operation of such a clause.

The Commission is permitted by rule to direct any public service corporation to give notice - in such form as the Commission deems appropriate - to customers affected, of any hearing at which the fair value of the corporation's property is to be determined and just and reasonable rates and charges are to be established.¹⁹ There are no other formal rules relating to the transmittal of information by the utility to customers, nor were formal rules relating to termination procedures available at the time of this report.

The Commission has considered or adopted rules or guidelines relating to procedures²⁰ for review of automatic adjustment clauses and treatment of advertising expenses.

No change may be made in any rates except after 30 days notice to the Commission and the public;²¹ notice to the public is to be given by keeping open for public inspection new schedules showing the changes.²²

Commission hearings are governed by the public utilities statutes and the Commission's own rules of practice and procedure, and the Commission is not bound in such hearings by technical rules of evidence.²³ The Commission may hold hearings on rate changes,²⁴ and on other aspects of utility service, either on its own motion or on complaint.²⁵

At the hearing, the complainant and the party complained of, and such persons as the Commission allows to intervene, may present evidence and be heard.²⁶ The Commission may issue process for the attendance of necessary witnesses.²⁷

Any party in interest, or the attorney general on behalf of the state, may file an action in superior court to vacate or set aside a Commission order or decision, on the grounds that the order or regulation provided for therein are unlawful or unreasonable.²⁸ The superior court hears the matter *de novo*: the court is not limited to considering evidence presented at the Commission's hearing and forms its own judgment as an independent tribunal.²⁹

1. Article 15, §3
2. Arizona Revised Statutes §40-202
3. A.R.S. §40-203
4. ARSA §40-361. The Arizona Court of Appeals has expressed its acceptance of the "general principle of law" that a utility may not discriminate between customers similarly situated, General Cable Corp. v. Citizens Utilities Co., 555 P.2d 350, 27 Ariz. App. 381 (1976).

5. Administrative Rules and Regulations, R14-2-128(G) (Defining filing requirements in support of a request by a public service corporation doing business in Arizona for a determination of the value of property of the corporation and of the rate of return thereon, and in support of proposed increased rates or charges.)
6. NARUC Survey, Table 61(b)
7. Electrical Week, December 25, 1978, p.8-9
8. NARUC Survey, Table 61(b)
9. Customers not qualifying as Residential Customers (i.e. as used in individually metered dwelling units) whose gas consumption during the preceeding 12 months exceeded 7,000 MCF in any month or 70,000 MCF in such a 12-month period. R14-2-126(5).
10. R14-2-126(c)(1) - (3)
11. NARUC Survey, Table 61(b)
12. See R14-2-126
13. NARUC Survey, Table 61(b)
14. R14-2-104(A). Note the PURPA applies to new buidings, §113(b)(1)
15. A.R.S. §40-250(A)
16. Op. Atty. Gen. No. 71-15
17. Scates v. Arizona Corporate Commission 578 P.2d 612, 118 Ariz. 531 (Ct. App. Ariz. 1978). The definition of such a clause was given as: A device that permits rates to adjust automatically, either up or down, in relation to fluctuation in certain, narrowly defined, operating expenses, and usually embodies a formula established during rate hearing to permit adjustment of rates in future to reflect changes in specific operating costs such as whole-sale cost of gas or electricity.
18. Id.
19. R14-2-124(A)
20. Stone & Webster Questionnaire, OMB 038-579052, Response of the Arizona Corporation Commission
21. A.R.S. §40-367(A)
22. Id. (B)
23. Id. §40-243. The rules of practice and procedure were not available at the time of this report.
24. Id. §40-250 (1979-1980 Cum. Supp.)
25. Id. §§40-246(A), -249
26. Id. §40-247
27. Id.
28. Id. §40-254(A)
29. Id. (C) See Gibbons v. Arizona Corporation Commission 75 Ariz 214, 245 P.2d 1024 (1953). Notwithstanding this, the Court of Appeals of Arizona has held that the trial court's review is limited to a determination of whether the Commission's order is supported by substantial evidence and thus not arbitrary. See Sun City Water Co. v. Arizona Corporation Commission 26 Ariz. App. 304, 547 P.2d 1104 vacated (on other grounds) in 113 Ariz. 464, 556 P.2d 1126 (1976), followed in Arizona Corporation Commission v. Citizens Utilities Co. 584 P.2d 1175 (Ariz. App. 1978)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>ARIZONA</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹		X	X			Administrative Rules and Regulations, R 14-2-128 (G)			
Declining Block Rates-Restructuring ²				X					
Time-of-Day Rates ³		X	X						
Seasonal Rates ⁴		X	X						
Interruptible Rates ⁵									
Lifeline Rates ⁶		X	X						
Master Metering ⁷				X		R 14-2-104 (A)			
Automatic Adjustment Clauses - Review ⁸				X			Op. Atty. Gen. No. 71-15		
Information to Consumers ⁹		X	X						
Termination Procedures ¹⁰									
Exclusion of Advertising Expense ¹¹				X					

1. See text accompanying n. 5 of the discussion.
2. See text accompanying n. 6 of the discussion.
3. See text accompanying n. 7 of the discussion.
4. See text accompanying n. 8 of the discussion.
5. See text accompanying nn. 9-12 of the discussion.
6. See text accompanying n. 13 of the discussion.
7. See text accompanying n. 14 of the discussion.
8. See text accompanying nn. 15-18, 20 of the discussion.
9. See text accompanying n. 19 of the discussion.
10. Information unavailable.
11. See text accompanying n. 20 of the discussion.

ARKANSAS

Rates demanded by any public utility in Arkansas must be "just and reasonable."¹ Every public utility shall furnish "such adequate and efficient service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort, requirements, and convenience of its patrons, employees and the public."² Utilities may not grant "any unreasonable preference or advantage...or subject any corporation or person to any unreasonable prejudice or disadvantage..." nor may they establish any "unreasonable difference as to rates or services...as between classes of service."³

The Arkansas Public Service Commission ("Commission") has the power and jurisdiction to "supervise and regulate every public utility ..., and to do all things ... that may be necessary or expedient in the exercise of such power and jurisdiction...."⁴ The Commission has "exclusive jurisdiction and authority "to determine electric utility rates, although each municipality maintains jurisdiction to determine, *inter alia*, the "quality and character of ... each kind of product or service to be furnished" by public utilities within the municipality.⁵ The Commission has "the power to: (1) Find, and fix just, reasonable, and sufficient rates ... (2) Determine ... reasonable, safe, adequate, sufficient service ... (3) Ascertain and fix adequate, and reasonable standards, classifications, regulations,, practices and services ..."⁶

The Commission has stated that, as a general proposition, electric rates should be determined by cost of service.⁸ All utilities must submit a cost-of-service study in support of their tariff filings.⁹ The Commission has authorized declining block rates, but discourages them.¹⁰ In fact, in a recent case the Commission approved flattened electric rates and stated that all demand costs must be recovered on a constant per unit basis in the absence of evidence that other methods of recovering such costs are cost-justified.¹¹ The Commission has also disapproved a utility's request for declining block rates, and has ordered the utility to file rates consisting of a flat charge unrelated to consumption and a flat kilowatt hour charge,¹² that recovers demand and energy costs.¹³ Time-of-day rates have been authorized¹⁴ and seasonal rates have been approved.¹⁵ The implementation of electric rates on an interruptible basis is authorized by statute¹⁶ and has been allowed.¹⁷ Lifeline rates have not been authorized by the Commission.¹⁸ However, a Little Rock ordinance authorizing such rates has been held invalid by an Arkansas county court.¹⁹ In a 1977 rate hearing, the Commission failed to approve inverted rates because it lacked evidence concerning the effect of price on demand for electricity by various customer classes.²⁰

The Commission does not have a policy regarding master metering.²¹ The Arkansas Supreme Court has upheld the use of automatic adjustment clauses approved by the Commission.²² Upon request, a utility must furnish the customer a copy of the rate schedule applicable to such customer.²³ Under recently adopted Commission rules, a utility must also provide each customer with written information setting forth the rights and obligations of the utility and its customers and the rates applicable to service for the particular customer.²⁴ Such information must be distributed to the customer either upon commencement of service to such customer or at least annually by distribution of a newsletter.²⁵

Generally, service to a customer may be disconnected only after at least five days' prior written notice²⁵ and an opportunity for complaint.²⁶ Third party notice is allowed.²⁷ Service may not be discontinued for nonpayment if the customer pays a reasonable portion of his account and agrees to pay the balance of the account and all future bills.²⁸ Discontinuation of service to a residential user can be postponed for thirty days upon presentation of a physician's certificate stating that "discontinuation...will aggravate an existing medical emergency" of the customer.²⁹ Service may not be terminated when the temperature is below thirty-two degrees.³⁰ Expenditures for advertising which is image-building, promotional, institutional,³¹ or related to community affairs have been disallowed for ratemaking purposes.³¹ The Commission is authorized under state law to approve utility programs³² which promote the use of solar, wind or other small energy generation systems.

The Arkansas legislature has authorized the Commission to investigate and implement energy conservation programs and measures.³³ These programs and measures expressly include activities which "result in the improvement of load factors, contribute to reductions in peak power demands, and promote efficient load management, including the adoption of interruptible service equipment and alternative or additional metering equipment designed to implement new rate structures...."³⁴ Also included are programs that promote the "use of renewable energy technologies or sources, including solar energy, wind power" or other types of energy.³⁵

No public utility may make any rate changes except after thirty days' notice to the Public Service Commission. Proposed changes must be shown by filing new schedules or must be indicated on schedules filed and in force at the time.³⁶ The utility shall also give notice of proposed changes to other interested parties as the commission in its discretion may direct.³⁷ Utilities must keep copies of such schedules open to public inspection.³⁸ Any Chamber of Commerce or Board of Trade, mercantile, agricultural or manufacturing association, or any public utility or any municipality, or any twenty-five public utility users may complain in writing to the Commission of any act or thing done or permitted by any public utility in violation of law. Any consumer or prospective consumer may complain to the Commission with respect to service, furnishing of service or any discrimination with respect to service or rates.³⁹ After complaint or its own motion, the commission, upon reasonable notice, may suspend the operation of new rates for a maximum of six months while it makes its investigation. If, however, the utility contends that an immediate and compelling necessity exists for the requested rate increase, a petition may be filed with the commission which petition must be set for hearing within fifteen days⁴⁰ from date of filing or at a time mutually agreeable to the commission and the utility.

All facts and information in the possession of the commission shall be public and all reports, records and files of the commission shall be open to inspection by the public at all reasonable times, except that the commission may withhold facts or information for a period not exceeding ninety days whenever the commission determines it to be necessary in the interest of the public. The commission may require utilities to produce any documents relating to the public utility's business or affairs within the state.⁴¹ The commission and each commissioner may administer oaths, examine witnesses, and compel the production of documents

and cause depositions to be taken.⁴² No person shall be excused from testifying or producing documents upon the ground that doing so would tend to incriminate him or subject him to penalty or forfeiture.⁴³ At any hearings held by the Commission, the complainant and person or corporation complained of may be heard in person or by attorney, and may introduce evidence and examine and cross-examine witnesses.⁴⁴ The Commission must determine whether the utility has violated its statutory mandate to provide just and reasonable rates and adequate and efficient service and whether it granted unreasonable preferences as to rates or services.⁴⁵

Application to the Commission for rehearing must be made within thirty days after service of the Commission's order upon the person aggrieved.⁴⁶ Within thirty days after the order of the Commission upon application for rehearing, a party may file a petition for review in the Circuit Court of Pulaski County.⁴⁷ The record before the court shall consist of a complete transcript of the case made before the Commission, even if such evidence would be inadmissible if offered at trial.⁴⁸ Review by the circuit court will not be extended farther than to determine whether the Commission's findings are supported by substantial evidence, whether the Commission has regularly pursued its authority or whether the order or decision under review violated the petitioners' constitutional rights.⁴⁹ Within thirty days of judgment and decree of the circuit court notice of appeal may be filed to the Supreme Court of Arkansas.⁵⁰

1. Ark. Stat. Ann. §73-204 (1957)
2. *Id.*
3. *Id.* §73-207.
4. *Id.* §73-202.
5. Ark. Stat. Ann. §§73-202a, -202b (Cum. Supp. 1977).
6. *Id.*; Ark. Stat. Ann. §73-208 (1957).
7. *Id.* §73-218.
8. See Re Arkansas-Missouri Power Co., 22 P.U.R. 4th 493 (1977). However, in structuring rates, the Commission has also considered the adverse customer impact which an abrupt change to fully cost-reflective rates would have. See also Re Oklahoma Gas and Elec. Co., 26 P.U.R. 123 (1979) where the Commission approved allocation of a rate increase which would cause the residential class to be subsidized slightly by other classes of customers.
9. Rules of Practice and Procedure before the Utilities Division of the Arkansas Public Service Commission, Department of Commerce, Rule 9.04. (Rev. Sep. 28, 1977).
10. NARUC Survey, Table 61(b).
11. Re Arkansas-Missouri Power Co., 22 P.U.R. 4th 493 (1978).
12. Re Oklahoma Gas and Elec. Co., *supra* at 138-9.
13. NARUC Survey, Table 61(b). But see Re Arkansas Power & Light Co., 19 P.U.R. 4th 53 (1977) (in the absence of information from a demand management demonstration project funded by the Federal Energy Administration, the Commission is not in a position to objectively weigh the benefits of rate designs such as time-of-day and peak-load pricing).
14. Re Clay County Elec. Co-op., 22 P.U.R. 4th 223 (1977) (seasonal rates approved for residential and small commercial service users). See Re Oklahoma Gas and Elec. Co., *supra* where the Commission required the utility to apply

a seasonal differential to rates proposed for residential, commercial and industrial customers.

15. Ark. Stat. Ann. §73-275 (Cum. Supp. 1977).
16. See Re Arkansas Power & Light Co., 19 P.U.R. 4th 53 (1977) (optional interruptible air conditioning rate).
17. NARUC Survey, Table 61(b).
18. See Re Arkansas Power & Light Co., 19 P.U.R. 4th 53 (1977).
19. Id.
20. NARUC Survey, Table 61(b).
21. City of El Dorado v. Arkansas Pub. Serv. Comm'n., 235 Ark. 812, 362 S.W.2d 680 (1962) (construing Ark. Stat. Ann. §73-219 (1957)).
22. Ark. Stat. Ann. §73-205.1 (1957).
23. Ark. Pub. Serv. Comm'n., Revised Rules and Regulations Governing Utility Service, Rule 6C. Utility proposals regarding the prescribed information must be submitted for Commission approval on or before April 1, 1979. Dissemination of such information shall commence within 90 days to one year after Commission approval, depending on the method of dissemination chosen by the utility. Re Revised Rules and Regulations Governing Utility Service, No. U-2888 (Ark. Pub. Serv. Comm'n. Nov. 8, 1978) (order adopting rules and regulations governing utility service).
24. Ark. Pub. Serv. Comm'n., Revised Rules and Regulations Governing Utility Service, Rule 6C.
25. Id., Rule 8C.
26. Id., Rule 8I.
27. Id., Rule 8C.
28. Id., Rule 8H.
29. Id., Rule 8G.
30. Id., Rule 8E.
31. See Re Arkansas-Missouri Power Co., 22 P.U.R. 4th 493 (1977); Re Arkansas Power & Light Co., 15 P.U.R. 4th 153 (1976). Re Southwestern Bell Tel. Co., 27 P.U.R. 4th 493 (1979).
32. Ark. Stat. Ann. §§73-2503-2504 (Cum. Supp. 1977).
33. Id., §73-2503.
34. Id., §73-2504.
35. Id.
36. Ark. Stat. Ann. §73-217 (1977).
37. Id.
38. Id.
39. Id. §73-216 (1957).
40. Id. §73-217 (1977).
41. Id. §73-226 (1947).
42. Id. §§73-222, 223.
43. Id. §73-225.
44. Id. §73-228(c) (1947).
45. Id. §§73-204(b), 73-207 (1947).
46. Id. §73-229.1(a) (1977).
47. Id. §73-229.1(b) (1977).
48. Id.
49. Id.
50. Id. §73-229.1(d) (1977).

ARKANSAS

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service	X			X	Rules of Prac. and Proced. before the Utilities Serv. of the Ark. Pub. Serv. Comm'n, Sept. of Com., Rule 9.04 (Rev. 1 Sep. 28, 1977) ¹	<u>Re Arkansas-Missouri Power Co., 22 P.U.R. 4th 493 (1977)²</u> <u>Re Oklahoma Gas and Elec. Co., 26 P.U.R. 4th 123 (1979)</u>			
Declining Block Rates - Restruc- turing			X	X		<u>Re Arkansas-Missouri Power Co., 22 P.U.R. 4th 493 (1977)³</u> <u>Re Oklahoma Gas and Elec Co., 26 P.U.R. 123 4th (1979)⁴</u>			
Time-of-Day Rates			X	X		<u>Re Arkansas Power & Light Co., 19 P.U.R. 4th 53 (1977)⁵</u>			
Seasonal Rates			X	X		<u>Re Clay County Elec. Co-op Corp., 22 P.U.R. 4th 223 (1977)⁶</u> <u>Re Oklahoma Gas and Elec. Co., 26 P.U.R. 123 4th (1979)</u>			Efficiency, 22 P.U.R. 4th at 229 ⁷
Interruptible Rates			X	X	Ark. Stat. Ann. §§73-275, (Cum. Supp. 1977) ⁸				

<u>Standard/Policy</u>	<u>ARKANSAS (Cont'd)</u>				<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>				
Load Management		X	X		Ark. Stat. Ann. §§73-2503, -2504 ⁹ (Cum .Supp. 1977)			Conservation, Ark. Stat. Ann. §§73-2503, -2504 ⁹
Lifeline Rates ¹⁰								
Master Metering ¹¹								
Automatic Adjust- ment Clauses ¹¹								
Information to Consumers	X	X	X		Ark. Stat. Ann. §73-205.1 (1957) ¹²	Rules and Regs. Governing Utility Services, Rule 6C ¹³		
Termination: Notice Provision	X	X	X			Rules and Regs. Governing Utility Services, Rules 8C ¹⁴ , 8E, 8I, 8H, 8G ¹⁴		
Endangering Health Provision	X	X	X			Rules and Regs. Governing Utility Services, Rule 8G ¹⁵		
Exclusion of Advertising	X	X	X			Re Arkansas-Missouri Power Co., 22 P.U.R. 4th 493 (1977) ¹⁶ ; Re Arkansas Power & Light Co., 15 P.U.R. 4th 153 (1976) ¹⁶		

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
						ARKANSAS (Cont'd)			
						Re Southwestern Bell Tel. Co., 27 P.U.R. 4th 493 (1979)			
Small Energy Systems		X	X		Ark. Stat. Ann. §§73-2503, -2504 (Cum. Supp. 1977) ¹⁷				Conservation, Ark. Stat. Ann. §§73-2503, -2504 ¹⁷

1. See text accompanying nn. 8-9 of the discussion.
2. Id.
3. See text accompanying nn. 10-12 of the discussion.
4. Id.
5. See text accompanying n. 13 of the discussion.
6. See text accompanying n. 14 of the discussion.
7. Id.
8. See text accompanying nn. 15-16 of the discussion.
9. Id.
10. See text accompanying nn. 17-19 of the discussion.
11. See text accompanying n. 21 of the discussion.
12. See text accompanying nn. 22-24 of the discussion.
13. Id.
14. See text accompanying nn. 25-30 of the discussion.
15. Id.
16. See text accompanying n. 31 of the discussion.
17. See text accompanying n. 32 of the discussion.

CALIFORNIA

California's state constitution establishes the Public Utilities Commission (the "Commission")¹ and gives the state legislature plenary power to confer authority and jurisdiction on the Commission.² By statute, the Commission has the power to "supervise and regulate" public utilities, and to do all things "necessary and convenient" in the exercise of its power and jurisdiction.³ When, after a hearing, the Commission finds that a utility's rates are "insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential,"⁴ the Commission must determine and fix just, reasonable and sufficient rates.

Charges demanded by any public utility must be "just and reasonable" and service "adequate, efficient, just and reasonable."⁵ No utility may grant any preference or advantage to any corporation or person, nor subject any corporation or person to any prejudice or disadvantage;⁶ no utility may establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

In generic proceedings, the Commission has declared that "conservation in the sense of efficient allocation of electricity" is to be "the keystone of the rate structure."⁸ According to the Commission, conservation thus defined with reference to economic efficiency (i.e. elimination of any use of electricity which is not worth to consumers what it costs society to produce) encompasses the concepts of "reduction in wasteful kilowatt-hour usage of electricity," the "overall reduction of kilowatt-hour usage of electricity" and the "reduction of peak demands upon electric utility systems." Equity is served by this system because efficient allocation of electricity means that distinctions made among different consumers are rational and not arbitrary. The Commission has directed utilities to undertake conservation efforts, has evaluated the results of utility steps in that respect and has stated that it will be its "practice to require an affirmative showing of vigorous and successful conservation efforts for any increase in return on equity."⁹ Utilities are expected to utilize conservation concepts that are "reasonable and cost-effective."¹⁰

For the Commission, "the primary test of reasonableness in setting rates has been cost-of-service."¹¹ It has recently found that "marginal" or "incremental" costs are significant in allocating revenue among customer classes, and that they as well as average costs should be considered in determining rates.¹² The Commission has noted that "where conservation is a goal average costs alone are not enough."¹³

However, cost-of-service is only one factor to be considered in the ratemaking process,¹⁴ and departure from cost-of-service ratemaking may be warranted where, for example, it is necessary to give effect to lifeline rates.¹⁵ Lifeline rates are mandated by statute in California:¹⁶ the Commission must designate a lifeline quantity of electricity necessary for specified minimum energy needs of residential users, and utility schedules must provide for lifeline rates.¹⁷

While declining block rates exist in California electric utility tariffs, the Commission has stated that such rates are inconsistent with conservation goals and that one of its objectives is to eliminate them.¹⁸ In a recent case, the utility

stipulated to a staff proposal that "residential nonlifeline rates be set on an inverted basis in order to discourage waste and encourage prudent use of precious energy."¹⁹ The Commission has administered a fuel cost adjustment on a cents per unit basis increase to rates (except lifeline rates) for all classes of service, which has caused proportionately larger electric rate increases for large use customers and therefore some flattening in the declining block structure;²⁰ and it has acted to decrease the number of blocks in the rate structure.²¹

The Commission ordered utilities to institute time-of-day rates in its generic proceedings in 1976. The order initially covered rates charged by three of the state's major utilities to large usage customers for whom the necessary metering equipment was already installed; by 1977 additional metering was to be installed and time-of-day schedules were to be filed by six large utilities to apply to customers with demands greater than 500 kW.²²

In the same generic proceedings it was determined that seasonal rates should be further studied. Such rates have been in effect with respect to residential and large industrial customers.²³

The Commission also determined in these proceedings that load factor could be improved and peak load capacity requirements reduced through the use of interruptible rates and other load management programs such as demand control rate schedules and automatic or semi-automatic load curtailment. The Commission ordered respondent electric utilities to continue experimenting with such procedures. Recently the California Energy Commission approved a statewide test load-management and energy-conservation program.²⁴

Regulated electric utilities in California may recover energy costs associated with the production of electricity under Energy Cost Adjustment Clauses and Purchased Power Clauses. However, neither clause operates automatically, with the level of revenues to be collected determined in semi-annual formal proceedings. According to the Commission, the question of utility incentives for the economical purchase of energy are covered at these proceedings.²⁵ In addition, when an electric utility requests a rate adjustment reflecting and passing through to customers a specific fuel cost increase, relief is limited to 80% of the request until a hearing has been held and the Commission determines the balance to be justified.²⁶

A statute provides that where domestic electric service is provided by a master-meter customer through a submeter service system, the master-meter customer providing the service must charge the rate that would be charged if the users received electricity directly from the utility. Utilities must establish rates to provide the master-meter customer a reasonable differential to cover the costs of providing submeter service.²⁷ Rebates received by master-meter customers must be credited to users²⁸ and utilities must inform master-meter customers of their responsibility to do this.²⁹

The Commission has determined that metering or submetering of individual residential units in multi-unit complexes encourages conservation of energy, and has prohibited master metering of all new multi-unit residential complexes. In addition, utilities are to furnish to owners and landlords information about the

advantages of individual metering, to encourage voluntary installation of such metering in existing complexes where it would be economical to do so.³⁰

Notice of an application for a rate increase must be furnished by the utility to customers affected by the proposed increase.³¹ The Commission has stressed the importance of customer education in pursuing conservation goals, and has ordered a bill format that will break out lifeline and non-lifeline charges, separate monthly and commodity charges and generally provide enough information to enable the customers to follow the calculation of their bills.³²

Service by a utility may not be terminated for nonpayment of a bill without at least 7 days notice (by first-class mail) to the customer,³³ and it may not be cut off at any time, during which the business offices of the corporation are not open to the public,³⁴ nor during the pendency of an investigation into a customer dispute or complaint.³⁵ Where service is provided to residential users through a master meter, the utility must make good faith efforts to inform the actual users when the account is in arrears that service will be terminated in 10 days, and must inform them of their right to become utility customers without having to pay the amount due.³⁶

According to the Commission, major utilities currently identify customers who are dependent on life support equipment (one source of such information being tariffs that provide lifeline allowances for life support equipment) and try to avoid disconnecting or disrupting service to such customers. The Commission has informally requested utilities to forego disconnects during periods of freezing temperatures.³⁷ An investigation of standards for termination of service is presently underway.³⁸

By statute the Commission must disallow for purposes of setting electric rates all expenses for advertising "which encourage increased consumption of such services or commodities."³⁹ Expenses for advertising which encourages the more efficient operation of electric plants, the more efficient use of energy, or the conservation of energy or natural resources or presents accurate information about the purchase and use of appliances may be allowed.⁴⁰ The Commission has held that "political activity of a utility cannot be charged to the ratepayers, directly or indirectly."⁴¹ It has also adopted accounting practices that classify expenditures for political activities as a non-operating or below-the-line account.⁴²

The Commission has ordered hearings on rates for small energy systems.⁴³ It supports the promotion of alternative energy sources⁴⁴ and has received a legislative mandate to investigate alternative methods of long-term, low-interest financing of solar energy systems.⁴⁵ The statute directs the Commission to consider among other things which alternative would facilitate the implementation of cost-effective solar energy. The Commission may allow utilities an extra .5% rate of return, under certain conditions, on utility investments designed to produce energy from renewable resources (e.g. solar, geothermal, wind and hydroelectric projects).⁴⁶

No utility may raise any rate except upon a showing before the Commission and a finding by the Commission that the increase is justified, and, as noted earlier, notice of an application for a rate increase must be furnished by the utility to customers affected by the proposed increase.⁴⁷ The notice must give the amount

of increase sought, the reasons for the request, and an address of the Commission to which customers may direct inquiries regarding the increase, including a request to receive notice of the date, time and place of any hearing on the application. The applicant utility must also publish in a newspaper in the county in which the increase will be effective, a notice describing the proposed increase in general terms.⁴⁸

Notice of hearings on rate increases must be given by the utility to entities or persons who may be affected, by posting such notice in public places, and publishing it in a newspaper, in the areas concerned.⁴⁹

The Commission must permit individual residential utility customers affected by a proposed increase to testify at any hearing on the proposed increase.⁵⁰ The Commission may permit other parties to intervene.⁵¹ Leave to intervene will only be granted to a petitioner on averments "reasonably pertinent" to the issues to be presented but which do not "unduly broaden" the scope of the hearing.⁵² However, interested parties may enter an appearance and participate in a hearing without intervening (that is, without filing a pleading) to the extent permitted by the hearing officer, if their contentions are "reasonably pertinent to the issues already presented."⁵³

Certain specified information must be submitted by a utility in making a rate increase application.⁵⁴ The Commission may require additional information,⁵⁵ and has, for example required utilities to prepare and submit cost-of-service data (including marginal cost information) and a review of conservation efforts.⁵⁶ The hearing officer has discretion as to the form and admissibility of evidence.⁵⁷ The Commission may issue process for the attendance of necessary witnesses.⁵⁸

Within 30 days after the denial of an application for rehearing or the decision on rehearing, an applicant may apply to the California Supreme Court for review to determine the "lawfulness" of the Commission order or decision.⁵⁹ The court's review is on the record only.⁶⁰ It may determine whether the Commission "has regularly pursued its authority;" by statute this standard includes a determination of whether the petitioner's state or federal constitutional rights have been violated.⁶¹ The Commission is required by statute to make findings of fact after the conclusion of a hearing,⁶² and by statute such findings, including its findings and conclusions as to reasonableness and discrimination, are not subject to review.⁶³ However, the state Supreme Court has held that the Commission's findings must be adequate to permit a reviewing court "to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily" and to "assist parties to know why the case was lost and to prepare for rehearing or review, assist others planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action."⁶⁴ Findings are not open to attack for insufficiency if any reasonable construction of the evidence presented would support them;⁶⁵ but there must be some evidence presented.

1. Article 12, §1.
2. Article 12, §5.
3. Cal. Code (West) §701.
4. Id. §728.

5. Id. §451.
6. Id. §453(a).
7. Id. §453(c).
8. Investigation on the California Public Utilities Commission's Own Motion Into Electric Utility Rate Structures, Dec.No.85559, March 16, 1976. See also Gas & Electric Utility Rate Structure, 24 P.U.R.4th 332, 336 (1975) (stressing the conservation goals of lifeline service).
9. Pacific Gas & Electric Co., Dec.No.84902 (September 16, 1975). See also Southern California Edison Co., 27 P.U.R.4th 144, 212 ff. (1978).
10. Pacific Gas & Electric Co., 26 P.U.R.4th 201, 208 (1978).
11. Southern California Gas Co., 14 P.U.R.4th 498 (1976); Investigation, supra n.8.
12. Investigation, supra n.8.
13. Pacific Power & Light Co., 19 P.U.R.4th 37 (1977). See also Southern California Edison Co., 27 P.U.R.4th 144, 232 (1978).
14. Investigation, supra n.8; Southern California Gas Co., supra n.11.
15. California - Pacific Utilities Co. 17 P.U.R.4th 256 (1976).
16. Cal.Code §739.
17. Lifeline quantities of electricity have been reported as 240 kwh(Electrical Week, July 24, 1978, p.5) and for air conditioning customers, 650 kwh June through September and 550 kwh for May and October. (Electrical Week, April 17, 1978, p.5). For a discussion of other aspects of the lifeline law (permitted end-user, rates for single rooms) see Re Gas and Electric Utility Rate Structure, supra n. 8.
18. Investigation, supra n. 8 Southern California Edison Co., supra n. 13 at 232.
19. Sierra Pacific Power Co., 23 P.U.R.4th 485, 490 (1978). The utility also here stipulated to using a high-priced tail-block for a high level of consumption in a "General Service" Rate Schedule.
20. Pacific Power & Light Co., supra n.13; California Pacific Utilities Co., 12 P.U.R.4th 297, 303 (1975).
21. Pacific Power & Light Co., supra n. 11.
22. Investigation, supra n.8.
23. NARUC Survey, "Ratemaking", Table 61(b).
24. Electric Week, February 5, 1979 p.7.
25. Stone & Webster Questionnaire, OMB No.038-579052, Response of the California Public Utilities Commission. See also Re Fuel Adjustment Clauses for Electric Utilities Dec.No.85731, April 27, 1976, modified by Dec.No.86085 (July 7, 1976) and 86485 (October 13, 1976).
26. Cal.Code §454.5.
27. Cal.Code §739.5(a).
28. Id. §739.5(b).
29. Id. §739.5(c).
30. Dec.No.88651, April 4, 1978.
31. Cal.Code §454.
32. Southern California Edison Co., supra n. 13 at 233.
33. Cal.Code §779(a).
34. Id. §780.
35. Id. §779(b).
36. Id. §777.
37. Stone & Webster Questionnaire, supra n.25.

38. Investigation No.49 (Order issued May 22, 1979).
39. Cal.Code §796(a).
40. Id. §796(b).
41. Baushey v. Pacific Gas & Electric Co., 10 P.U.R.4th 23, 27 (1975). PG&E was ordered by the Commission to desist from including any political material in any mailing charged in whole or in part to operating expenses.
42. Cal.Code §§792, 793; Stone & Webster Questionnaire, supra n.25 (Federal Power Commission Uniform System of Accounts, Account 426).
43. Stone & Webster Questionnaire, supra n.25.
44. Dec.No.84902, supra n.9. See NARUC Bulletin No.46-1978 (November 13, 1978).
45. Cal.Code §2851. Note that the state supreme court has recently ruled that the Commission can recommend but cannot order utilities to finance home insulation. Reported in Electrical Week, July 30, 1979.
46. Cal.Code §454.
47. Cal.Code §454(a), Id.
48. Rules of Practice and Procedure, Rule 24.
49. Id. Rule 52.
50. Cal.Code §454(c).
51. Id. §1705.
52. Rules of Practice and Procedure, Rule 53.
53. Id. Rule 54.
54. Id. Rules 15-16, 23.
55. Id. Rule 15(c)
56. See e.g. Southern California Edison Co., supra n.25
57. Rules of Practice and Procedure, Rule 64.
58. Cal.Code §1705.
59. Id. §1756.
60. Id. §1757.
61. Id.
62. Id. §1705.
63. Id. §1757.
64. California Mfrs. Ass'n. v. Pub. Util. Comm'n., 24 Cal.3d 251, 595 P.2d 98, 155 Cal.Reptr.664, 667-668 (Sup.Ct.en banc 1979), quoting Greyhound Lines, Inc. v. Pub. Util. Comm'n., 65 Cal.2d 811, 813, 423 P.2d 556, 557, 56 Cal.Rptr. 484, 485.
65. Toward Utility Rate Normalization v. Public Utilities Commission, 585 P.2d 491, 495 (S.Ct.en banc 1978), 149 Cal. Rptr.692.

CALIFORNIA

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service	X					<u>Investigation of Electric Utility Rate Structures, Doc. No. 85559 (1976)</u> <u>Re Pacific Power & Light Co., 19 P.U.R. 4th 37 (1977); Re Pacific Power & Light Co., 19 P.U.R. 4th 498 (1976)</u>		<u>Conserva- tion: Investiga- tion</u>	Conservation, Equity, Efficiency: <u>Investigation</u> 27 P.U.R. 4th 144, 212 (1978)
Declining Block Rates-Restructuring	X		X	X		<u>Investigation, supra; Re Sierra Pacific Power Co., 23 P.U.R. 4th 485 (1978); Southern California Edison Co., 27 P.U.R. 4th 144 (1978)</u>			Conservation: 19 P.U.R. 4th 144, 232
Time-of-Day Rates			X	X		<u>Investigation, supra</u>			
Seasonal Rates				X		<u>Investigation, supra</u>			
Interruptible Rates				X		<u>Investigation, supra</u>			
Load Management				X		<u>Investigation, supra</u>			

CALIFORNIA (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Lifeline Rates	X				Cal. Code §739 ⁶	<u>Re Gas & Electric Utility Rate Struc- tures, 24 P.U.R. 4th 332 (1978)</u>			Conservation: 24 P.U.R. 4th 332
Master Metering		X	X		Public Utilities Code §739.5 ⁷	Doc. No. 88651 (1978)			Conservation, 24 P.U.R. 4th 332
Automatic Adjust- ment Clauses - Review	X		X	X	Public Utilities Code §454.5 ⁸	<u>Re Fuel Adjustment Clauses for Elec- tric Utilities,</u> Dec. No. 85731 (1976)	<u>Southern California Edison Co. v. Cali- fornia P.U.C.,</u> 576 P.2d 945 (1978)		
Information to Consumers	X				Public Utilities Code §§454(a), 739.5(c) ⁹	<u>Re Sierra Pacific Power Co., 23 P.U.R. 4th 485 (1978)</u>			
Termination Proce- dures: 1. Notice 2. Prohibited if Health Hazard ¹¹	X			X	Public Utilities Code §779 ¹⁰	Investigation No. 49 (in process)			
Exclusion of Adver- tising Expenses	X				Cal. Code § 796(b)	<u>Re Pacific Gas & Electric Co.,</u> 11 P.U.R. 4th 504 (1975); <u>Re General Telephone Co.,</u> 21 P.U.R. 4th 17a (1976); <u>Boushey v. Pacific Gas & Electric, 10 P.U.R. 4th 23 (1975)</u> ¹²			

CALIFORNIA (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
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Small Electric
Systems

X Public Utilities 13
Code §§454, 456.5

1. See text accompanying nn. 11-15 of the discussion.
2. See text accompanying nn. 18-21 of the discussion.
3. See text accompanying n. 22 of the discussion.
4. See text accompanying n. 23 of the discussion.
5. See text accompanying n. 24 of the discussion.
6. See text accompanying nn. 16-17 of the discussion.
7. See text accompanying nn. 27-39 of the discussion.
8. See text accompanying nn. 25-26 of the discussion.
9. See text accompanying nn. 31-32 of the discussion.
10. See text accompanying nn. 33-36 of the discussion.
11. See text accompanying nn. 37-38 of the discussion.
12. See text accompanying nn. 39-42 of the discussion.
13. See text accompanying nn. 43-46 of the discussion.

COLORADO

The Public Utilities Commission of Colorado (the "Commission") has the power, authority and duty to adopt necessary rates and regulations; to govern and regulate rates of state public utilities to correct abuses; to prevent unjust discrimination and extortions in rates; to supervise and regulate utilities generally; and to do everything that is necessary and convenient in the exercise of its power. If, after a hearing, the Commission finds that any rates or classifications are "unjust, unreasonable, discriminatory or preferential" the Commission must determine and fix just, reasonable and sufficient rates, rules and regulations.

No public utility in Colorado may "make or grant any preference or advantage to any corporation or person or subject any corporation or person to any preference or disadvantage" as to rates, charges, service or facilities. Public utilities may not establish any "unreasonable difference" in rates as between localities or classes of service. The state supreme court has held that the Commission exceeded its authority by ordering reduced natural gas rates for low-income, disabled, and elderly persons, in that such rates violate this statutory prohibition against preferential rates.

The Commission has recently completed generic hearings and issued a decision regarding a number of issues relating to electric utility rate structures. Although the investigation was commenced in 1976 and the record closed prior to the enactment of PURPA, the issues considered to a great extent track the standards outlined in PURPA, and the Commission analyzed its findings and conclusion in light of those standards. The Commission made the following findings:

- o Goals of Regulation. The Commission noted that historically the responsibility of public utilities has been to meet the demands of their customers no matter how large or at what time those demands occur. In its view, recent dramatic increases in demand and in costs of energy and capital have not relieved Colorado utilities of their responsibility to provide "adequate and reliable" service, and its primary responsibility remains "to assure that rates charged to consumers for electricity are the lowest possible, commensurate with the provision of adequate service." Although the goals of efficiency and conservation (which the Commission described as "the wise use, rather than non-use, of resources," and thus as a subcategory of efficiency) are "critically important," the basic responsibility for running a utility efficiently rests with management, and management must be allowed to exercise reasonable business judgment and discretion in its operations. However, it is a reasonable exercise of the Commission's discretion to examine the reasonableness and prudence of costs and not simply to set rates which will cover all costs. Fundamental fairness is another regulatory goal, and dictates simply that customers similarly situated be treated in similar fashion.
- o Load Management. The Commission found that load management techniques and in particular interruptible rates offer a potentially effective strategy for dealing with peak customer demands. The Commission

defined load management as "any method of altering or controlling a utility's timing or magnitude of its customer load," and its purpose as a reduction in "a given utility's system peak which over time will allow the utility to reduce its capital expenditures for generating and transmission facilities." The Commission ordered certain electric utilities to prepare and file interruptible rate schedules applicable to industrial, commercial and/or irrigation rate consumer classes based upon certain designated rate design criteria. Basically, the criteria outlined by the Commission relate to structuring interruptible service on the basis of costs: for example, the Commission states that on an hourly basis, the interruptible service should be curtailed whenever a utility's incremental cost of energy exceeds the revenue the utility would receive from the customer for service rendered at 100 percent load factor. The order is based on a finding that commercial air conditioning is a major contributor to peak demand for summer peaking utilities and a prime candidate for interruption. The record in the proceedings was insufficient to determine whether interruptible rates for winter peaking utilities would be cost effective.

- o Costing Methodology. After discussing the relative advantages of marginal cost analysis (including an examination of long-run incremental costs and other methodologies) and average costs, the Commission determined that it would not now be appropriate to use marginal costs as a basis for setting rates.
- o Time of Use Pricing. The Commission determined, however, that marginal cost analysis is appropriate for determining whether to implement time of use rates: "Thus, if the marginal or incremental costs of serving peak demand are greater than those for serving off-peak demand, rates should reflect such differential even though they do not track precisely those marginal costs because of the practical problems of application noted above." The Commission concluded from the record that time of use rates ought to be favored for Colorado. It indicated that it will implement such rates on a case-by-case basis, assessing the costs of implementation against the likely benefits in each case. The Commission ordered each electric utility subject to its jurisdiction to file revised rate schedules implementing time of day rates for its industrial and large commercial rate classes, and ordering each utility whose seasonal load characteristics justified such an order to file revised rate schedules implementing seasonally differentiated rates for all customer rate classes. The Commission felt that differentiating between industrial and large commercial rate classes, on the one hand, and residential and other rate classes, on the other, with respect to time of day rates was justified by practical implementation difficulties: the implementation of such rates for the latter classes would not be cost effective given the present stage of metering technology.
- o Declining Block Rates. Although believing that the declining block rate structure has been misunderstood, and that it does in fact track actual costs because the demand component of cost decreases per

unit as usage increases, the Commission decided that public misunderstanding of the design and usefulness of the rate coupled with the controversy surrounding the rate have made its continued use counterproductive.⁶ It ordered each electric utility subject to its jurisdiction to file revised rate schedules designed to recover customer costs, energy costs and demand costs through separate charges. It noted that it would expect utilities to include bill inserts and undertake other explanations of the design characteristics of the new rates.

- o Lifeline Rates. The Commission did not implement lifeline rates. It found that the traditional design of lifeline rates, which prices the first rate blocks below cost in an attempt to assure a subsistence quantity of electricity for all customers, does not necessarily benefit low income residential customers: low consumption customers are benefited but the evidence did not convince the Commission that the two groups are identical. Although it might appear that such a rate would at least encourage conservation, this concept was questioned as well on the grounds that a rate below actual cost would distort the efficient allocation of economic resources. Participants in the hearing also argued that rate structures were not an appropriate vehicle for income redistribution. In addition, rates that were specifically directed towards certain low income customers (and which would thus avoid some of the problems noted above) have been invalidated by the Colorado Supreme Court on the grounds of being preferential and unjustly discriminatory. However, as the Commission interpreted it, that case does not entirely preclude it from taking social considerations into account in exercising its rate-making function, but only indicates that such considerations may not be the sole basis for customer classifications. Thus, that opinion did not bar other lifeline rate approaches that would be available to all residential customers. The Commission also stated that in accordance with PURPA, it would reconsider the question of lifeline rates in the future.
- o Alternative Energy Sources. The Commission found that the rate structures developed by electric utilities for solar technology should neither "unduly benefit nor unduly hamper the solar alternative." The Commission directed utilities to file time-of-day usage rates for residential and commercial heat storage customers.

In a 1975 case the Commission ordered the installation of demand-indicating meters for all new residential and general commercial customers, and old customers who requested the meters, who had electric space heating. Rates were designed with a two-step demand charge and a flat energy charge. The Commission noted that while these meters would not reflect time-of-use, they would mean that all-electric customers would pay the full costs of their service and be given some incentive to spread their electrical load.⁸

The Commission has an unofficial policy discouraging master metering.⁹

Strictly speaking, Colorado fuel adjustment clauses are not automatic - a hearing must be held on adjustments.¹⁰ The Commission has required that a utility file reports of costs on a monthly basis, and that applications for adjustment be accompanied by the utility's responses to the Commission's "pass-on questionnaire", if more than a year has elapsed since the issuance of a Commission decision in a rate-making proceeding with the company, or since the effective date of a revised clause that was accompanied by the questionnaire.¹¹

Commission rules require that utilities mail a written or printed notice setting forth proposed changes in rates, classifications, rules or regulations that will result in increased rates to each of the utility's active consumers or users affected by the proposed changes. The notice must inform the recipient of the procedure¹² for protest and for receiving notice of the Commission's hearing on the rates.

No utility may discontinue service to any customer for violation of any utility rule and/or nonpayment of bills except upon written notice of at least seven days. Such notice must include, besides a statement of the rule violated or the sum due, a statement of how the customer may contact the utility to resolve any dispute, and of the customer's rights to make an informal complaint to the Commission Staff and to request a hearing before the Commission. The Commission in its discretion may order the utility not to terminate service pending a hearing.¹³ The rules also provide for a full post-termination hearing.¹⁴ The Supreme Court of Colorado has upheld the sufficiency of these termination procedures under federal and state due process standards.¹⁵ Commission hearings began this year on discontinuance and termination of service standards. It is possible that the state Supreme Court's decision prohibiting lifeline rates based on income might limit its authority to adopt termination procedures based on age and handicaps in compliance with PURPA survey standards.

The Commission has ruled that utilities may include in expenses the costs of advertising where its purpose is solely informative,¹⁶ and of advertising aimed at more efficient usage of the plant (e.g. promoting off-peak use), or dealing with conservation, insulation, or environmental concerns.¹⁷ Advertising that will promote increased total usage of energy is not sufficiently beneficial to ratepayers for expenses related to it to be included.

The public utility statutes provide that no change may be made by any utility in any rate except after 30 days' notice to the Commission and public, which is to be given by filing with the Commission and keeping open for public inspection new schedules showing the changes.¹⁸ When such a schedule is filed, the Commission may, upon reasonable notice, hold hearings concerning the "propriety" of the changes.¹⁹ The Commission's rules refine these procedures for "fixed utilities" such as electric utilities. A public utility wishing to increase its rates in any way must mail notice of such proposal to each of its active consumers or users affected by the change 30 days before the proposed effective date of the changes.²⁰ The prescribed form of notice states that anyone may protest the proposed action in writing to the Commission, and may request the Commission to provide them with notice of any hearing to be held.²¹ If the Commission receives protests that in its discretion warrant additional investigation, or on its own motion, it may suspend the proposed rates²² and hold hearings to determine what rates will be authorized.

The Commission may also hold hearings on rates on its own motion or upon complaint.²³

Parties may appear in proceedings before the Commission as a matter of right (if such right is granted by statute or if they have "a legally protected interest or right in the subject matter which may be affected by the proceedings."), by intervention or as amicus curiae.²⁴ Intervention may be permitted by petitioners showing "substantial interest in the subject matter of the proceedings and [that] his intervention would not unduly broaden the issues."²⁵

At the hearing, any party to the proceeding may appear and be heard,²⁶ examine and cross-examine witnesses and introduce evidence.²⁷ The Commission is not bound by the technical rules of evidence.²⁸ It may issue process, order and take depositions, examine witnesses and require utilities to produce documents.²⁹

After hearing, the Commission must establish such rates as are "just and reasonable."³⁰ Whenever an investigation is made, a hearing is held or a decision entered, the Commission must make a report in writing on such action and state its findings of fact and conclusions of law together with its decision on the matter.³¹

Within 30 days after an application for consideration is denied by the Commission, the applicant may apply to the district court for a writ of certiorari or review for the purpose of having the lawfulness of the final decision inquired into and determined.³² By statute the findings and conclusions of the Commission on disputed questions of fact are not subject to review, unless the validity of an order or decision of the Commission is challenged as in violation of the petitioner's rights under the state or federal constitutions. In that case the court is mandated to "exercise an independent judgment on the law and the facts, and the findings or conclusion of the Commission material to the determination of the said constitutional question shall not be final."³³ The court's review is limited to determining whether the Commission "regularly pursued its authority," including whether its decision violated any constitutional rights of the petitioner and was just and reasonable and whether its findings were "in accordance with the evidence."³⁴ There must be no "clear abuse of discretion."³⁵

1. Colo. Rev. Stat. §40-3-102
2. Id. §40-3-111
3. Id.
4. Id. §40-3-106
5. Case No. 5693, July 27, 1979.
6. In considering the declining block rates in use in Colorado against the PURPA standards, the Commission found that the state's declining block rates comply with federal standards.
7. Mountain States Legal Foundation v. Colorado Public Utilities Commission, — Colo. —, 590 P.2d 495 (Sup. Ct. en banc 1979)
8. Re Public Service Co. of Colorado, *supra* n. 6
9. NARUC Survey, Table 61(b)
10. NARUC Survey, Table 6(a). This survey notes that automatic clauses have been allowed for a few small cooperatives and one small investor-owned utility.

11. Public Service Co. of Colorado, 13 P.U.R. 4th 1 (1975)
12. Public Utilities Commission of the State of Colorado, Rules of Practice and Procedure: Rule 18.
13. Public Utilities Commission of the State of Colorado, Rules Regulating the Service of Electric Utilities, Rule 13(a), (c)
14. Id. Rule 13(c)(2) and 13(d)
15. Denver Welfare Rights Organization v. Public Utilities Commission 547 P. 2d 239 (S.Ct. of Colorado en banc 1976). Plaintiffs here sought an automatic pretermination hearing. The Supreme Court concluded that the uninterrupted continuation of utility service is a protected interest within the purview of the Due Process Clause of the Fourteenth Amendment, and of Article II, Section 25 of the Colorado Constitution. The action of the Public Utilities Commission in adopting the rules referred to above, after hearings, brought termination under those rules into the realm of "state action" and the reach of the Fourteenth Amendment. However, the Court also found that "[t]he interest of the utility customer in the continuation of utility services is limited to his ability and willingness to assume the financial responsibility for that service." This limited interest was balanced against the utility's interest in receiving payment when due and without delay caused by frivolous disputes, and the Court found that the full post-termination hearings provided for by the rule adequately protect both the consumer and the utility. Thus the hearing sought by the plaintiffs was not necessary to satisfy the demands of Due Process under the federal and state constitutions.
16. Re Mountain States Telephone and Telegraph Co. 22 P.U.R. 4th 516 (1977) (The Commission stated that costs of image enhancement and promotional advertising could not be included in expenses.)
17. Re Public Service Co. of Colorado 13 P.U.R. 4th 40, 58-60 (1975)
18. C.R.S. §40-3-104.
19. Id. §40-6-111.
20. Rules of Practice and Procedure, Rule 18A.
21. Id.
22. Id. Rule 18(4)(a), (c). See also C.R.S. §40-6-111.
23. C.R.S. §40-3-111, -108 and Rule 12.
24. Id. §40-6-109(1) and Rule 7A.
25. Rule 10.
26. C.R.S. §40-6-101(1), -109(1).
27. Id. §40-6-109 and Rule 14.
28. Id. §40-6-101(4) and Rule 14(H).
29. Id. §§40-6-102, -103, -107.
30. Id. §40-6-111(2).
31. Id. §§40-2-106, 40-6-109(3).
32. Id. §40-6-115(1) (1976 Supp.)
33. Id. (2).
34. Id. (3).
35. Colorado Municipal League v. Pub. Util Comm'n, 597 P.2d 586 (Sup. Ct. en banc 1979).

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>COLORADO</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service	X		X				Case No. 5693 (1979) <u>Re Mountain View Electrical Association</u> , 5 P.U.R. 4th 185 (1974); <u>Re Public Service Co. of Colorado</u> , 13 P.U.R. 4th 1 (1975) ¹		Conservation Case No. 5693	Conservation, Efficiency, Equity: Case No. 5693
Declining Block Rates-Restructuring			X	X			Case No. 5693 <u>Re Public Service Co. of Colorado</u> , 13 P.U.R. 4th 1 (1975); <u>Re Idaho Power Co.</u> , 13 P.U.R. 4th 282 (1975) ²			
Time-of-day Rates				X			Case No. 5693 ³			
Seasonal Rates				X			Case No. 5693 ⁴			
Interruptible Rates			X	X			Case No. 5693 <u>Re Public Service Co. of Colorado</u> , 13 P.U.R. 4th 1 (1975) ⁵			Case 5693
Load Management			X	X			Case No. 5693, <u>Re Idaho Power Co.</u> , 13 P.U.R. 4th 282 (1975) ⁶			

COLORADO (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to FURPA Objectives</u>
Lifeline Rates	X				Colorado Revised Statutes §§40-3-102, 40-3-106(1); Const. art. 25			<u>Mountain States Legal Foundation v. Public Utilities Commission</u> , 590 P.2d 495 sup. Ct. en blanc, 1979)	
Master Metering ⁸									
Automatic Adjustment Clauses - Review	X					<u>Re Public Service Co. of Colorado</u> , 13 P.U.R. 4th 1 (1975) ⁹			
Information to Consumers	X					Public Utilities Commission Rules of Practice & Procedure, Rule 18 ¹⁰			
Termination: Notice Provision	X					Rule 13(a), (c) ¹¹	<u>Denver Welfare Rights Organization v. Public Utilities Commission</u> , 547 P.2d 239 (S.Ct. of Colorado en banc 1976)		
Endangering Health Provision									
Exclusion of Advertising Expenses	X					<u>Re Mountain States Telephone & Telegraph Co.</u> , 22 P.U.R. 4th 516 (1977); <u>Re Public Service Co. of Colorado</u> , 13 P.U.R. 4th 40 (1975) ¹²			Conservation

COLORADO (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Small Electric ¹³ Systems - Rates		X	X			Case No. 5693			

1. See text accompanying nn. 5-6 of the discussion.
2. See text accompanying n. 16 of the discussion.
3. See text accompanying n. 5 of the discussion.
4. See text accompanying n. 5 of the discussion.
5. See text accompanying n. 6 of the discussion.
6. See text accompanying n. 8 of the discussion.
7. See text accompanying n. 7 of the discussion.
8. See text accompanying n. 19 of the discussion.
9. See text accompanying n. 10 of the discussion.
10. See text accompanying n. 12 of the discussion.
11. See text accompanying nn. 13-15 of the discussion.
12. See text accompanying nn. 16-17 of the discussion.
13. See text accompanying n. 5 of the discussion.

CONNECTICUT

The Connecticut Division of Public Utilities Control ("DPUC") is authorized by statute to regulate the rates of public service companies.¹ Rates for electric service cannot be more or less than just,³ reasonable and adequate,² and unreasonably discriminatory rates are prohibited.

In 1974 the DPUC decided "for present" not to adopt new rates based on long-run incremental costs.⁴ It has expressed approval, however, of the idea that each customer should pay the cost imposed on the utility in meeting that customer's needs.⁵ "The commission believes, and has so held in prior cases, that the rate structure should reflect the cost of producing and distributing electricity to each class of customer."⁶

The DPUC has found that cost justification for declining block rates did not provide consumers with appropriate price signals.⁷ The DPUC's policy is to discourage declining block rates. Two 1974 decisions allocated an increase in the cost of oil on a uniform per kilowatt hour basis resulting in "some leveling of the declining block rate structure, consistent with actual costs."⁹

Optional time-of-day rates to be offered to all customers were ordered to be filed by all electric utilities to become effective January 1, 1978.¹⁰ In at least two prior decisions, the DPUC had approved time-of-day rates for certain customers.¹¹

Industrial users have optional rates with a summer-winter differential that reflects costs.¹²

A small number of industrial customers have interruptible rates, and the DPUC advocates use of such rates.¹³ At least two recent DPUC decisions have approved interruptible rates.¹⁴

The authority was involved in a load management experiment with 200 residential customers that influenced it to order time-of-day pricing for all electric customers and encouraged use of load management.¹⁵

The DPUC is currently considering the elimination of master metering for multi-unit dwellings in Connecticut.¹⁶

The DPUC must hold a public hearing concerning application of the fuel adjustment clause no less frequently than once every three months.¹⁷

Utilities are required to notify by mail all customers who would be affected by proposed amendments to existing rates.¹⁸

Electric service may not be terminated on any Friday, Saturday, Sunday, legal holiday, or day before any legal holiday or at any time the utility's offices are not open to the public.¹⁹ Termination for delinquency in a customer's account may not be made without providing the customer with 13 days bilingual notice by first class mail.²⁰ If a seriously ill customer makes arrangements to pay his delinquent bill over a reasonable period and keeps his account current, service

may not be terminated.²¹ Special rules are provided respecting termination of service to customers who have filed complaints and to residential buildings when the owner, rather than the tenants, is delinquent.²²

By statute, political, institutional and promotional advertising are not to be treated as operating expenses.²³

The DPUC's policy is to encourage rates for consumers with solar or wind small generation systems.²⁴

A Connecticut statute, C.G.S.A. § 16-19(e)(b), directs the DPUC to study new rate designs including but not limited to marginal cost pricing, peak load or time of day pricing, life-line rates for persons of poverty status and "proposals for optimizing the utilization of energy and restraining its wasteful use and encouraging conservation." Final findings were due June 1, 1977, and the DPUC must conduct further review at least once every two years.

Another statute, C.G.S.A. § 16-19(a), directs the DPUC to exercise its powers consistently with principles of economy, efficiency, public safety, economic development, energy conservation, and prudent management of the natural environment.

Generic hearings and rate proceedings are governed by section 16 of the Connecticut General Statutes and by the Commission's rules.²⁵ One week's notice of Commission action is required²⁶ and specific provisions are made for intervention or protest.²⁷ The Commission may direct the production of documents²⁸ and a written record is required of all Commission hearings.²⁹

The Superior Court reviews decisions of the DPUC based only on the administrative record.³⁰ An "arbitrary and capricious" test is the evidentiary standard applied on review.³¹

1. Conn. Gen. Stat. Ann. § 16-19(a) (1979 Supp.).
2. Id.
3. Id.
4. Re Hartford Electric Light Co., 6 P.U.R.4th 209 (1974)
5. See Re Hartford Electric Co., 18 P.U.R.4th 194 (1976)
6. Re: United Illuminating Co., 7 P.U.R.4th 417, 430 (1974)
7. NARUC Survey, "Ratemaking", Table 61(b).
8. Id.
9. Re: United Illuminating Co., supra, n. 6; See also Re Hartford Electric Light Co., supra, n. 4, at 227.
10. NARUC Survey, "Ratemaking", Table 61(b).
11. See Re Hartford Electric Light Co., supra, n. 4; Re Connecticut Light & Power Co., 17 P.U.R.4th 1 (1976).
12. NARUC Survey, "Ratemaking", Table 61(b).
13. Id.
14. See Re Hartford Electric Light Co., supra, n. 4; Re Connecticut Light & Power Co., 17 P.U.R.4th 1 (1976).
15. NARUC Survey, "Ratemaking", Table 61(b).
16. Connecticut Division of Public Utilities Control, Docket No. 78-0718 (August 2, 1978).

17. Conn. Gen. Stat. Ann. § 16-19(b)(f) (1979 Supp.).
18. Id. § 16-19(a).
19. Id. § 16-262c.
20. Id. § 19-262d(a).
21. Id. § 19-262d(b).
22. Id. §§ 19-262d - 19-262i.
23. Id. § 16-19d.
24. NARUC Survey, "Ratemaking", Table 61(b).
25. Conn. Gen. Stat. Ann. § 16-1 et seq. (1960); DPUC Regulations, Part 2.
26. Conn. Gen. Stat. Ann. § 16-25 (1960); Conn. Gen. Stat. Ann. § 4-177 (1979 Supp.).
27. DPUC Regulations, 16-1-17 thru 16-1-21.
28. Id. 16-1-49; Conn. Gen. Stat. Ann. § 16-8 (1979 Supp.).
29. Conn. Gen. Stat. Ann. §§ 4-177, 16-8 (1979 Supp.).
30. Stone and Webster Questionnaire, OMB No. 038-579052, p. 8.
31. Id., p. 9.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>CONNECTICUT</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹				X			<u>Re Hartford Elec- tric Light Company,</u> 18 P.U.R.4th 194 (1976)			
							<u>Re United Illumi- nation Co.,</u> 7 P.U.R.4th 417 (1974)			
							<u>Re Hartford Elec- tric Light Co.,</u> 6 P.U.R.4th 209 (1974)			
Cost Justification for Declining Block Rates				X			<u>Re United Illumi- nating Company,</u> 7 P.U.R.4th 417 (1974)			
							<u>Re Hartford Elec- tric Light Co.,</u> 6 P.U.R.4th 209 (1974)			
Time-of-day Rates ³		X	X				<u>Re Hartford Elec- tric Light Co.,</u> 18 P.U.R.4th (1976)			
							<u>Re Conn. Light and Power Co.,</u> 17 P.U.R.4th 1 (1976)			
Seasonal Rates ⁴		X	X							

CONNECTICUT (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Interguptible Rates ⁵		X	X			<u>Re Hartford Elec- tric Light Co.,</u> 18 P.U.R.4th 194 (1976)			
						<u>Re Conn. Light & Power Co.,</u> 17 P.U.R.4th 1 (1976)			
Load Management Techniques ⁶				X					
Master Metering ⁷									
Review of Automatic Adjustment Clauses ⁸			X		Conn. Gen. Stat. Ann. § 16-19b(f) (1979 Supp.)				
Information to Consumers	X		X		Conn. Gen. Stat. Ann. § 16-19(a) (1979 Supp.)				
Termination of Service ⁹			X		Conn. Gen. Stat. Ann. §§ 16-262c through 262i (1979 Supp.)				
Advertising ¹⁰	X		X		Conn. Gen. Stat. Ann. § 16-19d (1979 Supp.)				
Small Electric Systems ¹¹				X					

CONNECTICUT (cont'd)

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1. See text accompanying nn. 4-6 of discussion.
 2. NARUC Survey, Table 61(b). See text accompanying nn. 6-7 of Discussion.
 3. Id., See text accompanying nn. 7-8 of discussion.
 4. Id. See text accompanying nn. 8-9 of discussion.
 5. Id. See text accompanying nn. 9-10 of discussion.
 6. NARUC Survey, Table 61(c). See text accompanying nn. 10-11 of discussion.
 7. NARUC Survey, Table 61(b). See text accompanying n. 11 of the discussion.
 8. A public hearing concerning application of the fuel adjustment clause must be held at least once every three months.
 9. See text accompanying nn. 12-15 of discussion.
 10. By statute, political, institutional and promotional advertising are not to be treated as operating expenses.
 11. The NARUC Survey, Table 61(c), indicates that the Authority's policy is to encourage rates for consumers with slow or small wind generation systems.

DELAWARE

Section 303 of title 26 of the Delaware Code provides:

No public utility shall make, impose or exact any unjust or unreasonable or unduly preferential or unjustly discriminatory individual or joint rate for any product or service supplied or rendered by it within the State, or adopt, maintain or enforce any regulation, practice or measurement which is unjust, unreasonable, unduly preferential or unjustly discriminatory or otherwise in violation of law, or make, or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation or to any particular description of traffic, in any respect whatsoever.¹

Other statutes place the burden of proof to show that rates are just and reasonable on the utility, and grant the Public Service Commission (the "Commission") power to set just and reasonable rates.² The Commission's Annual Report for July 1, 1976 - June 30, 1977 indicates that it has ordered Delmarva Power and Light Company to conduct a cost-of-service study.

Utilities in Delaware have presented evidence that their declining block rates are currently cost-justified, and hearings must be held on utilities automatic adjustment clauses.³ The Commission has implemented seasonal rates and an optional interruptible service rate for industrial customers.⁴ It has also apparently authorized a study by a private consulting firm of the feasibility of implementing load management systems.⁵

The Commission's policy is to discourage master metering.⁶ By statute, utilities must publish proposed changes in rates in a newspaper of county-wide circulation serving the area in which the changes will take effect.

Termination of service is also limited by a statute enacted in 1976. It is illegal to terminate service to a dwelling unit for use in that unit for nonpayment of past charges without at least 72 hours notice.⁸ Termination is not permitted between noon on Friday (or the last preceding business day if Friday is a legal holiday) and noon on Monday (or the next succeeding business day if Monday is a legal holiday) unless the utility provides facilities for repayment and restoration of service during that period.⁹ Moreover, termination is not permitted at all if the utility receives a physician's or Christian Sciences practitioner's certificate that an occupant of the dwelling unit is so ill that termination would adversely affect his health or recovery.¹⁰ In a case involving a water company decided before this statute was enacted, the Delaware Supreme Court held that it would be an abuse of discretion for the Commission not to restrain discontinuance of service pending determination of a bona fide debt dispute.¹¹

The Rules of Practice of the Commission provide that due notice will be given of all hearings.¹² Anyone objecting on the ground of private or public interest to the approval of any matter under consideration by the Commission may be a protestant.¹³ Petitions to intervene may be filed by any person claiming an interest

which may be directly affected and which is not adequately represented by any other party.¹⁴

Subpoenas for the production of documents will be issued upon application to the Commission in writing or by the Commission upon its own motion.¹⁵

Any public utility affected by any final order or any other original party or intervenor may appeal from such order to the Superior Court.¹⁶ The Superior Court must base its ruling on the record and cannot take cognizance of any facts not on the record.¹⁷ The decision of the Commission must stand if there is an evidentiary basis for it¹⁸ and the Court cannot substitute its judgment for that of the Commission.¹⁹ The Court will²⁰ reverse an administrative decision only upon a showing of an abuse of discretion.

1. Del. Code Ann. tit. 26, § 303 (1978 Cum. Supp.).
2. See id. §§ 307; 309; 311.
3. NARUC Survey, Tables 6(a) and 61(b).
4. Id.
5. Id., Table 61(c).
6. Id., Table 61(b).
7. Del. Code Ann. tit. 26, § 304 (1978 Cum. Supp.).
8. Id. § 117(b).
9. Id. § 177(c).
10. Id. § 117(d).
11. Artesian Water Company v. Cynwyd Club, 297 A.2d 387 (Sup. Ct. Del. 1972).
12. Rules of Practice, Doc. No. 30-11-78-02-05, § 14.
13. Id. § 5(g).
14. Id. § 11.
15. Id. § 17(c).
16. Del. Code Ann. tit. 26, § 192 (1975).
17. In re Delaware Power & Light Co., 99 A.2d 270 (Super. Ct. Del. 1953).
18. In re Delaware Sports Serv., 196 A.2d 215 (Super. Ct. Del. 1963), aff'd 202 A.2d 568 (Sup. Ct. Del. 1964).
19. Diamond State Tel. Co., 113 A.2d 437 (Sup. Ct. Del. 1955).
20. In re Artesian Water Co., 189 A.2d 435 (Super. Ct. Del. 1963).

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	DELAWARE	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost Justification for Declining Block Rates ¹				X						
Seasonal Rates ²		X	X							
Interruptible Rates ³		X	X							
Load Management ⁴										
Master Metering ⁵										
Information to Consumers ⁶					Del. Code Ann. tit. 26, § 304 (1978 Cum. Sup.)					
Termination of Service ⁷			X		Del. Code Ann. tit. 26, § 117 (1978 Cum. Sup.)					

1. NARUC Survey, Table 61(b). See text accompanying n. 3 of discussion.
2. Id.
3. Id. See text accompanying n. 4 of discussion.
4. Id., Table 61 (c). See text accompanying n. 5 of discussion.
5. Id., Table 61(b). See text accompanying n. 6 of discussion.
6. Proposed changes in rates must be published.
7. See text accompanying nn. 8-10 of discussion.

DISTRICT OF COLUMBIA

Public utilities doing business within the District of Columbia are required by statute to "furnish service and facilities reasonably safe and adequate and in all respects just and reasonable."¹ The charge made for services furnished or rendered "shall be reasonable, just, and non-discriminatory."² The Public Service Commission (the "Commission") is charged with insuring that every public utility furnishes such service at such charges as required by the statutory provisions.³

The Commission has stated that rate design must take into account, not only costs, but also value of service, historical rate patterns, and other public interest considerations.⁴ Differences in the public utility's rate of return from different customer classes need not specifically and quantitatively be supported by customer class-cost considerations; differences in rates can be based not only on quantity, but also on nature, time and pattern of use so as to achieve reasonable efficiency and economic operation.⁵ In recent years, the Commission has reexamined the desirability of declining block rates and has concluded there is no longer any justification for provision of volume discount rates.⁶ The Commission appears committed to the proposition that long run incremental cost should be the basis for setting retail rates.⁷ In a 1975 decision, the Commission stated:

Implicit to us in the theory of long run incremental cost pricing are the concepts of peak-load and time-of-day pricing, both of which appeal to us in the light of the current costs of producing and delivering energy in the District of Columbia.

Seasonal rates have been adopted and approved;⁹ however, time-of-day rates, while under study by a utility,¹⁰ have not yet been approved.¹¹ Interruptible rates have been approved with the Commission noting that "[a]ll the company's customers benefit when the company retains an interruptible market which enables it to maximize its sales."¹² Load management techniques have not been required by the Commission.¹³ The Commission has concluded in one case that because low usage consumers (below 450 kwh per month) have not caused and do not contribute to the need for new and increased plant investment by the utility serving the District (PEPCO),¹⁴ no part of the base rate increase should be borne by the low usage consumers.

The Commission has no policy concerning master metering of multi-unit dwellings.¹⁵ Automatic adjustment clauses are permitted,¹⁶ and there is no requirement that a hearing be held on the adjustment clause before the adjustment becomes effective.¹⁷ A statute provides for a copy of the rate schedule to be available for public inspection at every utility station and office.¹⁸ In addition, one of the functions of the statutorily-created People's Counsel is to develop means of public information dissemination.¹⁹ The rules and regulations governing the provision of utility services require five day notice to the consumer if the utility decides to discontinue the consumer's service.²⁰

Advertising expenditures are included in operating expenses for rate-making purposes provided the Commission finds them reasonable in a case by case determination.²¹ The Commission has not yet adopted²² a policy for rates for consumers with solar, wind, or small generation facilities.

Generic hearings and rate proceedings are conducted pursuant to the Commission's Rules of Practice and Procedure. Notice of hearings must be given not less than ten days in advance.²³ Any person not named as a party but having a substantial interest therein may petition the Commission for leave to intervene.²⁴ The People's Counsel shall represent and appeal for the public at hearings of the Commission and in judicial proceedings involving their interests.²⁵

Subpoenas for the production of books and records may be issued by the Commission upon application.²⁶

The D.C. Court of Appeals shall have jurisdiction to hear and determine any appeal from an order or decision of the Commission.²⁷ Any such appeal shall be heard upon the record and no new evidence shall be received.²⁸ The review of the court shall be limited to questions of law and the findings of fact by the Commission shall be deemed conclusive unless it shall appear that such findings are unreasonable, arbitrary, or capricious.²⁹

1. D.C. Code Ann. § 43-301 (1973).
2. Id.; see also Potomac Electric Power Co. v. Public Service Commission, 380 A.2d 126, 131-32 (D.C.App. 1977).
3. Id. § 43-201a (Supp. 1977).
4. Re Washington Gas Light Co., 16 P.U.R.4th 261, 283 (1976).
5. Apartment House Council of Metropolitan Washington, Inc. v. Public Service Commission of District of Columbia, 332 A.2d 53, 57 (D.C.App. 1975).
6. Re Washington Gas & Light Co., supra note 4, at 278; Re Potomac Electric Power Co., 11 P.U.R.4th 214, 232-34 (1975).
7. Re Potomac Electric Power Co., supra note 6, at 232.
8. Id.
9. See e.g., id. at 233; NARUC Survey, "Ratemaking," Table 61(b).
10. Re Potomac Electric Power Co., supra note 6, at 235.
11. NARUC Survey, "Ratemaking," Table 61(b). But, see ELECTRICAL WEEK, p. 5 (June 6, 1977) (reporting that PEPCO has filed for time-of-day rates for more than 200 large commercial customers).
12. Re Washington Gas Light Co., supra note 4, at 282.
13. NARUC Survey, "Ratemaking," Table 61(c).
14. Re Potomac Electric Power Co., 3 P.U.R.4th 65, 79-80 (1973); Re Potomac Electric Power Co., supra note 6, at 233-34.
15. NARUC Survey, "Ratemaking," Table 61(c).
16. See e.g., Re Washington Gas Light Co., supra note 4, at 284-85.
17. NARUC Survey, "State Regulation of Energy Adjustment Clauses," Table 6(a).
18. D.C. Code Ann. § 43-325 (1973).
19. Id. § 43-205(d)(4)(Supp. 1977).
20. General Terms and Conditions for Furnishing Electric Service in the District of Columbia, p. 15 (June 29, 1973); Washington Gas & Light Co. Rate Schedules and General Service Provisions for Gas Service in the District of Columbia, p. 27 (January 30, 1975).
21. NARUC Survey, "Miscellaneous Cost of Service Allowances," Table 18.
22. NARUC Survey, "Rate Structure Revision," Table 61(c). See also ELECTRICAL WEEK, p. 6-7 (December 4, 1978) (the Commission will soon consider the

backup energy rates proposed by Washington Gas & Light Co. of which some are two to four times greater than the normal residential gas rates. If the higher rates are approved, this would have a detrimental effect on the development of alternative energy sources).

23. Rules of Practice and Procedure 8.1 (1970).
24. Id. Rule 7.1.
25. D.C. Code Ann. § 43-205(d) (Supp. 1977).
26. Rule 10.2.
27. D.C. Code Ann. § 43-705 (1973).
28. Id.
29. Id. § 43-706.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹			X			<u>Re Washington Gas Light Co.,</u> 16 P.U.R.4th 261. 283 (1976)	<u>Apartment House Council v. Pub. Serv. Comm'n.,</u> 332 A.2d 53 (D.C. App. 1975)		
Declining Block Rates ²			X			<u>Re Potomac Electric Power Co., 11</u> P.U.R.4th 214 (1975)			
Time of Day Rates ³			X			<u>Re Potomac Electric Power Co., 11</u> P.U.R.4th 214 (1975)			
Seasonal Rates ⁴		X	X			<u>Re Potomac Electric Power Co., 11</u> P.U.R.4th 214 (1975)			
Interruptible Rates ⁵		X	X			<u>Re Washington Gas Light Co., 16</u> P.U.R.4th 261 (1976)			
Load Management Techniques ⁶									
Lifeline Rates ⁷			X			<u>Re Potomac Electric Power Co., 3</u> P.U.R.4th 65 (1973)			
Automatic Adjust- ment Clauses ⁸			X			<u>Re Washington Gas Light Co., 16</u> P.U.R.4th 261 (1976)			

DISTRICT OF COLUMBIA

					DISTRICT OF COLUMBIA (Cont'd)				
<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Information to Consumers ⁹	X				D.C. Code Ann. § 43-325 (1973)				
Procedures for Termination ¹⁰	X					<u>General terms and Conditions for Furnishing Electric Service in the District of Columbia,</u> p. 15 (June 29, 1973)			
Advertising Expenses ¹¹				X					
Small Energy Procedures ¹²									

1. See text accompanying nn. 4-5 of discussion.
2. See text accompanying n. 6 of discussion.
3. See text accompanying nn. 10-11 of discussion.
4. See text accompanying n. 9 of discussion.
5. See text accompanying n. 12 of discussion.
6. See text accompanying n. 13 of discussion.
7. See text accompanying n. 14 of discussion.
8. See text accompanying nn. 16-17 of discussion.
9. See text accompanying nn. 18-19 of discussion.
10. See text accompanying n. 20 of discussion.
11. See text accompanying n. 21 of discussion.
12. See text accompanying n. 22 of discussion.

FLORIDA

Public utilities operating in Florida are required by statute to furnish "reasonably sufficient, adequate and efficient service" at "fair and reasonable" rates and charges.¹ The utilities are prohibited from granting "any undue or unreasonable preference or advantage to any person or locality" or from subjecting "the same to any undue or unreasonable prejudice or disadvantage."² The Florida Public Service Commission (the "Commission") has jurisdiction³ and power⁴ to regulate and supervise all utilities in the state. The Commission is charged with fixing fair and reasonable rates whenever, after public hearing either upon its own motion or upon complaint, the existing rates are found to be "unjust, unreasonable, insufficient, or unjustly discriminatory or preferential."⁵

The Commission is not compelled to apply a "cost of service" criteria in setting differential rates for an electrical utility.⁶ Factors such as the rate history and experience of the utility, the consumption and load characteristics of the various classes of customers, value of service and rate continuity can be considered by the Commission in rate proceedings.⁷ Declining block rates have been approved, and the Commission does not have a policy of discouraging such rates.⁸ Seasonal rates have been approved⁹ and the Commission has directed the utilities to file optional peak load pricing rates incorporating charges that vary by time-of-day.¹⁰ In endorsing such rates the Commission concluded "that peak load pricing, under certain conditions, would achieve an improvement of the system load factor which in turn would provide a more efficient utility system operation."¹¹ Interruptible rates have also received Commission approval.¹² The Commission has endorsed load management activity by the utilities.¹³ The Commission does not appear to have taken a definitive position on lifeline rates.¹⁴

The Commission has a policy of discouraging master metering.¹⁵ Fuel adjustment clauses are permitted,¹⁶ and public hearings are required before the adjustment becomes effective.¹⁷ The Commission allows advertising by the utilities but only when it is determined that such advertising provides a tangible benefit to the general body of rate payers.¹⁸ The Commission, in a general investigation of the promotional practices of all electric and gas utilities, concluded that expenses for informational advertising, advertising which is designed to inform the consumer of rates, charges and conditions of service, are allowable as expenses for rate-making purposes while expenses for promotional advertising, "corporate image" advertising, and sponsorship of community activities are not includible as an operating expense.¹⁹ The Commission has a policy²⁰ encouraging the development of solar, wind, and small generation facilities.

The procedural aspects of the Commission's ratemaking proceedings are governed by the Florida Administrative Procedures Act.²¹ Parties affected by Commission action must be timely informed of the date, place, and nature of any hearing.²² The Commission may issue subpoenas²³ for the production of documents and a written record must be made of all hearings.²⁴

The Supreme Court reviews decisions of the Commission²⁵ based only on the administrative record.²⁶ The substantial evidence test is the evidentiary standard

used on review²⁷ and the legal tests are: in excess of statutory authority;²⁸ abuse of discretion;²⁹ and not in accordance with law.³⁰

1. Fla. Stat. Ann. § 366.03 (1968).
2. Id.
3. Id. § 366.04 (1979 Supp.).
4. Id. § 366.05.
5. Id. § 366.06.
6. International Minerals & Chemical Corp. v. Mayo, 336 So.2d 548, 551 (1976).
7. Id. at 552. See also, Re Florida Gas Co., 13 P.U.R.4th 255, 267 (Sup. Ct. Fla. 1975).
8. NARUC Survey, "Ratemaking," Table 61(b); Re Florida Power & Light Co., 9 P.U.R.4th 146, 172 (1975).
9. Re Florida Power & Light Co., supra note 8, at 170-71; Re Tampa Electric Co., 9 P.U.R.4th 402, 425 (1975).
10. Re Florida Power & Light Co., supra note 8, at 171-72; Re Tampa Electric Co., supra note 9, at 424-25.
11. Id. at 424.
12. See e.g., Re Florida Power & Light Co., supra note 8, at 172-73.
13. NARUC Survey, "Rate Structure Revision," Table 61(c).
14. See NARUC Survey, "Ratemaking," Table 61(b) and ELECTRICAL WEEK P. 9-10 (July 4, 1977) (where the Commission decided to invert Florida Power & Light's residential rates). The inversion of rates generated much controversy and unconfirmed sources reports these rates have been suspended.
15. NARUC Survey, "Ratemaking," Table 61(b). See also Commission Order No. 69319 EU (1969).
16. See e.g., Re Tampa Electric Co., supra note 9, at 422; See also General Investigation of Cost Recovery Clauses, Docket No. 74680-CI.
17. See Op. Atty. Gen., 074-288, Sept. 20, 1974; Op. Atty. Gen., 074-309, Oct. 9, 1974; NARUC Survey, "State Regulation of Energy Adjustment Clauses," Table 6(a).
18. Re Florida Power & Light Co., supra note 8, at 162; Re General Telephone Co. of Florida, 19 P.U.R.4th 227, 239 (1977); Re Florida Gas Co., supra note 7, at 259; Re Southern Bell Telephone & Telegraph Co., 21 P.U.R.4th 451, 457 (1977).
19. Re Promotional Practices of Electrical Utilities, 8 P.U.R.4th 268 (1975).
20. NARUC Survey, "Rate Structure Revision," Table 61(c) (Commission approved exempting consumers with less than 25 kw loads from standby charges).
21. Fla. Stat. Ann. § 120.10 et seq. (1973).
22. Id. § 120.23.
23. Id. § 120.25.
24. Id.
25. Id. § 366.10 (1968).
26. Stone and Webster Questionnaire, OMB No. 038-579052, p. 8.
27. Fla. Stat. Ann. § 120.68(10) (1973).
28. Id. § 120.68(9).
29. Id. § 120.68(12)(a).
30. Id. § 120.68(9).

FLORIDA

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service			X		<u>Re Florida Gas Co., 13 P.U.R.4th 255, 267 (1975)</u> ¹	<u>International Minerals & Chemical Corp. v. Mayo, 336 So.2d 548, 551-52 (Sup.Ct.Fla. 1976)</u> ¹			
-56- Declining Block Rates-Restructuring			X	X		<u>Re Florida Power & Light Co., 9 P.U.R.4th 146, 172 (1975).</u> ²			
Time-of-day Rates			X	X		<u>Re Florida Power & Light Co., 9 P.U.R.4th 146, 171-72 (1975);</u> <u>Re Tampa Electric Co., 9 P.U.R.4th 402, 424-25 (1975);</u> ³			
Seasonal Rates			X	X		<u>Re Florida Power & Light Co., 9 P.U.R.4th 146, 170-71 (1975);</u> <u>Re Tampa Electric Co., 9 P.U.R.4th 402, 425 (1975)</u> ⁴			
Interruptible Rates			X	X		<u>Re Florida Power & Light Co., 9 P.U.R.4th 146, 172-73 (1975)</u> ⁵			
Load Management ⁶			X	X					

FLORIDA (Cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Lifeline Rates				x ⁷					
Master Metering				x ⁸					
Automatic Adjust- ment Clauses			x	x			<u>Re Tampa Electric Co., 9 P.U.R.4th 402, 422 (1975); General Investiga- tion of Cost Re- covery Clauses, Docket No. 74680- C1.</u>		
Information to Consumers ⁶									
Termination: Notice Provision ⁶									
Endangering Health Provision ⁶									
Exclusion of Adver- tising	x			x			<u>Re Southern Bell Telephone & Tele- graph Co., 21 P.U.R.4th 451, 457 (1977); Re Florida Power & Light Co., 9 P.U.R.4th 146, 162 (1975); Re Promotional Prac- tices of Electrical Utilities, 8 P.U.R. 4th 268 (1975)</u>		
Small Electric Systems				x ¹¹ x					

FLORIDA (cont'd)

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1. See text accompanying nn. 6-7 of discussion.
 2. See text accompanying n. 8 of discussion.
 3. See text accompanying nn. 10-11 of discussion.
 4. See text accompanying n. 9 of discussion.
 5. See text accompanying n. 12 of discussion.
 6. Information unavailable.
 7. See text accompanying n. 14 of discussion.
 8. See text accompanying n. 15 of discussion.
 9. See text accompanying nn. 16-17 of discussion.
 10. See text accompanying nn. 18-19 of discussion.
 11. See text accompanying n. 20 of discussion.

GEORGIA

Public utilities operating in Georgia are statutorily required to "establish and maintain such public service and facilities as may be reasonable and just."¹ The Public Service Commission (the "Commission") has general jurisdiction and supervisory powers over all utilities in the state.² The Commission has exclusive power to determine and fix "just and reasonable rates"³ and is directed to consider the quality of service rendered by the utility in fixing such rates.⁴ The utilities are forbidden to unjustly discriminate in the setting of rates and the provision of services.⁵ The General Assembly of Georgia, in recognition of the importance of effective and economical public utilities to the economy of the state, has established a Consumers' Utility Counsel to insure that all available information concerning rate cases and proceedings is presented to the Commission.⁶

The Commission has stated that allocated cost of service studies provide useful guidelines for setting rates;⁷ however, the Commission has been consistent in its view that such studies are not "the sole criterion which must be followed mechanically to a predetermined mathematically certain result."⁸ Other factors which should be considered in fixing rates include: the ability to pay; the value of the service; the conservation of energy; and the public welfare.⁹ Declining block rates have been approved by the Commission; however, the Commission has a policy of discouraging such rates.¹⁰ The Commission has encouraged the institution of time-of-day rates on an experimental basis noting the need to improve the utilities' deteriorating load factor.¹¹ The Commission has, however, decided the optional time-of-day rates proposed by one utility should not be presently approved.¹² Seasonal rates¹³ and interruptible rates¹⁴ have been approved by the Commission. Similarly, the Commission has enthusiastically endorsed the installation of load management techniques to control the growth of the utilities' peak loads.¹⁵ While "lifeline rates" have not been adopted, the Commission has approved a rate design which relieves the consumer who consumes less than 650 kwh per month of the burden of paying for increased demands on the system.¹⁶

The Commission has no policy on master metering.¹⁷ Recently, the Commission abolished the fuel adjustment clause in the rate schedules of Georgia Power and Savannah Electric & Power,¹⁸ and the General Assembly abolished all other fuel adjustment clauses.¹⁹ Advertising expenses are allowed as "operating expenses" for rate-making purposes; however, the advertising is required to be concentrated in the area of informing the consumers of ways to make more efficient and economical use of electricity, and should not be used to promote either the use of electricity or the utility's rate application in rate proceedings.²⁰ The Commission has no policy on rates for consumers with solar, wind and small generation facilities.²¹

Generic hearings and specific rate application proceedings before the Commission are governed by the Georgia Administrative Procedure Act and the Commission's Utility Rules.²² Notice must be given to all parties affected, including the Consumers' Utility Counsel, ten days prior to hearing except in cases for the fixing of joint rates when thirty days notice shall be given²³ and affected persons or companies shall have an opportunity to be heard.²⁴ All applications, petitions or complaints filed with the Commission and actions initiated by the Commission are assigned for public hearing.²⁵

Final orders of the Commission are appealable to the Supreme Court and Court of Appeals of Georgia.²⁶ There exists a presumption that a rate set by the Commission is reasonable.²⁷

1. Ga. Code Ann. §93-307 (1978).
2. Id. §§93-307, 308.
3. Id. §93-309.
4. Id. §93-309.1.
5. Rules of Georgia Public Service Commission, §515-3-1-.02, p.23 (January 1, 1976).
6. Ga. Code Ann. §93-3A (1978).
7. Re Georgia Power Co., 9 P.U.R.4th 381, 392 (1975).
8. Id.; See also Allied Chemical Corp. v. Georgia Power Co., 236 Ga.548, 551-52, 224 S.E.2d 396, 399 (Sup.Ct.Ga.1976); Re Savannah Electric & Power Co., 21 P.U.R.4th 330, 334 (1977).
9. Re Georgia Power Co., supra note 7, at 391.
10. NARUC Survey, "Ratemaking," Table 61(b).
11. Re Georgia Power Co., supra note 7, at 390-91.
12. Re Georgia Power Co., 22 P.U.R.4th 321, 333 (1977). (note that the concerns of the Commission were directed at the incomplete nature of the studies of the effect of the experimental rates and at the limited quantity of time-clock meters available for implementation of such rates, and not at the theoretical desirability of time-of-day rates).
13. See e.g., id. at 331-32.
14. See e.g., Re Atlanta Gas Light Co., 17 P.U.R.4th 421, 427-28 (1976).
15. Re Georgia Power Co., supra note 7, at 390-91. See also ELECTRICAL WEEK, p.2-3 (November 29, 1976) (Georgia Power has developed a load management system using either ripple control or control via radio frequencies).
16. Re Georgia Power Co., supra note 12, at 331; Re Georgia Power Co., supra note 7, at 393.
17. NARUC Survey, "Ratemaking," Table 61(b).
18. See ELECTRICAL WEEK, p.4 (September 11, 1978) (Commission abolished fuel adjustment clause in rate schedules of Georgia Power and Savannah Electric & Power).
19. Act No. 655, Georgia General Assembly, 1979 session, codified as Ga. Code Ann. § 93-307.2 (1979 Supp.).
20. Re Georgia Power Co., 3 P.U.R.4th 375, 386 (1973).
21. NARUC Survey, "Rate Structure Revision," Table 61(c).
22. Ga. Code Ann. § 3A-104 (1978); Utility Rules of the Georgia Public Service Commission (1976).
23. Utility Rules, Chapter 515-2-1-.04 (1976).
24. Id.
25. Id. Chap. 515-2-1-.05, .07.
26. Ga. Code Ann. § 6-701 (1979 Supp.).
27. Savannah Elec. v. Ga. Pub. Serv. Comm'n, 236 S.E.2d 87 (Sup. Ct. 1977).

<u>Standard/Policy</u>					<u>Constitution and Statutes</u>	<u>GEORGIA</u>			<u>Reference to PURPA Objectives</u>
	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>		<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	
Cost of Service			X			<u>Re Georgia Power Co., 9 P.U.R.4th 381, 391-92 (1975); Re Savannah Electric & Power Co., 21 P.U.R.4th 330, 334 (1977)</u> ¹	<u>Allied Chemical Corp. & Georgia Power Co., 236 Ga. 548, 551-52, 224 S.E.2d 396, 399 (1976)</u>		
-19- Declining Block Rates-Restructuring		X ²	X						
Time-of-day Rates			X			<u>Re Georgia Power Co., 22 P.U.R.4th 321, 333 (1977); Re Georgia Power Co., 9 P.U.R.4th 381, 390-91 (1975)</u> ³			
Seasonal Rates		X	X			<u>Re Georgia Power Co., 22 P.U.R.4th 321, 331-32 (1977)</u> ⁴			
Interruptible Rates	X	X				<u>Re Atlanta Gas Light Co., 17 P.U.R. 4th 421, 427-28 (1976)</u> ⁵			
Load Management		X	X			<u>Re Georgia Power Co., 9 P.U.R.4th 381, 390-91 (1975)</u> ⁶			
Lifeline Rates			X			<u>Re Georgia Power Co., 22 P.U.R.4th 321, 331 (1977); Re Georgia Power Co., 9 P.U.R.4th 381, 393 (1975)</u> ⁷			

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Georgia (Cont.)</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Master Metering ⁸									
Automatic Adjust- ment Clauses		x ⁹		x					
Information to Consumers ⁸									
Termination: Notice Provision ⁸									
Endangering Health Provision ⁸									
Exclusion of Adver- tising					x	<u>Re Georgia Power Co., 3 P.U.R.4th</u> <u>375, 386 (1973)</u> ¹⁰			
Small Electric Systems ⁸									

1. See text accompanying nn. 7-9 of discussion.
2. See text accompanying n. 10 of discussion.
3. See text accompanying nn. 11-12 of discussion.
4. See text accompanying n. 13 of discussion.
5. See text accompanying n. 14 of discussion.
6. See text accompanying n. 15 of discussion.
7. See text accompanying n. 16 of discussion.
8. Information unavailable.
9. See text accompanying n. 18 of discussion.
10. See text accompanying n. 19 of discussion.

HAWAII

The Hawaii Public Utilities Commission has "general supervision" of utilities, including rates.¹ By statute, all rates must be "just and reasonable",² and the commission may prohibit "unreasonable discrimination between localities, or between users and consumers, under substantially similar conditions . . ."³ In a recent case, the commission declined to base rates on incremental costs because insufficient evidence was presented to enable it to evaluate the effects of such rates.⁴ Utilities with declining block rates have presented evidence that these rates are currently cost-justified.⁵

Notice of hearings concerning rate changes must be published in a newspaper of general circulation and applicants must notify their consumers at least one week before the hearing with "the manner and fact of notification to be reported to the commission before the date of the hearing."⁶

The Supreme Court held in 1975 that the Commission acted arbitrarily and unreasonably in allowing an electric company to include in its cost of service promotional expenditures designed to attract new customers and to capture customers from a competing electric company.⁷ The court cited the unfairness of this practice to the rate payer, the national energy problem and environmental concerns.

Hawaii has instituted generic hearings on rate structure. In one case, the commission concluded that no fundamental changes in rate structure should be made until these hearings are completed.⁸ It also observed that in these hearings it could evaluate studies conducted on the mainland that evaluate "the use of rate designs to encourage conservation . . ."⁹ In another case, the commission indicated that life-line, time-of-day, interruptible, off-peak, solar energy programs and other rate designs would be investigated in the generic hearings.¹⁰

The Commission's Rules of Practice and Procedure govern the procedural aspects of generic hearings and rate proceedings.¹¹ Reasonable written notice must be given of investigations of public utilities by the Commission.¹² In rate cases, two weeks notice is required.¹³ Legal notices of public hearings must be published in a newspaper in the county affected by the proposed action.¹⁴

Intervention is permitted upon motion stating the applicant's interest¹⁵ and the Commission may permit participation without intervention to persons with limited interests in a proceeding.¹⁶ The State Consumer Advocate is ex officio a party to any proceeding before the Commission.¹⁷

Any party may request the issuance of a subpoena duces tecum for the production of documents or records.¹⁸ In all general rate proceedings, prepared testimony and exhibits may be filed in advance pursuant to a prehearing order.¹⁹

Orders of the Commission are appealable to the Supreme Court of Hawaii.²⁰ Appeals are on the record and no new evidence is permitted.²¹ No rule or order may be issued except upon consideration of the whole record or such portion thereof as may be cited by any party or supported by and in accordance with reliable, probative and substantial evidence.²²

1. Haw. Rev. Stat. § 269-6 (1978). See also § 269-16.
2. Id. § 269-16(a).
3. Id. § 269-16(b).
4. Re Hawaii Electric Light Co., 13 P.U.R.4th 329 (1976).
5. NARUC Survey, "Ratemaking", Table 61(b).
6. Haw. Rev. Stat. § 269-16(b) (1978).
7. Application of Hawaiian Electric Company, Inc., 535 P.2d 1102 (1975).
8. Re Hawaii Electric Light Co., 13 P.U.R.4th 329 (1976).
9. Id. at 344.
10. Re Molokai Electric Co., Ltd., 22 P.U.R.4th 437 (1977).
11. State of Hawaii, Public Utilities Commission, Rules of Practice and Procedure (1978).
12. Haw. Rev. Stat. § 269-12 (1976).
13. Id.
14. Id. § 92-41.
15. Rules of Practice and Procedure 4-1.
16. Id. Rule 4-2.
17. Id. Rule 4-7.
18. Id. Rule 3-12(2).
19. Id. Rule 3-17(6).
20. Haw. Rev. Stat. § 296-16 (1976).
21. Id. § 641-2.
22. Id. § 91-10.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>HAWAII</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹				X		<u>Re Hawaiian Electric Light Co.,</u> 13 P.U.R.4th 329 (1976)			
Cost Justification for Declining Block Rates ²				X					
Information to Consumers ³				X	Haw. Rev. Stat. § 269-16(b) (1978)				
Advertising							<u>Application of Hawaiian Electric Light Co., Inc.,</u> 535 P.2d 1102 (1976) ⁴		

1. See text accompanying n. 4 of the discussion.
2. See text accompanying n. 5 of the discussion.
3. See text accompanying n. 6 of the discussion.
4. See text accompanying n. 7 of the discussion.

IDAHO

The public utilities commission of Idaho (the "Commission") is empowered by statute to "supervise and regulate every public utility in the state" and to do everything necessary to carry out the provisions of the public utilities law.¹ When it finds after a hearing that rates are "unjust, unreasonable, discriminatory or preferential" it is to determine and fix just and reasonable rates.² The public utilities have a duty to make their charges "just and reasonable."³ Public utilities may not grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, nor may they establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.⁴

The Commission has stated that "equity" in ratemaking requires two things: that the rate design generates the proper amount of revenue from service to the class, and that it allocates cost responsibility to individual customers in a "fair and reasonable" way.⁵ Thus the Commission tries to set electric rates to produce revenues that will "most nearly match the cost-of-service for each customer class."⁶ This has led the Commission in recent cases to question the continuing appropriateness of declining energy block rate structures and to find that such rates violate two principles of utility rate design in that they do not apportion costs fairly and they do not promote optimum social and economic use of energy.⁷ Rate schedules providing for lower rates for larger users have been flattened by eliminating blocks and reducing the extent to which rates for consumption at higher levels were below rates for consumption at lower levels.⁸ The Commission does not rely solely on cost-of-service studies, partly due to a lack of reliable data and partly due to a conviction that "other considerations should enter into the rate setting equation where necessary and appropriate."⁹

The Commission has stated its intention to consider time-of-use pricing in future rate proceedings,¹⁰ and has approved seasonal rates.¹¹

Interruptible rates have been considered and approved in Idaho for industrial customers.¹² One utility devised a load management program, but the Commission decided that it did not need to order the company to undertake that or any particular load management or conservation programs: the choice in the first instance should be left in the hands of utility management. The Commission indicated that its role should be limited to encouragement and, if necessary, enforcement of the governmental policy favoring conservation of resources and pursuit of a least cost strategy in meeting future energy demands.¹³

In a 1976 case an intervenor senior citizens group requested limited lifeline rates (a residential rate three mills below the usual residential rate) for senior citizens and disabled persons. The Commission declined to adopt the rates, stating that it had an insufficient basis on which to determine that this was a fair and reasonable rate design. It noted that the request raised questions of public policy outside the scope of ordinary rate design issues, and that such questions should get continuing attention from the Commission and the state legislature.¹⁴

In 1976, the Commission denied a gas company a "gas purchase adjustment clause" on the grounds that the significant impact that gas purchase price adjustments have required that resulting rate adjustments be subject to public scrutiny through hearings.¹⁵ As of 1977 there were no adjustment clauses in effect in Idaho.¹⁶

In a recent case, an intervenor citizens coalition requested that the Commission prohibit utility expenditure for advertising unless it relates to conservation, membership fees and contributions, and lobbying activities and political advertising.¹⁷ The Commission disallowed the membership fees and contributions and stated that these would be treated as a below-the-line expense in the future. The request for prohibition of political advertising expenses was denied because of possible First Amendment complications. However, the Commission indicated its intent to address the question in detail in the applicant utility's next rate case.

The Idaho Supreme Court has recently held that the Commission lacked the authority to prohibit a public utility from mailing "political advocacy" materials with customers' bills.¹⁸ Since the Commission has found that the costs of the mailing were not claimed as operating expenses but were paid by the utility and its stockholders, the order at issue was outside the Commission's ratemaking authority. The court emphasized that the question was not whether the Commission had the authority to disallow as an operating expense costs incurred in mailing the material, stating "[s]uch would have been an appropriate part of the Commission's ratemaking function."¹⁹

In an earlier case, the Commission determined that the "cost of promotional advertising for new generation facilities is not the responsibility of the applicant's ratepayers. If applicant's stockholders determine that promotional advertising is desirable they are free to engage in it at their own expense."²⁰ The Commission stated it was not thereby restricting in any way the utility's freedom of speech. In another case, the Commission stated that advertising by an electric company for the purpose of obtaining additional business was not encouraged, and that the expense of such advertising ought not to be charged to ratepayers "who will be asked to compete for power with any new customers gained by applicant." However, the Commission did not disallow expenses in that case.²¹

Commission has no formal policy on master metering²² or on rates for small alternative energy systems.²³ It has scheduled generic hearings on cost-of-service studies and other rate design matters.²⁴

No information was available on Idaho procedures and requirements for disseminating information to consumers and terminating service to customers.

No public utility may raise any rate except upon a showing before the Commission and a finding of the Commission that the increase is justified.²⁵ The Commission may hold a hearing, upon reasonable notice, either on its own motion or on complaint, with respect to rates or other matters relating to utility service.²⁶

Persons other than original parties who are "directly and substantially affected" by a proceeding before the Commission may obtain leave to intervene.²⁷ The intervention must not unduly broaden the issues.²⁸ In addition, protestants may testify and/or provide a written or oral statement at hearings without becoming intervenors, but they do not have the rights of parties to cross-examine witnesses or otherwise participate in the proceedings.²⁹ Written protests to the implementation of rate schedules may also be filed.³⁰

In the conduct of hearings the Commission is not bound by the technical rules of evidence.³¹ The Commission has the power to issue process³² and cause the deposition of witnesses.³³ After the conclusion of the hearing, the Commission must make and file its order.³⁴

Any party aggrieved by a Commission decision, and who has petitioned the Commission for rehearing, may appeal to the state supreme court.³⁵ On appeal, no new or additional evidence may be introduced in court; the appeal must be heard on the record only.³⁶ The review is limited to a determination of whether the Commission "regularly pursued its authority, including a determination of whether the order appealed from violates any right of the appellant under the Constitution of the United States or of the state of Idaho."³⁷

1. Idaho Code §61-501.
2. Id. §61-502.
3. Id. §61-301.
4. Id.
5. Utah Power & Light Co., 22 P.U.R. 4th 351 (1977).
6. Washington Water Power Co. 24 P.U.R. 4th 39, 57 (1977) In this case the Commission accepted a staff contention that the company's "average-and-excess" method of allocating demand-related costs failed to charge properly for peak use and generally needed refinement. Included in the costs that need to be considered are the incremental costs of adding capacity to the system. The Commission stated its intention to investigate marginal cost pricing in future rate proceedings. The Commission has used cost-of-service concepts and structure in designing rates at least since 1970. See Idaho Power Co. 86 P.U.R. 3d 458 (1970) Note however, the Commission does not appear to require that cost of service studies be submitted: Citizens Utilities Co. 16 P.U.R. 4th 359, 365 (1976). However, one survey has stated that the Commission has given notice that it will not in future deviate from cost-based rates. NARUC Survey, Table 61(a).
7. Utah Power & Light Co., 22 P.U.R. 4th 351, 376 (1977) See also Washington Water Power Co., supra n. 6. Over 50 years ago the Idaho Commission stated that the charge to a company for power sold to it for off-peak use should not be as high as the general power schedule. Kootinai Power Co. P.U.R. 1923A, 764, 786.
8. Citizens Utilities Co. 16 P.U.R. 4th 359 (1976).
9. Idaho Power & Light Co. 29 P.U.R. 4th 183, 218 (1979).
10. Washington Water Power Co., supra n. 4 at 58.
11. Utah Power & Light Co. supra n. 5, imposing a one cent per kilowatt-hour peak-load pricing for all use above 600 kilowatt-hours during the system's summer peak-load months. The Commission noted that this summer surcharge employed the benefits of marginal cost pricing.

12. See Idaho Power Co. 23 P.U.R. 4th 299 (1977) and Idaho Power Co. 13 P.U.R. 4th 282 (1976).
13. Utah Power & Light Co., supra n. 3. The Commission warned of an "immediate and stern response" if the company failed to carry out this policy.
14. Washington Water Power Co. 17 P.U.R. 4th 70 (1976).
15. Id.
16. NARUC Survey, Table 61(b).
17. Idaho Power Co. 23 P.U.R. 4th 299 (1978).
18. Washington Water Power Co. v. Kootenai Environmental Alliance 99 Idaho 875, 591 P.2d 122 (1979).
19. Id. at 127.
20. Washington Water Power Co., supra n. 11 at, 84 (1976).
21. Citizens Utilities Co., supra n. 6 at 362 (1976).
22. NARUC Survey, Table 6(a).
23. NARUC Survey, Table 6(a).
24. Noted in Idaho POWER & Light Co., supra n. 7.
25. L.C.A. §61-622.
26. Id. See also §§61-612, 623, 503.
27. Rules of Practice and Procedure, Idaho Public Utilities Commission, Rule 5.1.
28. Id. Rule 5.4.
29. Id. Rule 5.5.
30. Id. Rule 6.10.
31. L.C.A. §61-601.
32. Id. §61-617.
33. Id. §61-605. On the conduct of hearings, see generally Rules of Practice and Procedure, Rule 9.
34. L.C.A. §61-618.
35. Id. §61-627. Rules of Practice and Procedure, Rule 12.
36. Id. §61-629.
37. Id.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>IDAHO</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service	X		X	X		<u>Re Washington Water Power Co., 24 P.U.R. 4th 39 (1977);</u> <u>Re Citizens Utili- ties Co., 16 P.U.R. 4th 359 (1976);</u> <u>Re Idaho Power Co., 86 P.U.R. 3d 458 (1970)¹</u>			Equity
Declining Block Rates-Restructuring			X	X		<u>Re Utah Power & Light Co., 22 P.U.R. 4th 351 (1977);</u> <u>Re Washington Water Power Co., 24² P.U.R. 4th 39 (1977)</u>			Efficiency; Equity - <u>Re Utah Power & Light Co., 22 P.U.R. 4th 351 (1977)</u>
Time-of-day Rates				X		<u>Re Washington Water Power Co., 24 P.U.R. 4th 39 (1977);</u> <u>Re Kootenai Power Co.,³ P.U.R. 1923A 764</u>			
Seasonal Rates			X	X		<u>Re Utah Power & Light Co., 22⁴ P.U.R. 4th 351 (1977)</u>			
Interruptible Rates			X	X		<u>Re Idaho Power Co., 23 P.U.R. 4th 299 (1977);</u> <u>Re Idaho Power Co., 13 P.U.R.⁵ 4th 282 (1976)</u>			

IDAHO (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Load Management			X			<u>Re Utah Power & Light Co., 22 P.U.R. 4th 351 (1977)</u> ⁶			Conservation
Lifeline Rates			X			<u>Re Washinton Water Power Co., 17 P.U.R. 4th 70 (1976)</u> ⁷			
Master Metering ⁸									
Automatic Adjustment Clauses		X		X		<u>Re Idaho Power Co., 23 P.U.R. 4th 299 (1978)</u> ⁹			
Information to Consumers ¹⁰									
Termination: No-tice Provision ¹⁰									
Endangering Health Provision									
Exclusion of Advertising Expenses				X		<u>Washington Water Power Co. v. Kootenai Environmental Alliance, Sup. Ct. Case No. 12509;</u> ¹¹			
			X			<u>Re Citizens Utilities Co., 16 P.U.R. 4th 359 (1976);</u> <u>Re Intermountain Gas Co., 18 P.U.R. 4th (1976)</u>			
Small Electric Systems ¹²									

IDAHO (cont'd)

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1. See text accompanying n. 5-9 of the discussion.
 2. See text accompanying n. 7-8 of the discussion.
 3. See text accompanying nn. 10-11 of the discussion.
 4. See text accompanying n. 11 of the discussion.
 5. See text accompanying n. 12 of the discussion.
 6. See text accompanying n. 13 of the discussion.
 7. See text accompanying n. 14 of the discussion.
 8. See text accompanying n. 22 of the discussion.
 9. See text accompanying nn. 15-16 of the discussion.
 10. Information unavailable.
 11. See text accompanying nn. 17-21 of the discussion.
 12. See text accompanying n. 23 of the discussion.

ILLINOIS

All charges made by Illinois public utilities "shall be just and reasonable."¹ Every public utility must "furnish ...such service instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees, and public and as shall be...adequate, efficient, just and reasonable."² Utilities may not grant "any preference or advantage...or subject any corporation or person to any prejudice or disadvantage."³ State law prohibits unreasonable differences as to rates or other charges, services, facilities, or in any other respect, ... as between classes of service."⁴ In setting rates, a utility "may as a basis for the determination of charges made by it classify its service according to amount used, the time when used, the purpose for which used, and other relevant factors."⁵

The Illinois Commerce Commission ("commission") has "general supervision" of all public utilities."⁶ The commission "shall establish the rates or other charges, classifications, contracts, practices, rules or regulations ...which it shall find to be just and reasonable." When the commission, after a hearing, "shall find that rates or other charges, or classifications ...collected by any public utility ..., or that the rules, regulations, contracts, or practices or any of them, affecting such rates or other charges, or classifications, ...are unjust, unreasonable, discriminatory or preferential or in any wise in violation of any provisions of law, or ...are insufficient, the [c]ommission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed..."⁸

The Illinois Commerce Commission has taken the position that cost of service is but one of many factors which must be considered in designing rates⁹ and that there are "many acceptable methods of developing cost-of-service studies."¹⁰ "Regardless of the method used, cost of service studies should be considered only as a guide" for rate making.¹¹ Declining block electric rates have been approved.¹² However, the commission has taken the position that "the gradual flattening of residential block rates is preferable."¹³ At present, time-of-day rates have been implemented for industrial and commercial users,¹⁴ and the commission has ordered experimental time-of-day rates for selected residential customers.¹⁵ Seasonal rates have been authorized for all classes of customers.¹⁶ Interruptible rates have also been approved¹⁷ and the commission has recently ordered several electric utilities to study the feasibility of implementing available load management techniques, including radio control, ripple control and interruptible rates for the utility's major service classifications.¹⁸ The commission has approved residential and non-residential controlled water heating rates.¹⁹ The commission has considered lifeline rates in several gas and electric rate proceedings, but in each instance has rejected the proposals as violative of the anti-discrimination provisions of the Illinois Public Utilities Act, Ill. Rev. Stat. Ch. 111-2/3, §38.²⁰ The commission has stated that such proposed rates constitute subsidies which must be approved by legislative process.²¹

In a generic proceeding, the commission is currently investigating the feasibility of peak-load pricing for some or all of the customers of the major Illinois electric utilities.²² The investigation will consider cost of service as a basis for

peak-load pricing, seasonal and time-of-day rates, metering and appropriate load management techniques, and will weigh the costs of applying peak-load pricing concepts against such possible benefits as conservation and better management of resources and more equitable utility rates.²³

Illinois has an informal policy of discouraging master metering.²⁴ Fuel adjustment clauses for electric utilities have been approved by statute; however, the commission must hold annual public hearings to "reconcile any amounts collected with actual costs" and to determine whether such clauses "reflect actual costs of fuel or power prudently purchased."²⁵ The commission has recently conducted a generic proceeding concerning the adoption of a uniform fuel adjustment clause for all electric public utilities and determined that a uniform clause is desirable in Illinois.²⁶

The utilities must make proposed rate schedule information open to public inspection.²⁷ Under the commission's recently revised rules, service may be discontinued five days after delivery of written notice.²⁸ However, service may not be discontinued, and must be restored if discontinued, when the customer enters into a deferred payment agreement or when the matter is subject to dispute or complaint by the customer.²⁹ Termination of service to a residential user for nonpayment of bills is prohibited where such utility service is the only source of space heating or space heating control or operation and where the temperature is forecast to be 20°F. or less.³⁰ Discontinuance may also be postponed up to sixty days by presentation of a medical certificate indicating that discontinuance "will aggravate an existing illness of ... a permanent resident of the premises..."³¹ The commission has specifically found that its rules regarding discontinuance of service comply with the Public Utility Regulatory Policies Act of 1978.³² The commission has mandated a trial program under which, during the period between December 1, 1979 and April 1, 1980, electric utilities must contact the customer or an adult residing in the customer's household by telephone, a personal visit, or certified mail informing the customer that: the customer's account is past due and subject to disconnection for nonpayment; the customer's service will not be disconnected if both a deferred payment plan and a budget plan are agreed to by the customer, and the utility and the customer abide by the plan; and the customer, if eligible, should apply for emergency assistance provided by governmental and private social service agencies.³³ In some recent cases the commission has allowed, for ratemaking purposes, advertising expenditures related to conservation and product safety, informing customers about alternate forms of energy and encouraging off-peak consumption,³⁴ while it has disallowed expenses for certain promotional³⁵ and image building³⁶ advertising and expenses for lobbying.³⁷ In fact, the Illinois Supreme Court, in its review of a commission decision regarding a telephone utility, has stated that customers, who are not given a chance to decide which legislative proposals are to be supported, should not bear the costs of lobbying and, therefore, such expenses shall not be considered for ratemaking.³⁸ By statute, gas and electric utilities are forbidden from considering a customer's use of solar energy as a basis for charging higher rates to such a customer or otherwise discriminating against him.³⁹ The commission has also approved solar rates for heating.⁴⁰

In several cases, the commission has addressed the goals of the Public Utility Regulatory Policies Act in commenting generally upon rate design. The commission has stated that it is "cognizant of the priority of reducing wasteful use of energy under today's economic and social conditions; rate structures should not continue to encourage consumption at the same pace as in the past."⁴¹ In 1974, the commission urged a cautious approach to rate design, stating that demand and usage must not fall to a point detrimental to ratepayers and that rate design should not cause "a reduction in overall usage while allowing system peak demands to either increase or remain the same."⁴² In a more recent decision, the commission noted that the circumstances giving rise to its position have not changed, but it further stated that, given the present "economic and energy situation," more emphasis should be placed on developing rates which "place costs on more of an equitable basis on those customers imposing such costs on the utility's system."⁴³ There the commission ordered the utility to study time-of-day pricing for industrial and commercial users and to present its position with respect to peak-load pricing, time-of-day pricing, conservation and load management.⁴⁴ Since that time, other utilities have been ordered to implement time-of-day rates or develop time-of-day pricing experiments and the commission has begun its generic hearing into all aspects of peak-load pricing.⁴⁵

No changes shall be made in public utility rates except after thirty days' notice to the commission and the public. New schedules or supplements must be filed with the commission stating the changes and the time the changes will go into effect.⁴⁶ Whenever such change is filed, the commission has the authority, on its own motion or on written complaint by any person or corporation, chamber of commerce, board of trade, or any industrial, commercial, mercantile, agricultural or manufacturing association, or any body politic or municipal corporation to enter upon a hearing concerning the propriety of the change.⁴⁷ The commission, any commissioner or assistant commissioner may administer oaths,⁴⁸ issue subpoenas for the appearance of witnesses or the production of documents⁴⁹ and cause depositions to be taken.⁵⁰ The commission, each commissioner, assistant commissioner and commission employee may inspect the papers, books, accounts, documents, plant equipment or other property of any public utility at any time.⁵¹ The commission is empowered to enter upon hearings, without answer or other formal pleadings by the interested utility, but upon reasonable notice, to determine the propriety of any rate or charge.⁵² All hearings conducted by the commission shall be open to the public.⁵³ At any hearing, the complainant and the person or corporation complained of and such persons the commission allowed to intervene shall be entitled to be heard in person or by attorney and to introduce evidence.⁵⁴ All evidence presented at hearings and all reports of investigations or inquiries not conducted as hearings shall be made part of the records of the commission.⁵⁵ In the conduct of any investigation, inquiry or hearing, neither the commission nor any commissioner, assistant commissioner or officer of the commission shall be bound by the technical rules of evidence, and no informality in any proceeding shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.⁵⁶ No person shall be excused from testifying or from producing any documents upon the ground that the testimony or evidence may tend to incriminate him or subject him to penalty or forfeiture.⁵⁷

The Commission is required to make findings sufficient for a judicial review⁵⁸ of the case and which clearly disclose the grounds upon which the agency acted. It has been stated that findings which will enable the court to intelligently review a commission order in a rate case should succinctly set forth the pro forma operating revenues, pro forma operating expenses, net original cost, rate base and rate of return to which the utility is entitled.⁵⁹ The Commission is also required to consider what the rate of return to each class of security holders will be under a proposed rate.⁶⁰ Within thirty days after service of any rule or regulation, order or decision of the commission, any party may apply for rehearing.⁶¹ No appeal shall be allowed unless and until an application for rehearing is filed and finally disposed of by the commission.⁶² Within thirty days after service of any order or decision of the commission refusing application for rehearing, or of any final order or decision after rehearing, any person or corporation affected may appeal to the circuit court of the county in which the subject-matter of the hearing is situated, or if the subject-matter of the hearing is situated in more than one county, then of any one of such counties, for the purpose of having the reasonableness or lawfulness of the rule, regulation, order or decision inquired into and determined.⁶³ The rule, regulation, order or decision of the commission shall not be set aside unless it clearly appears that the finding of the commission was against the manifest weight of the evidence, the commission was without jurisdiction or that a constitutional right of the utility was infringed.⁶⁴ If it appears that the commission failed to receive evidence, properly proffered, the case will be remanded to the commission for consideration of such evidence, unless it appears that such new evidence would not be controlling.⁶⁵ Appeal from all final orders and judgments of the circuit court may be taken directly to the Supreme Court by either party to the action, within sixty days after the entry of the order of judgment of the circuit court.⁶⁶

1. Ill. Rev. Stat. ch. 111-2/3 §32 (1977).
2. Id.
3. Id. §38.
4. Id.
5. Id. §32
6. Ill. Ann. Stat. ch. 111-2/3, §8 (Smith-Hurd Cum. Supp. 1978).
7. An Act to amend Section 36 of "An Act concerning public utilities," approved June 29, 1921, as amended, Pub.A. 80-1158, 1978 Ill.Legis.Serv. (West).
8. Ill. Stat. Ann. Stat. ch. 111-2/3, §41 (Smith-Hurd Cum. Supp. 1978).
9. Illinois Power Co., No. 76-0435 (Ill.Com.Comm'n. June 15, 1977); Central Ill. Pub. Serv. Co., No. 76-0304 (Ill.Com.Comm'n. Ap. 8, 1977). (Hereinafter all orders cited are those of the Illinois Commerce Commission).
10. Id.
11. Commonwealth Edison Co., No. 58340 (Ap. 10, 1974).
12. See, e.g., Central Ill. Pub. Serv. Co., No. 76-0304 (Ap. 8, 1977); Commonwealth Edison Co., No. 58340 (Ap. 10, 1974)
13. Central Ill. Pub. Serv. Co., No. 76-0304 (Ap. 8, 1977).
14. Central Ill. Pub. Serv. Co., No. 77-0375 (Ap. 12, 1978); Commonwealth Edison Co., No. 76-0698 (Oct. 12, 1977).
15. Central Ill. Light Co., No. 77-0631 (Aug. 23, 1978); Commonwealth Edison Co., No. 76-0698

16. See Central Ill., No. 77-0631 (Aug. 23, 1978); Central Ill. Pub. Serv. Co., No. 77-0375 (Ap. 12, 1978); Commonwealth Edison Co., No. 76-0698 (Oct. 12, 1977); Illinois Power Co., No. 76-0435 (June 15, 1977); Commonwealth Edison, Nos: 59359, 59485, Consol. (Aug. 27, 1975), Central Ill. Light Co., No. 58925, 59179, Consol. (Feb. 20, 1975).
17. NARUC Survey, Table 61(b).
18. See Central Ill. Light Co., No. 77-0631 (Aug. 23, 1978); Central Illi. Pub. Serv. Co., No. 77-0375 (Ap. 12, 1978); Commonwealth Edison Co., No. 76-0698 (Oct. 12, 1978).
19. Central Ill. Light Co., No. 58925, 59179, Consol. (Ill. Com. Comm'n. Feb. 20, 1975).
20. Peoples Gas Light and Coke Co., No. 76-0004 (Nov. 9, 1976) (gas rates); Central Ill. Light Co., No. 60044 (July 14, 1976); Commonwealth Edison Co., Nos. 59359, 59485, Consol.
21. See cases cited in note 20, supra.
22. Illinois Com. Comm'n. v. Commonwealth Edison Co., - Investigation into the Feasibility of Applying Peak-Load Pricing Concepts to All or Some Classes of Customers Served by Respondents and the Establishment of Proper Cost Determinations thereunder, No. 76-0568.
23. See, Id. (Oct. 6, 1976) (order requiring investigation of peak-load pricing for customers of Commonwealth Edison Company, which order was entered prior to enlargement of the matter as a generic proceeding).
24. NARUC Survey, Table 61(b).
25. An Act to amend Section 36 of "An Act concerning public utilities," approved June 29, 1921, as amended, Pub. Ay80-1158, 1978 Ill. Legis. Serv. (West).
26. Adoption of Uniform Fuel Adjustment Clause(s), No. 78-0457 (Sept. 6, 1978) (resolution instituting the proceeding); NARUC No. 4-1979.
27. An Act to amend Section 36 of "An Act concerning public utilities," approved June 29, 1921, as amended, Pub. A.80-1158, 1978 Ill. Legis. Serv. (West).
28. Illinois Com. Comm'n., Gen. Order 172, Rule 13, (Second Rev. (Smith-Hurd Cum. Supp. 1978) More limited mandate as to termination policies during winter months. If the notice is mailed, service may be discontinued eight days after mailing. See, Ill. Ann. Stat., ch. 111-2/3, § 32.1
29. Id.
30. Id. See, Ill. Ann. Stat. ch. 111-2/3, § 32.1
31. Id.
32. Rules Establishing Procedures for Gas, Electric, Water and Sanitary Sewers Utilities Governing Eligibility for Service, Deposits, Payment Practices and Discontinuance of Service; Gen. Order 172 Second Rev. (Dec. 27, 1978) (order adopting Gen. Order 172, Second Rev.)
33. NARUC Survey, No. 46-1979.
34. See Commonwealth Edison Co., No. 78-0045 (Dec. 13, 1978; Commonwealth Edison Co., No. 76-0698 (Oct. 12, 1977).
35. Id., Commonwealth Edison Co., No. 58340 (Ill. Com. Comm'n. Ap. 10, 1974)
36. Illinois Bell Tel. Co.; No. 59666 (Feb. 4, 1976) (telephone rate case).
37. Commonwealth Edison Co., No. 58340 (Ap. 10, 1974)
38. Illinois Bell Tel. Co. v. Illinois Com. Comm'n., 55 Ill. 2d 461, 303 N.E. 2d 364 (1973).
39. Ill. Rev. Stat. ch. 111-2/3 § 38 (Smith-Hurd Cum. Supp. 1978).
40. Central Ill. Light Co., No. 77-063 (Aug. 23, 1978).

- 41. Commonwealth Edison Co., No. 58340 (Ap. 10, 1974).
- 42. Id.
- 43. Commonwealth Edison Co., Nos. 59359, 59485, Consol. (Aug. 27, 1975).
- 44. Id.
- 45. See notes 14-15, 22-23 and accompanying text, supra.
- 46. Ill. Rev. Stat. ch. 111 2/3 §36 (1921).
- 47. Id. §§36,68.
- 48. Id. §64.
- 49. Id. §§64,66.
- 50. Id. §66
- 51. Id. §67
- 52. Id. §36.
- 53. Id. §64.
- 54. Id. §69
- 55. Id. §64.
- 56. Id.
- 57. Id. §65.
- 58. Reinhardt v. Bd. of Educ., 61 Ill.2d 101, 103, 329 N.E.2d 218 (1975); Island Lake Water Co. v. Commerce Comm'n., 65 Ill.App.3d 853, 855, 382 N.E.2d 835, 857 (1978).
- 59. Camelot Utilities, Inc. v. Commerce Comm'n., 51 Ill.App.3d 5, 8-9, 365 N.E.2d 312 (1977); Island Lake Water Co., supra.
- 60. City of Alton v. Commerce Comm'n., 19 Ill.2d 76,86 165 N.E.2d 513 (1960); Island Lake Water Co., supra.
- 61. Ill. Rev. Stat. ch. 111 2/3 §71 (1921).
- 62. Id.
- 63. Id. §72.
- 64. Id.; Union Elec. Co. v. Commerce Comm'n., 64 Ill.App.3d 700, 381 N.E.2d 1002, citing State Pub. Util. Comm'n. v. Springfield Gas & Elec. Co., 291 Ill. 209, 125 N.E.891 (1919).
- 65. Ill. Rev. Stat. ch. 111 2/3 §72 (1921).
- 66. Id. §73.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹			X			<u>Illinois Power Co.</u> , 76-0435 (June 15, 1977);			
						<u>Central Illinois Pub. Serv. Co.</u> , No. 76-0304 (Ap. 8, 1977);			
						<u>Commonwealth Edison Co.</u> , Nos. 59359, 59485, Consol. (Aug. 27, 1975);			
						<u>Commonwealth Edison Co.</u> , No. 58340 (Ap. 10, 1974)			
Cost Justification for Declining Block Rates ²									
Time-of-day Rates ³			X	X		<u>Illinois Com. Comm'n. v. Commonwealth Edison, et al.</u> , No. 76-0568;			
						<u>Central Illinois Light Co.</u> , No. 77-0631 (Aug. 23, 1968);			
						<u>Central Illinois Pub. Serv. Co.</u> , No. 77-0375 (Ap. 12, 1978);			

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Time-of-day Rates (cont'd)						<u>Commonwealth Edison Co., No. 76-0698 (Oct. 12, 1977);</u>			
						<u>Illinois Power Co., No. 76-0435 (June 15, 1977);</u>			
						<u>Commonwealth Edison Co., Nos. 59359, 59485, Consol. (Aug. 27, 1975)</u>			
Seasonal Rates ⁴		X	X			<u>Illinois Com. Comm'n. v. Common- wealth Edison Co., et al., No. 76- 0568;</u>			
						<u>Central Illinois Light Co., No. 77-0631 (Aug. 23, 1978);</u>			
						<u>Central Illinois Pub. Serv. Co., No. 77-0375 (Ap. 12, 1978);</u>			Efficiency, No. 77-0375 at 4
						<u>Commonwealth Edison Co., No. 76-0698 (Oct. 12, 1977);</u>			

<u>Standard/Policy</u> <u>Seasonal Rates</u> (cont'd)	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution</u> <u>and Statutes</u>	<u>Commission Rules</u> <u>and Decisions</u>	<u>Court</u> <u>Decisions</u>	<u>Defined</u>	<u>Reference</u> <u>to PURPA</u> <u>Objectives</u>
Interguptible Rates ⁵		X	X			<u>Illinois Power</u> <u>Co., No. 76-0435</u> (June 15, 1977);			
Load Management ⁶		X	X			<u>Commonwealth Edison</u> <u>Co., Nos. 59359,</u> <u>59485, Consol.</u> (Aug. 27, 1975)			Efficiency, Nos. 59359, 59485, Consol. at 7-8
						<u>Illinois Com.</u> <u>Comm'n. v. Common-</u> <u>wealth Edison,</u> <u>et al., No. 76-</u> <u>0568;</u>			
						<u>Central Illinois</u> <u>Light Co., No.</u> <u>77-0631 (Aug.</u> <u>23, 1978);</u>			
						<u>Central Illinois</u> <u>Pub. Serv. Co.,</u> <u>No. 77-0375 (Ap.</u> <u>12, 1978);</u>			
						<u>Commonwealth Edison</u> <u>Co., No. 76-0698</u> (Oct. 12, 1977);			
						<u>Central Illinois</u> <u>Light Co., Nos.</u> <u>58925, 59179,</u> <u>Consol. (Feb. 20,</u> <u>1975)</u>			

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>ILLINOIS (cont'd)</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Lifeline Rates ⁷	X		X		Ill. Rev. Stat. Ch. 111-2/3, §38 (1977)	Central Illinois Light Co., No. 60044, (July 14, 1976); Commonwealth Edison Co., Nos. 59359, 59485, Consol. (Aug. 27, 1975)			Equity, No. 60044 at 4; Nos. 59359, 594, Consol. at 9
Master Metering ⁸									
Review of Automatic Adjustment Clauses ⁹		X	X		Pub. A.80-1158, 1978 Ill. Legis. Service (West) ⁹				
Information to Consumers ¹⁰									
Termination ¹¹		X	X		Ill. Rev. Stat. Ch. 111-2/3, §32.1 (1977)	General Order 172, Second Revised, Rule 13			
Advertising ¹²		X	X			Commonwealth Edison Co., No. 76-0698 (Oct. 12, 1977); Commonwealth Edison Co., No. 58340 (Ap. 10, 1974); Illinois Bell Tele. Co., No. 76-0409 (May 25, 1977)	Illinois Bell Tele. Co. v. Illinois Com. Comm'n., 55 Ill. 2d 461, 303 N.E. 2d 364 (1973)		
Small Energy Systems ¹³		X	X		Ill. Rev. Stat. Ch. 111-2/3, §38 (1977)				

ILLINOIS (cont'd)

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1. See text accompanying nn. 9-11 of the discussion.
 2. See text accompanying nn. 12-13 of the discussion.
 3. See text accompanying nn. 14-15, 22-23 of the discussion.
 4. See text accompanying n. 16 of the discussion.
 5. See text accompanying n. 17 of the discussion.
 6. See text accompanying nn. 18-19 of the discussion.
 7. See text accompanying nn. 20-21 of the discussion.
 8. See text accompanying n. 24 of the discussion.
 9. See text accompanying nn. 25-26 of the discussion.
 10. See text accompanying n. 27 of the discussion.
 11. See text accompanying nn. 28-33 of the discussion.
 12. See text accompanying nn. 34-38 of the discussion.
 13. See text accompanying nn. 39-40 of the discussion.

INDIANA

Every public utility in Indiana must furnish "reasonably adequate service and facilities" and the charges for such service must be "reasonable and just."¹ Rates and service may not be "unjustly discriminatory."² Services for each public utility may be classified by taking into account "the quantity [of product] used, the time when used, the purpose for which used and other reasonable consideration [sic]."³

The Indiana Public Service Commission ("Commission") is authorized to regulate public utilities within the state.⁴ Every public utility must file with the Commission schedules "showing all rates, tolls and charges which it has established," and such rates, tolls and charges "shall not exceed, without consent of the Commission, the rates, tolls and charges in force January 1, 1913."⁵ The Commission may make appropriate investigation of complaints by interested petitioners that "any of the rates, tolls, charges or schedules ... are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act whatsoever affecting or relating to the service of any public utility ... is in any respect unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained ..."⁶ When the Commission believes "that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate, or cannot be obtained, or that an investigation of any matters relating to any public utility should for any reason be made," it may, on its own motion, investigate the matter.

In Indiana, cost of service is not the only criterion by which electric rates are judged. Other factors include "energy usage, differences in customer demand, load characteristics, risk involved, [and the] value of service ..."⁸ However, in a decision regarding a water utility, a state appellate court has determined that in the absence of evidence that proposed rate allocations will be equitable for all customer classes, a rate increase must be allocated uniformly among customer classes. Declining block rates for electricity have been approved, but the Commission has an unofficial policy of discouraging them.¹⁰ Utilities proposing such rates have offered evidence that rates are currently cost-justified.¹¹ Time-of-day rates have been implemented on an experimental basis¹² and the Commission has allowed seasonal rates for commercial space heating.¹³ Rates for interruptible service have not been approved.¹⁴ However, a study has been commenced concerning load management systems.¹⁵ The Commission has not approved lifeline rates.¹⁶

Fuel adjustment clauses are allowed, but must be approved by Commission hearing prior to becoming effective, and increases under such clauses are not automatic.¹⁷ Before a public, municipal or cooperative electric utility's fuel cost increase becomes effective, the public counselor must examine the books and records of the utility to determine the cost of the fuel, and the Commission must hold a summary hearing on the sole issue of the charge.¹⁸ Applications for such increases may not be made by electric generating utilities more often than every three months.¹⁹ For such utilities, the Commission holds a formal hearing solely on the fuel cost charge, at which among other things it considers whether the utility has made every reasonable effort to acquire fuel so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible.²⁰

Each utility must distribute to all applicants for service and to all current customers, without request, a pamphlet describing the rights and duties of utility customers.²¹ Copies of residential rate schedules must be supplied by utilities upon request and each residential customer must be furnished a summary of proposed changes in the residential base rate.²² Generally, electric service may not be disconnected without providing the customer with seven days' prior written notice²³ and an opportunity for complaint and review.²⁴ In certain instances, when the customer can demonstrate financial hardship, service may not be disconnected.²⁵ Disconnection can be postponed by presentation of a medical statement that such action would constitute a "serious and immediate threat to the health or safety" of a member of the customer's household.²⁶

By statute, the Commission may not consider or approve, when determining the allowable operating expenses of a utility, any expenses for "institutional or image building advertising, charitable contributions or political contributions,"²⁷ Under earlier administrative rules, only advertising expenditures of "material benefit" will be allowed by the Commission for ratemaking purposes.²⁸ These include expenditures for advertising related to energy conservation, safety, customer cost reduction and educational programs.²⁹

It is Commission policy that rates should not discriminate against or discourage the use of solar, wind or other small energy generating devices.³⁰

Master metering rules are under consideration pursuant to a recent hearing, and an order of the Commission is pending regarding substantial compliance of existing rules on providing information to consumers, treatment of advertising expenses and termination of service with PURPA standards.³¹

By statute, whenever a public utility files a complaint or petition regarding an increase in its rates, affecting its customers in any county, it must publish a notice of such filing in a newspaper of general circulation in such county.³² Whenever the Commission orders a hearing in any proceeding instituted by or against a utility, at least ten days notice must be given by publication in two newspapers of general circulation in a county where affected customers reside.³³

The Commission's practice and procedure is not controlled by the state administrative procedure act,³⁴ but by Administrative Rules and Regulations adopted pursuant to I.S.A. §8-1-2-47.³⁵ These rules provide for permissive intervention by an interested party on petition to the Commission, if a "substantial interest" in the subject matter of the proceeding is shown, and the intervention would not "unduly broaden" the issues.³⁶ Indiana law also provides for a "public counselor," who is entitled to appear on behalf of the public and rate payers in rate cases and other proceedings before the Commission or involving utility rates and services.³⁷ The Commission may request his appearance, and must notify him of the institution of any proceedings in which he is entitled to appear.

Each utility is required to furnish the Commission whatever information is required by the Commission to enable it to fix rates or otherwise carry out its duties.³⁸ The Commission may submit questions to a utility, to which the utility must submit specific answers.³⁹ The Commission (or any lawful agent thereof)

may compel the attendance of witnesses and the production of documents,⁴⁰ and may cause the taking of depositions.⁴¹

Any person or entity adversely affected by any final Commission action may within 30 days appeal to the Court of Appeals of Indiana for errors of law in such action.⁴² An appellant's assignment of errors that the action is "contrary to law" is sufficient to present to the court for review "both the sufficiency of the facts found to sustain the decision, ruling or order, and the sufficiency of the evidence to sustain the finding of facts upon which it was rendered."⁴³ The Court of Appeals has stated that this standard of judicial review requires at the first level that the Commission's decision in a rate-making case must contain "specific findings on all the factual determinations material to its ultimate conclusion."⁴⁴ The Commission ought also to articulate the "policy [legal decisions] and evidentiary factors underlying its resolution of all the issues."⁴⁵ The second level of review requires a reviewing court to inquire whether there is substantial evidence in light of the whole record to support the Commission's findings of basic fact."⁴⁶

The reviewing court may not consider any evidence beyond that contained in the record, except that where issues of confiscation or constitutional rights⁴⁷ are involved, it may order additional evidence to be taken by the Commission.

1. Ind.Code Ann. §8-1-2-4 (Burns 1973).
2. See *id.* §§8-1-2-54, -58.
3. *Id.* §8-1-2-46.
4. *Id.* §§8-1-1-1 to -13.
5. *Id.* §8-1-2-38.
6. *Id.* §8-1-2-54.
7. *Id.* §8-1-2-58.
8. *Re Indianapolis Power & Light Co.*, 9 P.U.R. 4th 86, 96 (1975).
9. *City of Terre Haute v. American Water Works*, 133 Ind. App. 232, 180 N.E.2d 110 (1962).
10. NARUC Survey, Table 61(b).
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*, Table 61(c).
16. *Id.*, Table 61(b).
17. *Capital Improvement Board v. Public Serv. Comm'n.*, — Ind. App. —, 375 N.E.2d 616 (1978); *City of Evansville v. Southern Ind. Gas & Elec. Co.*, — Ind. App. —, 339 N.E.2d 562 (1976); Ind.Code Ann. §8-1-2-42(b) (Burns Cum. Supp. 1979).
18. I.C.A. §8-1-2-42(b).
19. *Id.* (d).
20. *Id.* (d)(1).
21. Ind. Admin. Rules and Regs. (8-1-2-4)-A45 (Burns 1976).
22. *Id.*
23. Ind. Admin. Rules and Regs. (8-1-2-4) -A43(E) (Burns Cum. Supp. 1978)
24. *Id.* -A43(C)(3), -A44.
25. *Id.* -A43(C)(2)(e).
26. *Id.* -A43(C)(1).

27. Ind. Code Ann. §8-1-2-6(c) (Burns 1979 Cumulative Supp.).
28. Ind. Admin. Rules and Regs. (8-1-2-10) -F3 (Burns 1976).
29. Id. -F4.
30. NARUC Survey, Table 61(c).
31. Stone & Webster Questionnaire OMB 038-579052, Response of Indiana Public Service Commission.
32. I.C.A. §8-1-2-61.
33. Id. §8-1-1-8.
34. Id. §4-22-1-2.
35. Iowa Admin. Rules and Regs. (8-1-2-47)-1 to -22.
36. Id. (8-1-2-47)-9.
37. I.C.A. §8-1-1-4.
38. Id. §8-1-2-52.
39. Id.
40. Id. §8-1-2-62.
41. Id. §8-1-2-64.
42. I.C.A. §8-1-3-1.
43. Id.
44. City of Evansville v. Southern Indiana Gas & Electric Co., supra n. 17 at 571 (1975).
45. Id. at 577.
46. Id. See also City of Muncie v. Indiana Public Service Commission, — Ind.App. —, 378 N.E.2d 896, 26 P.U.R. 4th 588, 590 (1978) and Public Service Commission v. Indiana Bell Telephone Company, 235 Ind. 1, 130 N.E.2d 467 (1955).
47. I.C.A. §8-1-3-7.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>INDIANA</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service	X			X	<u>Re Indianapolis Power & Light Co.,</u> 9 P.U.R. 4th 86 (1975) ¹		<u>City of Terre Haute v. American Water Works, 133 Ind.App. 232, 180 N.E.2d 110 (1962)</u> ²		
Declining Block Rates- ³ Restructuring									
Time-of-day Rates		X ⁴		X					
Seasonal Rates		X ⁵		X					
Interruptible Rates ⁶									
Lifeline Rates ⁷									
Master Metering ⁸									
Automatic Adjustment Clauses		X		X	Ind. Code Ann. §8-1-2-42 (Burns, Cum. Supp. 1978) ⁹		<u>Capitol Improvement Bd. v. Public Serv. Comm'n., Ind. App. 375 N.E.2d 616 (1978);</u> <u>City of Evansville v. Southern Ind. Gas & Elec. Co., Ind. App. 339 N.E.2d 562 (1976)</u>		

INDIANA (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Information to ¹⁰ Consumers	X			X		Ind. Admin. Rules and Regs. (8-1-2-4) A45 (Burns 1976)			
Termination: ¹¹ Notice Provision	X			X		Ind. Admin. Rules and Regs. (8-1-2-4) ___ A43(E) (Burns Cum. Supp. 1978)			
-88- Endangering Health Provision	X			X		Ind. Admin. Rules Regs. (8-1-2-4) ___ A43(C) (1) (Burns Cum. Supp. 1978)			
Exclusion of ¹² Advertising	X			X		Ind. Admin. Rules and Regs. (8-1-2-10) -F3, -F4 (Burns 1976)			Conservation, Ind. Admin. Rules and Regs. (8-1- 2-10) -F4 (Burns 1976)
Small Electric ¹³ Systems				X	X				

1. See text accompanying nn. 8-9 of the discussion.
2. Id.
3. See text accompanying nn. 10-11 of the discussion.
4. See text accompanying n. 12 of the discussion.
5. See text accompanying n. 13 of the discussion.
6. See text accompanying nn. 14-15 of the discussion.
7. See text accompanying n. 16 of the discussion.
8. See text accompanying n. 31 of the discussion.
9. See text accompanying nn. 17-20 of the discussion.
10. See text accompanying nn. 21-22 of the discussion.
11. See text accompanying nn. 23-26 of the discussion.
12. See text accompanying nn. 27-29 of the discussion.
13. See text accompanying n. 30 of the discussion.

IOWA

Public utilities operating in Iowa are "required to furnish reasonably adequate service and facilities," and their charges "shall be reasonable and just...." Public utilities may not grant "unreasonable preferences or advantages as to rates or services to any person ... or subject any person to any unreasonable prejudice or disadvantage."²

The Iowa State Commerce Commission ("commission") has "general supervision ... of all lines for the transmission, sale and distribution of electrical current for light, heat and power...."³ Whenever the commission, pursuant to a hearing, finds that a public utility's "rates, charges, schedules, service or regulations are unjust, unreasonable, discriminatory or otherwise in violation of ... law, the commission shall determine just, reasonable and nondiscriminatory rates, charges, schedules, service or regulations to be thereafter observed and enforced."⁴

Rates are not specifically required to be based on the cost of service.⁵ However, cost of service is the "proper basic criterion" for setting rates⁶ and cost of service studies have been used for rate design.⁷ The commission has a policy of discouraging declining block rates and promoting flat rates for electricity.⁸ Time-of-day rates have not been approved,⁹ but seasonal rates, providing for a summer-winter differential, have been allowed, with the commission asserting that customers responsible for peak load should bear the costs of such service.¹⁰ Rates for interruptible service have been approved by the commission,¹¹ while lifeline rate proposals have not been authorized.¹² A lifeline proposal is currently pending before the Iowa legislature.

With regard to master metering, the commission has issued a statement of position saying that individual meter measurement for rental or leased premises is required except (1) for electricity used in centralized heating, cooling, water-heating or ventilation systems; (2) where individual metering is impractical, unreasonable or uneconomical; (3) where submetering for resale of service was permitted prior to July 12, 1966 by the commission; or (4) where electric service, initiated prior to January 1, 1979, is delivered to premises and resold as an undefined part of a fixed rental or lease payment.¹³ Automatic adjustments of rates are allowed provided that a schedule showing such automatic adjustments is first filed with the commission.¹⁴ Information concerning rate schedules must be made available for public inspection and written notice of proposed rate increases must be given,¹⁵ to all affected customers at least thirty days prior to the effective date thereof. The commission requires a detailed system of accounting which identifies promotional advertising expenses, institutional or goodwill advertising expenses, rate justification advertising expenses and political advertising expenses.¹⁶ Service may not be disconnected for nonpayment of a bill, unless, inter alia, the customer has been given written notice that he has at least twelve days in which to settle his account. A good faith effort must be made to contact a residential customer by telephone or in person to inform him of the pending disconnection. During the period November 1 to April 1, if the attempt fails, the premises must be posted with a notice informing the customer at least one day prior to disconnection. Disconnection of a residential customer may not take place on a weekend, a holiday or after 2:00 p.m., unless the utility is prepared to reconnect on the same day,

and may not take place when the temperature for the remainder of the day and the following day as forecast by the nearest Federal Weather Service station is predicted to be less than 20 degrees Fahrenheit. During the period November 1 to April 1, disconnection shall be postponed for thirty days if the discontinuance of service would present an especial [sic] danger to the health of the customer or any permanent resident. The utility may require verification of such danger by a health or social service official. The postponement may be extended by renewal of the verification.¹⁷ A disconnection moratorium bill is now pending in the Iowa legislature. When nonpayment results from a dispute over an electric bill, disconnection will be postponed by payment of any undisputed portion of the bill.¹⁸ By statute, utilities are prohibited from considering the use of renewable energy sources, such as solar heating, wind power and the conversion of urban and agricultural organic wastes into methane gas and liquid fuels, by a customer as a basis for establishing discriminatory rates or discontinuing services or subjecting the customer to any other prejudice or disadvantage based on the customer's use or intended use of renewable energy sources.¹⁹

Amendments to the state building code make applicable thermal efficiency standards of the building code "to all new construction owned by the state, an agency of the state or a political subdivision of the state, to all new construction located in a governmental subdivision which has adopted either the state building code or a local building code or compilation of requirements for building construction and to all other new construction in the state which will contain more than one hundred thousand cubic feet of enclosed space that is heated or cooled."²⁰

New rates must be filed with the commission at least thirty days prior to the effective date thereof.²¹ Written notice must also be given to all affected customers at least thirty days prior to the effective date of the rate change. The notice to affected customers shall also state that the customer has a right to file a written objection to such rate increase and that he may request the commission to hold a public hearing to determine if such rate increase should be allowed.²² Whenever there is filed with the commission by any person or body politic, or filed by the commission upon its own motion, a written complaint requesting the commission to determine the reasonableness of rates, such written complaint shall be forwarded to the public utility. If the utility does not satisfy the complaint within a reasonable time specified by the commission and there appears any reasonable ground for investigating the complaint, the commission shall initiate a formal proceeding.²³ The commission shall docket the case as a formal proceeding and set the case for hearing any time prior to the effective date of the rate change and shall give such notice of the formal proceeding as it deems appropriate.²⁴ The commission has authority to administer oaths and issue subpoenas. Discovery procedures available in civil actions are available to all parties in ratemaking cases.²⁵ Informal settlements of such controversies are encouraged.²⁶ Findings of the commission shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Effect shall be given to the rules of privilege recognized by law.²⁷ Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the commission.²⁸ All parties to a hearing shall be afforded an opportunity to respond and present evidence and argument

and be represented by counsel.²⁹ Findings of fact shall be prepared by the presiding officer.³⁰ If, after hearing, the commission finds such rates to be unlawful, they shall be set aside and the utility will be ordered to file rates which will meet the requirements of the statute.³¹

Any party, within twenty days after entry of the commission's order, may apply for rehearing.³² Petition for judicial review may be within thirty days after denial of rehearing or issuance of decision on rehearing filed in the district court of any county wherein the order of the commission or some part thereof is to take effect.³³ On judicial review, the court shall not hear any further evidence with respect to those issues of fact whose determination was entrusted to the commission.³⁴ The court may affirm, remand, or may reverse, modify, or grant equitable or legal relief if substantial rights of the petitioner have been prejudiced because the agency action is (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the commission; (c) in violation of a commission rule; (d) made upon unlawful procedure; (e) affected by other error of law; (f) unsupported by substantial evidence in the record made before the commission; or (g) unreasonable, arbitrary, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.³⁵

1. Iowa Code Ann. §476.8 (West Cum. Supp. 1978-79).
2. Id. §476.5.
3. Id. §474.9.
4. Id. §476.3.
5. NARUC Survey, Table 61(a).
6. Re Iowa Power & Light Co., 20 P.U.R. 4th 397, 413 (1977).
7. See Re Albia Light & R. Co., 15 P.U.R. 4th 147 (1976); NARUC Survey, Table 61(a).
8. Id., Table 61(b).
9. Id.
10. See Re Iowa Power & Light Co., 20 P.U.R. 4th 397 (1977) (summer-winter rate differentials authorized for all customer classes); Re Albia Light & R. Co., 15 P.U.R. 4th 147 (1976) (summer-winter rate differentials authorized for all customer classes).
11. NARUC, Table 61(b).
12. Id.
13. Iowa State Commerce Comm. No. RMU-78-7.
14. Iowa Code Ann. §476.6 (West Cum. Supp. 1978-79). See Re Iowa Power & Light Co., 20 P.U.R. 4th 397 (1977); IAC 250-7.4(d)(5).
15. Id. §§476.4, 476.6; Iowa Admin. Code, Commerce (250) ch. 20.4(l) (1977).
16. Iowa State Commerce Comm. No. U-463.
17. Iowa Admin. Code, Commerce (250) ch. 20.4(l)(h).
18. Id.
19. Iowa Code Ann. §476.21 (West Cum. Supp. 1978-79).
20. Id. §103A.10.
21. Id. §476.6.
22. Id.
23. Id. §476.3.
24. Id. §476.6
25. Id. §§17A.13, 476.2.

26. Id. §17A.10.
27. Id. §17A.14.
28. Id.
29. Id. §17A.12.
30. Id. §17A.15.
31. Id. §476.6.
32. Id. §§476.12, 17A.16.
33. Id. §§476.13, 17A.19(3).
34. Id. §17A.19(7).
35. Id. §17A.19(8).

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>IOWA</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹		X	X			<u>Re Iowa Power & Light Co., 20 P.U.R. 4th 397 (1977)</u>			
Declining Block Rates-Restructuring ²									
Time-of-day Rates ³									
Seasonal Rates ⁴		X	X			<u>Re Iowa Power & Light Co., 20 P.U.R. 4th 397 (1977)</u> ³ ; <u>Re Albia Light & R. Co., 15 P.U.R. 4th 147 (1976)</u>			
Interruptible Rates ⁵		X	X						
Load Management ⁶									
Lifeline Rates ⁷									
Master Metering ⁸		X	X			<u>Iowa State Commerce Commission No. RMU- 78-7.</u>			
Automatic Adjust- ment Clauses		X	X		<u>Iowa Code Ann. §476.6 (West Cum. Supp. 1978-79). Iowa Admin. Code 250-7.4(d) (5) (1977)</u>	<u>Re Iowa Power & Light Co., 20 P.U.R. 4th 397 (1977)</u>			

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>IOWA (cont'd)</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Information to Consumers ¹⁰		X	X		Iowa Code Ann. §§476.4, 476.6; Iowa Admin. Code (250) ch. 20.4(1) (1977)				
Termination: Notice Provision ¹¹		X	X		Iowa Admin. Code, Commerce (250) ch. 20.4(7) (1977)				
Endangering Health Provision					Iowa Admin. Code, Commerce (250) ch. 20.4 (17) (h) (1977)				
Advertising ¹²		X	X			Iowa State Commerce Commission No. U-463			
Small Electric Systems ¹³		X	X		Iowa Code Ann. §476.2 1 (West Cum. Supp. 1978-79)				

1. See text accompanying nn. 5-7 of the discussion.
2. See text accompanying n. 8 of the discussion.
3. See text accompanying n. 9 of the discussion.
4. See text accompanying n. 10 of the discussion.
5. See text accompanying n. 11 of the discussion.
6. Id.
7. See text accompanying n. 12 of the discussion.
8. See text accompanying n. 13 of the discussion.
9. See text accompanying n. 14 of the discussion.
10. See text accompanying n. 15 of the discussion.
11. See text accompanying nn. 17-18 of the discussion.
12. See text accompanying n. 16 of the discussion.
13. See text accompanying n. 19 of the discussion.

KANSAS

In Kansas, the public utilities are "required to furnish reasonably efficient and sufficient service ... and facilities ... and to establish just and reasonable rates...and to make just and reasonable rules, classifications and regulations...."¹ "[E]very unjust or unreasonable [sic] discriminatory or unduly preferential rule or regulation, classification [or] rate...demanded, exacted or received is prohibited...."²

The Kansas State Corporation Commission ("commission") has "full power, authority and jurisdiction to supervise and control the public utilities ... doing business in the State of Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction."³ However, "the power and authority to control and regulate all public utilities...situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city," subject only to the right to request the commission for relief from improper municipal enactments.⁴ Pursuant to its jurisdictional grant, the commission has the responsibility to investigate and reform all rates, classifications, rules or regulations which it finds to be "unjust, unreasonable, unjustly discriminatory or unduly preferential."⁵ Also, if "the commission finds that any regulation, measurement, practice, act or service complained of is unjust, unreasonable, unreasonably inefficient, insufficient, unduly preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of [the public utilities] act or of the [commission's] orders, ... the commission may substitute therefor such other regulations, measurements, practices, service or acts, and ... make such order respecting any such charges [sic] in such regulations, measurements, practices, service or acts as shall be just and reasonable."⁶

According to the commission, "[t]here is no single factor that is determinative of just and reasonable rates.... [N]evertheless, cost of service ... is, in the first analysis, the generally-accepted method of determining the reasonableness of rates and the lack of undue discrimination or preferential nature thereof."⁷ Declining block rates for electricity have been discouraged⁸ and the commission has authorized flattened schedules.⁹ The commission has accepted a proposal for offering optional time-of-day electric rates for large industrial and commercial customers.¹⁰ Seasonal rates have been approved.¹¹ Interruptible rates have also been approved for electric service¹² and at least one utility is conducting a load management experiment utilizing ripple control.¹³ State law expressly authorizes the Commission to allow a utility a greater rate of return on experimental projects, "such as load management devices, which it determines ... to be reasonably designed to cause more efficient utilization of energy."¹⁴ In a recent case, the commission rejected a proposed lifeline electric rate on the ground that it was not cost-justified and was, therefore, discriminatory and impermissible under state law.¹⁵

The commission discourages master metering as being "wasteful".¹⁶ Automatic adjustment clauses are allowed,¹⁷ but in at least one instance have been subject to monthly reporting requirements.¹⁸ Rate information must be made available for public inspection.¹⁹ Seven days' written notice is required and a twenty-one day extension is available for illness if a letter from a physician is

presented, before termination of a customer's service.²⁰ In the interest of conservation, the Commission has, by ratemaking procedure, "attempted to discourage ... excessive and counter-productive spending ... for advertising and business promotional purposes...."²¹ The commission has disallowed as an expense to ratepayers advertising that was institutional advertising or advertising promoting corporate goodwill.²² Advertising which promotes conservation or provides information which is useful to the consumer will be considered a legitimate company operating expense to be borne by ratepayers.²³ The commission has also allowed, as proper operating expenses, costs for promotion and advertising designed to increase system efficiency by increasing load factor.²⁴ The commission has changed its procedure for dealing with advertising by utility companies by shifting the burden from commission staff to the utility to prove that the costs of a particular advertisement should be included in the company's operating expenses.²⁵ The commission is authorized to allow a public utility a greater rate of return on investments in solar, wind or other alternate energy generation systems.²⁶ Also, according to NARUC, the Commission has adopted a policy which encourages the use of solar generation systems.²⁷

Utilities desiring to make a change in rates shall file with the commission a schedule showing the changes desired.²⁸ No such changes may be made without the consent of the commission.²⁹ Within thirty days after the commission has authorized such changes, copies of all schedules must be filed for public inspection.³⁰ The commission upon its own motion, or upon complaint in writing made by any mercantile, agricultural or manufacturing organization or society, or by any body politic or municipal organization, or by any taxpayer, firm, corporation, or association that any rates are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential may proceed, with or without notice, to make an investigation, but no order affecting such rates shall be entered by the commission without a formal public hearing.³¹ Due notice of public hearings shall be given by the commission to the public utility and to the complainant or complainants, if any. The timing of such hearings is at the discretion of the commission.³² The utility or the complainant(s) shall be entitled to be heard, and shall have process to enforce the attendance of witnesses and the production of documents. The commission may require the production of documents in the possession or under the control of the utility or complainants affecting the subject matter of the controversy.³³ The commission or any member thereof is empowered to issue subpoenas and administer oaths.³⁴ No person shall be excused from testifying or producing documents on the ground that such evidence may tend to incriminate him or subject him to penalty.³⁵

Any party may apply for rehearing within ten days of date of service of the commission's decision. Application for rehearing is a prerequisite to any cause of action arising in any court.³⁶ The court of appeals has exclusive jurisdiction of proceedings for review of an order or decision of the commission arising from a rate hearing.³⁷ Within thirty days after application for rehearing is denied or after rendition of decision on rehearing, the applicant may apply for court review.³⁸ The commission must provide for such review a transcript of all pleadings, applications, proceedings, orders or decisions for the purpose of having the lawfulness or reasonableness of the original order or decision determined. No new or additional evidence may be introduced upon the trial or any proceedings for review,

unless a party can show additional material evidence which by the exercise of due diligence, could not have been produced at the hearing before the commission or unless the court finds that the commission has erroneously refused to admit or consider material evidence. In such cases, it shall be the duty of the commission to hear and consider such evidence and make an order modifying, setting aside or affirming its former decision, after which the court shall order the trial to proceed to determine if the decision as originally made or modified is in any respect unlawful or unreasonable.

1. Kan.Stat. Ann. §66-107 (1972).
2. Id.
3. Id. §66-101.
4. Kan.Stat. Ann. §66-104 (Cum.Supp.1978).
5. Kan.Stat. Ann. §66-110 (1972).
6. Id.
7. Re Kansas Power & Light Co., 8 P.U.R.4th 337, 378-79 (1975).
8. NARUC Survey, Table 61(b).
9. See Re Kansas Power & Light Co., 8 P.U.R.4th 337 (1975) (rate schedules flattened by increasing end steps of block rates by a greater percentage than the middle steps). The commission took a step toward eliminating promotional rates that result in declining block rates by ordering Kansas Power & Light to charge its total-electric customers the same price per Kwh in the summer months as paid by regular residential customers. NARUC Survey, No. 42-1979.
10. NARUC Survey, Table 61(b); Electrical Week, Sept. 24, 1979 at 6.
11. See Re Kansas City Power & Light Co., 16 P.U.R.4th 111 (1976) (summer-winter differential approved for residential users and an 80% demand ratchet approved for commercial and industrial customers); the commission approved use of a seasonal differential with higher summer rates in an order to Kansas Powers Light. Electrical Week, supra.
12. See Re Kansas Power & Light Co., 8 P.U.R.4th 337 (1975) (industrial customer); the commission approved Kansas Power & Light's proposal to expand application of interruptible power contracts. Electrical Week, supra.
13. NARUC Survey, Table 61(c).
14. Kan.Stat. Ann. §66-117 (Cum.Supp.1978).
15. Re Kansas Power & Light Co., 20 P.U.R.4th 55 (1977) (proposed lifeline rates not permitted under Kan.Stat. Ann. §66-110 (1972)).
16. NARUC Survey, Table 61(b); NARUC Survey, No. 34-1979.
17. Id., Table 6a.
18. See Re Kansas City Power & Light Co., 16 P.U.R.4th 111 (1976). The report on the fuel adjustment clause must include (a) total kilowatt-hours by affected classes, (b) total monthly revenue charged under the clause and (c) unamortized unrecovered fuel costs remaining at month's end.
19. Kan.Stat. Ann. §66-117 (Cum.Supp.1978).
20. The Energy Consumer, Oct., 1979 at 9.
21. Re Kansas Power & Light Co., 6 P.U.R.4th 321, 344 (1974).
22. Re Southwestern Bell Tel., 28 P.U.R. 4th 519, 536 (1979).
23. NARUC Survey, No. 42-1979.
24. Re Kansas Power & Light Co., supra at 344-45.
25. NARUC Survey, No. 42-1979.

26. Kan. Stat. Ann. §66-117 (Cum. Supp. 1978).
27. NARUC Survey, Table 61(c). The Commission has adopted a utility proposal which would allow users of solar heating to retain their all electric rates or space heating rates.
28. Kan. Stat. Ann. §66-117 (Cum. Supp. 1978)
29. Id.
30. Kan. Stat. Ann. §66-111 (1972).
31. Id.
32. Id. §66-112.
33. Kan. Stat. Ann. §66-150 (Cum. Supp. 1978).
34. Kan. Stat. Ann. §66-114 (1972).
35. Kan. Stat. Ann. §16-118b. (Cum. Supp. 1978).
36. Id. §66-118a.
37. Id. §66-118c.
38. Id. §66-118d.
39. Id. §66-118f.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>KANSAS</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service		X	X			<u>Re Kansas Power & Light Co., 8 P.U.R. 4th 337 (1975)¹</u>			Equity, 8 P.U.R. 4th at 378-79 ¹
Declining Block Rates - Restruc- turing		X	X			<u>Re Kansas Power & Light Co. 8 P.U.R. 2 4th 337 (1975)²</u>			
Time-of-day Rates ³		X	X			<u>Re: Kansas Power & Light Co., Elec- trical Week. Sept. 24, 1979.</u>			
Seasonal Rates		X	X			<u>Re Kansas City Power & Light Co., 16 P.U.R. 4th 111 (1976)⁴</u> <u>Electrical Week, supra.</u>			
Interruptible Rates		X	X			<u>Re Kansas Power & Light Co., 8 P.U.R. 4th 337 (1975)⁵</u> <u>Electrical Week, supra.</u>			

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Load Management		X	X ⁶		Kan. Stat. Ann. §66-117 (Cum. Supp. 1978) ⁷				Efficiency, Kan. Stat. Ann. §66-117
Lifeline Rates			X		Kan. Stat. Ann. §66-110 (1972) ⁸	<u>Re Kansas Power & Light Co., 20 P.U.R. 4th 55 (1977)</u> ⁸			
Master Metering				X ⁹					
Automatic Adjustment Clauses		X ¹⁰	X			<u>Re Kansas City Power & Light Co., 16 P.U.R. 4th 111 (1976)</u> ¹¹			
Information to Consumers ¹²									
Termination ¹²		X	X			The Energy Consumer, Oct., 1979.			
Exclusion of Advertising		X	X			<u>Re Kansas Power & Light Co., 6 P.U.R. 4th 321 (1974)</u> ¹³			Conservation and Efficiency, 6 P.U.R. 4th at 344 ¹³
Small Electric Systems	X	X			Kan. Stat. Ann. §66-117 (Cum. Supp. 1978) ¹⁴		NARUC No. 42-1979.		

KANSAS (cont'd)

KANSAS (cont'd)

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1. See text accompanying n. 7 of the discussion.
 2. See text accompanying nn. 8-9 of the discussion.
 3. See text accompanying n. 10 of the discussion.
 4. See text accompanying n. 11 of the discussion.
 5. See text accompanying n. 12 of the discussion.
 6. See text accompanying nn. 13-14 of the discussion.
 7. Id.
 8. See text accompanying n. 15 of the discussion.
 9. See text accompanying n. 16 of the discussion.
 10. See text accompanying nn. 17-18 of the discussion.
 11. Id.
 12. See text accompanying nn. 19-20 of the discussion.
 13. See text accompanying nn. 21-26 of the discussion.
 14. See text accompanying n. 27 of the discussion.

KENTUCKY

The rates charged by a public utility in Kentucky must be "fair, just and reasonable" and the service which it furnishes shall be "adequate, efficient and reasonable."¹ Utilities may not "give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between ... classes of service for doing a like and contemporaneous service under the same or substantially the same conditions."² Classifications of service and rates may "take into account the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration."³

The Kentucky Public Service Commission had jurisdiction over electric utilities within Kentucky⁴ until April 1, 1979, when the Energy Regulatory Commission assumed "exclusive jurisdiction over the rates and service" of all electric utilities within the state.⁵ The Energy Regulatory Commission shall make appropriate investigation of complaints by interested parties that any rate is "unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of [a] utility ... is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained...."⁶ When, pursuant to a hearing, the Energy Regulatory Commission shall determine that "any rate ... is unjust, unreasonable, insufficient, unjustly discriminatory" or otherwise violative of the state's public utilities laws, such commission shall "prescribe a just and reasonable rate."⁷

In Kentucky, all tariff filings concerning the furnishing of electric services must be accompanied by a cost-of-service study supporting the proposed charges.⁸ Declining block rates have been allowed for electric utilities, but the commission has a policy of discouraging them.⁹ Time-of-day rates have not been approved,¹⁰ but the commission has permitted the use of seasonal rates.¹¹ Rates for interruptible service have not been authorized.¹² The commission encourages load management.¹³ The Public Service Commission ordered all utilities to submit lifeline rates for residential customers by July 1, 1979.¹⁴ Its successor, the Energy Regulatory Commission, held lifeline orders in abeyance pending the outcome of a court action filed by a number of large industrial customers who claimed that such rates would cause them to assume an unfair economic burden if implemented. The action was recently dismissed.¹⁵

The commission has no policy regarding master metering.¹⁶ Utilities are required to file monthly fuel adjustment clauses ten days before being put into effect.¹⁷ Copies of all fossil fuel contracts and supporting documents must also be filed with the commission.¹⁸ At six month intervals, the commission will conduct public hearings on the utility's past fuel adjustments and may order a decrease in rates where it finds an unjustified adjustment.¹⁹ Every two years the commission will review past operation of the clause and will disallow improper expenses to re-establish the proper fuel clause charge.²⁰ Information regarding current rates and proposed rate increases must be provided to consumers,²¹ but, as a general rule, such information need not be mailed directly to consumers. Electric service may be terminated for noncompliance with utility rules and regulations only upon ten days' written notice after failing to induce the customer or applicant to comply.²²

Service can be cut off without notice or refused when a dangerous situation is found on the customer's premises and a customer may also be discontinued without notice for obtaining or diverting service by fraudulent or illegal means.²³ A customer or applicant may be refused service or service may be discontinued upon fifteen days' written notice where the customer refuses or neglects to provide reasonable access to his premises.²⁴ Termination of service for unpaid bills requires ten days' written notice but upon presentation of a medical certificate stating that "discontinuance of service will aggravate any existing illness or infirmity" of a person on the premises discontinuance may be postponed until the affected resident can make other living arrangements or until thirty days elapse since the utility notified the customer in writing of local, state and federal programs that provide assistance with the payment of utility bills.²⁵ Direct or indirect expenditures in a utility's cost of service for ratemaking purposes for promotional, political or institutional advertising is prohibited. Advertising which the utility can demonstrate will produce a material benefit to ratepayers, such as that which informs customers how to conserve energy, that which is required by law or regulation, is with regard to service interruption, safety measures or emergency conditions, employment opportunities, or that which promotes the use of energy efficient appliances, equipment or services will be allowed.²⁶ The Energy Regulatory Commission has no policy regarding electric rates which discriminate against or discourage the use of solar, wind or other small energy generation systems.²⁷

Rate changes may not be made by any utility except upon twenty days' notice to the commission stating the changes proposed and the time when the changed rates will go into effect.²⁸ The commission may then, either upon its own motion or upon complaint in writing made by any mercantile, agricultural or manufacturing society, or by any body politic or municipal organization, or by any utility, or by ten patrons of the utility complained of or any ten complainants of all or any of the aforementioned classes that the rate is unreasonable or discriminatory, upon reasonable notice, enter upon a hearing concerning the reasonableness of the new rates.²⁹ Intervention may be made by any corporation, association, body politic or person authorized by law to become a party to a proceeding before the Commission upon leave of the Commission,³⁰ and by the Attorney-General's Division of Consumer Protection.³¹ The books, accounts, papers and records of the utility are available to the commission for inspection and the utility must file reports or other information that the commission reasonably requires.³² Each commission and each commissioner is empowered to issue subpoenas, subpoenas duces tecum and all necessary process in proceedings brought before or initiated by the commission.³³ Investigation with or without a hearing by the commission is authorized.³⁴ Each commission or any commissioner, or any party to the proceeding may cause depositions of witnesses residing within the state to be taken.³⁵ The scheduling of hearings is to be fixed by the commission.³⁶ Timing of such hearings is not otherwise dealt with by the statute. At the hearing, the complainant and the person complained of may be heard in person or by attorney and may introduce evidence.³⁷ Witnesses may be examined by the commission and each commissioner.³⁸ No person may be excused from testifying or producing documents at any inquiry by or hearing before either the commission or any commissioner on the ground that the testimony or production may tend to incriminate him or subject him to penalty or forfeiture.³⁹ A full record must be kept of all contested proceedings.⁴⁰ After a determination is made by the commission in any hearing, any party to the proceedings may petition

for rehearing within twenty days after service of the commission's order upon him.⁴¹ Within twenty days of service of the commission's order upon him, twenty days after denial of application for rehearing, or twenty days after final order on rehearing, any party to the proceeding may bring an action against the commission in the Franklin Circuit Court to vacate or set aside the order or determine that it is unlawful or unreasonable.⁴² The proceeding must comport with requirements of due process.⁴³ The review is on the record.⁴⁴ The burden of proof rests on the person seeking to set aside the determination, requirement, direction or order of the commission who must show on clear and satisfactory evidence that the determination, requirement, direction or order is unreasonable or unlawful.⁴⁵ Any party to the proceeding may appeal from the judgment of the circuit court to the Court of Appeals.⁴⁶

1. Ky. Rev. Stat. §278.030 (Cum. Supp. 1978).
2. Id. §278.170.
3. Id. §278.030.
4. Id. §278.040 (effective until Ap. 1, 1979).
5. Id. (effective Ap. 1, 1979).
6. Id. §278.260 (effective Ap. 1, 1979).
7. Id. §278.270 (effective Ap. 1, 1979).
8. 807 Ky. Admin. Reg. 2:020, §5(2)(c).
9. NARUC Survey, Table 61(b).
10. Id.
11. Id.
12. Id.
13. Id., Table 61(c).
14. Re Establishment of Lifeline Rates, Adm Case No. 202, March 22, 1979.
15. Electrical Week, Aug. 6, 1979 at 4; Order of Franklin Circuit Court C.A.No.79-CI-0755, Aug.7, 1979.
16. NARUC Survey, Table 61(b).
17. 807 Ky. Admin. Reg. 50:075 §1(9).
18. Id. §1(7).
19. Id. §1(11).
20. Id. §1(12).
21. 807 Ky. Admin. Reg. 2:010, §6; 2:020, §7. Information concerning a proposed rate increase must be mailed to consumers when twenty or less than twenty such consumers will be effected by the proposed increase.
22. 807 Ky. Admin. Reg. 50:015 §11(1)(a).
23. Id. §§11(1)(b); 11(2)(c).
24. Id. §11(1)(c).
25. Id. §11(2)(a).
26. 807 Ky. Admin. Reg. 50:020.
27. NARUC Survey, Table 61(c).
28. Ky. Rev. Stat. §278.180 (Cum. Supp. 1978).
29. Id. §§278.190(1); 278.260.
30. 807 Ky. Admin. Reg. 50:005.
31. Ky. Rev. Stat. §367.150(8) (1972).
32. Ky. Rev. Stat. §278.230(2)(3) (Cum. Supp. 1978).
33. Id. §278.320.
34. Id. §278.250.

- 35. Id. §278.340.
- 36. Id. §278.310(1).
- 37. Id. §278.310(3).
- 38. Id. §278.330.
- 39. Id. §278.350.
- 40. Id. §278.360.
- 41. Id. §278.400.
- 42. Id. §278.410.
- 43. Ky. Const. §13.
- 44. Id. §278.420.
- 45. Id. §278.430
- 46. Id. §278.450.

KENTUCKY

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹	X		X			807 Ky. Admin. Reg. 2:020, §5(2)(3)			
Declining Block Rates-Restructuring ²				X					
Time-of-day Rates ³									
Seasonal Rates ⁴			X						
Interguptible Rates ⁵									
Load Management ⁶									
Lifeline Rates ⁷	X			X	Order of Franklin Circuit Court C.A. No. 79-CI-0755 (1979)	Re Establishment of Lifeline Rate Adm. Case No. 202 (1979)			
Master Metering ⁸									
Automatic Adjustment Clauses - Review ⁹						807 Ky. Admin. Reg. 50:075 §1(9)			
Information to Consumers ¹⁰						807 Ky. Admin. Reg. 2:010, §6			

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Exclusion of Advertising ¹¹			X	X		807 Ky. Admin. Reg. 50:020			
Small Electric Systems ¹²									

1. See text accompanying n. 8 of the discussion.
2. See text accompanying n. 9 of the discussion.
3. See text accompanying n. 10 of the discussion.
4. See text accompanying n. 11 of the discussion.
5. See text accompanying n. 12 of the discussion.
6. See text accompanying n. 13 of the discussion.
7. See text accompanying nn. 14-15 of the discussion.
8. See text accompanying n. 16 of the discussion.
9. See text accompanying nn. 17-20 of the discussion.
10. See text accompanying n. 21 of the discussion.
11. See text accompanying nn. 22-25 of the discussion.
12. See text accompanying n. 27 of the discussion.

LOUISIANA

Louisiana does not statutorily proscribe unreasonable discrimination in rate-making by utilities doing business in the state; however, the state courts have jurisprudentially adopted the prevailing rule that utilities' rate structures must be non-discriminatory.¹ The utilities are also prohibited from engaging in discriminatory practices, (e.g. rebates, preferential charges and service inequalities).² The Public Service Commission (the "Commission") has the power to fix³ and regulate the rates charged and the services furnished by the public utilities.

Reasonable classification of consumers for rate-making purposes can be based upon such factors as the cost of service, the purpose for which the service or product is received, the quantity or amount received, the different character of the service furnished, the time of its use, or any other matter which presents a substantial difference as a ground of distinction.⁴ The Commission has ordered a utility to take the necessary steps to produce sufficient data to permit a cost-of-service study for the purpose of improving rate design.⁵ The Commission has approved declining block rates and has no policy of discouraging such rates.⁶ In addition,⁸ the Commission has approved seasonal rates⁹ and rates for interruptible service,⁸ but has yet to approve time-of-day rates.¹⁰ There has been no load management activity approved by the Commission.¹⁰ Lifeline rates have not been approved, and the Louisiana courts have been consistent in finding impermissible any discrimination among customers as to the rate charged for the same service.¹¹

The Commission has prohibited master metering from and after April 20, 1978.¹² Automatic adjustment clauses are permitted and there is a requirement that a hearing be held a month prior to the change becoming effective.¹³ Advertising expenses are allowable operating expenses for rate-making purposes provided they are reasonable in amount and are beneficial to consumers.¹⁴ The Commission has not yet adopted a policy with respect to rates for consumers with solar, wind or small generation facilities.¹⁵ Procedures for protecting ratepayers from abrupt termination of service are currently under review by the Commission.¹⁶

There are no constitutional or statutory provisions, which govern the procedural aspects of the Commission's ratemaking proceedings.¹⁷

Generic hearings or specific rate application proceedings before the Commission are governed by a specific set of rules of practice and procedure.¹⁸ The Secretary of the Commission publishes monthly notices of proceedings¹⁹ and every person who desires to appear in opposition must file a notice of protest within twenty-five days after the publication of such notice.²⁰ Any party with a justiciable or administratively cognizable interest may appear in any proceeding before the Commission.²¹ Unless otherwise prohibited by law, any public official, agency, department of the State of Louisiana or any of its political subdivisions, and every civic and trade organization shall be permitted to appear in any proceeding.²²

Any evidence which is probative and relevant may be admitted provided the substantive rights of all parties are protected.²³ Prepared testimony may be submitted²⁴ and depositions may be taken with the consent of the Commission.²⁵ Subpoenas for the production of books, papers, accounts or documents

may be issued by the Commission upon its own motion, or upon the written motion of a party for good cause shown.²⁶

All hearings are open to the public,²⁷ and contested proceedings shall be on the record.²⁸ When a notice of protest is filed, cases are assigned to the contested docket.²⁹ All cases on the uncontested docket shall be processed as expeditiously as practicable.³⁰

Commission decisions are reviewed by the 19th Judicial District Court³¹ and the administrative record is open to consideration of additional evidence.³² The evidentiary standard applied on review is the "same evidence" test.³³ The legal standard applied on review is "clearly arbitrary or erroneous."³⁴

1. Guste v. Council of City of New Orleans, 9 P.U.R.4th 353, 357, 309 So.2d 290 (La.Sup.Ct. 1975); Hicks v. City of Monroe Util. Comm., 29 P.U.R.3d 275, 112 So.2d 635 (La.Sup.Ct. 1959).
2. Guste v. Council of City of New Orleans, *supra*, n. 1, at 357.
3. La. Rev. Stat. Ann. § 1163 (West) (Supp. 1978).
4. Hicks v. City of Monroe Util. Comm., *supra* n. 1, at 285.
5. Re Gulf States Utilities Co., 20 P.U.R.4th 147, 162-63 (1977).
6. NARUC Survey, "Ratemaking," Table 61(b).
7. Id.
8. Id.
9. Id.
10. NARUC Survey, "Rate Structure Revision," Table 61(c).
11. See Sugar Bowl Gas Corporation v. Louisiana Public Service Commission, 354 So.2d 1014, 1018 (La.Sup.Ct. 1978); see also cases cited in note 1, *supra*.
12. Louisiana Public Service Commission General Order (April 20, 1978).
13. Response to Stone and Webster Questionnaire, O.M.B. No. 038-579052, p. 3.
14. Id.
15. Id.
16. Id.
17. Stone and Webster Questionnaire, OMB No. 038-579052, p. 6-9.
18. Rules of Practice and Procedure, Louisiana Public Service Commission (July 1, 1976).
19. Id. Rule 19.
20. Id.
21. Id. Rule 10.
22. Id.
23. Id. Rule 32.
24. Id. Rule 35.
25. Id. Rule 39.
26. Id. Rule 40.
27. Id. Rule 26.
28. Id. Rule 29.
29. Id. Rule 20.
30. Id. Rule 21.
31. Stone and Webster Questionnaire, *supra* n. 17 at 8.
32. Id.

- 33. B&M Trucking v. Louisiana Pub. Serv. Comm., 353 So.2d 1323 (1977)
- 34. South Central Bell Tel. Co. v. Louisiana Pub. Serv. Comm., 352 So.2d 999 (1977).

LOUISIANA (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Termination ¹⁰ : Notice Provision									
Endangering Health Provision									
Exclusion of Advertising					x ⁹				
Small Electric Systems ⁶									

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1. See text accompanying nn. 4-5 of discussion.
 2. See text accompanying n. 6 of discussion.
 3. See text accompanying n. 9 of discussion.
 4. See text accompanying n. 7 of discussion.
 5. See text accompanying n. 8 of discussion.
 6. Information unavailable.
 7. See text accompanying n. 11 of discussion.
 8. See text accompanying n. 13 of discussion.
 9. See text accompanying n. 14 of discussion.
 10. See text accompanying n. 16 of discussion.

MAINE

The Maine Public Utilities Commission is empowered to investigate proposed rate charges, and rates must be just and reasonable.¹ In 1977, the Maine legislature enacted the Electric Rate Reform Act.² This Act states:

The Legislature declares and finds that improvements in electric utility rate design and related regulatory programs have great potential for reducing the cost of electric utility services to consumers, for encouraging energy conservation and efficient use of existing facilities and for minimizing the need for expensive new electrical generating and transmission capacity. It is the purpose of this chapter to require the Public Utilities Commission to relate electric rates more closely to the costs of providing electric service.

The Act also directs that the Commission "as it determines appropriate" shall order electric utilities to submit rate design proposals "designed to encourage energy conservation, minimize the need for new electrical generating capacity, and minimize costs of electricity to consumers."⁴ These proposals "shall include, but not be limited to" load management techniques, rates reflecting marginal costs of service including time-of-day and seasonal rates, policies encouraging economic use of fuel and rates or policies which encourage electric system reliability.⁵ In at least one recent case, the Supreme Judicial Court declined to adopt seasonally differentiated residential customer rates.⁶

Utilities in Maine have presented evidence that their declining block rates are currently cost-justified, and that the Commission's policy is to discourage declining block rates. A 1978 Supreme Court case found that a declining block rate was just and reasonable even assuming for purposes of argument that it bore little relation to cost.

Interruptible service rates have been implemented.⁸

By statute, the Maine legislature directed the commission to create a one-year demonstration project for lifeline rates for older citizens below a specified income.⁹ The Commission was directed to hold a public hearing to review the lifeline service rate and to report its findings and recommendations to the legislature by the end of 1976.¹⁰ The demonstration project ended in early 1977 and no lifeline rates are currently in effect.

The Maine legislature also directed the Commission to adopt regulations with respect to termination of service. The regulations were required to provide for written notice, the right of a consumer to pay in installments, the right of a consumer to an informal hearing with the utility company and an appeal to the Commission, and to prohibit termination during a limited medical emergency.¹¹

In a case decided more than 20 years ago, the Maine Supreme Judicial Court held that good faith promotional expenses by utilities are acceptable so long as they are within the "limits of reason." The court held that the Commission erred when it disallowed certain promotional expenses.¹²

The Commission has ordered a generic rate design proceeding.¹³ Peak load pricing or other load management proposals are required in all rate case filings.¹⁴

Procedural aspects of generic hearings and rate proceedings before the Commission are governed by the Rules of Practice and Procedure.¹⁵ Written notice of hearings must be sent to all parties¹⁶ and the Commission shall cause notice to be given to the public by publishing a certified copy thereof in a newspaper of general circulation in the territory affected at least three weeks prior to the hearing date.¹⁷

Petitions to intervene will be granted upon a showing of direct and substantial interest in the subject matter of the proceedings.¹⁸ Interested parties who may be directly and substantially affected by a proceeding may be allowed to introduce evidence or otherwise participate in the conduct of such proceeding.¹⁹

Subpoenas for the production of books and records will be issued upon written application or upon the Commission's own motion.²⁰ Documentary evidence may be submitted upon stipulation of the parties or at the discretion of the presiding officer.²¹

An appeal from a final decision of the Commission may be taken to the law court on questions of law.²² In appeals of decisions involving rates, the law court shall have jurisdiction to review, modify, amend or annul any ruling or order of the Commission, but only to the extent of the unlawfulness of such ruling or order.²³ No evidence beyond that contained in the record may be introduced, except in cases where issues of confiscation or constitutional right are involved.²⁴

1. Me. Rev. Stat. tit. 35, §§ 69, 51 (1978).
2. Id. §§ 91-95.
3. Id. § 92.
4. Id. § 93.
5. Id.
6. Central Maine Power Co., (1979) cited in (1979) Util. L. Rep. (CCH) ¶ 22,888.
7. Central Maine Power v. Pub. Util. Comm., 382 A.2d 302 (S.Jud.Ct. of Maine 1978).
8. NARUC Survey, "Ratemaking", Table 61(b); Re Bangor Hydro-Electric Co., 16 P.U.R.4th 244 (1976).
9. Me. Rev. Stat. tit. 35, §§ 82-85 (1978).
10. Id. § 85.
11. Id. § 314.
12. Central Maine Power Co. v. Pub. Util. Comm., 136 A.2d 726 (S.Jud.Ct. of Maine 1957)
13. See Central Maine Power v. Pub. Util. Comm., 382 A.2d 302, n. 39 (S. Jud.Ct. of Maine 1978); NARUC Survey, "Ratemaking", Table 61(c)
14. Me. Rev. Stat. tit. 35, §§ 91-95 (1978); NARUC Survey, "Ratemaking", Table 61(b).
15. Rules of Practice and Procedure Before the Public Utilities Commission of Maine (1962).
16. Id. Rule 4.2.
17. Id. Rule 4A.2.

18. Id. Rule 16.
19. Id. Rule 16.7.
20. Id. Rule 4.18.
21. Id. Rule 4.15.
22. Me. Rev. Stat. tit. 35, § 303 (1978).
23. Id. § 305.
24. Id.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>MAINE</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service			X		Me. Rev. Stats. Ann. tit. 35 ¹ §§ 92-94 (1978)				Conservation, Efficiency
Cost Justification Declining Block Rates ²							<u>Central Maine Power v. Pub. Serv. Comm., 382 A.2d 302 (S. Jud. Ct. of Maine 1978)⁴</u>		
Time-of-Day Rates ³			X		Me. Rev. Stat. Ann. tit. 35, § 93 (1978)				
Interruptible Rates ⁵		X	X			<u>Re Bangor Hydro- Electric Co., 16 P.U.R.4th 244 (1976)</u>			
Load Management Techniques ⁸			X		Me. Rev. Stat. Ann. tit. 35, § 93 (1978)				
Lifeline Rates ⁶			X		Me. Rev. Stat. Ann. tit. 35, §§ 82-85 (1978)				
Termination of Service ⁷			X		Me. Rev. Stat. Ann. tit. 35, § 314 (1978) ¹				
Advertising ⁹			X				<u>Central Maine Power Co. v. Pub. Serv. Comm., 136 A.2d 726 (S.Jud.Ct. of Maine 1957)</u>		

MAINE (cont'd)

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1. The purpose of the Electric Rate Reform Act was to "require the Public Utilities Commission to relate electric rates more closely to the costs of providing electric service." Me. Rev. Stat. tit. 35, § 92 (1977). See text accompanying nn. 2-5 of discussion.
 2. See text accompanying nn. 5-6 of discussion.
 3. See text accompanying nn 2-5 of discussion.
 4. See text accompanying n. 7 of discussion.
 5. See text accompanying nn. 8-9 of discussion.
 6. See text accompanying n. 10 of discussion.
 7. See text accompanying n. 11 of discussion.
 8. See text accompanying n. 14 of discussion.
 9. See text accompanying n. 12 of discussion.

MARYLAND

Public service companies operating in Maryland are statutorily required to furnish services and facilities "which are safe, adequate, just, and reasonable, economical, and efficient, giving consideration to the conservation of natural resources and the quality of the environment."¹ The companies are also required to charge "just and reasonable rates" for the services provided.² The Public Service Commission (the "Commission") has the power to supervise and regulate the public service companies³ and, in particular, the power to determine and fix such just and reasonable rates.⁴ The public service companies are not allowed to grant any undue or unreasonable preference to, or discriminate against, or cause any undue or unreasonable prejudice to any person, locality or particular class of service.⁵

The Commission has stated that cost of service, although significant, is but one factor to consider in determining the proper differential between rates for different classes and uses.⁶ Declining block rates have been approved by the Commission pending the completion of the Commission's generic electric rate design investigation.⁸ The legislature has directed the Commission to study the declining block rate method and investigate alternative rate structures to promote the conservation of energy.⁹ The Commission has also deferred incorporation of time-of-day rates into the existing rate structure pending the completion of the generic investigation.¹⁰ Seasonal rates have been approved by the Commission and the Commission has required the public service companies to maintain the seasonal differential on a percentage basis.¹¹ Rates for curtailable service have been approved.¹² Load management techniques are also being investigated in the generic investigation.¹³ While lifeline rates have not been approved by the Commission,¹⁴ elderly subscribers are statutorily exempted from any cash deposit requirement.¹⁵

The legislature has directed the Commission not to authorize an electric company to service any new residential multiple occupancy building on which construction begins after July 1, 1978 unless that building has an individual meter for each occupancy unit.¹⁶ Automatic fuel adjustment clauses are allowed in Maryland pursuant to statutory guidelines.¹⁷ In addition, the Commission is required to conduct a public evidentiary hearing any time the fuel costs change by more than five percent.¹⁸

The Commission has required gas companies to assist consumers in selecting the most economical rate schedule and to notify consumers of any changes in rate or with any additional information as may be reasonably requested.¹⁹ In addition, gas companies are required to give the consumer at least 3 days' written notice before terminating service for non-payment of bill.²⁰ The Commission has lifted its temporary moratorium on disconnections of residential gas and electric service. Now, affidavits must be filed with the Commission prior to such termination stating that the life or health of the occupant will not be threatened thereby.²¹ The Commission severely limits the amount of promotional expenditures includible as operating expenses for rate-making purposes.²² The Commission has a nondiscriminating policy for rates for consumers with solar, wind, or small generation facilities.²³

All proceedings before the Commission are governed by the Commission's Rules and the Public Service Commission Law.²⁴

The Office of People's Counsel shall evaluate all matters before the Commission to determine if the interests of residential users are affected.²⁵ It shall appear before the Commission and Courts on behalf of those affected users in all matters over which the Commission has original jurisdiction and in which the People's Counsel deems their interest to be involved.²⁶ Any person may intervene in any proceeding before the Commission unless their interests are adequately represented by an existing party or the issues sought to be raised are irrelevant or immaterial.²⁷

The Commission may, on its own motion or upon the request of any party, issue subpoenas for the production of documents.²⁸ Parties have the right to submit documentary evidence.²⁹

The validity of any rule or regulation of the Commission may be determined upon petition for a declaratory judgment to the Superior Court of Baltimore City or to the circuit court for the county where the petitioner has its principal office.³⁰ Any party or person in interest dissatisfied by a final decision or order of the Commission may petition the circuit court for any county within which operations are carried out for review.³¹ Any party may introduce new evidence on judicial review.³² If such evidence is materially different from that given at hearing before the Commission, the Commission will be notified and given an opportunity to modify or rescind its action.³³ In the absence of recission or modification, judgment will be rendered on the original order.³⁴

Every final order of the Commission shall be prima facie correct and shall be affirmed unless clearly shown to be in violation of constitutional provisions, not within statutory authority or jurisdiction, made upon unlawful procedure, arbitrary or capricious, affected by other error of law, or unsupported by substantial evidence.³⁵

An aggrieved party may obtain further review of any final judgment by appeal to the Court of Special Appeals.³⁶

1. Md. Pub. Serv. Comm. Code Ann. § 28(c) (Supp. 1978)
2. Id. at § 28(d), 69.
3. Id. at § 68.
4. Id. § 68.
5. Id. at § 26(a).
6. Re Baltimore Gas & Electric Co., 89 P.U.R.3d 340, 367 (1971).
7. See e.g., Re The Potomac Edison Co., 22 P.U.R.4th 129, 157-58 (1977); Re Baltimore Gas & Electric Co., 17 P.U.R.4th 44, 67 (1976); Re The Potomac Edison Co., 9 P.U.R.4th 241, 262 (1975).
8. Maryland Investigation on Commission's Own Motion of Electric Utility Rate Structure, Case No. 6808, Order No. 62568 (1977).
9. Md. Pub. Serv. Comm. Code Ann. § 54E (Supp. 1978).
10. Re The Potomac Edison Co., supra note 7, at 140, 158.
11. Re Baltimore Gas & Electric Co., supra note 7, at 67.
12. Baltimore Gas & Electric Rider 16, effective Dec. 26, 1978.
13. See note 8, supra.
14. NARUC Survey, "Ratemaking," Table 61(b).
15. Md. Pub. Serv. Comm. Code Ann. § 27A (Supp. 1978).

16. Id. § 51(b). See also § 54G. (This section allows any owner, operator, or manager of an apartment house which is not individually metered for electricity to install submetering equipment for each individual dwelling unit).
17. Id. § 54F.
18. Id. § 54F.
19. In the matter of Regulations of the Public Service Commission Governing Service Supplied by Gas Companies, Case No. 6736, Order No. 61510, \$4.1 (October 1, 1974).
20. Id. § 4.8.4.
21. Pub. Serv. Comm. Order No. 63975, Docket No. 7163 (Oct. 15, 1979).
22. NARUC Survey, "Miscellaneous Cost of Service Allowances," Table 18.
23. NARUC Survey, "Rate Structure Revision," Table 61(c).
24. Md. Pub. Serv. Comm. Code Ann. § 76 (Supp. 1978).
25. Id. § 15.
26. Id.
27. Id. § 82B.
28. Id. § 80.
29. Id. § 82.
30. Id. § 89.
31. Id. §§ 90, 91.
32. Id. § 96.
33. Id.
34. Id.
35. Id. § 97.
36. Id. § 98.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>MARYLAND</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹				X		<u>Re Baltimore Gas & Electric Co.,</u> 89 P.U.R.3d 340, 367 (1971)			
Declining Block Rates ²				X	Md. Pub. Serv. Comm. Code Ann. S 54E (Supp. 1978)	<u>Re The Potomac Edison Co., 22</u> P.U.R.4th 129, 157- 58 (1977)			
Time of Day Rates ³				X		<u>Re The Potomac Edison Co., 22</u> P.U.R.4th 129 (1977)			
Seasonal Rates ⁴	X					<u>Re Baltimore Gas & Electric Co., 17</u> P.U.R.4th 44 (1975)			
Interruptible Rates ⁵				X					
Load Management Techniques ⁶				X					
Lifeline Rates ⁷					Md. Pub. Serv. Comm. Code Ann. S 27A (Supp. 1978)				
Master Metering ⁸		X			Md. Pub. Serv. Comm. Code Ann. SS 27A, 54G (Supp. 1978)				
Automatic Adjustment Clauses ⁹				X	Md. Pub. Serv. Comm. Code Ann. SS 54D, F (Supp. 1978)				

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Information to Consumers ¹⁰	X			X		Order No. 61510 § 4.1 (Oct. 1, 1974)			
Procedures for Termination ¹¹				X		Order No. 61510 § 4.8.4 (Oct. 1, 1974)			
Advertising Expenses ¹²			X						
Small Energy Producers ¹³				X					

1. See text accompanying n. 6 of discussion.
2. See text accompanying nn. 7-9 of discussion.
3. See text accompanying n. 10 of discussion.
4. See text accompanying n. 11 of discussion.
5. See text accompanying n. 12 of discussion.
6. See text accompanying n. 13 of discussion.
7. See text accompanying nn. 14-15 of discussion.
8. See text accompanying n. 16 of discussion.
9. See text accompanying nn. 17-18 of discussion.
10. See text accompanying n. 19 of discussion.
11. See text accompanying nn. 20-21 of discussion.
12. See text accompanying n. 22 of discussion.
13. See text accompanying n. 23 of discussion.

MASSACHUSETTS

The Massachusetts Department of Public Utilities ("DPU") has the power to review rate increases proposed by utilities.¹ In a 1977 case, the Massachusetts Supreme Court ruled that rates need not be determined solely on a cost-related basis unless the department so orders.² The DPU has issued proposed regulations that prohibit declining block rates unless they are cost-justified,³ and has ordered the implementation of peak load pricing.⁴

Time-of-day rates have been filed and implemented on an experimental basis,⁵ and the DPU's proposed regulations would adopt mandatory time-of-day rates for all customers.⁶ Boston-Edison has a winter-summer differential for large users, and the DPU's proposed regulations require utilities to submit a proposal for interruptible retail electrical service.⁷ Moreover, the proposed regulations require each utility to file a comprehensive load management program.⁸

A 1978 court decision rejected a challenge to a department order exempting the first 384 kw's of monthly residential usage from a rate increase on the ground that this segment of residential usage had not contributed significantly to the growth of peak load demand. The court held that the Department's order did not constitute irrational discrimination, and noted that the department could reasonably conclude that the challenged exemption would encourage energy conservation and that the challenged segment did not contribute significantly to the growth of peak-load demand.⁹ In 1978, the DPU ordered an experimental life line rate for Massachusetts Electric's elderly needy.¹⁰

A 1973 case notes that department regulations create a future policy of converting to a system under which each unit in a multiple residence dwelling has a separate meter.¹¹ However, the DPU currently has no policy with respect to master metering.¹² A hearing is required before a utility may recover charges in its automatic adjustment clause,¹³ and the DPU has established standards regarding treatment of advertising expenses.¹⁴

By statute, the DPU must hold a public hearing and investigate proposed general rate increases, and it must publish notice of this hearing.¹⁵ Also by statute, Massachusetts has regulated termination of service.¹⁶ Service may not be terminated during a severe illness¹⁷ or for failure to pay for an appliance purchased from the utility.¹⁸ Service to nursing homes and the like may not be terminated without fourteen days notice to the customer and the department, and then only upon terms and conditions set by the department.¹⁹ Special requirements are also mandated with respect to terminating service to tenants and households with residents age 65 or older.²⁰

The DPU's proposed regulations require utilities to file proposals with respect to rates for consumers with solar, wind and small generation systems.²¹

Massachusetts has conducted a generic hearing concerning rates.²²

Generic hearings and rate proceedings before the DPU are conducted pursuant to the Procedural Rules.²³ Written notice of hearings must be given to all parties,

at least fourteen days prior thereto, which notice shall include the time, date, place and nature of the hearing.²⁴

Any person who desires to participate in a proceeding may file a written petition for intervention describing the petitioners interest in the proceeding, the relief sought, and the nature of evidence which will be presented.²⁵

Witnesses may submit prepared direct testimony²⁶ and the DPU and all other parties²⁷ shall have the authority to issue subpoenas for the production of documents. At the request of any party, the DPU will provide that proceedings be officially recorded by a reporter.²⁸

The Supreme Judicial Court reviews decisions of the DPU²⁹ based only on the administrative record.³⁰ The substantial evidence test is the evidentiary standard used on review³¹ and the legal tests include: lack of jurisdiction;³² error of law;³³ contrary to constitutional rights;³⁴ in excess of statutory authority;³⁵ abuse of discretion;³⁶ and not in accordance with law.³⁷

1. Mass. Ann. Laws ch. 164, § 94 (Michie/Law. Co-op) (1979).
2. Trustees of Clark Univ. v. Dept. of Pub. Utils., 361 N.E.2d 1285 (S. Jud. Ct. Mass. 1977).
3. NARUC Survey, "Ratemaking", Table 61(b).
4. D.P.U. 18810 (1977).
5. NARUC Survey, "Ratemaking", Table 61(b).
6. Id. See also, Electrical Week, October 31, 1977.
7. NARUC Survey, "Ratemaking", Table 61(b).
8. Id.
9. Boston Edison v. Dept. of Pub. Utils., 361 N.E.2d 1285 (S. Jud. Ct. of Mass. 1978).
10. Electrical Week, June 5, 1978.
11. Cambridge Electric Light Co. v. Dept. of Pub. Utils., 295 N.E.2d 876 (Sup. Jud. Ct. of Mass. 1973).
12. Stone and Webster Questionnaire, OMB No. 038-579052, p. 5.
13. Mass. Ann. Laws ch. 164, § 94G (Michie/Law. Co-op) (1979); Electric Co. v. Dept. of Pub. Utils., 366 N.E.2d 1232 (S. Jud. Ct. of Mass. 1977); Trustees of Clark Univ. v. Dept. of Pub. Utils., supra n. 2; Consumers Arg. for Fair Energy Equality v. Dept. of Pub. Utils., 335 N.E.2d 341 (Sup. Jud. Ct. of Mass. 1975).
14. Boston Edison Company, D.P.U. 19300, p. 40-41 (1978).
15. Mass. Ann. Laws ch. 164, § 94 (Michie/Law. Co-op) (1979).
16. Id. §§ 124, 124A-E; see also D.P.U. 18565 (1976).
17. Id. § 124A.
18. Id. § 124B.
19. Id. § 124C.
20. Id. §§ 124D, E.
21. NARUC Survey, "Ratemaking", Table 61(c).
22. See Re Boston Edison Co., 6 P.U.R.4th 77, 88-89 (1974); NARUC Survey, "Ratemaking", Table 61(c).
23. Massachusetts Department of Public Utilities Procedural Rules.

24. Mass. Ann. Laws ch. 164, § 94 ch. 30A, § 3(a) (Michie/Law. Co-op) (1979); Fryer v. Dept. of Pub. Utils., 373 N.E.2d 1977 (Sup. Jud. Ct. of Mass. 1978); New England Tel. and Tel. v. Dept. of Pub. Utils., 363 N.E.2d 519 (Sup. Jud. Ct. of Mass. 1977); Save the Bay, Inc. v. Dept. of Pub. Util., 322 N.E.2d 742 (Sup. Jud. Ct. of Mass. 1975); Procedural Rule 6.5.
25. Save the Bay, Inc. v. Dept. of Pub. Utils., supra n. 24; Boston Edison Co. v. Dept. of Pub. Utils., 375 N.E.2d 305 (Sup. Jud. Ct. of Mass. 1978); Procedural Rule 3.1.
26. Procedural Rule 10.4.
27. Procedural Rule 10.9.
28. Procedural Rule 6.7.
29. Stone and Webster Questionnaire, supra n. 12 at 8.
30. Id.
31. Mass. Ann. Laws ch. 30A, § 14 (Michie/Law Co-op) (1979); Fryer v. Dept. of Pub. Utils., supra n. 24; New England Tel. and Tel. v. Dept. of Pub. Utils., supra n. 24; Fitchburg Gas and Elec. Light Co. v. Dept. of Pub. Utils., 359 N.E.2d 1294 (Sup. Jud. Ct. of Mass. 1977); New England Tel. and Tel. v. Dept. of Pub. Utils., 354 N.E.2d 860 (Sup. Jud. Ct. of Mass. 1976).
32. Mass. Ann. Laws ch. 30, § 14 (Michie/Law. Co-op) (1979).
33. Id.
34. Id.
35. Id.
36. Id.
37. Id.

[illegible]

MASSACHUSETTS (cont'd)

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1. See text accompanying nn. 1-2 of discussion.
 2. The NARUC Survey, Table 61(b), indicates that the department has issued proposed regulations that prohibit declining block rates unless they are cost-justified.
 3. See text accompanying nn. 2-3 of discussion.
 4. Id.
 5. Id.
 6. Id.
 7. See text accompanying n. 3 of discussion.
 8. See text accompanying n. 4 of discussion.
 9. According to Table 6(a) of the NARUC Survey, a hearing is required before utilities are permitted to recover charges in their automatic adjustment clauses.
 10. See text accompanying n. 5 of discussion.
 11. See text accompanying nn. 6-10 of discussion.
 12. See text accompanying n. 11 of discussion.

MICHIGAN

In Michigan, the rates of "every electric utility shall be just and reasonable and no consumer shall at any time be charged more or less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions...."¹ An electric utility may not charge any person "a greater or less compensation for any service ... than it charges" any other person for rendering similar services.² Factors to be considered in setting rates include cost, reasonable return on the fair value of all property used in the service, depreciation, obsolescence, risks of business, value of service to the consumer, the connected load, the hours of the day when used and the quantity used each month...."³

The Michigan Public Service Commission ("Commission") has complete power and jurisdiction to regulate all public utilities in the state except any municipally owned utility and except as otherwise restricted by law."⁴ The Commission has "power and jurisdiction to regulate all rates, ... charges, services, rules, conditions of service and all other matters pertaining to the ... operation or direction of such public utilities."⁵

Cost of service must be considered by the Commission in allocating the revenue requirement among customer classes.⁶ Declining block rates have been approved by the Commission but, for reasons of conservation and efficiency, the Commission has encouraged and approved flat rates.⁷ The burden of demonstrating the cost-justification of such rates is on the utilities.⁸

In order to promote energy efficiency, time-of-day pricing has been implemented for larger industrial and commercial users and has been approved on an optional basis for large farms and residential space-heating customers.⁹ Experimental time-of-day rates have also been authorized for residential and general service users.¹⁰ Seasonal rates have been approved for domestic space heating.¹¹ The Commission has also authorized interruptible rates.¹² Rates for controlled water heating have been implemented and experiments with other forms of load management such as heat storage and controlled air conditioning have been undertaken.¹³

The Commission recently approved an optional low-usage residential rate at a reduced price for customers over 65 years of age.¹⁴ In order to promote energy conservation and efficient use of energy, the Commission has ordered the establishment of inverted rates for residential consumers.¹⁵

In a recent rate case the Commission stated that as a matter of policy individual metering is in the public interest because it promotes energy conservation and equity.¹⁶ Therefore, the Commission eliminated the utility's master-metering option for new multiple-unit dwellings and retained the present general service rate for master-metered buildings with more than four units, thereby discouraging, but not eliminating master-metering for older buildings.¹⁷ The Commission also approved a staff proposal¹⁸ that existing mobile home parks be voluntarily converted to individual metering.

Automatic adjustment clauses may be authorized by the Commission,¹⁹ but at least in certain instances they have been subject to monthly review and to a six-month reconciliation of revenues.²⁰ The Commission has also approved any annual rate adjustment to reflect changes in certain of the utility's operating, automatic and maintenance expenses, without prior hearings, based on a cost-indexing system.²¹

The Commission has required several utilities to adopt consumer information programs to help residential customers conserve and use energy more efficiently.²² In a recent case, the Commission required an electric utility to provide in its monthly bills to residential and small commercial users information indicating the customer's average energy use per day during the same month of the previous year.²³ Each public utility shall mail or deliver to its new customers, upon commencement of service, a pamphlet summarizing the rights and responsibilities of customers.²⁴ The pamphlet shall be made available at all times on request.²⁵

A utility may not discontinue service unless ten days' prior written notice is provided²⁶ and the customer has an opportunity to present a complaint.²⁷ Discontinuance of service to a residential user must be postponed upon presentation of a medical statement that such action will "aggravate an existent medical emergency" of the resident.²⁸ In addition, if a customer does not dispute liability to the utility for payment of a bill, but asserts his or her inability to pay in full, a utility must offer the customer an opportunity to enter into a settlement providing that the customer's service will not be discontinued if the customer pays a reasonable amount of the outstanding bill and pays the remainder in reasonable installments.²⁹ In determining the reasonableness of payments, the parties must consider, among other things, the customer's ability to pay, the reasons why the debt has been outstanding and any other relevant factors concerning the customer's circumstances.³⁰ Recently the Commission denied a petition by the Lansing Energy Action Project ("LEAP") requesting promulgation of a rule that no person have their utility service disconnected between November and May on the basis of financial inability to pay for utility service.³¹ The Commission found that its existing rate design and billing practice standards already provided fair protection against cut off of necessary utility service to low-income consumers. The Commission felt that the rule proposed by LEAP "would require the Commission to involve itself in an act of social legislating" and that a "substantial legal question" exists "with respect to the Commission's authority to undertake such an action."³² However, the Commission issued proposed amendments to billing practice rules that would prevent termination of service to any customer receiving assistance, or eligible for assistance, from a social welfare agency. It has recently approved rule changes under which customers may get a 14-day extension of the due date of the bills by proving to the utility that they have applied for economic assistance from a government agency. If a customer has requested it, the utility must also mail a copy of his or her shut-off advice to a third party, so a friend or relative may be alerted of the imminent disconnection.

Generally speaking, the Commission pursues a policy of disallowing cost-of-service treatment for expenditures for lobbying and promotional advertising, while it encourages advertising directed toward energy conservation and efficiency.³³ In a recent decision, the Commission provided that residential customers having

alternate energy sources may³⁴ sell power to a utility and use the utility's power as a stand-by energy source.

In 1974, the Commission released a public statement of its goals.³⁵ In the field of energy supply, the Commission described its goal as the "provision of an adequate and reliable supply of energy ... through resource development, energy conservation and, when necessary, allocation programs".³⁶ In the area of rate proceedings, the Commission articulated the goal of carrying out its "mandate as purchasing agent for the utility consumer" by insuring adequate and efficient,³⁷ utility service, with equitable distribution of costs among all classes of service. The Commission's authorization of time-of-day rates, inverted rates and consumer information programs has been expressly³⁸ founded on the Commission's concern for energy conservation and efficiency. In granting its approval of flattened energy blocks, the Commission has stated that "rates must be based upon reasonable cost responsibility and be designed to reflect current costs of providing service. This is critical if efficient use of available energy is to be promoted."³⁹

Rate-making hearings are governed by the statutes relating to the Commission,⁴⁰ the Michigan Administrative Procedure Act⁴¹ and the Commission's Rules of Practice and Procedure. When a utility seeks to increase or alter its rates or rate schedule in any way that will increase the cost of service to its customers, notice must be given within the affected service area.⁴² The method of giving such notice is not prescribed, but in general, notice must be adequate to apprise interested persons.⁴³ All parties to a "contested case" such as a rate-making hearing - the term "parties" includes persons who initiated the proceedings and intervenors - must be given an opportunity for a hearing "without due delay"⁴⁴ and must receive "reasonable notice" of such hearing.⁴⁵ A person who is not an original party but who claims an interest in a pending proceeding may petition to intervene, by filing a petition with the Commission at least 5 days prior to the hearing.⁴⁶ A person may appear in a proceeding without intervention if his contentions are "reasonably pertinent" to the issues already presented.⁴⁷ Defined classes of persons who may thus participate in a hearing to fix rates include individual customers or ratepayers.⁴⁸

At the hearing, the parties offer evidence to support their application or contentions.⁴⁹ The Commission may cause subpoenas to be issued⁵⁰ and may on its own motion or on the request of a party order deposition or interrogatories.⁵¹ Unpublished filing requirements may exist and the Commission also issues interpretive statements of its rules and requirements.⁵² The Commission's final decision must be⁵³ in writing or stated in the record and include findings of fact and conclusion of law.

Final decisions or orders of the Commission may, upon petition made⁵⁴ within 60 days of the order, be reviewed by the Circuit Court for Ingham County.⁵⁵ The petitioner must have exhausted his administrative remedies.⁵⁶ Review is by the court without a jury and on the record,⁵⁷ except that proof of an alleged irregularity in Commission procedure not shown by the record may be proved.⁵⁸ The court may order additional evidence to be presented before the Commission upon application if it is shown that an inadequate record was made or the evidence is material and there are good reasons why the evidence was not previously recorded or presented.⁵⁹ The court may set aside a decision or order of the Commission

"if substantial rights of the petitioner have been prejudiced" because the order is (1) in violation of the constitution or a statute, (2) in excess of the statutory authority or jurisdiction of the agency, (3) was made on unlawful procedures, (4) is not supported by "competent, material and substantial evidence on the whole record," (5) is arbitrary, capricious or an abuse of discretion, or (6) is affected by any other significant errors of law.⁵⁹

1. Mich. Comp. Laws Ann. 460.557 (1967).
2. Id.
3. Id.
4. Id. §460.6.
5. Id.
6. Re Consumers Power Co., 25 P.U.R.4th 167 (1978); Mich. Comp. Laws Ann. §460. 557 (1967).
7. Re Consumers Power Co., 3 P.U.R. 4th 321 (1974); Re Detroit Edison Co., 3 P.U.R. 4th 209 (1974).
8. NARUC Survey, Table 61(b).
9. Re Consumers Power Co., 25 P.U.R. 4th 167 (1978); Re Detroit Edison Co., 20 P.U.R. 4th 1 (1977); Re Consumers Power Co., 14 P.U.R. 4th 370 (1976); Re Detroit Edison Co., 14 P.U.R. 4th 223 (1976).
10. Re Detroit Edison Co., 20 P.U.R. 4th 1 (1977).
11. NARUC Survey, Table 61(b).
12. Re Consumers Power Co., 25 P.U.R. 4th 167 (1978).
13. NARUC Survey, Table 61(c). Also, those customers choosing the optional low-usage senior citizen rate described in the text accompanying note 14, *infra*, may be subject to mandatory load control. Re Consumers Power Co., 25 P.U.R. 4th 167 (1978).
14. Re Consumers Power Co., 25 P.U.R. 4th 167 (1978).
15. Re Consumers Power Co., 25 P.U.R.4th 1 (1977); Re Consumers Power Co., 14 P.U.R. 4th 370 (1976); Re Detroit Edison Co., 14 P.U.R. 4th 223 (1976).
16. Re Consumers Power Co., 25 P.U.R.4th 167, (1978).
17. Id.
18. Id.
19. Mich. Comp. Laws Ann. §460.6a(2) (Cum. Supp. 1977-78). *See, e.g.,* Re Detroit Edison Co., 20 P.U.R.4th 1 (1977).
20. Id.
21. Re Consumers Power Co., 25 P.U.R. 4th 167 (1978).
22. Id.; Re Detroit Edison Co., 20 P.U.R. 4th 1 (1977).
23. Re Consumers Power Co., 25 P.U.R. 4th 167 (1978).
24. Mich. Dept. of Commerce, Consumer Standards and Billing Practices, Electrical and Gas Residential Service, Rule 45 (1974). Pub. Serv. Comm'n.
25. Id.
26. Id., Rule 63.
27. Id., Rule 64.
28. Id., Rule 53.
29. Id., Rule 70.
30. Id. 70(4).
31. Lansing Energy Action Project, 26 P.U.R. 4th 235 (1978).
32. Id. at 239, citing attorney general's Opinion No. 53535.

33. See Indiana & Michigan Electric Co., Case No. U-5608, April 10, 1979; Re Detroit Edison Co., 20 P.U.R. 4th 1 (1977); Re Detroit Edison Co., 14 P.U.R. 4th 223 (1976); Re Consumers Power Co., 14 P.U.R. 4th 1 (1976); Re Consumers Power Co., 3 P.U.R. 4th 321 (1974); Re Detroit Edison Co., 3 P.U.R. 4th 209 (1974).
34. Re Detroit Edison Co., 20 P.U.R. 4th 1 (1977). In Re Consumers Power Co., 25 P.U.R. 4th 167 (1978), the Commission approved a power provision for customers who have their own solar or wind electric generating systems. Customers served under this rate would pay all direct costs of metering, controlling and protective equipment and would sell surplus power to the utility.
35. Mich. Pub. Serv. Comm'n., "Statement of Goals Concerning Energy and Communications," Interpretative and Informative Statement 1974-1 (Feb. 4, 1974).
36. Id. at 1.
37. Id. at 1-2. The Commission stated that implementation of its "mandate" also requires (1) rate setting which will guarantee the financial soundness of the utilities and (2) prompt and objective rendering of decisions by the Commission.
38. See Re Consumers Power Co., 25 P.U.R. 4th 167 (1978); Re Detroit Edison Co., 20 P.U.R. 4th 1 (1977); Re Consumers Power Co., 14 P.U.R. 4th 370 (1976); Re Detroit Edison Co., 14 P.U.R. 4th 223 (1976).
39. Re Consumers Power Co., 3 P.U.R. 4th 321, 343 (1974); Re Detroit Edison Co., 3 P.U.R. 4th 209, 249 (1974).
40. Mich. Comp. Laws Ann. §460, et seq.
41. Id.
42. Id. §460.6a(1).
43. See, Haven v. City of Troy, 39 Mich.App. 219, 197 N.W.2d 496, 499 (1972).
44. Mich. Comp. Laws Ann. §24.271(1).
45. Id. §24.271(2). Rule 31 of the Commission's Rules of Practice and Procedure (460.41z0 prescribes 10-day written notice.
46. Rules of Practice and Procedure, Rule 11 (460.21).
47. Id. Rule 16 (460.26).
48. Id. Rule 16(1)(a).
49. Mich. Comp. Laws Ann. §460.6a, 24.276; Rules of Practice and Procedure, Rules 34, 37.
50. M.C.L.A. § 24.273, Rule 41.
51. Rule 35.
52. Stone & Webster Questionnaires, OMB 038-579052, Response of Michigan Public Service Commission; see e.g.
53. M.C.L.A. § 24.285.
54. Id. § 24.301 et seq.
55. Id. § 24.301.
56. Id. §24.304.
57. Id.
58. Id. § 24.305.
59. Id. §24.306.

Standard/Policy					MICHIGAN			Reference to PURPA Objectives
	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>
Cost of Service	X	X	X		Mich.Comp.Laws App. \$460.557 (1967). ¹	<u>Re Consumer's Power Co., 25 P.U.R.4th 167 (1978)</u> ²		Conservation, 25 P.U.R.4th at 210 ³
Declining Block Rates-Restructuring ⁴			X	X		<u>Re Consumers Power Co., 3 P.U.R.4th 321 (1974), Re Detroit Edison Co., 3 P.U.R.4th 209 (1974)</u> ⁵		Conservation and efficiency, 3 P.U.R.4th at 3 43; ⁵ 3 P.U.R. at 249. ⁵
Time-of-day Rates			X	X		<u>Re Consumers Power Co., 25 P.U.R.4th 167 (1978)</u> ⁶ ; <u>Re Detroit Edison Co., 20 P.U.R. 4th 1 (1977)</u> ⁷ ; <u>Re Consumers Power Co., 14 P.U.R.8th 370 (1976)</u> ⁸ ; <u>Re Detroit Edison Co., 14 P.U.R.8th 223 (1976)</u> ⁸		Efficiency, 14 P.U.R. 4th at 401 ⁹ ; 14 P.U.R. 4th at 259 ⁹
Seasonal Rates			X ¹⁰	X				
Interruptible Rates			X	X		<u>Re Consumers Power Co., 25 P.U.R. 4th 167 (1978)</u>		
Load Management			X ¹¹	X				
Lifeline Rates			X	X		<u>Re Consumers Power Co., 25 P.U.R.12th 4th 167 (1978)</u> ¹²		

MICHIGAN (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Master Metering	X		X	X		<u>Re Consumers Power Co., 25 P.U.R.</u> ¹³ 4th 167 (1978)			Conservation and Efficiency, 25 P.U.R. 4th at 220-21 ¹⁴
Automatic Adjust- ment Clauses			X	X		<u>Re Consumers Power Co., 25 P.U.R.</u> ¹⁵ 4th 167 (1978)			
Information to Consumers	X		X	X		<u>Re Detroit Edison Co., 20 P.U.R.</u> ¹⁶ 4th 1 (1977)	<u>Re Consumers Power Co., 25 P.U.R.</u> ^{17,18} 4th 167 (1978)		
						<u>Re Detroit Edison Co., 20 P.U.R.</u> ¹⁷ 4th 1 (1977)	Mich. Dept. Com., Pub. Serv. Comm'n, Consumer Standards and Billing Prac- tices, Electrical and Gas Residential Service, Rule 45 ¹⁹		

MICHIGAN (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Termination: ²⁰ Notice Provision	X		X	X		Mich. Dept. Com., Pub. Serv. Comm'n., Consumer Standards and Billing Prac- tices, Electrical and Gas Residen- tial Service, Rules 63-64			
Endangering Health Provision	X		X	X		Mich. Dept. Com., Pub. Serv. Comm'n., Consumer Standards and Billing Prac- tices, Electrical and Gas Residen- tial Service, Rule 53			Conservation and efficiency, 25 P.U.R. 4th at 201-02 ¹⁷ ; 20 ¹⁷ P.U.R. 4th at 37-38 ¹⁷
Exclusion of Advertising ²¹	X			X		Re Detroit Edison Co., 20 P.U.R. 4th 1 (1977) ²⁰ ; Re Detroit Edison Co., 14 P.U.R. 21; 4th 223 (1976) ²¹ ; Re Consumers Power Co., 14 P.U.R. 4th 1 (1976) ²² ; Re Consumers Power Co., 3 P.U.R. 4th 321 (1974); Re Detroit Edison Co., 3 P.U.R. 4th 209 (1974);			Conservation, 14 P.U.R. 4th at 29 ²² ; 3 P.U.R. 4th at 333-34 Conservation and efficiency, 3 P.U.R. 4th at 237
Small Energy			X	X					

MICHIGAN (cont'd)

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1. See text accompanying n. 6 of the discussion.
 2. Id.
 3. Id.
 4. See text accompanying nn. 7-8 of the discussion.
 5. Id.
 6. See text accompanying nn. 9-10 of the discussion.
 7. Id.
 8. Id.
 9. Id.
 10. See text accompanying n. 11 of the discussion.
 11. See text accompanying nn. 12-13 of the discussion.
 12. See text accompanying nn. 14-15 of the discussion.
 13. See text accompanying nn. 16-18 of the discussion.
 14. Id.
 15. See text accompanying nn. 19-21 of the discussion.
 16. Id.
 17. See text accompanying nn. 22-25 of the discussion.
 18. Id.
 19. Id.
 20. See text accompanying nn. 26-32 of the discussion.
 21. See text accompanying n. 33 of the discussion.

MINNESOTA

Rates charged by public utilities operating in Minnesota must be "just and reasonable."¹ Rates may not be "unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers."² Public utilities must furnish service which is "safe, adequate, efficient, and reasonable."³

The public service commission (the "commission") is "vested with the powers, rights, functions, and jurisdiction to regulate ... every public utility...."⁴ Whenever, upon investigation, the commission shall find rates, regulations, measurements, practices or services to be "unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise unreasonable or unlawful," the commission shall establish, in lieu thereof, reasonable rates, regulations, measurements, practices or services.⁵

Cost of service is one factor considered by the commission in allocating rate increases among classes of customers.⁶ When a public utility proposes rate changes resulting in a "material change" in a utility's rate structure, the commission requires submission of a cost-of-service study.⁷ The commission has approved declining block rates, but is attempting to depart from this practice.⁸ The commission has stated that flattened rates are desirable for reasons of conservation and efficiency.⁹ The commission has ordered studies of time-of-day rates,¹⁰ but has not authorized such rates.¹¹ The commission has allowed seasonal rates.¹² Optional rates for interruptible service have been authorized¹³ and a cost study has been undertaken concerning load management.¹⁴ Lifeline rates have not been authorized.¹⁵

Master metering of electric customers is forbidden by statute.¹⁶ Automatic adjustment of charges for utility service is permitted by statute.¹⁷ Every public utility must keep copies of current rate schedules open to public inspection.¹⁸ By statute, the commission shall disapprove, for ratemaking purposes, expenses for lobbying, goodwill advertising and promotional advertising.¹⁹ Expenses for advertising which provides financial information or promotes energy conservation or safety may be allowed in the ratemaking process.²⁰ Customers' service may be terminated on five days' written notice.²¹ The commission has not addressed the issue of electric rates which may discriminate against or discourage the use of solar, wind or other small energy generation systems.²²

Unless the commission orders otherwise, no public utility shall change any rate except after ninety days notice to the commission, which notice shall include substantiating documentation and a schedule when the proposed changes will go into effect. The filing utility shall give written notice of the proposed change to the governing body of each municipality and county in the area affected. The commission may suspend operation of the new rates for ninety days, during which time the commission shall determine whether all questions of reasonableness of the rates requested raised by persons deemed interested or by the administrative division of the department of public service can be resolved to the satisfaction of the commission. If the commission finds that all significant issues raised have not been resolved to its satisfaction, or upon petition of ten percent of the affected customers or one hundred affected customers, whichever is less, it shall refer

the matter to the office of hearing examiners as a contested case and may further extend the period of suspension for a period not to exceed a total of nine months. If the commission does not make a final determination concerning any schedule of rates within the nine month period, the schedule shall be deemed to have been approved by the commission.²³ The commission may make an investigation as it deems necessary, on its own motion or upon a complaint made against any public utility, by the governing body of any political subdivision, by another public utility, or by any fifty consumers of the particular utility that any rate is in any respect unreasonable, insufficient or unjustly discriminatory.²⁴ The commission on its own motion may summarily investigate the reasonableness or equity of any rate or charge.²⁵ Investigations by the commission may proceed with or without a hearing as it deems best, but the commission may make no order without affording the affected parties a hearing.²⁶ The public utility, complainant, governing bodies of affected municipalities and counties and any other persons the commission deems necessary shall be given notice of hearing.²⁷ The scheduling and timing of formal hearings are left to the discretion of the commission. At any public hearing, both the public utility and the complainant shall be entitled to be heard and be represented by counsel.²⁸ The burden of proof to show that the rate change is just and reasonable shall be upon the utility seeking the change.²⁹ The commission and each commissioner may administer oaths, examine witnesses, issue subpoenas and all necessary process and cause depositions to be taken.³⁰ It may also inspect the premises of any public utility and order the production of records.³¹ No person shall be excused from testifying or from producing documents upon the ground that the evidence may tend to incriminate him or subject him to penalty or forfeiture.³² A full and complete transcript of all proceedings at any formal hearing before the commission, any commissioner or hearing examiner must be kept.³³ Within twenty days after service by the commission of any decision constituting an order or determination, any party to the proceeding and any other person aggrieved by the decision and directly affected thereby, may apply to the commission for a rehearing. Application for rehearing is a prerequisite to any action for judicial review.³⁴

1. Minn.Stat. Ann. §216B.03 (West Cum Supp.1979).
2. Id.
3. Id. §216B.04.
4. Id. §216B.08.
5. Id. §216B.23.
6. St. Paul Area Chamber of Commerce v. Public Serv. Comm'n., — Mn.—, 251 N.W. 2d 350 (1977); Re Northern States Power Co., 11 P.U.R. 4th 385 (1975).
7. Minn.Code Ag. R. 405E (1978).
8. NARUC Survey, Table 61(b).
9. See Re Northern States Power Co., 11 P.U.R. 4th 385 (1975).
10. Id.
11. NARUC Survey, Table 61(b). See Re Northern States Power Co., 11 P.U.R. 4th 385 (1975).
12. Id.
13. NARUC Survey, Table 61(b).
14. Id., Table 61(c).
15. Id., Table 61(b).
16. Minn.Stat. Ann. §116 H.129 (West Cum. Supp.1979).

17. Id. §216B.16; Minn. Code Ag. R. 390-395 (1978).
18. Minn. Stat. Ann. §216B.05 (West Cum. Supp. 1979).
19. Id. §216B.16, subd. 8 (West).
20. Id.
21. The Energy Consumer, Oct., 1979 at 9.
22. NARUC Survey, Table 61(c).
23. Minn. Stat. Ann. §216B.16 subd. 1, 2 (West Cum. Supp. 1979).
24. Id. §216B.17 subd. 1.
25. Id. §216B.21.
26. Id. §216B.14.
27. Id. §216B.17 subd. 3, 4.
28. Id. §216B.17 subd. 3.
29. Id. §216B.16 subd. 4.
30. Id. §§216B.28-.30.
31. Id. §§216B.12-.13.
32. Id. §216B.31.
33. Id. §216B.35.
34. Id. §216B.27 subd. 1, 2.

MINNESOTA

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service	X	X	X		Minn. Code Ag ₁ R.405E (1978)	<u>Re Northern States Power Co.</u> ; 11 P.U.R. 4th 385 (1975)	<u>St. Paul Area C. of C. v. Public Serv. Comm'n.</u> , Mn., 251 N.W.2d 350 (1977)		
Declining Block Rates - Restructuring			X	X		<u>Re Northern States Power Co.</u> , 11 P.U.R. 2 ⁴ th 385 (1975)			Conservation and efficiency, 11 P.U.R. 2 ⁴ th at 413-14 ²
Time-of-day Rates				X		<u>Re Northern States Power Co.</u> , 11 P.U.R. 3 ⁴ th 385 (1975)			
Seasonal Rates			X	X		<u>Re Northern States Power Co.</u> , 11 P.U.R. 4 ⁴ th 385 (1975)			
Interruptible Rates			X ⁵	X					
Load Management ⁶				X					
Lifeline Rates ⁷									
Master Metering ⁸	X		X		Minn. Stat. Ann. §116 H. 129 (West Cum. Supp. 1979)				

MINNESOTA (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Automatic Adjust- ment Clauses		X	X		Minn. Stat. Ann. §216 B.16 (West Cum. Supp. 1979) ⁹	Minn. Code As.R. 390-395 (1978)			
Information to Consumers ¹⁰									
Termination ¹¹			X	X		<u>The Energy Consumer,</u> Oct., 1979			
Exclusion of Adver- tising ¹²	X		X	X	Minn. Stat. Ann. §216 B.15, Subd. 8 (West Cum. Supp. 1979)				Conservation, Minn. Stat. Ann. §216 B.15, Subd.8
Small Electric Systems ¹³									

1. See text accompanying n. 6-7 of the discussion.
2. See text accompanying nn. 8-9 of the discussion.
3. See text accompanying n. 10-11 of the discussion.
4. See text accompanying n. 12 of the discussion.
5. See text accompanying n. 13 of the discussion.
6. See text accompanying n. 14 of the discussion.
7. See text accompanying n. 15 of the discussion.
8. See text accompanying n. 16 of the discussion.
9. See text accompanying n. 17 of the discussion.
10. See text accompanying n. 18 of the discussion.
11. See text accompanying n. 21 of the discussion.
12. See text accompanying nn. 19-20 of the discussion.
13. See text accompanying n. 22 of the discussion.

MISSISSIPPI

The Public Service Commission has broad powers to regulate rates.¹

Utility rates in Mississippi must be "just and reasonable," and may not be "unreasonably discriminatory."² Evidence that declining block rates are currently cost-justified has been presented by utilities, but the commission has no policy with respect to declining block rates.³

Two experiments with optional time-of-day rates for residential customers are currently underway.⁴ These rates are not cost-based.⁵ Seasonal rates have also been implemented, and master metering is not permitted in new construction.⁶ A type of load management system has been implemented within Mississippi.

By regulation, utilities must "supply or make available to the customer, either at the beginning of service or whenever the customer requests it, a copy of the rates applicable to the type or types of service furnished the customer and ...assist him in obtaining the rate which is most advantageous for his requirements for service."⁸

No utility may discontinue service to any customer without first having used due diligence to give the customer notice and reasonable opportunity to cure any deficiency. In no case shall service be discontinued until after at least five days written notice, except for cases of fraudulent, careless, negligent or unlawful use of the commodity or service, or where a dangerous condition is found to exist.⁹

Upon the filing of a new rate schedule, the Commission may, either upon complaint or its own initiative, upon reasonable notice, conduct a hearing on the lawfulness of such rate.¹⁰ In addition, the Commission may conduct such other hearings as may be required on not less than twenty days notice.¹¹ Notice shall be given to all interested parties by mail and by publication in a newspaper of general circulation published in Jackson, Mississippi.¹²

13. The Commission may issue subpoenas duces tecum in proceedings before it.

Any party aggrieved by a final order of the Commission may appeal to the chancery court, first judicial district court of Hinds County.¹⁴ No new or additional evidence may be introduced but the case shall be determined upon the record.¹⁵ An order of the Commission may not be vacated except for errors of law unless the court finds that the order is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the Commission, or violates constitutional rights.¹⁶

Appeals from any final judgment of the chancery court may be had to the Supreme Court.¹⁷

1. Miss. Code Ann. §§ 77-3-33 through 77-3-41 (1978 Supp.).
2. Miss. Code Ann. §§ 77-3-33, 77-3-41 (1978 Supp.).
3. NARUC Survey, "Ratemaking", Table 61(b)

4. Id.
5. Id.
6. Id.
7. Id., Table 61(c).
8. Rules and Regulations Governing Public Utility Service, Rule 6C(2)
9. Id. Rule 8.
10. Miss. Code Ann. § 77-3-39 (1973).
11. Id. § 77-3-47.
12. Id.
13. Id. § 77-3-49.
14. Id. §§ 77-1-45, 77-3-67.
15. Id. § 77-3-67.
16. Id.
17. Id. § 77-3-71.

-Stat-

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>MISSISSIPPI Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost Justification for Declining Block Rates ¹									
Time-of-Day Rates ²			X	X					
Seasonal Rates ³			X	X					
Load Management Techniques ⁴			X	X					
Master Metering ⁵									
Information to Consumers ⁶						Rules and Regula- tions Governing Public Utility Service, Rule 6 C(2)			
Termination ⁷						Rules and Regula- tions Governing Public Utility Service, Rule 8			

1. See text accompanying n. 3 of discussion
2. See text accompanying nn. 4-5 of discussion
3. See text accompanying n. 6 of discussion.
4. The NARUC Survey, Table 61(c) indicates that some sort of load management system has been implemented within Mississippi.
5. See text accompanying n. 6 of discussion.
6. See text accompanying n. 7 of discussion.
7. See text accompanying n. 9 of discussion.

MISSOURI

Every public utility in Missouri "shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable."¹ All rates shall be "just and reasonable."² No utility may grant "any undue or unreasonable preference or advantage ... or subject any particular person ... or any particular description of service to any undue or unreasonable prejudice of disadvantage...."³ No utility shall charge "a greater or less compensation for ... electricity ... than it charges ... any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions."⁴

The Missouri Public Service Commission ("commission") has "general supervision" over all electric utilities.⁵ If, after conducting a hearing, the commission determines that "the rates or charges or the acts or regulations" of a utility under its supervision are "unjust, unreasonable, unjustly discriminatory or unduly preferential" or otherwise violative of the law, the commission shall "determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished...."⁶

The commission does not require that electric rate structures be cost-based.⁷ Declining block rates for electricity have been approved, but such rates are discouraged by the commission.⁸ Time-of-day rates have not been authorized, but seasonal rates have been approved.¹⁰ The commission has permitted implementation of interruptible rates,¹¹ and forms of load management such as ripple control and load shedding for residential air conditioners have been implemented.¹² Lifeline rates have not been approved.¹³

The Commission has a policy of discouraging master metering.¹⁴ In response to PURPA guidelines, the commission's staff has drafted a rule concerning master metering which calls for individual metering of all new apartment buildings, complexes, commercial buildings and mobile home parks which are begun after November 1, 1980.¹⁵ On June 29, 1979, the Missouri Supreme Court held that the state legislature had not empowered the commission to authorize a fuel adjustment clause as part of a utility's rate structure.¹⁶ The commission has moved for rehearing or, alternatively, to modify the opinion.¹⁷ Six days prior written notice and forty-eight hours delivered notice of disconnection for nonpayment of a bill must be provided to residential customers. Notice of intent to discontinue service must be posted at least five days prior to discontinuance of service for nonpayment of bill at a multi-unit residential building at which usage is measured by a single meter. Where the occupant of a multi-dwelling residential unit or other residence is not the utility's customer, and the occupant has advised the utility or the utility is otherwise aware that he is not the customer, the utility must give such occupant five days written notice before discontinuing service. At least twenty-four hours preceding discontinuance, the utility shall make reasonable efforts to contact the customer. Discontinuance may be postponed for a time not in excess of twenty-one days if the utility is advised the discontinuance will aggravate an existent medical emergency of the customer, a member of his family or other permanent resident of the premises. A utility may require the customer to provide satisfactory evidence that a medical emergency exists.¹⁸ During the period November 15 through

March 15, phone and personal contact must be attempted to be made to elderly and handicapped customers registered with the utility. A social service agency designated by the registered individual must also receive a copy of notice of termination.¹⁹

In recent gas utility rate hearings, the Commission modified its earlier position which disallowed for ratemaking purposes advertising which was designed to promote a favorable image of the company or goodwill advertising. The commission, instead, has adopted the New York policy which will permit informational, institutional and goodwill advertising in an amount based on a percentage of operating revenues.²⁰ However, the commission's staff has recently drafted a rule in accordance with PURPA guidelines which prohibits recovery from any person other than the shareholders of electrical corporations of any direct or indirect expenditures for promotional or political advertising.²¹ The Commission has no policy regarding electric rates which discourage the use of solar, wind or other alternate energy generation systems.²²

No change shall be made in electrical rates except after thirty days' notice to the commission and publication for thirty days as required by commission order.²³ Complaint may be made by the commission of its own motion, or in writing by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, provided that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges, unless the complaint is signed by the public counsel or the mayor or president or chairman of the board of aldermen or a majority of the counsel, commission or other legislative body of any city, town, village or county within which the alleged violation of law, rule or commission decision occurred, or by not less than twenty-five consumers of the utility. The commission shall fix the time when the hearing will be had upon the complaint, and unless public necessity requires otherwise shall serve not less than ten days' notice thereof.²⁴ In any investigation or hearing before the commission, the commission or any commissioner or any party may cause depositions to be taken, may compel the attendance of witnesses and the production of documents.²⁵ The commission, upon request of any party, may issue subpoenas and subpoenas duces tecum.²⁶ In all investigations, inquiries or hearings, the commission or commissioners are not bound by the technical rules of evidence and no informality in any proceeding shall invalidate any action taken by the commission.²⁷ At any hearing, the complainant and the person or corporation complained of and such corporations or persons that the commission allows to intervene shall be entitled to be heard, introduce evidence,²⁸ introduce exhibits, cross-examine opposing witnesses, impeach any witness and rebut the evidence against him.²⁹ The commission may take official notice of matters judicially cognizable and also of all technical or scientific facts within its competence if the parties are given notice and opportunity to contest such facts.³⁰ A full and complete record of all proceedings before the commission or any commissioner must be kept. Each decision and order shall be in writing.³¹ Findings of fact shall be stated separately from conclusions of law and shall include a concise statement of the findings on which the commission bases its order.³²

Application may be made for rehearing from any commission order or decision, by public counsel, or any corporation or person or public utility interested. If granted, the rehearing must be determined within thirty days after submission. Application for rehearing is a prerequisite to court action.³³ Within thirty days after the application for rehearing is denied or within thirty days after rendition of judgment on rehearing, the applicant may apply to the circuit court of the county in which the hearing was held or in which the commission has its principal office for a writ of certiorari or review for the purpose of having the reasonableness or lawfulness of the original order or decision determined.³⁴ No new or additional evidence may be introduced in the circuit court, but the cause shall be heard on the evidence and exhibits introduced before the commission.³⁵ Appeal may be taken from the circuit court to the supreme court or court of appeals.³⁶ Court review, in cases in which a hearing is required by law, shall determine whether the findings, decisions, rules and orders of the commission are supported by competent and substantial evidence upon the whole record.³⁷ The court of appeals may not disturb a rate order of the commission unless it clearly contravenes the law or is clearly contrary to the overwhelming weight of the evidence.³⁸

1. Mo.Stat. Ann. §393.130 (Vernon Cum. Supp. 1978).
2. Id.
3. Id.
4. Id.
5. Id. §393.140.
6. Id.
7. NARUC Survey, Table 61(a).
8. Id., Table 61(b). In a revised settlement with the commission, Missouri Edison Electric Co. agreed to allocate a rate increase on a per kilowatt hour basis. This allocation will even out the company's present declining block rate structure. "Declining block rates, . . . do not promote conservation, the Commission has determined." NARUC No. 44-1979. The commission also ordered application of a Kansas City Power & Light rate hike on a cents-per-unit basis "to effect some moderation and flattening of the block structure." Electrical Week.
9. Id. In formal hearings on rate design held in May, 1979, the commission staff backed time-of-day rates, and Union Electric vigorously opposed such rates for residential customer classes. Electrical Week, May 21, 1979 at 7-8.
10. Id. There is no summer-winter differential. However, the last step in the declining block rate is eliminated during the summer in order to increase rates to large users.
11. Id.
12. Id., Table 61(c).
13. Id., Table 61(b).
14. Id.
15. 4 C.S.R. 240-20.040.
16. State ex rel. Utility Consumer Council v. P.S.C., — Mo.—, 595 S.W.2d 41, rehearing denied (1979).
17. P.S.C. Case No. EO-80-76.
18. 4 C.S.R. 240-10.050.
19. 4 C.S.R. 240-13.050.

20. In Re Laclede Gas Co., 27 P.U.R.4th 241, 250 (1978), the commission allowed one-tenth of one percent of operating revenues of Laclede Gas for promotional, institutional and goodwill advertising. Subsequently, in Re Kansas City Power & Light Co., 28 P.U.R.4th 398, 436-7 (1979), the commission applied the same policy and again applied the same percentage in allowing advertisements of a promotional or political nature.
21. 4 C.S.R. 240-20.050.
22. NARUC Survey, Table 61(c).
23. Mo.Stat. Ann. §393.140(11) (Vernon Cum. Supp. 1978).
24. Id. §386.390.
25. Id. §386.420.
26. Id. §536.077.
27. Id. §386.410.
28. Id. §386.420
29. Id. §536.070(2).
30. Id. §536.070(6).
31. Id. §386.420.
32. Id. §536.090.
33. Id. §386.500.
34. Id. §386.510
35. Id.
36. Id. §386.540
37. Mo. Const. Art. 5, §22.
38. State ex rel. Val. Sewage Co. v. Public Service Comm'n, 515 S.W.2d 845 (1974).

MISSOURI (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Termination: Notice Provision ¹¹		X	X		4 C.S.R. 240-13.050; 4 C.S.R. 240-10.050.				
Endangering Health Provision		X	X		4 C.S.R. 240-13.050.				
Exclusion of Advertising ¹²	X			X		Re Laclede Gas Co., 27 P.U.R. 4th 241,250 (1978), Re Kansas City Power & Light Co., 28 P.U.R. 4th 398, 436-7 (1979). ⁶ The commission's staff has drafted a rule in accord- ance with PURPA guidelines 4 C.S.R. 240-20.050.		Conser- vation and effi- ciency, 25 P.U.R. at 67	
Small Electric Systems ¹³									

1. See text accompanying n. 7 of the discussion.
2. See text accompanying n. 8 of the discussion.
3. See text accompanying n. 9 of the discussion.
4. See text accompanying n. 10 of the discussion.
5. See text accompanying n. 11 of the discussion.
6. See text accompanying n. 12 of the discussion.
7. See text accompanying n. 13 of the discussion.
8. See text accompanying nn. 14-15 of the discussion.
9. See text accompanying nn. 16-17 of the discussion.
10. See text accompanying n. 23 of the discussion.
11. See text accompanying nn. 18-19 of the discussion.
12. See text accompanying nn. 20-21 of the discussion.
13. See text accompanying n. 22 of the discussion.

MONTANA

The Montana Public Service Commission is created by statute "to supervise and regulate" the operation of public utilities.¹ If upon a hearing the Commission finds that rates are "unjust, unreasonable or unjustly discriminatory," it has the power to fix just and reasonable rates.² Utilities are commanded by statute to furnish "reasonably adequate service" at "reasonable and just" charges.³

In setting rates, the Commission may prescribe classifications of service; such classifications may take into account the quantity used, the time when used, and "any other reasonable consideration."⁴

In a recent gas rate case the Montana Public Service Commission has stated that any proposed rate not supported by acceptable cost justification or other demonstrable rational basis should be discarded in favor of a schedule that as nearly as practicable gives an equal charge by volume for each volume of usage within and between each class of customers. The Commission refused to approve the applicant utility's rate schedule because no cost-of-service evidence supporting it had been provided; it authorized a flat-rate structure, declaring that the utility's proposed declining tail-block rate structure would tend to encourage large users of natural gas to use more at a lower cost at a time when energy costs and shortages made this approach irrational. Flat rates were found to be just, reasonable, equitable and conducive to energy conservation.

Lifeline rates have not been approved in Montana, nor have rates for interruptible service,⁵ although load management techniques are being studied.⁶ One utility was ordered in 1977 to file marginal cost-based time-of-day rates.⁸ Seasonal rates have also been approved.¹⁰ The Commission has a policy discouraging master metering.¹¹ The Commission encourages the development of small supplemental energy sources.¹²

Costs or expenses incurred by public utilities for advertising may not be treated as expenses deductible from income or from capital assets or in any other manner by the Commission in setting or regulating rates.¹² However, this prohibition does not apply to advertising which encourages conservation of energy or informs the public of the availability of alternative forms of energy or recommends usage at times of lower rates or lower demands.¹³

The approval of an "automatic adjustment clause" together with the Commission's establishment of a procedure of continuous reporting of actual costs and Commission review of adjustments, has been found a fair and equitable exercise of the supervisory and regulatory powers of the Commission by the Montana Supreme Court.¹⁴ However, the Commission itself determined in another case that automatic adjustment clauses are in violation of the Montana Administrative Procedure Act provisions for contested cases; the citizens' right of participation; the right to know; the due process of law provisions of state and federal constitutions.¹⁵

No information was available at the time of this report as to the Commission's policies on termination procedures and information that utilities must supply to customers.

No change may be made in a utility's rates except upon approval of the Commission or upon the passage of 9 months after the filing of the revised schedule with the Commission.¹⁶ Before the Commission may approve any change in a rate schedule generally affecting consumers in a utility's service area, it must publish notice of the proposed change in a newspaper of general circulation in the affected area.¹⁷ The notice must announce a hearing on the change and state how interested persons may become parties to the hearing.¹⁸ Notices of all hearings must also be sent to the Montana Consumer Counsel¹⁹, which is an office created by the state constitution to represent consumer interests in matters before the Commission. The Commission may also conduct investigations and hold hearings upon complaint.²⁰

Persons interested in and directly affected by the subject matter of any hearing or investigation before the Commission may petition to become a party to the proceeding.²¹ Granting of such petitions is in the Commission's discretion provided that the petitioner must have a substantial interest in the subject matter of the hearing, his participation will be in the public interest and the granting of the petition will not unduly broaden the issues.²² The Commission also has the discretion to permit persons desiring to testify at a hearing without intervening to do so.²³

The Montana Rules of Civil Procedure relating to discovery in state civil actions apply in contested Commission cases.²⁴ Parties may also use data requests among themselves.²⁵ The Commission may compel the attendance of witnesses and the production of documents at hearings.²⁶

At the hearing, parties are entitled to introduce evidence, examine and cross-examine witnesses and generally participate in the conduct of the hearing.²⁷ The Commission is bound by common law and statutory rules of evidence.²⁸ It may require additional evidence to that provided by the parties.²⁹

Each order or decision of the Commission must contain separately stated findings of fact and conclusions of law.³⁰

Any party in interest who is dissatisfied with an order of the Commission may file an action in district court to vacate and set aside the order on the grounds that it is unlawful or unreasonable.³¹ Such actions are to be tried and determined as other civil actions, so parties may introduce additional evidence before the court.³² However, if new or different evidence is introduced, and unless the parties stipulate otherwise, the district, before rendering judgment, must present such evidence to the Commission for its consideration and allow it to alter its order.³³

Appeal for judicial review of a Commission order may apparently also be had under the Montana Administrative Procedure Act. Under this statute, the scope of judicial review is more limited.³⁴

1. Mont. Rev. Codes Ann. §70-101 (1977 Supp.)
2. Id. (1971) §70-121.
3. Id. §70-105.
4. Id. §70-115.

5. Cut Bank Gas Co., 12 P.U.R. 4th 106 (1975).
6. NARUC Survey, Table 6l(b).
7. NARUC Survey, Table 6l(c).
8. NARUC Survey, Table 6l(b).
9. NARUC Survey, Table 6l(b).
10. Id.
11. NARUC Survey, Table 6l(c).
12. M.R.C.A. §70-121.1.
13. Id.
14. Montana Consumer Council v. Montana Public Service Commission, 541 P.2d 770 (Montana Supreme Court 1975).
15. Cut Bank Gas Co., supra n.1 at 110 [§70-113 of the Montana Code provided in part that no change may be made in a utility's rate schedule "except as approved by the commission".]
16. M.R.C.A. §70-113.
17. Id. Also, Rules of Procedure and Practice 38-2.2(22) - P2190 and M.R.C.A. §82-4209(2).
18. Id.
19. Id. Rule 38-2.2(22) - P2200.
20. M.R.C.A. §70-119. Also, Rule 38-2.2(26) - P2220.
21. Rule 38-2.2(30) - P2290(1).
22. Rule 38-2.2(30) - P2330.
23. Rule 38-2.2(30) - P2290(2).
24. Rule 38-2.2(42) - P2390(1)
25. Id. (2).
26. Rule 38-2.2(42) - P2400.
27. Rule 38-2.2(50) - P2480.
28. Rule 38-2.2(54) - P2570.
29. Rule 38-2.2(54) - P2620.
30. Rule 38-2.2(64) - P2700.
31. M.R.C.A. §70-128(1).
32. Id. (2).
33. Id. (3).
34. M.R.C.A. §82-4216. See e.g. Petition of Montana Power Co. 590 P.2d. 1140, 1143 (Sup.Ct. 1979).

[illegible]

MONTANA (cont'd)

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1. See text accompanying n. 5 of the discussion.
 2. See text accompanying n. 5 of the discussion.
 3. See text accompanying n. 8 of the discussion.
 4. See text accompanying n. 9 of the discussion.
 5. See text accompanying nn. 6-7 of the discussion.
 6. See text accompanying n. 6 of the discussion.
 7. See text accompanying nn. 14-15 of the discussion.
 8. See text accompanying nn. 12-13 of the discussion.
 9. Information unavailable.
 10. See text accompanying n. 11 of the discussion.

NEBRASKA

Nebraska has not returned the Stone and Webster survey. There appear to be no relevant Nebraska statutes or decisions with regard to the regulatory policies of PURPA.

NEVADA

The Nevada public utilities statutes require that public utilities furnish reasonably adequate service and facilities and that charges be "just and reasonable."¹ The Public Service Commission of Nevada (the "Commission"), which has the power to supervise and regulate the operation of the state's public utilities,² has stated its policy on the relationship of rates to cost-of-service as follows:

The commission is of the opinion that the theory of cost of service should be given consideration in the formulation of rates; however, the guidelines offered by a cost-of-service study in the setting of rates must be tempered with other factors such as value of service, price elasticity, conservation consideration and historical rate design. Thus, although the commission considers data on the cost of service to be necessary and valuable in the setting of rates, it does not consider it to be the only factor in the rate-making process.³

Having found declining block rates to be inconsistent with the energy shortage, the Commission has committed itself to a policy of restructuring rates so as to establish flat or single block rates for all energy consumption within each customer class.⁴

The Commission has approved time of day⁵ and seasonal rates.⁶ It has stated recently that "the installation of viable direct load management programs ... is important to protect ... non-renewable resources and produce long term savings and the Commission intends to pursue the installation of load management programs."⁷ In that case it ordered the utility to file a tariff by April, 1980 providing an incentive to customers who volunteer to have load shedding equipment installed on residential air conditioning units if the ongoing studies indicate such a technique would be cost-effective.

There are no lifeline rates in effect in Nevada nor any policy or rates for alternative energy sources.⁹ The Commission has recently adopted a policy frowning on master metering.¹⁰

By statute, utilities must apply to the Commission for rate increases based on increased costs of fuel and may not apply for rate increases on the basis of fuel cost increases more than once every thirty days.¹¹

Nevada has no formal policy on the inclusion or exclusion of advertising expenses or on information to be provided to consumers, deciding the issues on a case-by-case basis.¹² The Commission requires utilities to file tariffs including termination of service provisions, which are subject to Commission approval.¹³

In its opinion on a recent application for an order and permit permitting the construction of two combustion turbine engines, the Commission discussed the changing perception of the statutory mandate that a utility provide "reasonably adequate service and facilities."¹⁴ A witness had questioned the justification for allowing continued utility generation capacity to "meet unlimited requirements

at unlimited costs to the ratepayer" and suggested interruptible rates as an alternative to such expansion. The Commission stated its opinion that "a reconsideration of the assumptions underlying what is reasonable service" would be appropriate in light of recent dramatic increases in utility rates and the concomitant burden on consumers.¹⁵

No changes may be made in any utility rate schedule except upon 30 days' notice to the Commission.¹⁶ The Commission may dispense with a hearing on the proposed change, after a consideration of any protests, if it will result in an increase in annual gross revenue to the utility of \$2,500 or less.¹⁷ When a new schedule is filed the Commission may, on its own motion or on complaint, enter into an investigation and hold a hearing on the propriety of the changed rates or service.¹⁸ Notice of the pendency of any matter on which a hearing is normally required by law must be given by the Commission "to all persons entitled to notice of the hearing."¹⁹

At a hearing both the complainant and the utility have the right to appear and be fully heard.²⁰ The Commission may order the appearance of witnesses or the production of documents²¹ and may cause depositions to be taken.²²

Any party in interest who is dissatisfied with any Commission order may within 90 days commence on action in the appropriate district court against the Commission and other interested parties to vacate and set aside such order on the ground that the rate or service fixed is unlawful or unreasonable.²³ Such actions are tried and determined as other civil actions, and any party may introduce additional evidence.²⁴ The court's review is limited to determining whether the Commission's decision was "within the law," did not violate the utility's constitutional rights and was based on substantial evidence.²⁵ A decision is "within the law" if in making it the Commission did not (1) lack jurisdiction, (2) commit an error of law, (3) exceed its statutory authority, or (4) abuse its discretion.²⁶

1. Nevada Revised Statutes §704.040
2. Id. §703.150
3. Sierra Pacific Power Co., 10 P.U.R. 4th 461 (1975)
Utilities do submit cost-of-service studies, see Sierra Pacific Power Co.,
2 P.U.R. 4th 46 (1973)
4. Nevada Power Co. 14 P.U.R. 445 (1976). See also Sierra Pacific Power Co. v. P.S.C. First Judicial District Court Case No. 36623 (1979)
5. NARUC Survey, Table 61(b). One utility has a marginal cost-based time-of-day rate during the summer.
6. Id. According to this survey, the seasonal rates apply to irrigation customers only.
7. Nevada Power Co., Dkt. 1771, September 4, 1979 at p. 32
8. Id. The Commission specifically referred to PURPA guidelines in making this determination.
9. NARUC Survey, Table 61(b), 61(c)
10. Stone & Webster Questionnaire OMB O32-579052, Response of the Nevada Public Service Commission.
11. N.R.S. §704.110
12. Questionnaire, supra n. 10

13. Id.
14. Nevada Power Co., supra n.8 at pp. 29-30
15. Id. at 30
16. N.R.S. §704.100(1)
17. Id. (6), (7)
18. Id. §704.110. See also §§704.120 (investigation on the Commission's own motion generally), 704.450 (complaints).
19. Id. §704.465. The Commission has promulgated rules governing its hearings, but they were not available at the time of this report.
20. Id. §704.450
21. Id. §704.490
22. Id. §704.520
23. Id. §704.540 (1)
24. Id. (3), (4). However, before entering judgement the court must give the Commission an opportunity to review the new evidence and modify its order.
25. P.S.C. v. Continental Telephone, 580 P.2d 467 (S.Ct. Nev. 1978)
26. Questionnaire supra n.11, citing for abuse of discretion Zephyr Cove Water Co., 94 Nev. Adv. Op. 179 (1978)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service				X		<u>Re Sierra Pacific Power Co., 10 P.U.R. 4th 461 (1975); Re Sierra Pacific Power Co., 2 P.U.R. 4th 46 (1973)</u> ¹			
Declining Block Rates-Restructuring		X	X			<u>Re Nevada Power Co., 14 P.U.R.</u> ² 4th 445 (1976)			Conservation
Time-of-day Rates		X ³	X						
Seasonal Rates		X ⁴	X						
Interruptible Rates ⁵									
Load Management ⁶									
Lifeline Rates ⁷									
Master Metering ⁸									
Automatic Adjust- ment Clauses - Review					X ⁹				
Information to Consumers ¹⁰									
Termination: ¹¹ Notice Provision									

NEVADA (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
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Endangering Health
Provision

Exclusion of Adver-
tising Expenses

x¹²

Small Electric Systems⁷

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1. See text accompanying nn. 2-3 of the discussion.
 2. See text accompanying n. 4 of the discussion.
 3. See text accompanying n. 5 of the discussion.
 4. See text accompanying n. 6 of the discussion.
 5. See text accompanying nn. 7-8 of the discussion.
 6. See text accompanying nn. 7-8 of the discussion.
 7. See text accompanying n. 9 of the discussion.
 8. See text accompanying n. 10 of the discussion.
 9. See text accompanying n. 11 of the discussion.
 10. Information unavailable.
 11. See text accompanying n. 13 of the discussion.
 12. See text accompanying n. 12 of the discussion.

NEW HAMPSHIRE

Utilities in New Hampshire must not grant any person any "undue or unreasonable preference or advantage" nor subject any person to any "undue or unreasonable prejudice or disadvantage."¹ Utilities have presented evidence that declining block rates are currently cost-justified in New Hampshire's generic hearing on rate design, which began in 1975.² Utilities must make time-of-use rates reflecting costs at different times of the year, and time-of-day rates available to customers on an optional basis.³

In January, 1977, the Public Utilities Commission (the "Commission") directed each Class A utility to conduct a 12 month time-of-day experiment based on average costs, and later a marginal cost time-of-day experiment.⁴ Seasonal rates are under consideration, and the Commission has directed all Class A electric utilities to study load management programs.⁵

In a 1973 case, the New Hampshire Supreme Court reviewed a Commission order holding that a proposed declining block rate that would provide an initial block rate for residential customers below cost would constitute illegal discrimination. The Court indicated that if what had been proposed was in fact an initial rate below cost, that the commission's view was correct.⁶

A hearing must be held before changes may be made in an automatic adjustment clause.⁷

In the same case, the Court expressed the view that promotional advertising might well be excluded from a utility's cost of service under present conditions, but that advertising to promote conservation would be acceptable today.⁸

By statute, no electric utility may terminate service without good cause and ten days written notice.⁹ Good cause means violation of a tariff provision or non-payment of charges past due.¹⁰ The statute also creates a procedure for a consumer to contest or question the reason for termination before service is cut off.¹¹

Generic hearings and specific rate proceedings are governed by the Commission's Rules of Practice and Procedure. The Commission may require a petitioner to give notice of a hearing "to the general public by newspaper having general circulation in the area affected by the petition," and the Commission "may direct such other means of notice as may be deemed appropriate and desirable under the circumstances."¹² Parties must receive at least fourteen days notice.¹³

Persons not a party to a proceeding, but having an interest in the subject matter as members of the public, may participate to such extent as the Commission in its discretion may permit.¹⁴ The Commission may require the filing of prepared testimony.¹⁵

Within twenty days after any order or decision of the Commission, any party or person affected may petition for rehearing.¹⁶ Within thirty days after a petition for rehearing is denied, or after the decision in such rehearing, the applicant may

appeal to the Supreme Court.¹⁷ The case shall be determined upon the record¹⁸ and the order or decision appealed from shall not be set aside except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence, that such order is unjust or unreasonable.¹⁹

1. N.H. Rev. Stat. Ann. § 378:10 (1966)
2. NARUC Survey, "Ratemaking", Tables 61(b) and 61(c)
3. N.H. Rev. Stat. Ann. § 378:7-a (1979 Supp.)
4. NARUC Survey, "Ratemaking", Tables 61(b) and 61(c).
5. Id.
6. Pub. Serv. Co. of New Hampshire v. State, 311 A.2d 513 (S.Ct.N.H. 1973)
7. N.H. Rev. Stat. Ann. § 378:3-a (1977 Supp.).
8. Pub. Serv. Co., supra, n. 5.
9. N.H. Rev. Stat. Ann. § 363-B:1 (1977 Supp.).
10. Id.
11. Id. §363-B:2.
12. Rules of Practice and Procedure, Part C, Rule 1.
13. Id.
14. Id. Part C, Rule 2.
15. Id. Part B, Rule 8.
16. N.H. Rev. Stat. Ann. § 541:3 (1974).
17. Id. § 541:6.
18. Id. § 541:14.
19. Id. § 541:13.

NEW HAMPSHIRE

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost Justification for Declining Block Rates ¹				X					
Time-of-day Rates ²		X	X		N.H. Rev. Stat. Ann. § 378:7-a (1979 Supp.)				
Seasonal Rates ³									
Load Management Techniques									
Life Line Rates									Pub. Serv. Co. of N.H. v. State, 311 A.2d 513 (S.Ct. N.H. 1973) ⁵
Automatic Adjust- ment Clause ⁶									
Information to Consumers				X					
Termination of Service ⁸				X	N.H. Rev. Stat. Ann. § 363-B:1; 363-B:2 (1977 Supp.)				
Advertising				X					Pub. Serv. Co. of N.H. v. State, 311 A.2d 513 (S.Ct. N.H. 1973) ⁹

NEW HAMPSHIRE (cont'd)

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1. See text accompanying nn. 2-3 of discussion.
 2. See text accompanying n. 4 of discussion.
 3. See text accompanying n. 5 of discussion.
 4. Id.
 5. This decision contains dicta suggesting that an initial block rate below cost for residential customers would constitute illegal discrimination.
 6. See text accompanying nn. 6-7 of discussion.
 7. See text accompanying n. 8 of discussion.
 8. See text accompanying nn. 9-11 of discussion.
 9. See text accompanying nn. 6-7 of discussion.

NEW JERSEY

Public utilities doing business in New Jersey are required by statute "to furnish safe, adequate and proper service, including the furnishing and performance of such service in a manner that tends to conserve energy resources and preserve the quality of the environment."¹ The Board of Public Utility Commissioners (the "Board") is empowered with general supervision and regulation of the utilities.² The Board is authorized to fix "just and reasonable" rates whenever the Board determines any existing rates "to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential."³ The utilities are statutorily prohibited from engaging in unjust or unreasonable discrimination in the charging of rates⁴ on in the provision of services.⁵

The Board has relied heavily on cost-of-service studies in implementing new rate structures and has deferred considering radical changes in rate design until such cost-of-service studies were available.⁶ Declining block rates have been approved by the Board, although the Board has a policy of discouraging such rates and has in recent rate cases flattened charges within the use classifications. Several New Jersey state agencies have presented testimony supporting a peak pricing concept, including a proposal of day-night pricing, and experimental time-of-days rates have been planned by two utilities. The Board has approved seasonal rates for commercial and industrial consumers as well as for residential consumers.¹⁰ Rates for interruptible service have also won Board approval.¹¹ Utilities in the state have conducted successful voluntary load management programs, including two-way ripple control devices.¹² Lifeline rates have been authorized by statute,¹³ and approved by the Board.¹⁴

The Board has no policy with regard to discouraging master-metering.¹⁵ Automatic energy clauses are permitted, and there is a requirement that hearings be held on the adjustment clause before the adjustment becomes effective.¹⁶ The New Jersey Administrative Code requires utilities to furnish rate information to consumers and to supply consumers "with information on the furnishing and performance of service in a manner that tends to conserve energy resources and preserve the quality of the environment."¹⁷ The Administrative Code further provides for the utility to give the consumer at least seven days' written notice of its intention to discontinue service for non-payment of bills.¹⁸ In addition, the utilities are prohibited from advertising "for the purpose or with the effect of encouraging or promoting the consumption of energy resources in a manner inconsistent with the goal of conservation of energy resources."¹⁹ The Board has a policy of non-discrimination on rates for consumers with solar, wind or small generation facilities.²⁰

When any public utility shall increase rates or change existing classifications, the Board, either upon written complaint or upon its own initiative, shall have power after hearing,²¹ upon notice, by order in writing, to determine the reasonableness of such action. Every municipality may intervene in any hearing or investigation held by the Board which involves rates affecting the municipality or its citizens.²² The board of freeholders of any county shall have all the rights of intervention afforded municipalities.²³

The Board may compel the production of books and records²⁴ and may require utilities to make data submissions.²⁵

Any order made by the Board may be reviewed by appeal to the appellate division of the Superior Court.²⁶ The Superior Court is given jurisdiction to review orders of the Board and set them aside when it clearly appears that there was no evidence before the Board to support the order reasonably or that the Board was acting beyond its jurisdiction.²⁷

1. N.J. Stat. Ann. § 48:2-23 (West)(Supp. 1978); N.J.A.C. § 14.3-3.1.
2. N.J. Stat. Ann. § 48:2-13 (West)(Supp. 1978).
3. Id. § 48:2-21 (West).
4. Id. § 48:3-21 (West).
5. Id. § 48:3-2 (West).
6. See Re Public Service Electric & Gas Co., 6 P.U.R.4th 302, 307-08 (1974); Re Jersey Central Power & Light, 2 P.U.R.4th 70, 84 (1973).
7. NARUC Survey, "Ratemaking," Table 61(b); Re Public Service Electric & Gas Co., supra note 6, at 307.
8. Re Public Service Electric & Gas Co., supra note 6, at 307-08.
9. NARUC Survey, "Ratemaking," Table 61(b).
10. Re Jersey Central Power and Light Co., 10 P.U.R.4th 74, 75-76 (1975).
11. NARUC Survey, "Ratemaking," Table 61(b); see e.g., Re Elizabethown Gas Co., 3 P.U.R.4th 182, 196 (1973).
12. NARUC Survey, "Rate Structure Revision," Table 61(c).
13. N.J. Stat. Ann. §§ 48:2-29.7 et. seq. (West)(Supp. 1978).
14. Re New Jersey Bell Telephone Company, 18 P.U.R.4th 65, 75-76 (1976).
15. NARUC Survey, "Ratemaking," Table 61(b).
16. NARUC Survey, "State Regulation of Energy Cost Adjustment Clauses," Table 6a.
17. N.J.A.C. § 14.3-3.3.
18. Id. § 14.3-7.12.
19. Id. § 14.3-3.3(d)6.
20. NARUC Survey, "Rate Structure Revision," Table 61(c).
21. N.J. Stat. Ann. § 48:2-21 (West) (1969).
22. Id. § 48:2-32.2 (West) (1979 Supp.).
23. Id.
24. Id. § 48:2-35.
25. Id. § 48:2-36.1.
26. Id. § 48:2-43.
27. Id. § 48:2-46.

<u>Standard/Policy</u>	<u>Mandated,</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>NEW JERSEY</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹		X					<u>Re Public Service Electric & Gas Co., 6 P.U.R.4th 302, 307-8 (1974); Re Jersey Central Power & Light, 2 P.U.R.4th 70, 84 (1973)</u>			
Declining Block Rates ²				X			<u>Re Public Service Electric & Gas Co., 6 P.U.R.4th 302, 307-8 (1974)</u>			
Time-of-Day Rates ³		X	X				<u>Re Public Service Electric & Gas Co., 6 P.U.R.4th 302, 307-8 (1974)</u>			
Seasonal Rates ⁴		X	X				<u>Re Jersey Central Power & Light Co., 10 P.U.R.4th 74, 75-76 (1975)</u>			
Interruptible Rates ⁵				X			<u>Re Elizabethtown Gas Co., 3 P.U.R.4th 182, 196 (1973)</u>			
Load Management Techniques ⁶		X								
Automatic Adjust- ment Clauses ⁷				X						

NEW JERSEY (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Information to Consumers	X				N.J.A.C. § 14.3- 3.3				
-170- Procedure for Termination	X				N.J.A.C. § 14.3- 7.12				
Advertising Expenses ¹⁰				X	N.J.A.C. § 14.3- 3.3(d) 6				
Small Energy Producers ¹¹				X					Conservation: N.J. Stat. Ann. § 48:2-23 (West) (Supp. 1978) N.J.A.C. § 14.3-3.1 ¹²

1. See text accompanying n. 6 of discussion.
2. See text accompanying n. 7 of discussion.
3. See text accompanying nn. 8-9 of discussion.
4. See text accompanying n. 10 of discussion.
5. See text accompanying n. 11 of discussion.
6. See text accompanying n. 12 of discussion.
7. See text accompanying n. 16 of discussion.
8. See text accompanying n. 17 of discussion.
9. See text accompanying n. 18 of discussion.
10. See text accompanying n. 19 of discussion.
11. See text accompanying n. 20 of discussion.
12. See text accompanying n. 1 of discussion.

NEW MEXICO

The New Mexico Public Service Commission (the "Commission") has "general and exclusive power and jurisdiction to regulate every public utility in respect to its rates and service regulations."¹

New Mexico statutes require that public utilities provide "adequate, efficient and reasonable service"² and that every rate demanded by a public utility be "just and reasonable."³ Although utilities have the right to establish "reasonable classifications" of their users,⁴ they may not "establish or maintain . . . unreasonable differences as to rates of service either as between localities or as between classes of service."⁵ "Discrimination" in the sense of the granting of "any unreasonable preference or advantage to any corporation or person within any classification" or the subjection of "any corporation or person within any classification to any unreasonable prejudice or disadvantage" is prohibited.⁶

In a lengthy discussion of its role and concerns in setting utility rates, the Commission has interpreted the scope and focus of its statutory powers narrowly.⁷ It emphasized its duty to fix rates enabling a public utility to recover the costs of furnishing service, including a fair rate of return on investment. While the public and consumer interest preclude the Commission from setting rates any higher, protection of these interests cannot justify the fixing of a service rate below the cost of furnishing the service.

Furthermore, the Commission stated its belief that it is empowered to regulate and supervise the suppliers of utility services -- who are required to furnish "adequate, efficient and reasonable service" -- but it is not in the business of regulating and supervising public demand. The Commission construed this and other unspecified provisions of the public utility statutes to mean that it is obliged to require utilities to furnish service in the quantities and types the public desires; it is not for the Commission to decide policy questions relating to utility growth or to whether "the imperatives of fuel conservation and environmental protection should be implemented by the manner in which we approve or fix service rates." These are questions for the legislature and the Commission feels that the legislature has chosen economic growth.

The Commission also found that while it is nearly impossible to fix rates so that no classes of customers have some advantage over others, it has not been given the power to decide deliberately that the rates charged one class shall subsidize service to another. Thus, as it construes its statutory mandate, it cannot deny requested increases in residential rates (i.e. and put the burden of necessary increases disproportionately on other classes), or establish lifeline rates.

In sum, for the New Mexico Commission, "'fair and reasonable' rates are those which make it economically feasible for the public utility, under efficient management, to meet all costs of furnishing services and to otherwise comply with the statutory obligations imposed upon it."

The Commission has stated that cost determination and allocation are the crucial elements of ratemaking, and acknowledged¹⁰ the problem of cost allocation among classes of service, but has not resolved it.

Declining block rates have been approved, although without evidence that they are cost-justified being presented.¹¹ Seasonal rates and experimental time-of-day rates have been implemented.¹² The Commission discourages master metering.¹³ Interruptible service is apparently offered to industrial customers.¹⁴

Automatic fuel and purchased power adjustment clauses are permitted and regulated by Commission General Order No. 28 (effective 1974), which applies to investor-owned utilities, cooperatives, and municipally owned utilities.¹⁵ These rules require monthly filing of actual fuel expenses for the current month, from which the "Adjustment Factor" -- which is the amount of increase or decrease in dollars per kWh to be added or deducted from each bill -- is calculated. Included in the calculations is a "Balancing Account" that compensates for under- and over-collections, so that only appropriate revenue is collected. Revenues gained under such clauses must be reconciled annually with actual expenses, in a filing with the Commission; the Commission also examines the operation of the Balancing Account.

The Commission has also implemented Cost of Service Indexing for the Public Service Company of New Mexico, allowing automatic, quarterly adjustments in base service rates if the company's actual book costs for services increase.¹⁶ In so doing, the Commission noted that the existence of adjustment clauses for fuel costs but not for depreciation and capital costs was a positive disincentive for utilities to shift from gas and oil fired generation to coal and nuclear systems, to "prepare for and improve the future."

Each electric utility must notify customers affected by a change in rates or schedule classification of such change.¹⁷

The Commission after hearings recently promulgated new rules relating to discontinuance of utility service for non-payment of past due charges, which require that each utility's policies on such discontinuances meet certain minimum standards. A utility must provide to the residential customer, 15 days prior to a proposed discontinuance, written notice (in English and Spanish) containing a statement of the details of the amount owed, the names and telephone numbers of utility personnel who may be contacted with respect to the discontinuance and of the customer's rights to dispute the bill and to file a complaint with the Commission. At least 2 days before discontinuance, the utility must try to contact the customer personally or by phone.¹⁸ In addition, pursuant to a statutory requirement that service not be disconnected if the customer does not have financial resources to pay the bill and discontinuance might endanger the life of a seriously ill person residing in the house,¹⁹ the rules require written notice in English and Spanish to the residential customer, 15 days prior to a proposed discontinuance, that the utility will not disconnect service to any residence where a seriously ill person resides, if (1) a certificate of a "practitioner of the healing arts" stating that such discontinuance may endanger the person's life and (2) proof that the customer does not have adequate financial resources to pay the utility charges, are received by the Commission 2 days prior to the discontinuance date. Each utility must also notify all customers of all state and local government sources of assistance on utility bills for eligible persons. Each utility must offer a "third-party notification program," under which a residential customer may direct the

utility to notify a designated third party -- a person, organization or government agency that is ready, willing and able to assist the customer in paying utility bills -- of any proposed discontinuance. Finally, a utility may not discontinue service to a customer who indicates he/she is unable to pay his/her utility charges until it has exhausted good faith efforts to arrange a good faith deferred payment plan with such customer.

Following guidelines established by the California Public Utilities Commission, the New Mexico Commission has disallowed promotional advertising expenses where the advertising does not lead to lower costs and more efficient services to customers.²⁰ Expenses for advertising directed toward safety and conservation have been allowed.²¹ The Commission has recently adopted a rule prohibiting the inclusion for ratemaking purposes of expenses for advertising "which is inconsistent with state and national energy policy, seeks to utilize ratepayers funds to foster the public image of the Company, advocates a position rather than providing factual information, or justifies higher rates or the need for an additional plant."²² The Public Service Company of New Mexico argued in the rule-making proceedings that all its advertisements are protected by the First Amendment to the U.S. Constitution from any infringement by the Commission (other than verification of reasonableness of the amount and good faith). The Commission found no support for the contention that the First Amendment protects the source of financing as well as the content and dissemination of commercial speech; utilities can still have advertisements of the types outlined, but their investors must pay.²³

The rules also disallow lobbying expenses and political contributions.²⁴

There is no state policy on alternative energy sources.²⁵

No public utility may make any change in any rate except after 30 days notice and filing of new schedules with the Commission.²⁶ The new schedules are open to public inspection and the utility must also give notice of the proposed changes to such "other interested persons" as the Commission in its discretion may direct.²⁷

The Commission may hold hearings on the lawfulness of any proposed new rates, either on complaint or its own motion,²⁸ may investigate other matters relating to utility rates and services on complaint²⁹ and may conduct such other hearings as the administration of its powers and duties may require, after notice is given to the persons interested therein.³⁰ All hearings or investigations held or made by the Commission must be public and on at least 20 days notice to the utility, complainant and/or other interested persons; all parties are entitled to be heard and to have process to compel the attendance of witnesses;³¹ and the Commission may take "such testimony as may be offered or as it may desire."³²³³ A person may intervene in proceedings before the Commission by filing a petition for leave to intervene.³⁴ Intervention will be denied, in the discretion of the Commission, if the petition "unduly broaden[s] the issue."

At the conclusion of the hearing, the Commission must make and file its findings of ultimate fact and order based thereon.³⁵

Any party may within 30 days of the date of a Commission order, file a petition for review of the order in the appropriate district court on the grounds that it is "unreasonable or unlawful."³⁶ Administrative remedies must first be exhausted.³⁷ Where the Commission's findings are supported by substantial evidence, the Commission did not act fraudulently, arbitrarily or capriciously and its action was within the scope of its authority, the court will uphold the order.³⁸

1. New Mexico Statutes Annotated §62-6-4 (1978).
2. Id. §62-8-2.
3. Id. §62-8-1.
4. Id. §62-8-4.
5. Id. §62-8-6.
6. Id.
7. Re Public Service Co. of New Mexico, 7 P.U.R. 4th 166, 169-171 (1974).
8. However, the Commission has recently taken steps to develop a state load management and energy conservation program, with the help of groups representing various interests in the utility field. Electrical Week, July 31, 1978 p. 5.
9. A bill requiring lifeline rates is apparently before the state legislature this year. Stone & Webster Questionnaire OMB 032-579052, Response of the New Mexico Public Service Commission.
10. Re Public Service Company of New Mexico, 8 P.U.R. 4th 113 (1974). The Commission determined in a 1973 case to move toward the cost-of-service principal of pricing, insofar as it proved "possible and feasible," in telephone rate cases. Re Mountain States Telephone & Telegraph, 2 P.U.R. 4th 332, 358-59 (1973). However, in 1977 the New Mexico Supreme Court reversed a Commission finding that the telephone company that had not presented reliable cost data to support each and every proposed rate had failed to meet its burden of proof to show that its proposed rates were "just and reasonable." The Court held that cost data could not be the sole criterion for developing telephone rates. Mountain States Telephone & Telegraph Co. v. N.M. State Corporation Commission, 563 P.2d 588, 19 P.U.R. 4th 318, 331 (1977).
11. NARUC Survey, Table 61(b).
12. Id.
13. NARUC Survey, p. 587.
14. See schedules reproduced in Re Community Public Service Co., 24 P.U.R. 4th 388 (1978).
15. See also Maestar v. New Mexico Public Service Commission, 85 N.M. 571, 514 P.2d 847 (S.Ct. N.M. 1973), where the Court upheld a gas company's purchased gas adjustment clause approved by the Commission as reasonable, in the face of a challenge on the grounds that part of the utility's purchased gas came from subsidiaries, and that therefore there was potential for abuse via favorable rates etc.
16. Re Public Service Company of New Mexico, 8 P.U.R. 4th 113 (1975).
17. General Order No. 5
18. General Order No. 32-A
19. §62-8-10 N.M.S.A. (1978 Comp. (Vol. 10)). This danger must be certified by a "practitioner in the healing arts" and the certificate delivered to the utility.
20. Re Southern Union Gas Co., 12 P.U.R. 4th 219 (1975), Re El Paso Electric Co., 23 P.U.R. 4th 131 (1977).

21. Re S.U. Gas Co., supra; Re El Paso Elect. Co., supra; Re Gas Company of New Mexico, 21 P.U.R. 4th 159 (1977).
22. General Order No. 31
23. Case No. 1417, August 27, 1979
24. Id. General Order No. 31. The Commission noted in its discussion of this order its belief that the order and its consideration of advertising expenses were in compliance with PURPA requirements.
25. NARUC Survey, Table 61(c).
26. N.M.S.A. §62-8-7(B)
27. Id.
28. Id. §62-8-7(C)
29. Id. §62-10-1
30. Id. §62-10-2. The Commission may initiate formal proceedings against any party and may demand of such party "such information and disclosures as the Commission may deem necessary" to the investigation. Rules of Practice and Procedure, Rule 10.
31. Id. §62-10-5. See also §62-10-4 and Rules 26 and 27.
32. Id. §62-10-5 and also §§62-10-8 (process), 62-10-9 (witnesses)
33. Id. §62-10-5 and also §62-10-10 (depositions)
34. Rule 9
35. N.M.S.A. §62-10-4
36. Id. §62-11-1
37. E.g. Application for rehearing, Id. §62-10-16
38. Maestas, supra n.15, 514 P.2d at 850. The court defined "substantial evidence" as "such evidence as a reasonable man might find adequate to support a conclusion." See also Llano, Inc. v. Southern Union Gas Co., 75 N.M. 7, 399 P.2d 646 (1964)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service			X			<u>Re Public Service Co. of New Mexico, 8 P.U.R. 4th 113 (1974); Re Mountain States Telephone & Telegraph, 2 P.U.R. 4th 332 (1973)</u> ¹	<u>Mountain States Telephone & Telegraph Co. v. N.M. State Corporation Commission, 563 P.2d 588 (S.Ct. N.M. 1977)</u>		
Declining Block Rates - Restructuring ²									
Time-of-Day Rates			X ³	X					
Seasonal Rates			X ³	X					
Interruptible Rates			X ⁴	X					
Load Management ⁵									
Lifeline Rates		X		X		<u>Re Public Service Co. of New Mexico, 8 P.U.R. 4th 113 (1974)</u> ⁶			
Master Metering ⁷									
Automatic Adjustment Clauses - Review			X	X		<u>General Order No. 28 (1974); Re Public Service Co. of New Mexico, 8 P.U.R. 4th 113 (1974)</u> ⁸	<u>Maestas v. N.M. Public Service Commission, 514 P.2d 847 (S.Ct. N.M. 1973)</u>		

NEW MEXICO

NEW MEXICO (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Information to Consumers	X					General Order No. 5			
Termination Procedures ¹⁰									
1. Notice	X					General Order No. 5, §V(23) (h)			
2. Prohibited if Health Hazard	X				NMSA §68-6-10	General Order No. 32			
Exclusion of Advertising Expenses ¹¹	X					Re El Paso Electric Co., 23 P.U.R. 4th 131 (1977)			
						Re Gas Co. of New Mexico, 21 P.U.R. 4th 159 (1977);			
						Re Southern Union Gas Co., 12 P.U.R. 4th 219 (1975)			
Small Electric Systems ¹²									

1. See text accompanying nn. 7-10 of the discussion.
2. See text accompanying n. 11 of the discussion.
3. See text accompanying n. 12 of the discussion.
4. See text accompanying n. 14 of the discussion.
5. See text accompanying n. 14 of the discussion.
6. See text accompanying n. 7 of the discussion.
7. See text accompanying n. 13 of the discussion.
8. See text accompanying nn. 15-16 of the discussion.
9. See text accompanying n. 17 of the discussion.
10. See text accompanying nn. 18-19 of the discussion.
11. See text accompanying nn. 20-24 of the discussion.
12. See text accompanying n. 25 of the discussion.

NEW YORK

In New York, all electric rates must be "just and reasonable and not more than allowed by law or by order of the Commission."¹ Electric corporations must charge comparable rates for comparable services.

In a generic rate proceeding, the Public Service Commission (the "Commission") evaluated marginal cost pricing and concluded "that marginal costs do provide a reasonable basis for electric rate structures," and that "marginal costs are an important tool for consideration in all rate cases...."³ Consequently, it directed each company to work with the Commission's staff to establish a reasonable time schedule for marginal cost studies, and consideration of adopting suitable rate schedules.⁴ By regulation, in a rate proceeding the utility must establish the cost of rendering the service to which the rates are applicable and also the cost per unit of that service.⁵

In a 1975 case, the Commission said that its "long-standing policy" had been "to base rates on cost-of-service considerations, i.e., the rates charged to various classes of customers were related, as closely as possible, to the respective costs of serving them."⁶ It then explained:

It has become increasingly apparent that rates fashioned only on the traditional basis do not necessarily achieve such closely interrelated purposes as economic efficiency, environmental protection, and conservation. Consequently, it is both necessary and desirable that alternative pricing concepts, for example, a rate structure based upon principles of economic efficiency, be investigated and implemented if it is determined that such new pricing methods will achieve these goals.

An economically efficient rate structure requires that price reflect external, e.g., environmental costs, as well as those explicitly borne by supplying companies. Conservation clearly requires the discouragement of such wasteful consumption as occurs when prices are below cost, which is necessary for economic efficiency, as well. Thus, in principle, an economically efficient rate structure should achieve the interrelated purposes of conservation and environmental protection.

* * *

Most of us would agree that relating the prices we charge individual customers, for individual purchases, to the costs those purchases impose on society also serves the social purpose of fairness or equity: it seems only fair that every purchaser and every purchase bear the cost that this consumption imposes on the rest of us.

The Commission's policy is to discourage declining block rates. In one case, the Commission noted that it had concluded in Case 26309 "generally, that discounts

for large volume consumption did not appear justified on cost or load factor grounds.... [w]e announced that it would be incumbent upon those advocating retention of such rate design features as declining block rate structures to demonstrate cost justification in future proceedings."⁸ Consequently, in this case, the Commission ordered a single flat rate for residential customers and in general eliminated rate differentials that had not been cost justified."

New York's Public Utility law provides: "Nothing in this chapter shall be taken to prohibit ...classifications of service based upon the quantity used, the time when used, the purpose for which used, the duration of use or upon other reasonable consideration."¹⁰ Time of day rates have been proposed or implemented by several New York electric utilities.¹¹ Notwithstanding the statute, a New York court held a time-of-day rate illegal in 1978.¹² The court held that the rate was unreasonably discriminatory because it was limited to the utility's largest customers without any showing of a cost justification for limiting it to those customers. However, this decision has been reversed by the Court of Appeals.¹³

Seasonal rates have been implemented in New York,¹⁴ but, interruptible service rates have not been. However, the Commission has referred with approval to interruptible service rates.¹⁵ Each utility in New York has been required to submit a load management study.¹⁶

New York has not approved life-line rates.¹⁷ Such rates seem to be expressly authorized by a statute which provides that nothing in the Public Utility Law prohibits "sliding scale upward rates, beginning at a fixed price per unit for a small consumption and then increasing the price per unit as the consumption is increased."¹⁸ However, according to Electrical Week, September 11, 1978, the Commission found it had no authority to "approve discriminatory rates that would in effect tax some customers so that the electricity consumption of low income customers could be subsidized." Public Utilities Fortnightly, September 28, 1978 indicates that long range lifeline studies have been ordered.

By statute, the Commission is empowered to set informational requirements for bills to assure simplicity and clarity and the "commission shall further ensure" periodic explanation of applicable rates and rate schedules for the purpose of assisting customers in making the most efficient use of energy."¹⁹ By rule, an applicant may be entitled to public notice of the Commission's hearing concerning his application.²⁰

A utility may not terminate service to an entire multiple dwelling without complying with Public Service Law § 116, which imposes a notice requirement and creates an opportunity for tenants to make payment to avoid termination of service.²¹ A 1976 case suggests that generally, service may not be terminated when the customer is receiving public assistance, so long as payment is arranged by a "voucher" system through the government.²²

The Commission's policy is to set an allowance for informational and institutional advertising costs in accordance with specified guidelines rather than to review advertising programs and expenditures in rate cases.²³ In a recent case, a New York court held that this policy does not violate the First Amendment.

The court emphasized that the policy limited the right of utilities to include advertising expenses in excess of the guidelines in their cost-of-service but did not prohibit such advertising. In another case, a court held a Commission order banning bill inserts giving the utility's position on controversial issues was unconstitutional; the Commission could allocate the cost of this activity to shareholders but could not ban it.²⁴

Windmill and solar rates have been implemented in New York.²⁵

Generic hearings and specific rate proceedings are governed by the Public Service Law, the State Administrative Procedure Act, and the Commission's Rules of Practice. When a hearing has been ordered, the applicant may be required to publish a notice of said hearing giving the time, date, location and purpose, in the state register and newspapers of general circulation at least thirty days prior to the date thereof.²⁶

Any party with an interest in a proceeding may request permission to participate, which permission will be granted if the request will aid in arriving at a proper determination.²⁷

Upon the application of any party, the chairman or the Commission may issue a subpoena duces tecum,²⁸ and the Commission will require the utility to prepare data submissions.²⁹

Appeals of on the record hearings are taken to the Supreme Court, Special Term and transferred to the Appellate Divisions if there are substantial evidence questions.³⁰ Review is based on the administrative record only.³¹ The substantial evidence and reasonableness tests are the evidentiary standards used on review³² and the legal tests are: lack of jurisdiction;³³ error of law;³⁴ contrary to constitutional rights;³⁵ in excess of statutory authority;³⁶ abuse of discretion;³⁷ and not in accordance with law.³⁸

1. N.Y. Pub. Serv. Law § 65(1) (McKinney's) (1955).
2. Id. § 65(2).
3. Re Rate Design for Electric Corporations, 15 P.U.R.4th 434, 454 (1976); see also Lefkowitz v. Pub. Serv. Comm., 392 N.Y.S.2d 239, 40 N.Y.2d 4047 (1976).
4. Re Rate Design for Electric Corporations, supra n. 3 at 454.
5. Rules of Procedure, Rules 61.3b(2) and b(3).
6. Re Consolidated Edison Co. of New York, 8 P.U.R.4th 475 (1975)
7. Id. at 479-80
8. Re Consolidated Edison Co. of New York, supra n. 6 at 500.
9. Id. at 501
10. N.Y. Pub. Serv. Law § 65(5) (McKinney's) (1955); see also § 66(14).
11. See, e.g., Re Rate Design for Electric Corporations, 18 P.U.R.4th 434, 454 (1976); Re Consolidated Edison Co. of New York, 8 P.U.R.4th 475 (1975). See also NARUC Survey, "Ratemaking", Table 61(b).
12. New York State Council of Retail Merchants v. Pub. Serv. Comm., 404 N.Y.S.2d 899 (S.Ct., Appellate Division 1978)
13. New York State Council of Retail Merchants v. Pub. Serv. Comm., 45 N.Y.2d 661 (1978)

14. See e.g., Re Long Island Lighting Co., 9 P.U.R.4th 21, 40 (1975); Re Consolidated Edison Co. of New York, 8 P.U.R.4th 475, 495-96 (1975). See also, NARUC Survey, "Ratemaking", Table 61(b).
15. See Re Rate Design for Electric Corporations, 15 P.U.R.4th 434, 437 (1976)
16. NARUC Survey, "Rate Structure Revision", Table 61(c).
17. Id., "Ratemaking", Table 61(b)
18. N.Y. Pub. Serv. Law § 66(12) (McKinney's) (1979 Supp.)
19. N.Y. Pub. Serv. Law § 66(12-a) (McKinney's) (1979 Supp.)
20. Rules of Procedure, Rule 2.1; see also, 16 N.Y.C.R.R. §§ 136.80, 143.9 (1979), State Administrative Procedure Act § 202 (1979)
21. See also Levine v. Long Island Lighting Co., 2 P.U.R.4th 547 (N.Y.Sup.Ct. 1973) (abstract); 16 N.Y.C.R.R. § 143.1 et. seq. (1979)
22. Maria Rivera v. Consolidated Edison Co. of New York, 17 P.U.R.4th 238 (Sup.Ct.N.Y.1976)
23. Rochester Gas and Electric Corp. v. Pub. Serv. Comm., 410 N.Y.S.2d 142, 146 (S.Ct. Appellate Div.1978)
24. Consolidated Edison Co. v. Pub. Serv. Comm., 402 N.Y.S.2d 551 (Sup.Ct. Albany County 1978)
25. NARUC Survey, "Rate Structure Revision", Table 61(c); see also N.Y. Pub. Serv. Law § 65(2), (3) (McKinney's) (1955).
26. State Administrative Procedure Act § 202 (1979); 1133 Avenue of the Americas Co. v. Pub. Serv. Comm., 406 N.Y.S.2d 593, 62 A.D.2d 787 (1978).
27. N.Y. Pub. Serv. Law. § 71 (McKinney's) (1979 Supp.).
28. Rules of Procedure, Rule I, 4.
29. Id. Rule IV.
30. Stone and Webster Questionnaire, OMB No. 038-579052, p. 8.
31. Id.
32. N.Y. Civ. Prac. § 7804 (McKinney's) (1979 Supp.).
33. Id.
34. Id.
35. Id.
36. Id.
37. Id.
38. Id.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>NEW YORK</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service				X			<u>Re Rate Design for Electric Corporations</u> , 15 P.U.R. 4th 434, 437 (1976); Rules of Procedure, Rules 61.3b(2) and b(3); <u>Re Consolidated Edison Co. of New York</u> , 8 P.U.R. 4th 475 (1975)			Efficiency, Equity and Conservation ¹
Cost Justification for Declining Block Rates ²				X			<u>Re Consolidated Edison Co. of New York</u> , 8 P.U.R. 4th 475 (1975)			
Time-of-day Rates		X	X		N.Y. Pub. Serv. Law, §§ 65 (5), 66.14 (McKinney's) (1955)		<u>Re Rate Design for Electric Corporations</u> , 15 P.U.R. 4th 434, 454 (1976); <u>Re Consolidated Edison Co. of New York</u> , 8 P.U.R. 4th 475 (1975)	<u>New York State Council of Retail Merchants v. Pub. Serv. Comm.</u> , 404 N.Y.S.2d 899 (S ₃ Ct. App. Div. 1978)		
Seasonal Rates ⁴		X	X				<u>Re Long Island Lighting Co.</u> , 9 P.U.R. 4th 21, 40 (1975); <u>Re Consolidated Edison Co. of New York</u> , 8 P.U.R. 4th 475, 495-96 (1975)			

NEW YORK (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Interruptible Rates ⁵				X		<u>Re Rate Design for Electric Corporations</u> , 15 P.U.R. 4th 434, 437 (1976)			
Load Management Techniques ⁶									
Lifeline Rates ⁷				X	N.Y. Pub. Serv. Law § 66.12 (McKinney's) (1979 Supp.)				
Master Metering ⁸		X		X		<u>Re Rent-inclusion and Submetering for Electricity</u> , 14 P.U.R. 4th 602 (Case 26998, April 20, 1976) (abstract)			
Information to Consumers					N.Y. Pub. Serv. Law § 66.12-a. (McKinney's) (1979 Supp.)	Rules of Procedure, Rule 2.1			
Termination of Service ¹⁰				X	<u>Id.</u> , § 116		<u>Levine v. Long Island Lighting Co.</u> , 2 P.U.R. 4th 547 (N.Y. Sup. Ct. 1973); <u>Maria Rivera v. Consolidated Edison Co. of N.Y.</u> , 17 P.U.R. 4th 238 (S.Ct. N.Y. 1976)		

NEW YORK (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Advertising ¹¹				X			<u>Rochester Gas & Electric Corp. v. Pub. Serv. Comm.</u> , 410 N.Y.S.2d 152, 146 n. (S.Ct.App.Div. 1978); <u>Consolidated Edison Co. v. Pub. Serv. Comm.</u> , 402 N.Y.S.2d 551 (Sup.Ct.Albany County 1978)		
Small Energy System ¹²				X					

1. See text accompanying nn. 3-7 of the discussion.
2. See text accompanying nn. 9-10 of the discussion.
3. See text accompanying nn. 11-13 of the discussion.
4. See text accompanying n. 14 of the discussion.
5. See text accompanying n. 15 of the discussion.
6. See text accompanying n. 16 of the discussion.
7. See text accompanying n. 17 of the discussion.
8. See text accompanying n. 21 of the discussion.
9. See text accompanying nn. 19-20 of the discussion.
10. See text accompanying nn. 21-22 of the discussion.
11. See text accompanying nn. 23-24 of the discussion.
12. See text accompanying n. 25 of the discussion.

NORTH CAROLINA

Public utilities operating in North Carolina are required to "furnish adequate, efficient and reasonable service."¹ It is the policy of the State "[t]o provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy."² The North Carolina Utilities Commission (the "Commission") has the power and authority to supervise and control the public utilities of the State,³ including the power to make rates for public utilities.⁴ The Commission is guided in its rate determinations by several statutory factors, including a directive to "consider all other material facts of record that will enable it to determine what are reasonable and just rates."⁵ Discrimination in the rates or services of public utilities is statutorily prohibited.⁶ Finally, the Commission is statutorily mandated to fix electric power rates to promote conservation of energy resources.

The Commission has stated that "[a] rate design should (1) reflect costs of service, (2) recognize changes in long run incremental costs, (3) require classes of customers to pay their fair share of the costs to serve them, and (4) enable the utility to earn a fair rate of return on the fair value of its property including a return on new equity sufficient to attract necessary new capital."⁸ The Commission has ordered the utilities to submit rates based on long-run incremental costs, along with their own rate proposals, in each new rate-case filing. The Commission, in recognition of the urgent need for additional conservation of electrical energy, has advocated the implementation of a substantially inverted rate structure; however, the Commission declined to implement such a structure because the Commission concluded that it would place North Carolina in a totally non-competitive position with other states for attracting new industry.¹⁰ Thus declining-block rates have been approved by the Commission.¹¹ The legislature has directed the Commission to study the feasibility of a system of non-discriminatory peak pricing,¹² and the Commission has scheduled hearings to investigate long-run incremental costs and time-of-day pricing.¹³ Time-of-day rates have been approved by the Commission.¹⁴ Seasonal rates have been approved by the Commission,¹⁵ and rates for interruptible service, at least for gas companies have won Commission sanction.¹⁶ The utilities have been authorized to investigate load management techniques and, if the techniques are feasible, to seek Commission approval on implementing such techniques.¹⁷ The Commission has shown a concern regarding the burden of increasing electric rates on low income consumers,¹⁸ and has ordered a utility to establish a special rate for consumers receiving supplemental security income from the federal government.¹⁹

The Commission has a policy of discouraging master metering.²⁰ Section 62-134(e) of the General Statutes prohibits automatic fuel adjustment clauses but provides for expedited hearings covering only adjustments due to changes in the cost of fuel.²¹ The legislature has directed the Commission to inform and educate the public as to the necessity of controlling demands for electricity at peak periods.²² The Rules and Regulations provide that rate schedules be filed

by each utility with the Commission, and that copies of the rate schedules be furnished to consumers or prospective consumers upon request.²³ The Rules and Regulations also provide that the utility is required to give the consumer at least 24 hours' written notice of the utility's intention of discontinuing service for violation of rules or nonpayment of bills.²⁴ The Commission recently ordered utilities to obtain a specific Commission order before terminating service during the winter months to elderly or handicapped persons who are eligible for federal assistance and unable to pay their utility bills.²⁵ However, the Commission refused to approve a total moratorium on winter cutoffs. The Commission has adopted, at least for gas companies, a position that only advertising expenses associated with conservation be permitted as operating expenses for rate-making purposes.²⁶ The Commission has a policy of encouraging the development of solar, wind or small generation facilities.²⁷

Generic hearings and specific rate proceedings are conducted pursuant to the Rules of Practice and Procedure. All formal hearings and investigations are open to the public and notice of all public hearings shall be posted on the bulletin board in the Office of the Chief Clerk at least ten days in advance.²⁸ In formal proceedings the Commission may, at its discretion, give notice in a newspaper.²⁹ Any person showing a real interest in the subject matter of a hearing may become a party by filing a petition to intervene.³⁰

The Commission has the power to compel the production of books and documents³¹ and parties may make data submissions.³²

Appeals of final Commission orders lie to the Court of Appeals.³³ No new evidence may be considered on appeal, but if there is newly discovered evidence,³⁴ the court may remand the case to the Commission for reconsideration.

The substantial evidence standard is applied to factual issues on review and the decision of the Commission may be reversed or modified if it is found to be in violation of constitutional provisions, in excess of statutory authority or jurisdiction, made upon unlawful proceedings, affected by errors of law, or arbitrary or capricious.³⁵ Any party may appeal to the Supreme Court a decision of the Court of Appeals.³⁶

1. N.C. Gen. Stat. § 62-131 (Supp. 1977). See also *id.* § 62-2.
2. *Id.*
3. *Id.* § 62-30.
4. *Id.* § 62-130.
5. *Id.* § 62-133 (Supp. 1977).
6. *Id.* § 62-140. See also *State ex. rel. Utilities Commission v. Virginia Electric & Power Co.*, 28 N.C. 398, 206 S.E.2d 283, 291 (1974).
7. *Id.* § 62-155 (Supp. 1977).
8. *Re Duke Power Co.*, 7 P.U.R.4th 239, 249 (1974); *Re Carolina Power & Light Co.*, 8 P.U.R.4th 449, 459 (1975);
9. *ELECTRICAL WEEK*, p. 5 (January 9, 1978).
10. *Re Carolina Power & Light Co.*, *supra* note 8, at 464.
11. *NARUC Survey, "Ratemaking,"* Table 61(b).
12. N.C. Gen. Stat. § 62-155(d) (Supp. 1977).

13. See Re Virginia Electric & Power Co., 11 P.U.R.4th 115, 131 (1975) (hearing was scheduled for December, 1975 as Docket No. E-100, Sub. 21.)
14. NARUC Survey, "Ratemaking," Table 61(b).
15. See e.g., Re Virginia Electric & Power Co., *supra* note 13, at 131-32.
16. Re Piedmont Nat. Gas Co. Inc., 18 P.U.R.4th 478, 496 (1977).
17. N.C. Gen Stat. § 62-155(b) (Supp. 1977).
18. Re Carolina Power & Light Co., *supra* note 8, at 465.
19. Re Duke Power Co., 26 P.U.R.4th 241, 277 (1978).
20. N.C. Gen. Stat. § 143-151.42 (1977).
21. N.C. Gen. Stat. § 62-134(e)(Supp. 1977); Re Virginia Electric & Power Co., *supra* note 13, at 121, 135.
22. N.C. Gen. Stat. § 62-155(c) (Supp. 1977).
23. Id. § 62-138 (Supp. 1977); N.C.U.C. Rule R8-25.
24. Id., Rule R8-20.
25. ELECTRICAL WEEK, p. 4 (December 3, 1979).
26. Re Public Service Company of North Carolina, Inc., 19 P.U.R.4th 109, 120 (1977); see also Re Duke Power Co., *supra* note 8, at 244.
27. NARUC Survey, "Rate Structure Revision," Table 61(c).
28. N.C.U.C. Rule R1-21.
29. Id.
30. Id. Rule R1-19.
31. N.C. Gen. Stat. § 62-61 (1977).
32. Id. § 62-65.
33. Id. § 62-90.
34. Id. § 62-93.
35. Id. § 62-94.
36. Id. § 62-96.

NORTH CAROLINA

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹			X			<u>Re Duke Power Co., 7</u> <u>P.U.R.4th 239, 249</u> <u>(1974)</u>			
Declining Block Rates ²			X			<u>Re Carolina Power &</u> <u>Light Co., 8 P.U.R.</u> <u>4th 449, 459 (1975)</u>			
Time of Day Rates ³			X			<u>Re Virginia Electric</u> <u>& Power Co., 11</u> <u>P.U.R.4th 115, 131</u> <u>(1975)</u>			
Seasonal Rates ⁴			X			<u>Re Virginia Electric</u> <u>& Power Co., 11</u> <u>P.U.R.4th 115, 131-</u> <u>32 (1975)</u>			
Interruptible Rates ⁵			X			<u>Re Piedmont Nat. Gas</u> <u>Co. Inc., 18 P.U.R.</u> <u>4th 478, 496 (1977)</u>			
Land Management Techniques ⁶	X		X		N.C. Gen. Stat § 62- 155(b) (Supp. 1977)				
Lifeline Rates ⁷			X			<u>Re Duke Power Co.,</u> <u>26 P.U.R.4th 241,</u> <u>277 (1978)</u>			
Master Metering ⁸		X	X		N.C. Gen. Stat § 143-151.42 (1977)				
Automatic Adjust- ment Clauses ⁹		X			N.C. Gen Stat. § 62- 134(e) (Supp. 1977)				
Information to Consumers ¹⁰	X				N.C. Gen Stat §§ 62- 138, 155(e) (Supp. 1977) N.C.U.C. Rule R8-25				

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Procedures for Termination ¹¹	X			X	N.C.U.C. Rule R8-20				
Advertising Expenses ¹²				X		Re Public Service Co. of North Carolina, Inc., 19 P.U.R.4th 109, 120 (1977)			
Small Energy Procedures ¹³				X					

1. See text accompanying n. 8 of discussion.
2. See text accompanying nn. 10-11 of discussion.
3. See text accompanying nn. 13-14 of discussion.
4. See text accompanying n. 15 of discussion.
5. See text accompanying n. 16 of discussion.
6. See text accompanying n. 17 of discussion.
7. See text accompanying nn. 18-19 of discussion.
8. See text accompanying n. 20 of discussion.
9. See text accompanying n. 21 of discussion.
10. See text accompanying nn. 22-23 of discussion.
11. See text accompanying nn. 24-25 of discussion.
12. See text accompanying n. 26 of discussion.
13. See text accompanying n. 27 of discussion.

NORTH DAKOTA

The Public Service Commission of North Dakota (the "Commission") is mandated by statute to "supervise the rates of all public utilities."¹ It has the power to "originate, establish, modify, adjust, promulgate, and enforce" rates; when, after hearing, it finds that a utility's rates are "unjust, unreasonable,² insufficient, unjustly discriminatory," it must fix reasonable rates in lieu thereof.

Every public utility in North Dakota is commanded to furnish "adequate, convenient, just and reasonable" service, which shall be "without any unjust discrimination or preference."³ Rates must be "just and reasonable",⁴ and as to rates, no public utility may give "undue preference or advantage" to any person or corporation, nor subject the same to any prejudice or disadvantage. Furthermore, no public utility may "by any special rate or device" charge any customer "greater or less compensation for any service than it charges any other customer for a like and contemporaneous service under the same or substantially similar circumstances and conditions."⁵

There is no requirement in North Dakota that utilities submit cost of service studies, or that rates be designed to reflect costs of service.⁶ Declining block rates have been approved and cost justification is not required.⁷ Time of day and seasonal rates have been offered.⁸ Master metering is permitted in special cases.⁹ Fuel adjustment clauses are permitted.¹⁰ In a 1974 case, the utility proposed to change its fuel clause rider, to go from a 12-month average to a one-month average in order to remove the lag time in reflecting fossil cost changes. The Commission declined to approve the change, finding that "such a change would remove from management the incentive for hard bargaining with fuel suppliers."¹¹

The Commission has determined that while expenditure for "informational, instructional and conservation advertising is a proper expense for rate determination", expenses for institutional or corporate advertising and should be borne by the stockholders.¹² The Commission has recently stated that in the current energy crisis, promotional advertising should be discouraged and expenses for such advertising should be disallowed.¹³

A Commission order to Northern States Power Company directed that company to develop new and innovative rates permitting gas customers to utilize alternative sources of energy in conjunction with their gas service.¹⁴

Each utility must keep on file in its offices where customer payments are made a copy of its rate schedules and applicable rules and regulations.¹⁵ Each utility must also, annually and at the time of any rate change, deliver to each customer a copy of the applicable rate schedule.¹⁶ Where alternative schedules exist, the utility must notify affected customers of that fact and furnish them with copies of the schedules and a notice that the utility will assist them in calculating the billing for various loads under the various schedules.

Service may be discontinued only upon at least seven days' notice to the customer of the utility's intention to discontinue.¹⁸

The Commission may hold hearings, on due notice, on complaint or on its own initiative, whether with respect to rates¹⁹ or other aspects of utility service.²⁰ No utility may change its rates except on thirty days' notice to the Commission,²¹ and when applying for an increase in rates must submit certain specified information together with any other documents the Commission may request.²² In any proceeding involving the "rights of persons who are members of the public generally," notice of a Commission hearing must be given by (1) mailing notice to the chairman of the board of county commissioners for each county in which affected citizens reside, (2) mailing notice to the chief executive officer of each affected city,²³ and (3) publishing notice in the official newspaper of each affected county.²³

In any formal proceeding before the Commission, any person having a "substantial interest"²⁴ in the subject matter of the proceeding may petition for leave to intervene.²⁴ Intervention will be permitted only where the petitioner has a statutory right to be made a party or where he has an interest that existing parties might not represent adequately,²⁵ and the intervention would not unduly broaden the issues or delay the proceeding.²⁵

In general, the admissibility of evidence at a hearing is to be governed by the practice of the district court.²⁶ The Commission may waive common-law or statutory rules of evidence where necessary to determine the substantial rights of the parties, but may only accept probative evidence.²⁷ The Commission may require by subpoena the attendance and testimony of witnesses and the production of documents at hearings.²⁸ Depositions of witnesses may be taken.²⁹

After arguments have been closed, the Commission must make and state its findings of fact and its separate conclusions of law and its decision based thereon.³⁰

Appeal may be taken from a Commission decision to the appropriate district court.³¹ Final orders and decisions or decisions substantially affecting the rights of the parties are appealable.³²

The evidence considered by the court will be confined to the record.³³ The court may modify, reverse and/or remand the case to the Commission if (1) the Commission decision is not in accordance with law, (2) the decision is in violation of constitutional rights of the appellant, (3) the Commission rules of procedure did not afford the appellant a fair hearing, (4) the findings of fact are not supported by the evidence or (5) the conclusions are not supported by the findings of fact.³⁴

1. North Dakota Century Code Annotated (replacement volume 9B) §49-02-03
2. Id.
3. Id. §49-04-01
4. Id. §49-04-02
5. Id. §49-04-07
6. See NARUC Survey, Table 61(a). However, in a 1974 case, the Commission took note of the fact that the company's incremental costs to provide new service had come to exceed average costs, and found it therefore proper to order the company to redesign certain of its rates to modify promotional features. Rates were to be increased in those areas and closed to new customers. Re Northern States Power Co. 6 P.U.R. 4th 38 (1974)

7. NARUC Survey, Table 61(b)
8. Id. However, Northern States Power Co. supra. n. 6 the utility requested higher rates for electric customers for increased consumption in summer, but the Commission declined to implement these, citing lack of sufficient evidence to support the change in finding the rate design not reasonable.
9. NARUC Survey, Table 61(b)
10. NARUC Survey, Table 6a. See also Northern States Power Co. 6 P.U.R. 4th 38 (1974) (adjustment clause for gas company's propane purchases)
11. Northern States Power Co., supra n. 6
12. Northern States Power Co., 24 P.U.R. 4th 252 (1978); see also Re Northern States Power Co., Case No. 9741 (1978); Re Northern States Power Co., Case No. 9050 (1975) (10 P.U.R. 4th 489)
13. Case No. 9804, May 23, 1979
14. Northern States Power Co. 24 P.U.R. 4th 252.
15. N.D.A.C. 69-09-02-02(1)
16. Id. (3)
17. Id. (2)
18. Id. 69-09-02-05
19. N.D.C.C. §49-05-06
20. Id. §49-05-01. Also N.D.A.C. 69-02-01-08. See generally N.D.C.C. Ch. 28-32
21. N.D.C.C. §49-05-05
22. Id. §49-05-04. Also, N.D.A.C. 69-02-02-04
23. N.D.A.C. 69-02-04-01
24. Id. 69-02-02-05
25. Id.
26. N.D.C.C. §28-32-06. Also, N.D.A.C. 69-02-05-01
27. Id.
28. N.D.C.C. §28-32-09. Also, N.D.A.C. 69-02-05-03
29. N.D.A.C. 69-02-05-04
30. N.D.C.C. §28-32-13
31. Id. §28-32-15
32. Id.
33. Id. §28-32-19. For submission of additional evidence to the Commission, see §28-32-18.
34. Id. §28-32-19

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>
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Exclusion of Advertising Expenses X

Small Electric Systems X X

NORTH DAKOTA (cont'd)

Commission Rules and Decisions

Court Decisions

Defined

Reference to PURPA Objectives

Re Northern States Power Co., 24 P.U.R. 4th 252 (1978);
Re Northern States Power Co., 10 P.U.R. 4th 489 (1975)

Re Northern State Power Co., 24 P.U.R. 4th 252 (1978)

1. See text accompanying n. 6 of the discussion.
2. See text accompanying n. 7 of the discussion.
3. See text accompanying n. 8 of the discussion.
4. See text accompanying n. 9 of the discussion.
5. See text accompanying nn. 10-11 of the discussion.
6. See text accompanying nn. 15-16 of the discussion.
7. See text accompanying n. 18 of the discussion.
8. See text accompanying nn. 12-13 of the discussion.
9. See text accompanying n. 14 of the discussion.
10. Information unavailable.

OHIO

Every public utility in Ohio is required to "furnish necessary and adequate service and facilities, and every public utility shall furnish ...such instrumentalities and facilities as are adequate and in all respects just and reasonable."¹ Charges made by public utilities must be just and reasonable.² No public utility shall give "any undue or unreasonable preference or advantage...or subject any person...to any undue or unreasonable prejudice or disadvantage."³ A utility is not prohibited by Ohio law from providing for a "classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration...."⁴

The Public Utilities Commission of Ohio ("Commission") has the "power and jurisdiction to supervise and regulate public utilities ..., to require all public utilities to furnish their products and render all services exacted by the [C]ommission or by law...."⁵ Generally speaking, no rate or classification, no change in any rate or classification, and no regulation or practice affecting any rate or classification "shall become effective until the [Commission] ...determines it to be just and reasonable...."⁶ The Commission is authorized to alter the rules, regulations, measurements or practices of any public utility when it determines that such rules, regulations, measurements or practices are "unjust or unreasonable."⁷

Ohio law does not require a cost-of-service determination relative to specific rate classifications⁸ or a cost-of-service allocation among customer classes, although the statute specifically permits the Commission to consider costs attributable to provide service in setting just, reasonable and compensatory rates for such services,⁹ and methods of cost allocation are an important factor in rate design.¹⁰ A utility must file an allocation of cost of service with the Commission when evidence is offered indicating that a proposed rate change does not "generally reflect" the cost of providing service.¹¹

Furthermore, the Commission is under a legislative mandate to "initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies and take into account long-run incremental costs."¹² The same statute directs the Commission to examine and issue written findings on a number of the PURPA standards, including declining block rate structures, lifeline rates, time of day and seasonal pricing and interruptible load pricing.¹³ This examination is to occur notwithstanding any other section of the state (for instance, the permissive approach to cost-justification noted above as various restraints on discrimination).

The Commission has recently authorized marginal cost-based time-of-use rates,¹⁴ and has before it a generic proceeding pertaining in part to marginal cost quantification.¹⁵ One of the Commission's findings of fact in the former case was that time-of-use rates more accurately reflect the cost of providing electricity at the time it is consumed than do the nontime-differentiated rates.

In a recent Commission decision involving gas rates, a proposed lifeline rate for the utility's low income customers was rejected by the Commission because

the rate was not cost-justified.¹⁶ It might be noted that there is a statutory prohibition on public utilities furnishing service for less than actual cost for the purpose of destroying competition; the implication is that under other circumstances (such as, perhaps, lifeline rates), a utility might be permitted and justified in offering rates that are not cost-justified. (The same section of the statute prohibits a utility from receiving greater or less compensation from one person or entity than it receives from any other person or entity "for doing a like and contemporaneous service under substantially the same circumstances and conditions.")¹⁷

The Ohio Supreme Court has upheld orders by the Commission reducing the steepness of declining block rates in order to conserve energy.¹⁸ The Commission, however, has not eliminated the use of such rates.¹⁹

As noted above, the Commission has authorized the implementation by a utility of time-of-use rates.²⁰ The rates are to be phased in gradually, as proper metering of all customers becomes possible. In entering the order, the Commission found that it had the authority to order implementation of time-differentiated rates, contrary to assertions that such rates constitute an impermissible attempt by the Commission to "regulate consumers." It stated:²¹

Time-of-use rates will, if properly designed, more accurately reflect the cost of service incurred in meeting a customer's needs. The customer is free to exercise his or her judgment as to when and in what amounts he shall consume. His or her freedom to choose whether or not to consume will be enhanced by more accurate information as to the costs which consumption at any given hour will impose upon the utility.

The Commission further found that the gradual implementation of such rates would not be arbitrary or unduly discriminatory, where all classes of customers would eventually be on such rates, and where all customers within each class would be put on them as soon as they could be properly metered, stating that "[i]t is not unreasonable discrimination to classify a customer according to service based on time of use."²²

Seasonal rates have been authorized for residential²³ and general service²⁴ users.

The Commission has approved rates on an interruptible basis²⁵ and has authorized a small-use load management rate for residential customers and an experimental load management rate for medium- and large-use residential customers.²⁶ By statute, the Commission must require by rule that each electric light company offer to residential customers who have electric space heating the option of having their usage metered by a demand on load meter.²⁷ The Commission has also recently suggested to a major utility that it survey its large power rate customers to determine what interest exists in an interruptible rate for them.²⁸

Automatic adjustment clauses may be authorized, but they must be reviewed at a Commission hearing once every six months to consider, inter alia, the efficiency of the utility's fuel procurement policies and such other practices and policies as the Commission deems appropriate.²⁹ The Commission is mandated by statute to promulgate a rule establishing incentives, in terms of costs that may be recovered by electric light companies pursuant to a fuel cost adjustment clause, for the implementation and employment³⁰ by such companies of "efficient" fuel procurement and utilization practice.

Service to utility customers may not be terminated without actual prior notice of the proposed cut-off.³¹ By statute, residential customers may not be terminated during the period of November 15 through April 15 for nonpayment of a bill, unless the utility notifies the county welfare department of its action within 24 hours after the termination.³² During the same four-month period, electric service for an apartment may not be cut off, due to the landlord's non-payment³³ of a bill, unless the occupant is given five days notice prior to the termination.

The Commission allows, for rate making purposes, advertising related to conservation or public information; other advertising is excluded from cost of service.³⁴

The Commission has no policy regarding master metering or electric rates which³⁵ discourage or discriminate against the use of small energy generation systems.

Any public utility desiring to establish or change a rate must file a written application describing the rate with the Commission.³⁶ If the application is for an increase in rates, certain specific information -- such as a report of property used and useful and a statement of income -- as well as "such other information as the commission may require in its discretion," must be provided to the Commission.³⁷ The utility must publish for three consecutive weeks in a newspaper of general circulation throughout the territory in which the utility operates notice containing the form and substance of the application and stating that any person or entity may file objections to the increase which may allege that the proposals are unjust and discriminatory or unreasonable.³⁸ If no objections are filed within 30 days, the Commission holds a final hearing after giving notice to all parties at which it must "consider the matters set forth in said application and make such order respecting the prayer thereof as to it seems just and reasonable."³⁹ If objections are filed, the Commission must "promptly" set the application down for hearing of testimony on the proposals and objections and must give 10 days written notice of the time and place of the hearing to all parties.⁴⁰ The burden of proof in such proceedings is on the utility to show the increased rates are just and reasonable.⁴¹ When taking of testimony is complete and a full record of such testimony made and filed with the Commission, the Commission will issue its order.⁴² In all "contested cases" the Commission must file written findings of fact and conclusions of law.⁴³

The Commission may examine witnesses under oath at any time in order to assist it in the performance of its duties,⁴⁴ may similarly examine the books

and records of a utility and compel the production thereof.⁴⁵ It may cause depositions of any witnesses to be taken in an investigation.⁴⁶

Ohio law also creates the position of "consumers' counsel," a person appointed to represent the interest of residential consumers in proceedings before the Commission and in utility service and rate matters generally.⁴⁷

The supreme court of Ohio may reverse, vacate or modify a final order of the Commission on appeal if "upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable."⁴⁸ Notice of appeal must be filed within sixty days of the order. The Commission's conclusion on a question of fact "will not be reversed by this court unless [they are] manifestly against the weight of the evidence or so clearly unsupported by the record as to show misapprehension or mistake or willful disregard of duty."⁴⁹

1. Ohio Rev. Code Ann. §4905.22 (Anderson 1977).
2. Id.
3. Id. §4905.35.
4. Id. §4905.31.
5. Id. §4905.04.
6. Id. §4909.17.
7. Id. §4905.37.
8. Globe Metallurgical Div. of Interlake, Inc. v. Public Util. Comm'n., 40 Ohio St.2d 40, 319 N.E.2d 360 (1974).
9. O.R.C.A. §4909.151.
10. General Motors Corp. v. Public Util. Comm'n., 47 Ohio St.2d 58, 351 N.E.2d 183 (1976); Cleveland Elec. Illuminating Co. v. Public Util. Comm'n., 42 Ohio St.2d 403, 330 N.E.2d 1 (1975). Cf. Re East Ohio Gas Co., 16 P.U.R. 4th 137 (1976) (gas utility decision -- "pricing of utility services should be cost-justified to as great an extent as possible").
11. O.R.C.A. §4909.151.
12. Id. §4905.70. (Emphasis added)
13. Id. §4909.151 (Anderson 1977).
14. Dayton Power & Light Co. 27 P.U.R. 4th 123 (1979)
15. Case No. 76-892-EL-COI
16. East Ohio Gas Co. 16 P.U.R. 4th 137 (1976)
17. O.R.C.A. §4905.33.
18. General Motors Corp. v. Public Util. Comm'n., 47 Ohio St.2d 58, 351 N.E.2d 183 (1976), reviewing Re Cincinnati Gas & Elec. Co., 7 P.U.R. 4th 138 (1974), as affirmed, 11 P.U.R. 4th 257 (1975); Cleveland Elec. Illuminating Co. v. Public Util. Comm'n., 42 Ohio St.2d 403, 330 N.E.2d 1 (1975), reviewing Re Cleveland Elec. Illuminating Co., 3 P.U.R. 4th 259 (1973).
19. NARUC Survey, Table 61(b).
20. Dayton Power & Light, supra n. 13.
21. Id. at 130.
22. Id. at 141.
23. Re Columbus & So. Ohio Elec. Co., 24 P.U.R. 4th 261 (2378); Re Toledo Edison Co., 17 P.U.R. 4th 433 (1976).
24. Id.

25. NARUC Survey, Table 61(b). Cf. Re Dayton Power & Light Co., 21 P.U.R. 4th 376 (1977) (Commission encourages electric utility to offer interruptible rates).
26. Re Columbus & So. Elec. Co., 24 P.U.R. 4th 261 (1978).
27. O.R.C.A. §4905.70
28. Dayton Power & Light *supra* n. 13
29. City of Akron v. Public Util. Comm'n., 5 Ohio St.2d 237, 215 N.E.2d 366 (1966); City of Cleveland v. Public Util. Comm'n., 3 Ohio St.2d 82, 209 N.E.2d 424 (1965); Ohio Rev.Code Ann. §4905.301 (Anderson 1977).
30. O.R.C.A. §4905.69. The Commission has done so. See Ohio Adm.Code §§ 4901:1-11-01-09. See also Office of Consumers Carvel v. Public Utilities Commission 56 Ohio St 319, 384 NE2d 245 (1978)
31. Ohio Power Co. Public Util. Comm'n., 54 Ohio St.2d 342, 376 N.E.2d 1337 (1978); Ohio Rev.Code Ann. §§4905. 301, 4909.191 (Anderson 1977).
32. Palmer v. Columbia Gas Co., 479 F.2d 153 (6th Cir.1973); Re Cincinnati Gas & Elec. Co., 7 P.U.R. 4th 138 (1974).
33. O.R.C.A. §4933.121 (Anderson 1977). The customer may waive notice to the welfare department.
34. Id.
35. NARUC Survey, Table 18.
36. O.R.C.A. §4909.18
37. Id. See also Appendix to Rule 4901-1-36 (Standard Filing Requirements), Code of Rules and Regulations of the Public Utilities Commission of Ohio.
38. Id. and §4904.19
39. Id. §4909.19
40. Id. For the conduct of hearings, see also Rules 4901-1-01 to 4901-01-21.
41. Id.
42. Id.
43. Id. §4903.09
44. Id. §4903.02
45. Id. §4903.03
46. Id. §4903.06
47. Id. §4911.01-.17
48. Id. §4903.13
49. See e.g. Columbus So. Ohio Electric v. Public Utilities Commission 388 N.E.2d 1378, .58 Ohio St.120 (1979)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹		X	X		Ohio Rev. Code Ann. 4909.151 (Anderson 1977) 4905.70		<u>General Motors Corp. v. Public Util. Comm'n.</u> , 47 Ohio St. 2d 58, 351 N.E. 2d 183 (1976); <u>Cleveland Elec. Illuminating Co. v. Public Util. Comm'n.</u> , 42 Ohio St. 2d 403, 330 N.E. 2d 1 (1975); <u>Globe Metallurgical Div. of Interlake, Inc. v. Public Util. Comm'n.</u> , 40 Ohio St. 2d 40, 319 N.E. 2d 360 (1974)		
Declining Block Rates ² Restructuring						<u>Re Cincinnati Gas & Elec. Co.</u> , 17 P.U.R. 4th 138 (1974) <u>Re Cleveland Elec. Illuminating Co.</u> , 3 P.U.R. 4th 259 (1973)	<u>General Motors Corp. v. Public Util. Comm'n.</u> , 47 Ohio St. 2d 58, 351 N.E. 2d 183 (1976) <u>Cleveland Elec. Illuminating Co. v. Public Util. Comm'n.</u> , 42 Ohio St. 2d 403, 330 N.E. 2d 1 (1975)		Conservation, 7 P.U.R. at 152; 3 P.U.R. at 285
Time-of-day Rates ³		X	X			<u>Dayton Power & Light Co.</u> 27 P.U.R. 4th 123 (1979); <u>Re Dayton Power & Light Co.</u> , 21 P.U.R. 4th 376 (1977)			Efficiency, 21 P.U.R. 4th at 397

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>OHIO (cont'd)</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Seasonal Rates ⁴		X	X			<u>Re Columbia & So. Ohio Elec. Co.,</u> 24 P.U.R. 4th 261 (1978); <u>Re Toledo Edison Co.,</u> P.U.R. 4th 433 (1976)			
Interruptible Rates ⁵		X	X			<u>Re Dayton Power & Light Co.,</u> 21 P.U.R. 4th 376 (1977)			
Load Management ⁶		X	X			<u>Re Columbus & So Ohio Elec. Co.,</u> 24 P.U.R. 4th 261 (1978)			
Lifeline Rates ⁷			X			<u>Re East Ohio Gas Co.,</u> 16 P.U.R. 4th 137 (1976)			
Master Metering ⁸									
Automatic Adjustment Clauses	X	X	X		Ohio Rev. Code Ann. §§4905.301, 4909.191 (Anderson 1977)	<u>City of Akron v. Public Util. Comm'n.,</u> 5 Ohio St. 2d 237, 215 N.E. 2d 366 (1966)			Efficiency, Ohio Rev. Code Ann. §§4909. 191
						<u>City of Cleveland v. Public Util. Comm'n.,</u> 3 Ohio St. 2d 82, 209 N.E. 2d 424 (1965)			
Information to Consumers ¹⁰						Rule 4901:1-11-01 to 90			

<u>Standard/Policy</u>	<u>OHIO (cont'd)</u>				<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>				
Termination: Notice Provision ¹¹				X	Ohio Rev. Code Ann. §4933.121 (Anderson 1977)	<u>Re Cincinnati Gas & Elec. Co., 7 P.U.R. 4th 138 (1974)</u>	<u>Palmer v. Columbia Gas Co., 479F 2d 153 (6th Cir. 1973)</u>	
Endangering Health Provision ¹²								
Advertising ¹³				X				
Small Electric Systems ¹⁴								

1. See text accompanying nn. 8-12 of the discussion.
2. See text accompanying nn. 17-18 of the discussion.
3. See text accompanying nn. 13-14, 19-21 of the discussion.
4. See text accompanying nn. 22-23 of the discussion.
5. See text accompanying n. 24 of the discussion.
6. See text accompanying nn. 25-27 of the discussion.
7. See text accompanying n. 15 of the discussion.
8. See text accompanying n. 34 of the discussion.
9. See text accompanying nn. 28-29 of the discussion.
10. See text accompanying n. 37 of the discussion.
11. See text accompanying nn. 30-32 of the discussion.
12. Id.
13. See text accompanying n. 33 of the discussion.
14. See text accompanying n. 34 of the discussion.

OKLAHOMA

The Corporation Commission of Oklahoma ("commission") "has general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations, affecting their services, operations, and the management and conduct of their business...."¹ In addition to its enumerated powers, "the commission shall have all additional implied and incidental powers which may be proper and necessary" to perform its enumerated powers.

The commission does not require that electric rate structures be cost-based.³ Cost-of-service studies are used only as guides which are considered in developing electric rates.⁴ Declining block rates have been approved for electric utilities and the commission does not have a policy of discouraging such rates.⁵ Time-of-day rates have not been authorized,⁶ although they have been considered during rate hearings.⁷ Seasonal rates have been allowed,⁸ but interruptible rates have not been approved.¹⁰ The commission has undertaken no activity in the area of load management.¹⁰ In at least one rate case, lifeline rates for electricity were rejected because they were not cost-justified and because the commission desired legislative guidance before implementing such measures.¹¹

Master metering of new apartments has been prohibited.¹² Automatic fuel adjustment clauses may be approved by the commission;¹³ however, their application must be continually monitored by the commission and public hearings thereon must be conducted at least once every six months.¹⁴ Five days' written notice is required to terminate customer service.¹⁵ Generally, the only advertising expenses permitted for ratemaking purposes are those incurred in promoting energy conservation, education or industrial development.¹⁶ Allowance for all other advertising expenses is prohibited.¹⁷ Public utilities are forbidden by statute from increasing rates charged on the basis of the customer's use or installation of a solar energy device.¹⁸

Every proceeding before the commission must be commenced by an initial pleading,¹⁹ which is either an application, a complaint or an order of the commission.¹⁹ The applicant must cause notice of hearing to be published in one or more newspapers of general circulation in Oklahoma.²⁰ Such notice must set forth the nature of the application and state that all interested persons may appear and be heard at the hearing.²¹ In addition, notice of hearing of an application for approval of a rate change must be served by mail on the chief executive of each city and town in which affected utility customers are located.²²

Any party²³ interested in the subject matter of a proceeding may intervene and be heard.²³ The Commission may deny permission to intervene.²⁴

The commission may order depositions,²⁵ the production of documents²⁶ and the appearance of witnesses.²⁷ At the hearing, the commission must follow the rules of evidence applied in the District Courts of Oklahoma, except that if it is in the public interest to do so, the commission or the hearing officer may relax those rules.²⁸

At the conclusion of the hearing, the hearing officer files a report containing a brief summary of the evidence, the pertinent facts as found by such officer and recommended conclusions of law.²⁹ The commission enters such order as it deems appropriate on consideration of the report. Every order of the commission must contain (where appropriate) a summary of evidence, findings of fact containing all ultimate facts found to have been established and conclusions of law.³⁰

Proceedings on appeal are as prescribed by the applicable rules of the Supreme Court of Oklahoma.³¹

1. Okla.Stat. Ann. tit.17, §152 (West 1951).
2. Id. §153.
3. NARUC Survey, Table 61(a).
4. Re Oklahoma Gas & Elec. Co., 21 P.U.R. 4th 569 (1977).
5. NARUC Survey, Table 61(b).
6. Id.
7. See Re Public Serv. Co. 22 P.U.R. 4th 118 (1977) (present information insufficient to justify action regarding time-of-day rates).
8. NARUC Survey, Table 61(b).
9. Id.
10. Id., Table 61(c).
11. Re Public Serv. Co., 22 P.U.R. 4th 118 (1977).
12. NARUC Survey, Table 61(b).
13. Okla.Stat. Ann. tit.17, §251 (West Cum. Supp. 1978-79).
14. Id. §252. One purpose of the review is to insure that computations under the fuel clause have been made properly.
15. The Energy Consumer, Oct., 1979 at 9.
16. Okla. Stat. Ann. tit. 17, §180.1 (West Cum. Supp. 1978-79).
17. Id.
18. Id. §156.
19. Oklahoma Corporation Commission Rules of Practice 10
20. Id. 12
21. Id. 11
22. Id. 8(d)(7)
23. Id. 15(a)
24. Id. 15(d)
25. Id. 18(a)
26. Id. 18(b), 21(b)
27. Id. 21
28. Id. 22 governs the conduct of hearings generally. Id. 22(e) governs evidence.
29. Id. 23
30. Id. 25
31. Id. 28

OKLAHOMA

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹		X	X			<u>Re Oklahoma Gas & Elec. Co., 21 P.U.R. 4th 569 (1977)</u>			
Declining Block Rates-Restruc- turing ²									
Time-of-day Rates ³				X		<u>Re Public Serv. Co., 22 P.U.R. 4th 118 (1977)</u>			Conservation and equity, 22 P.U.R. 4th at 127
Seasonal Rates ⁴		X	X						
Interruptible Rates ⁵									
Load Management ⁶									
Lifeline Rates ⁷				X		<u>Re Public Serv. Co., 22 P.U.R. 4th 118 (1977)</u>			
Master Metering ⁸	X		X	X					
Automatic Adjustment Clauses ⁹		X	X		Okla. Stat. Ann. tit. 17, §§251- 252 (West Cum. Supp. 1978-79)				
Information to Consumers ¹⁰									

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Termination ¹¹		X	X			<u>The Energy Consumer, Oct., 1979.</u>			
Advertising ¹²	X		X		Okla. Stat. Ann. tit. 17, §180.1 (West Cum. Supp. 1978-79)				Conservation, Okla. Stat. Ann. tit. 17, §180.1
Small Electric Systems ¹³	X		X		Okla. Stat. Ann. tit. 17, §156 (West Cum. Supp. 1978-79)				

1. See text accompanying nn. 3-4 of the discussion.
2. See text accompanying n. 5 of the discussion.
3. See text accompanying nn. 6-7 of the discussion.
4. See text accompanying n. 8 of the discussion.
5. See text accompanying n. 9 of the discussion.
6. See text accompanying n. 10 of the discussion.
7. See text accompanying n. 11 of the discussion.
8. See text accompanying n. 12 of the discussion.
9. See text accompanying nn. 13-14 of the discussion.
10. See text accompanying nn. 20-22 of the discussion.
11. See text accompanying n. 15 of the discussion.
12. See text accompanying nn. 16-17 of the discussion.
13. See text accompanying n. 18 of the discussion.

OREGON

The Oregon public utility commissioner (the "Commissioner") is vested with the power to supervise and regulate every public utility in the state.¹ By statute, utilities in Oregon must provide adequate and safe service, and their charges must be "reasonable and just."² No public utility may charge any person more or less for any service than it charges any other person "for a like and contemporaneous service under substantially similar circumstances."³ And no public utility may give "undue or reasonable preference or advantage to any particular person or locality or ... subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect."⁴ Under this combination of statutes, the Commissioner found that it had no legal authority to allow discount rates to poor or elderly persons.⁵ As to proposed "lifeline" rates, designed to encourage conservation, the Commissioner observed that although conservation helps everyone in the long run, such rates could only directly help the poor and the elderly if such low- and fixed-income people used and needed less energy than others, a proposition not supported by the evidence presented.

It is the policy of the Oregon Commissioner to spread rates on the basis of long-run incremental costs and to distribute rates between the various customer classes based on an application of equal percentages of LRIC. The Commissioner has stated that "[t]he touchstone of ratemaking, and of the commissioner's responsibility to prevent rate discrimination, is the concept that each customer should pay the costs imposed upon the company in meeting that customer's energy needs."⁶ Declining block rates have been flattened and the number of blocks reduced for both gas and electric utilities.

Oregon law provides that the Commissioner shall provide for a comprehensive classification of service for each utility, which may take into account quantity, time of use, purpose of use, and any other reasonable consideration.⁸ Generic proceedings have been held on the institution of time of day and seasonal rates; seasonal rates are in effect for most customers, and time-of-day rates for large power customers.

Interruptible service has been approved and offered in Oregon, although in a recent case large volume interruptible service was eliminated from a gas company's schedules because there were no customers on the schedule, and it was not anticipated that there would be any.¹⁰ As to load management techniques, under a "Residential Energy Conservation Program"¹¹ public utilities are mandated by statute to present to the Commission a program that makes available to their customers information on weatherization and other energy-saving approaches, and assistance in implementing such approaches. In the preamble to this law, the legislature noted that there is an urgent and continuing need to conserve energy. Weatherization clauses have been implemented by utilities.

Master metering in new buildings has been banned in Oregon, and the Commissioner encourages submetering of old buildings as well.¹²

The Commissioner has stated that "requests to the public utility commissioner...to develop unusual sources of energy supply [solar, wind, geothermal] ...

cannot be considered because they are clearly beyond the authority of this office and could not be implemented even if they have merit. Such issues should be raised in the state legislature or another forum more appropriate than a rate case proceeding."¹³

Oregon has a provision for Power Cost Adjustment Clauses, including fuel costs.¹⁴ Changes to the adjustment amount require the prior approval of the Commissioner.

Rate schedules must be kept on file at local offices of utilities and open to the inspection of the public.¹⁵ The utility need only transmit information to customers upon their request; on such request, the utility must supply a description (either printed or in person at the office of the utility) of the method of reading meters,¹⁶ and a copy of the utility's rates applicable to the type of service furnished that customer.¹⁷ In the event of an unresolved dispute about any bill or charge, the utility must inform the customer of his privilege to appeal to the Commissioner.¹⁸

A utility may not discontinue service to any customer for violation of its rules or regulations or for nonpayment of bills, "without first having diligently tried to induce the customer to comply with its rules and regulations or to pay his bills."¹⁹ Service may not be actually discontinued until after at least fifteen days written notice, delivered in person or by first-class mail, and the utility is required to attempt a personal contact within 72 hours of termination. Such written notice must indicate the customer's right to appeal the action to the Commissioner. Service may not be discontinued on a day before a weekend or holiday or on a weekend or holiday without the prior consent of the Commissioner.²⁰ Service may not be discontinued when the customer has submitted a signed doctor's statement that such action would constitute a health hazard.

Expenses for advertising aimed at conservation are allowed, if reasonable.²¹ Institutional and promotional advertising expenses are generally excluded²², although the Oregon Commissioner's rules deal with "Promotional Activities" (action by a utility aimed at bringing about an increase or preventing a decrease in the amount of service used by prospective or present customers, or with the object of inducing any person to use its service rather than a competing form of energy),²³ and state that such activities

shall be just and reasonable, prudent as a business practice, economically feasible and compensatory, and reasonably beneficial both to the utility and its customers. The costs of promotional activities and concessions must not be so large as to impose an undue burden on the utility's customers in general and must be recoverable through related sales stimulation within a reasonable period of time.²⁴

Whenever a utility files with the Commissioner schedules containing new or increased rates, the Commissioner may either on complaint²⁵ or on his own initiative,²⁶ and after reasonable notice, hold a hearing to determine the "propriety and reasonableness" of the new or changed rates.²⁷ Schedules may not be changed except on 30 days filing and notice to the Commissioner²⁸ and all schedules must be filed in the business offices of the utilities, and be readily accessible to the public.²⁹

All hearings by the Commissioner are open to the public.³⁰ The Commissioner may permit any person to become a party to a proceeding who might have been a party on the institution of the proceeding.³¹ The Commissioner may also permit any person who applies to appear and participate in the proceeding if he determines that it will not unreasonably broaden the issues or burden the record.³² The Commissioner takes evidence at the hearing,³³ and has the power to cause or take depositions³⁴ and issue subpoenas (including subpoenas duces tecum).³⁵

After the completion of taking evidence, the Commissioner prepares and enters findings of fact and conclusion of law upon the evidence received, and enters his order.³⁶

Any party to the proceeding, aggrieved by the Commissioner's findings of fact, conclusions of law or order, may sue the Commissioner in circuit court to modify, vacate or set aside such findings, conclusions or order.³⁷

The court may review the findings, conclusions or order but may not substitute its judgment for the Commissioner's as to any finding of fact supported by substantial evidence.³⁸ The review is confined to the record and no additional evidence may be considered except an allegation of procedural irregularities.³⁹ Errors in procedure may be the basis for reversal or remand only if substantial rights of the plaintiff were prejudiced by such errors.⁴⁰

1. Oregon Revised Statutes §756.040 (1977)
2. Id. §757.020
3. Id. §757.310
4. Id. §757.325
5. Rate Concessions to Poor Persons and Senior Citizens, 14 P.U.R. 4th 87 (1976)
6. Portland General Electric Co., 23 P.U.R. 4th 209 (1977); see also Cascade Natural Gas Corp., 19 P.U.R. 4th 170 (1976); California-Pacific Utilities Co., 14 P.U.R. 4th 139 (1976); Portland General Electric, 8 P.U.R. 4th 393 (1974); Rate Concessions to Poor Persons and Senior Citizens, supra n.5.
7. Portland General Electric Co., 8 P.U.R. 4th 393, 415 (1974); Cascade Natural Gas Corp., supra n.6; California-Pacific Utilities Co., supra n.6; Rate Concession, supra n.5 at 96.
8. O.R.S. §757.230
9. Docket UF 3346, noted in Portland General Electric Co., supra n.6; P.U.C. Order No. 79-048.
10. Cascade Natural Gas Corp., supra n.6.
11. Oregon Laws 1977, Ch. 889, §§2-16.
12. NARUC Survey, Table 61(b), Oregon footnote 8.
13. Re Portland General Electric Co., supra n.6, 23 P.U.R. 4th at 233.
14. P.U.C. Order No. 79-830.
15. Oregon Administrative Rules, Chapter 860, §21-010(3)
16. O.A.R. 860-21-010(2)
17. O.A.R. 860-21-010(4)
18. O.A.R. 860-21-015
19. O.A.R. 860-21-065(2)
20. Id. P.U.C. Order No. 79-680.

21. Re Northwest Natural Gas Co., 17 P.U.R. 4th 296 (1976); Re Portland General Electric, 8 P.U.R. 4th 393 (1974).
22. NARUC Survey, Table 18
23. O.A.R.860-26-010
24. O.A.R.860-26-020(1)
25. O.R.S. \$756.500
26. Id. \$756.210. See also \$756.515, generally permitting the Commissioner to conduct investigations and hold hearings on rates or service on his own motion.
27. Id. \$756.210
28. Id. \$757.220
29. Id. \$757.240
30. Id. \$756.521
31. Id. \$756.525
32. Id.
33. Id. \$756.558
34. Id. \$756.538
35. Id. \$756.543
36. Id. \$756.560
37. Id. \$756.580
38. Id. \$756.598(1)
39. Id. (2). See also \$756.600, permitting the court to allow additional evidence to be submitted to the Commissioner, on a showing of materiality and good cause.
40. Id. \$756.598(2)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>OREGON</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service	X		X			<u>Re Portland General Electric Co.,</u> 23 P.U.R. 4th 209 (1977); <u>Re Cascade Natural Gas Co.,</u> 19 P.U.R. 4th 170 (1976); <u>Re Rate Concessions to Poor Persons and Senior Citizens,</u> 14 P.U.R. 4th 87 (1976) ¹			
Declining Block Rates - Restructur- ing			X	X		<u>Re Portland General Electric Co.,</u> 8 P.U.R. 4th 393 (1974); <u>Re Califor- nia-Pacific Utili- ties Co.,</u> 14 P.U.R. 4th 139 (1976) ²			
Time-of-day Rates			X		Oregon Revised Statutes §757.230 ³	Docket UF 3346 (generic); Order No. 79-048			
Seasonal Rates			X		O.R.S. §757.230 ³	Docket UF 3346 (generic); Order No. 79-048			
Interruptible Rates			X	X		<u>Re Cascade Natural Gas Co.,</u> 19 P.U.R. 4th 170 (1976) ⁴			
Load Management				X ⁵					
Lifeline Rates			X		O.R.S. §§757.310, 757.325 ⁶	<u>Re Rate Concessions to Poor Persons and Senior Citi- zens,</u> 14 P.U.R. 4th 87 (1976)			

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>OREGON (cont'd)</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Master Metering	x ⁷								
Automatic Adjustment Clauses ⁸			X			Order No. 79-830			
Information to Consumers	X				Oregon Administrative Rules Ch. 860, §§21-010, -015 ⁹				
Termination: Notice Provision	X		X		O.A.R. 860-21-065 ¹⁰	Order No. 79-680			
Endangering Health Provision			X			Order No. 79-680			
Exclusion of Advertising Expenses						<u>Re Northwest Natural Gas Co., 17 P.U.R. 4th 296 (1976); Re Portland General Electric, 8 P.U.R. 4th 393 (1974)</u> ¹¹			
Small Electric Systems				X		<u>Re Portland General Electric, 23 P.U.R. 4th 209 (1977)</u> ¹²			

1. See text accompanying n. 6 of the discussion.
2. See text accompanying n. 7 of the discussion.
3. See text accompanying nn. 8-9 of the discussion.
4. See text accompanying n. 10 of the discussion.
5. See text accompanying n. 11 of the discussion.
6. See text accompanying nn. 2-5 of the discussion.
7. See text accompanying n. 12 of the discussion.
8. See text accompanying n. 14 of the discussion.
9. See text accompanying nn. 15-18 of the discussion.
10. See text accompanying nn. 19-20 of the discussion.
11. See text accompanying nn. 21-23 of the discussion.
12. See text accompanying n. 13 of the discussion.

PENNSYLVANIA

Public utilities doing business in Pennsylvania are required to "furnish and maintain adequate, efficient, safe and reasonable service and facilities...."¹ The Pennsylvania Public Utility Commission (the "Commission") is granted the power² and authority to supervise and regulate all public utilities in the Commonwealth, and is granted the power and authority to enforce all provisions of the Public Utility Law.³ Rates made, demanded, or received by any public utility are required to be "just and reasonable"⁴ and discrimination in both rates⁵ and services⁶ is statutorily prohibited.

The Commission has considered many factors in exercising its rate-making functions. In a 1973 Commission decision, the Commission stated:

There is no requirement that rates for different classes of service be either uniform or equal or that they must be equally profitable. Differences in rates between classes of customers, based on such criteria as the quantity of electricity used, the nature of the use, the time of the use, the pattern of the use, or based on differences of conditions of service, or cost of service, are not only permissible but often desirable and even necessary to achieve reasonable efficiency and economy of operation.

Thus, while cost-of-service studies are important, the Commission concluded that the studies should not be the sole basis of rate design.⁸ The Commission has endorsed the utilities' movement to give greater consideration to long-run incremental costs in rate proposals.

Although declining block rates have been approved by the Commission, the Commission has taken steps to flatten the rate structure¹⁰ in order to induce greater conservation.¹¹ Time-of-day rate programs have been approved by the Commission.¹² Seasonal rates have been approved by the Commission and adopted by the utilities.¹³ Interruptible rates have also won Commission approval.¹⁴ The Commission has endorsed the load management activities conducted by the utilities.¹⁵ Although the Commission has expressed concern about the impact of rising energy costs on the low-income consumer, the Commission has concluded that the statutory law requires no unreasonable preference or prejudice to any consumer.¹⁶ Thus, the Commission rejected any benefits to selected users based on ability to pay.¹⁷

A utility has requested the Commission to require multi-occupancy buildings to have individual tenant meter readings.¹⁸ Automatic energy clauses are permitted, and there is no requirement that a hearing be held on the adjustment clause before the adjustment becomes effective.¹⁹ The statute does require, however, that the Commission conduct or cause to be conducted, at least on an annual basis, an audit of each public utility which automatically adjusts its rates to determine the propriety and correctness of the amounts which are billed and collected.²⁰ The utilities are required to file with the Commission a tariff showing all rate

information and are required to keep such information available for public inspection.²¹ The utilities are required by statute to personally contact the consumer at least three days prior to discontinuing service for non-payment of charges or any other reason;²² this requirement is in addition to the requirement to provide written notice and to the prohibition against discontinuing service on Friday, Saturday, Sundays or holidays.²³ The Commission has indicated that advertising expenses, other than those associated with conservation information or the promotion of certain type of offpeak usage, will be excluded from operating expenses for rate-making purposes.²⁴ No policy on rates for consumers with solar, wind or small generation facilities has been adopted by the Commission;²⁵ however, a utility has proposed that consumers be allowed to use alternative energy sources and still retain former heating rates.²⁶

The Commission shall fix the time and place of all hearings and shall service notice upon the parties in interest.²⁷ All hearings before the Commission shall be public and a full and complete record will be kept of all proceedings.²⁸

The Commission has the power to subpoena books and records²⁹ and every party is entitled to make data submissions.³⁰

Nothing in the Public Utility Law deprives any party, upon judicial review of the proceedings and orders of the Commission, of the right of trial by jury of any issue of fact raised thereby, where such right is secured either by the United States or Pennsylvania Constitution.³¹ The judicial scope of review of Commission cases is limited to a determination of whether constitutional rights have been violated, an error of law committed, or if there is a lack of substantial evidence to support the findings, determination, or order of the Commission.³² The substantial evidence test is the evidentiary standard applied on review.³³

1. Pa. Stat. Ann. tit.66, § 1171 (Purdon) (Supp. 1978).
2. Id. § 1341.
3. Id. § 1342.
4. Id. § 1141.
5. Id. § 1144.
6. Id. § 1172.
7. Pennsylvania Pub. Util. Comm. v. Philadelphia Electric Co., 1 P.U.R.4th 417, 463 (1973).
8. Pennsylvania Pub. Util. Comm. v. Duquesne Light Co., 5 P.U.R.4th 202, 245 (1974).
9. Pennsylvania Pub. Util. Comm. v. Metropolitan Edison Co., 4 P.U.R.4th 209, 240 et. seq. (1974).
10. See e.g., Pennsylvania Pub. Util. Comm. v. Philadelphia Electric Co., supra note 7, at 460; Pennsylvania Pub. Util. Comm. v. Duquesne Light Co., 16 P.U.R.4th 36, 68-69 (1976).
11. Pennsylvania Pub. Util. Comm. v. Equitable Gas Co., 21 P.U.R.4th 34, 57-58 (1977).
12. See e.g., Pennsylvania Electric Co., 25 P.U.R.4th 342, 364 (1978).
13. See e.g., Pennsylvania Pub. Util. Comm. v. Pike County Light & Power Co., 19 P.U.R.4th 543, 559-60 (1977); Pennsylvania Pub. Util. Comm. v. Philadelphia Electric Co., supra note 7, at 460; Pennsylvania Pub. Util. Comm. v. Metropolitan Edison Co., supra note 9, at 242-43.

14. Pennsylvania Pub. Util. Comm. v. Duquesne Light Co., supra note 8, at 246-47.
15. NARUC Survey, "Rate Structure Revision," Table 61(c).
16. Pennsylvania Pub. Util. Comm. v. Metropolitan Edison Co., supra note 9, at 247.
17. Id.
18. PUBLIC UTILITY FORTNIGHTLY, p. 42 (May 11, 1978) (Pennsylvania Power & Light Co. filed a request to have the Commission prohibit master-metering in multi-occupancy buildings).
19. NARUC Survey, "State Regulation of Energy Adjustment Clauses," Table 6(a).
20. Pa. Stat. Ann. tit. 66 § 1147(d) (Purdon)(Supp. 1978).
21. Id. § 1142.
22. Id. § 1172.2.
23. Id. § 1172.1. See also ELECTRICAL WEEK, p. 7 (December 25, 1978)(Commission denied a petition to institute a temporary ban on utility service termination during the four winter months).
24. Pennsylvania Pub. Util. Comm. v. Pennsylvania Electric Co., 1 P.U.R.4th 272, 293 (1973).
25. NARUC Survey, "Rate Structure Revision," Table 61(c).
26. PUBLIC UTILITIES FORTNIGHTLY, p. 42, (May 11, 1978) (Pennsylvania Power & Light Co. filed a request to allow consumers to retain former heating rates following installment of solar, wind, wood and other renewable resource energy).
27. Pa. Stat. Ann. tit. 66, § 703 (Purdon)(1979).
28. Id.
29. Id. § 309.
30. Id. § 332.
31. Id. § 901.
32. Pennsylvania Gas & Water v. Com. Pub. Util., 381 A.2d 996, 999 (Comm. Ct. Pa. 1977).
33. Id.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>PENNSYLVANIA</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of service				X		<u>Pennsylvania Pub. Util. Comm. v. Duquesne Light Co., 5 P.U.R.4th 202, 245 (1974);</u> <u>Pennsylvania Pub. Util. Comm. v. Metropolitan Edison Co., 4 P.U.R. 4th 209, 240-41 (1974);</u> <u>Pennsylvania Pub. Util. Comm. v. Philadelphia Electric Co., 1 P.U.R.4th 417, 463 (1973)¹</u>			
Declining Block Rates-Restructuring				X	X	<u>Pennsylvania Pub. Util. Comm. v. Duquesne Light Co., 16 P.U.R.4th 36, 68-69 (1976);</u> <u>Pennsylvania Pub. Util. Comm. v. Philadelphia Electric Co., 1 P.U.R.4th 417, 460 (1973)²</u>			<u>Conservation, Pennsylvania Pub. Util. Comm. v. Equitable Gas Co., 21 P.U.R. 4th 34, 57-58 (1977)</u>
Time-of-day Rates				X	X	<u>Pennsylvania Pub. Util. Comm. v. Pennsylvania Electric Co., 25 P.U.R.4th 342, 364 (1978)³</u>			

Standard/Policy	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	PENNSYLVANIA (Cont'd)				Reference to PURPA Objectives
					<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	
Seasonal Rates			X	X			<u>Pennsylvania Pub. Util. Comm. v. Pike County Light & Power Co., 19 P.U.R.4th 543 559-60 (1977)</u> ⁴		
Interruptible Rates			X	X			<u>Pennsylvania Pub. Util. Comm. v. Duquesne Light Co., 5 P.U.R.4th 202, 246-47 (1974)</u> ⁵		
Load Management			x ⁶	X					
Lifeline Rates	X		X		Pa.Stat.Ann. tit. 66, § 1144 (Purdon) (Supp. 1978)	⁷	<u>Pennsylvania Pub. Util. Comm. v. Metropolitan Edison Co., 4 P.U.R. 4th 209, 247 (1974)</u>		
Master Metering ⁸									
Automatic Adjust- ment Clauses			X	X	Pa.Stat.Ann. tit. 66, § 1147(d) (Pur- don) (Supp. 1978)	⁹			
Information to Consumers			X	X	Pa.Stat.Ann. tit. 66, § 1142 (Pur- don) ¹⁰ (Supp. 1978)				
Termination: Notice Provision			X	X	Pa.Stat.Ann. tit. 66, § 1172.1-2 (Purdon) (Supp. 1978) ¹¹				

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
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PENNSYLVANIA (Con:'d)

Endangering Health Provision

Exclusion of Advertising

X X

Pennsylvania Pub. Util. Comm. v. Pennsylvania Electric Co.,
1 P.U.R.4th 272,
293 (1973)¹²

1. See text accompanying nn. 7-9 of discussion.
2. See text accompanying nn. 10-11 of discussion.
3. See text accompanying n. 12 of discussion.
4. See text accompanying n. 13 of discussion.
5. See text accompanying n. 14 of discussion.
6. See text accompanying n. 15 of discussion.
7. See text accompanying nn. 16-17 of discussion.
8. Information unavailable.
9. See text accompanying nn. 19-20 of discussion.
10. See text accompanying n. 21 of discussion.
11. See text accompanying nn. 22-23 of discussion.
12. See text accompanying n. 24 of discussion.

PUERTO RICO

By statute, Puerto Rico has a Public Service Commission¹ that is authorized to regulate public service companies, including "electric power enterprises."² The Commission "shall look after the public interest so that, under just and reasonable rates, safe, suitable and efficient public services are rendered ..."³

However, the NARUC Survey, Table 61(b), n. 1, states "[t]he Commission does not regulate any electric utilities." Moreover, a review of the statutes and Public Utilities Reporter 4th revealed no provisions or decisions concerning rate designs for electric companies.

1. P.R. Laws Ann. tit. 27, § 1051 (1976).
2. Id. §§ 1002, 1101.
3. Id. §. 1101.

Note: The Puerto Rico Public Service Commission did not respond to the Stone and Webster Questionnaire and failed to provide a copy of its procedural rules and regulations. A search of available public material did not yield the information necessary to analyze hearing procedures and judicial review.

RHODE ISLAND

By statute, utility rates must be "reasonable and just,"¹ and no customer may be charged more or less than that charged "any other person, firm or corporation for a like and contemporaneous service, under substantially similar circumstances and conditions."² A Rhode Island statute expressly provides, however, that "[n]othing in this section nor any other provision of law shall be construed to prohibit the giving by any public utility of free or reduced rate service to any elderly person as defined by the division."³

Time-of-day rates have been implemented in Rhode Island on an experimental basis;⁴ seasonal rates⁵ and optional interruptible service rates have also been implemented.⁶ Two utilities have been testing home thermal storage devices and two-way automatic communication.⁷ A 1978 Public Utilities Commission (the "Commission") decision notes that a 12 month off-peak pricing experiment beginning November 1, 1977 was ordered on July 29, 1977 for a sample of Blackstone Valley Electric Company's residential and commercial customers.⁸

According to that decision, the first 300 kw per month of residential use has been exempted from rate increases since February 18, 1976.⁹ It also indicates that inverted residential rates are "under consideration."¹⁰ In another decision,¹¹ the Commission authorized an experimental tariff for low income senior citizens. As noted above,¹² a Rhode Island statute expressly authorizes reduced or free service to the elderly.¹²

By statute, master metering is prohibited in buildings with more than 10 apartments or dwelling units construction of which began after July 1, 1977.¹³ Also by statute,¹⁴ 10 days written notice is required before service may be terminated for nonpayment.¹⁴ A 1977 decision involving a gas company indicates that Commission regulations prohibit shut-offs on Fridays, Saturdays, Sundays, legal holidays and the day before legal holidays, and states that reasonable efforts at personal contracts before shut-off "should be a fundamental requirement of shut-off policy."¹⁵

By statute, it is Rhode Island's policy to promote availability of "adequate, efficient and economical energy."¹⁶ Generic hearings concerning long-run incremental cost based inverted rates are planned in Rhode Island.¹⁷

After receiving notice of a change in rates,¹⁸ the Commission shall hold a public hearing as to the propriety of such change.¹⁸ The Commission may compel²⁰ the production of books and records¹⁹ and parties may prepare data submissions.²⁰ The Consumers Council shall be an interested party for all purposes in all formal hearings conducted by the Division of Public Utilities of the Department of Business Regulation.²¹

Any person aggrieved by a decision or order of the Commission may petition the Supreme Court for a writ of certiorari.²² The findings of the Commission on questions of fact shall be held to be prima facie true and the Supreme Court shall not exercise its independent judgment nor weigh conflicting evidence.²³ An order of the Commission made in the exercise of administrative discretion shall not be reversed unless the Commission exceeded its authority or acted illegally, arbitrarily or unreasonably.²⁴

1. R.I. Gen. Laws § 39-2-1 (1977).
2. Id. § 39-2-2.
3. Id.
4. NARUC Survey, "Ratemaking", Table 61(b).
5. Id.; Re Block Island Power Co., 21 P.U.R.4th 107 (1977).
6. Id.
7. NARUC Survey, "Rate Structure Revision", Table 61(c).
8. Re Blackstone Valley Electric Co., 24 P.U.R.4th 309, 330 (1978).
9. Id.
10. Id.
11. Re Narragansett Electric Co., 23 P.U.R.4th 516 (1978).
12. See n. 3, supra.
13. R.I. Gen. Laws § 39-3-7.1 (1977).
14. Id. § 39-2-1.
15. Re Providence Gas Co., 22 P.U.R.4th 36 (1977).
16. R.I. Gen. Laws § 39-1-1 (1977).
17. NARUC Survey, "Rate Structure Revision", Table 61(c).
18. R.I. Gen. Laws § 39-3-11 (1978 Supp.).
19. Id. § 39-1-13.
20. Id. § 39-1-12.
21. Id. § 39-1-17.
22. Id. § 39-5-1.
23. Id. § 39-5-3.
24. Id.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>RHODE ISLAND</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Time-of-day Rates ¹			X	X					
Seasonal Rates ²			X	X		<u>Re Block Island Power Co., 21 P.U.R.4th 107 (1977)</u>			
Interruptible Rates ³			X	X					
Load Management Techniques ⁴			X	X					
Lifeline Rates ⁵			X	X	R.I. Gen. Laws § 39-2-2 (1977)	<u>Re Blackstone Electric Co., 24 P.U.R.4th 309, 330 (1978); Re Narragansett Electric Co., 23 P.U.R.4th 516 (1978)</u>			
Master Metering ⁶	X		X		R.I. Gen. Laws § 39-3-7.1 (1977)				
Termination of Service ⁷			X		R.I. Gen. Laws § 39-2-1 (1977)	<u>Re Providence Gas Co., 22 P.U.R.4th 36 (1977)</u>			
					R.I. Gen. Laws § 39-1-1 (1977)				Efficiency ⁸

1. See test accompanying nn. 3-4 of discussion.
2. Id.
3. NARUC Survey, Table 61(b).
4. See Test accompanying nn. 4-5 of discussion.
5. See test accompanying nn. 4-5 of discussion.
6. See test accompanying n. 11 of discussion.
7. See test accompanying n. 11-13 of discussion.
8. See test accompanying n. 14 of discussion.

SOUTH CAROLINA

Public utilities doing business in South Carolina are required to "furnish adequate, efficient and reasonable service."¹ Every rate made, demanded or received by an electric utility is required to be "just and reasonable."² The Public Service Commission of South Carolina (the "Commission") is empowered to fix just and reasonable standards and to prescribe reasonable regulations to be followed by the utilities.³ The utilities are statutorily prohibited from granting "any unreasonable preference or advantage" to any person as to rates or to service.⁴

The Commission is committed to setting rates based on cost-of-service studies:

This commission has attempted to ensure that the rate design of the electric utilities follow, to the fullest extent possible, their respective cost-of-service studies, by which each class of customer bears an equitable portion of these costs to the companies associated with providing that class with proper service.⁵

In considering the question of allocation of rates, the Commission has separated total costs into three major categories: (1) costs that are a function of the total number of customers; (2) costs that are a function of the volume of service supplied or energy costs; and (3) costs that are a function of the service capacity of plant and equipment in the terms of capability of carrying hourly or daily peak loads or demand costs.⁶ Declining block rates have been approved by the Commission,⁷ although recently the Commission has required a utility to implement an inverted-rate schedule.⁸ Time-of-day rates have not been approved;⁹ however, seasonal rates have won Commission approval.¹⁰ Rates for interruptible services on a contract basis have been approved by the Commission¹¹ and the Commission has encouraged some load management activity.¹² Although the Commission sympathized with the difficult plight of low or fixed income consumers in the light of increasing electrical rates, the Commission stated it had no authority to grant a special rate to low income consumers.¹³ The Commission thus urged the legislative and executive branches of the state and federal government to take action to enable low income consumers to purchase necessary utility services.¹⁴

The Commission has no policy regarding master metering. Automatic fuel adjustment clauses have been discarded by the Commission;¹⁵ the utilities are required to incorporate fuel cost in base rates and the Commission staff is required to monitor the utilities' fuel purchases.¹⁶ Utilities are required to notify in writing each affected consumer of any proposed change in rates and charges as well as to file copies of all schedules for rates of service with the Commission and keep copies of the rate schedules in local offices of the utility for inspection by the public.¹⁸ The utilities are required to provide consumers with five days' written notice before discontinuance of service for nonpayment of charges, and service can be terminated only on Mondays through Thursdays between the hours of 8:00 a.m. and 4:00 p.m.¹⁹ The Commission has taken the position that institutional advertising expenses are not operating expenses for rate-making purposes.²⁰ Special rates for consumers with solar,²¹ wind and small generation facilities are under investigation by Commission.

No electrical utility shall make any change in rate except upon thirty days notice to the Commission and such other interested parties as the Commission may direct.²² Any person may file a petition to intervene stating their interest in the subject matter, the grounds of the proposed intervention, and the position of the petitioner.²³

The Commission may issue subpoenas duces tecum²⁴ and parties may introduce data submissions.²⁵ The Commission shall fix the time and place of all hearings and shall serve notice thereof not less than twenty days before the time set for such hearing.²⁶

Decisions of the Commission may be reviewed by the Circuit Court of Richland County (5th Judicial Circuit) on the administrative record.²⁷ Additional evidence may be heard on procedural irregularities.²⁸

The evidentiary standard applied on review is "without supporting evidence,"²⁹ and the legal tests applied are: lack of jurisdiction,³⁰ error of law,³¹ in excess of statutory authority,³² abuse of discretion,³³ and not in accordance with law.³⁴

1. S.C. Code § 58-27-1510 (1976).
2. Id. § 58-27-810.
3. Id. §§ 58-27-140 et. seq.; see also id. § 58-27-220.
4. Id. § 58-27-840.
5. Re Carolina Power & Light Co., 9 P.U.R.4th 129, 143 (1975).
6. Re Lockhart Power Co., 8 P.U.R.4th 333, 335 (1975); Re South Carolina Electric & Gas Co., 6 P.U.R.4th 128, 141 (1974).
7. NARUC Survey, "Ratemaking," Table 61(b).
8. ELECTRICAL WEEK, p. 5 (December 19, 1977) (Commission ordered South Carolina Gas & Electric to implement an inverted rate schedule. A Commission source reported that the rate structure was intended as a discount for low-use customers rather than as a penalty for high use consumers or as a conservation measure).
9. NARUC Survey, "Ratemaking," Table 61(b).
10. Id.; see discussion on special rates for residential all-electric rates for consumers utilizing electric heat. Re South Carolina Electric & Gas Co., supra note 6, at 142.
11. Id.
12. NARUC Survey, "Rate Structure Revision," Table 61(c).
13. Re Carolina Power & Light Co., supra note 5, at 143-44.
14. Id. at 144.
15. NARUC Survey, "Ratemaking," Table 61(b).
16. ELECTRICAL WEEK, p. 4 (January 22, 1979); P.U.R. EXECUTIVE INFORMATION SERVICE, Weekly Letter No. 2352, p. 4 (January 25, 1979).
17. Id.
18. Rules & Regulations Governing Service Supplied by Electric Systems in South Carolina. Doc. No. 18,605, Order No. 19,331, RUE-401, 410 (June 30, 1976).
19. Id., RUE-406.
20. Re General Telephone Company of the Southeast, 13 P.U.R.4th 24, 35-36 (1976).
21. NARUC Survey, "Rate Structure Revision," Table 61(c).

22. S.C. Code § 58-27-820 (1976).
23. Rules of Practice and Procedure 103-836 (1977).
24. S.C. Code § 58-27-1960 (1976).
25. Id. § 58-27-2040.
26. Id. § 58-27-1980.
27. Stone and Webster Questionnaire, OMB No. 038-579052, p. 8.
28. Id.
29. Pee Dee Electric Coop. v. Pub. Serv. Comm., 92 S.E.2d 171 (Sup. Ct. S.C. 1956).
30. Black River Electric Coop., Inc. v. Pub. Serv. Comm., 120 S.E.2d 6 (Sup. Ct. S.C. 1961).
31. Pee Dee Electric, supra n. 29.
32. Piedmont & Northern Ry Co. v. Scott, 24 S.E.2d 353 (Sup. Ct. S.C. 1943).
33. Southern Bell Telephone & Telegraph Co. v. Pub. Serv. Comm., 244 S.E.2d 278 (Sup. Ct. S.C. 1978).
34. Piedmont & Northern Ry, supra n. 32.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹				X		<u>Re Carolina Power & Light Co., 9 P.U.R. 4th 129, 143 (1975);</u> <u>Re Lockhard Power Co., 8 P.U.R.4th 333, 335 (1975)</u>			
Declining Block Rates ²				X					
Time of Day Rates ³									
Seasonal Rates ⁴				X		<u>Re South Carolina Electric & Gas Co., 6 P.U.R.4th 128, 141 (1974)</u>			
Interruptible Rates ⁵				X		<u>Re South Carolina Electric & Gas Co., 6 P.U.R.4th 128 (1974)</u>			
Load Management Techniques ⁶				X					
Lifeline Rates ⁷				X		<u>Re Carolina Power & Light Co., 9 P.U.R. 4th 129 (1975)</u>			
Automatic Adjust- ment Clauses ⁸				X					
Information to Consumers	X			X		Doc. No. 18,605, Order No. 19,331, RUE-401, 410 (June 30, 1976)			

SOUTH CAROLINA

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>
Procedures for Termination ¹⁰		X		X	
Advertising Expenses ¹¹				X	
Small Energy Producers ¹²				X	

SOUTH CAROLINA (Cont'd)

<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Doc. No. 18,605, Order No. 19,331, RUE-406 (June 30, 1976)			
<u>Re General Telephone Co. of the Southeast</u> , 13 P.U.R.4th 24, 35-36 (1976)			

1. See text accompanying nn. 5-6 of discussion.
2. See text accompanying nn. 7-8 of discussion.
3. See text accompanying n. 9 of discussion.
4. See text accompanying n. 10 of discussion.
5. See text accompanying n. 11 of discussion.
6. See text accompanying n. 12 of discussion.
7. See text accompanying nn. 13-14 of discussion.
8. See text accompanying n. 16 of discussion.
9. See text accompanying n. 18 of discussion.
10. See text accompanying n. 19 of discussion.
11. See text accompanying n. 20 of discussion.
12. See text accompanying n. 21 of discussion.

SOUTH DAKOTA

The Public Service Commission of South Dakota (the "Commission") is vested with all "powers, rights, functions and jurisdiction" to regulate public utilities.¹ The commission is authorized and directed to regulate rates to the end that they are just and reasonable and non-discriminatory.²

Public utilities must charge "just and reasonable"³ rates, and no utility may as to rates make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.⁴

Under the Commission's rules, utilities requesting a rate increase of more than \$85,000 annually must submit cost of service information with their applications⁵; furthermore, with an initial application for a rate increase under these rules, the utility must include a cost of service study by customer class of service, by rate classification if so ordered, or other appropriate categorization showing revenues, costs and profitability for each rate category, identifying the procedures and underlying rationale for cost and revenue allocations.⁶ In a recent case the Commission adopted a staff position that customer charges should approximate average customer costs for each class, and found it "unjust, unfair, and unreasonable for the company to earn substantially varying rates of return among customer classes."⁷ In 1977 the Commission directed Montana-Dakota Utilities Co. to attempt to use marginal cost principles in designing its rates.⁸

The Commission is under a state legislative mandate to develop a policy "alleviating the financial burden to electric and gas consumers of the declining block rate structure" (as well as of other pricing structures in use by the utilities).⁹ Following this mandate, the Commission has declared that there must be a gradual flattening of declining block rates, but that an absolutely flat rate structure is not in the public interest.¹⁰ The Commission has implemented a residential rate structure with a flat energy charge.

In 1977 the Commission found that time-of-use rates would lead to more efficient generation and would lessen the need for additional capacity, thus providing "resource and environmental benefits," and ordered the utility to institute these rates for its larger customers with time metering capability.¹¹ In recently adopting a staff proposal for optional, marginal-cost-based time-of-day rates to be offered to the Montana-Dakota Utilities Company's electric customers, the Commission found that

the Commission has a duty and obligation to move toward compliance with the National Energy Policies Act of 1978 and that adoption of Staff's recommendation serves to satisfy part of that responsibility.¹²

Seasonal rates are also offered by utilities in South Dakota.¹³ Interruptible rates have been approved for the state's utilities,¹⁴ and the utilities have undertaken other load management approaches.¹⁵

In 1977 the Commission adopted a staff proposal to implement "conservation-type" rates with the objective of providing relief to elderly or low-income rate-payers and also of encouraging conservation of electricity.¹⁶

The Commission currently has no official policy on master metering¹⁷ or rates for alternative energy sources.¹⁸

Utilities must give written notice of any proposed increase in rates to all affected customers at least 30 days prior to the effective date of the increase, and such notice must include a statement of the customers' rights to object to the increase and to request the Commission to hold a public hearing on it.¹⁹ Each time the utility is granted an increase in residential rates, it must furnish each residential customer affected by the change a comparison of his or her old rates and his or her new ones.²⁰ Certain "customer information" and the customer's applicable rate schedule must be furnished by the utility to each new customer and all existing customers.²¹

By statute the Commission may permit a public utility to file rate schedules containing provisions for the automatic adjustment of charges for service in direct relation to changes in wholesale rates for energy delivered or the delivered costs of fuel used in generation of electricity.²² The Commission has recently approved a fuel adjustment clause that would allow adjustment only in the amount of 90% of increased fuel costs; it was noted in that case that the Commission would retain authority to determine when increases could be implemented.²³

Before a utility may disconnect for nonpayment of bills, a number of conditions must be met. The customer must have received a period of not less than twenty days from billing date to due date plus an additional notice period of at least ten days during which the bill has been owing, in which to pay the bill; the customer must have received written notice of the utility's intention to disconnect plus - if it is the customer's first disconnection - personal notice of such intention; notice must contain statements indicating the customer's right to appeal and the method of appeal; the customer must have been unwilling to enter into a reasonable agreement with the utility to liquidate his debt, especially if he or she has claimed an inability to pay or extenuating circumstances; and there must be no "bona fide and just" dispute about the bill.²⁴ Service may not be disconnected on the weekend (including Friday), any legal holiday, or any time when the utility's business offices are not open to the public.²⁵ No utility may disconnect residential service between November and April without adding an additional thirty days to the time otherwise allowed the customer before disconnection.²⁶ Finally, a utility must also postpone physical discontinuation to a residential customer for thirty days from the date of a physician's certificate or notice from a public health or social services official stating that physical discontinuation will aggravate an existing medical emergency of the customer, a family member, or other permanent resident of the place of service.²⁷ This extension is limited to a single thirty day period.

In applications for rate increases exceeding \$85,000, utilities must submit schedules showing advertising expenses broken down into expenses for promotional practices and advertising, informational advertising (such as energy conservation

and the like), community affairs advertising and image or institutional advertising.²⁸ In a 1977 case the Commission disallowed a portion of advertising expenses because institutional advertising was not shown to be required for the rendition of adequate, safe, and reliable electric service.²⁹ The Commission noted that it had not disallowed such expenses before where they were not excessive, and that this was an issue of first impression for it.

A staff position recommending disallowance of certain claimed general expenses related to lobbying activities was also adopted recently. In the same case, image enhancement expenses were also disallowed. The Commission stated that it found

the expenses involved...not germane or necessary to the rendition of adequate, safe and reliable electric service.... [I]n certain instances, the expenses may...cause detriment to consumers since various positions MDU and other utilities advocate through lobbying activities may be adverse to consumers. ...[S]uch expenses cannot and should not be recovered through rates charged to MDU's retail customers³⁰.

No utility may change any established rate except after thirty days notice to the Commission; the utility must also give thirty days' written notice of any proposed increase to all affected customer.³¹ As noted above, the latter notice must include a statement that the customer has the right to join with twenty-four other customers to file a written objection to the increase and may request the Commission to suspend the increase and hold a public hearing to determine if it should be allowed.³² Whenever new schedules containing an increase are filed, the Commission may upon complaint or its own notice, and an reasonable notice,³³ hold a hearing to determine of the rates are just and reasonable.³⁴

Intervenors are permitted to appeared at rate change hearings provided that their contention are "reasonably pertinent" to the issues already presented and they disclaim any right to broaden the issues.³⁵ Intervenors are not accorded the status of parties. Individuals, customers and ratepayers may also be permitted to appear in person before the Commission without filing a petition to intervene.³⁶

Under the state administrative procedure statute, a rate-making proceeding is considered a "contested case."³⁷ All parties to a contested case may present evidence on fact issues and argument on legal or policy issues.³⁸ The rules of evidence applicable to state civil trials apply to such hearings, except that in certain circumstances probative evidence not otherwise admissible may be admitted.³⁹ The Commission has the power to cause depositions to be taken⁴⁰ and to subpoena witnesses to appear and give testimony and to produce documents.⁴¹

The Commission's final decision or order adverse to any party must be in writing⁴² or stated in the record, and must include findings of fact and conclusions of law.⁴³ Findings of fact must be accompanied by a statement of the underlying facts supporting them.⁴³

A party aggrieved by a final decision in a contested case is entitled to judicial review on an appeal to the circuit court.⁴⁴ The review is confined to the record and a trial *de novo* shall not be granted unless otherwise authorized by law.⁴⁵ However, proof of alleged procedural irregularities in the Commission proceedings may be taken by the court.⁴⁶ The court is mandated to give "great weight" to the findings made by the Commission. It may reverse or modify the decision if "substantial rights of the appellant have been prejudiced because the administrative findings, influences, conclusions, or decisions" (1) violate constitutional or statutory provisions, (2) exceed the Commission's statutory authority; (3) were made upon unlawful procedures or are otherwise affected by an error of law, (4) are clearly erroneous in light of the entire evidence in the record, or (5) are arbitrary and capricious, an abuse of discretion, or a clearly unwarranted exercise of discretion.⁴⁷

1. South Dakota Compiled Laws §49-34A-6 (1979 Supp.).
2. *Id.* §§49-34A-6, 49-34A-21.
3. *Id.* §49-34A-6.
4. *Id.* §49-34A-3.
5. Rules of the South Dakota Public Utilities Commission, Rule 20:10:13:40; See Rules 20:10:13:96 to 20:10:13:99, detailing cost of service schedules and information required.
6. *Id.* 20:10:13:43.
7. Black Hills Power & Light Co., 16 P.U.R. 4th 369, 374-76 (1976).
8. Montana-Dakota Utilities Co. 21 P.U.R. 4th 1,30 (1977).
9. S.D.C.L. §49-34A-8.1 (Entitled "Policy to Alleviate the Financial Burden of Pricing Structure.")
10. Northwestern Public Service Co. 22 P.U.R. 4th 60 (1977).
11. Montana-Dakota Utilities Co., *supra*, n. 6. See also Northwestern Public Service Co., *supra*, n. 8.
12. In the Matter of the Application of Montana-Dakota Utilities Co. for the Authority to Establish Increased Rates for Electric Service, Decision and Order F-3240 (December 28, 1978).
13. NARUC Survey, Table 61(b).
14. NARUC Survey, Table 61(b).
15. NARUC Survey, Table 61(c). See also Commission Rule 20:10:21:13 and S.D.C.L. 49-41B-1,-3.
16. Montana-Dakota Utilities Co., *supra* n. 6 at 29 A lifeline energy rate and conservation act was submitted to voters in November, 1978. (Chapter 347 S.L. 1978, noted in S.D.C.L. Title 49) but was defeated.
17. NARUC Survey, Table 61(b).
18. *Id.*
19. S.D.C.L. §49-34A-12.
20. Commission Rule 20:10:16:01.
21. Commission Rule 20:10:16:02. "Customer information" includes the utility's own customer rules, notice of departments to which complaints can be filed, and notice of the customer's right to appeal utility decisions to the commission
22. S.D.C.L. §49-34A-25 (1979 Supp.).
23. Montana-Dakota Utility Co., *supra* n. 6. The Commission has undertaken generic fuel clause proceedings, Docket F-3089.
24. Commission Rule 20:10:20:03.
25. Commission Rule 20:10:20:06.

26. Commission Rule 20:10:20:10.
27. Commission Rule 20:10:20:11.
28. Commission Rules 20:10:13:40 and 20:10:13:83(1(a)-(d).
29. Montana-Dakota Utility Co., supra n. 6. See also Northwestern Public Service Co., supra n. 8.
30. In the Matter of Montana-Dakota Utilities Co., supra n. 10. See also Northwestern Bell Telephone Company, 3 P.U.R. 4th 486 (1974) (Company's expenses for informative advertising only allowed; Northwestern Bell Telephone Company, 15 P.U.R. 4th 289 91976) (Promotional and informational advertising expense allowed); and Northwestern Public Service Co. F-3055 (Sept. 27, 1976) (Electric Company's advertising expenses allowed as operating expenses for rate-making purposes).
31. S.D.L.C. §49-34A-12.
32. Id. and Commission Rules 20:10:14:12-16.
33. Id. §49-34A-12; See also §1-26-16 and Commission Rule 20:10:14:17.
34. Id.
35. Id. §§49-34A-3.1, 1-26-17.1 and Commission Rule 20:10:14:02. The rule gives additional criteria for permitting intervention.
36. Commission Rule 20:10:14:06.
37. S.D.C.L. §1-26-1 (1979 Supp.).
38. Id. §1-26-18. See also Commission Rules 20:10:14:20-37.
39. Id. §1-26-19.
40. Id. §1-26-19.2.
41. Id. §1-26-19.1.
42. Id. §1-26-25.
43. Id.
44. Id. §§1-26-30,-30.2.
45. Id. §1-26-35.
46. Id.
47. Id. §1-26-36.

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service	X			X		Rules 20:10:13:40, :43, :96-99 <u>Re Black Hills Power & Light Co.,</u> 16 P.U.R. 4th 369 (1976); <u>Re Montana-Dakota Utilities,</u> 21 P.U.R. 4th 1 (1977) ¹			
Declining Block Rates - Restructuring	X		X		SDCL §49-34A-8.1 ²	<u>Re Northwestern Public Service Co.,</u> 22 P.U.R. 4th 60 (1977)			
Time-of-Day Rates			X	X		<u>Application of Montana-Dakota Utilities Decision & Order</u> F-3240 (1978) ³			
Seasonal Rates			X ⁴	X					
Interruptible Rates			X ⁵	X					
Load Management			X ⁶	X					
Lifeline Rates			X	X		<u>Re Montana-Dakota Utilities,</u> 21 P.U.R. 4th 1 (1977)			Conservation
Master Metering ⁸									
Information to Consumers	X				SDCL §49-34A-12 ⁹	Rule 20:10:16:01 Rule 20:10:16:02			
Automatic Adjustment Clauses			X	X	SDCL §49-34A-25 ¹⁰	<u>Re Montana-Dakota Utilities Co.,</u> 21 P.U.R. 4th 1 (1977). Generic proceedings Dkt F-3089			

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Termination Procedures ¹¹									
1. Notice		X				Rule 20:10:20:03			
2. Prohibited if Health Hazard		X				Rule 20:10:13:40			
Exclusion of Advertising Expenses			X	X					
Small Electric Systems ¹³									

SOUTH DAKOTA (cont'd)

Application of Montana-Dakota Utilities Decision & Order F-3240 (1978); Re Montana-Dakota Utilities Co., 21 P.U.R. 4th 1 (1977); Re Northwestern Public Service Co., 22 P.U.R. 4th 60 (1977)¹²

1. See text accompanying nn. 5-8 of the discussion.
2. See text accompanying nn. 9-10 of the discussion.
3. See text accompanying nn. 11-12 of the discussion.
4. See text accompanying n. 13 of the discussion.
5. See text accompanying n. 14 of the discussion.
6. See text accompanying n. 15 of the discussion.
7. See text accompanying n. 16 of the discussion.
8. See text accompanying n. 17 of the discussion.
9. See text accompanying nn. 19-21 of the discussion.
10. See text accompanying nn. 22-23 of the discussion.
11. See text accompanying nn. 24-27 of the discussion.
12. See text accompanying nn. 28-29 of the discussion.
13. See text accompanying n. 18 of the discussion.

TENNESSEE

Public utilities doing business in Tennessee are required "[t]o furnish safe, adequate, and proper service and to keep and maintain its property and equipment in such condition as to enable [them] to do so."¹ The Tennessee Public Service Commission (the "Commission") is granted "general supervision and regulation of, jurisdiction, and control over, all public utilities. . . ."² In addition, the Commission is specifically authorized "to pass upon the reasonableness of any rate, fare, or charge"³ made by the public utilities. The utilities are statutorily prohibited from adopting any regulation, practice or measurement which is unjust, unreasonable, unduly preferential or discriminatory,⁴ and from charging any unreasonable, unjustly discriminatory or unduly preferential rate or charge.⁵

The Commission, in exercising its power to pass upon the reasonableness of any rate, fare or charge, is required to take into consideration "all such things, involving the cost of the service."⁶ Declining block rates have been approved by the Commission, and the Commission has no policy with regards to discouraging such rates. Neither time-of-day rates⁸ nor seasonal rates⁹ have won Commission approval. The Commission has approved rates for interruptible service,¹⁰ and has not yet approved any plans for load management activity.¹¹ Lifeline rates have not been approved by the Commission.¹²

The Commission has no policy on master metering in multi-occupancy dwelling units.¹³ Automatic energy adjustment clauses are permitted for purchased power, and there is no requirement a hearing be held before the adjustment becomes effective.¹⁴ The utilities are required to file with the Commission complete schedules of every classification employed and of every rate or charge exacted for any product supplied or services rendered.¹⁵ The Commission has disallowed lobbying expenses as operating expenses for ratemaking purposes;¹⁶ however, the Commission has allowed expenses relating to advertising which are designed to increase revenues or decrease expenses, as well as reasonable expenses of what appears to be "institutional" advertising.¹⁷ No policy has been formulated by the Commission regarding rates for consumers with solar, wind, or small generation facilities.¹⁸

All parties to contested cases before the Commission shall be afforded an opportunity for hearing after reasonable notice stating the time, place, and issues involved.¹⁹ The Commission may, upon motion, allow any interested person to intervene and become a party to any contested case.²⁰ Parties may make data submissions to the Commission.²¹

Any party to a contested case before the Commission may appeal a final order by filing a petition for certiorari to the chancery court of Davidson County.²² The review shall be conducted on the record²³ and the court may reverse the decision if it was in violation of constitutional provisions, in excess of statutory authority or jurisdiction, made upon unlawful procedure, arbitrary or capricious, or affected by other error of law.²⁴ Appeals of decisions of the chancery court may be had to the Supreme Court.²⁵ The Supreme Court will give every reasonable presumption in favor of the lawfulness of the orders of the Public Service Commission and where there is material evidence supporting the decision, it will not be reversed.²⁶

1. Tenn. Code Ann. § 65-414 (1976).
2. Id. §§ 65-404, 518.
3. Id. § 65-405.
4. Id. § 65-422.
5. Id. § 65-521.
6. Id. § 65-405.
7. NARUC Survey, "Ratemaking," Table 61(b).
8. Id.
9. Id.
10. Re Nashville Gas Co., 11 P.U.R.4th 442, 450-51 (1975).
11. NARUC Survey, "Rate Structure Revision," Table 61(c).
12. NARUC Survey, "Ratemaking," Table 61(b).
13. Id.
14. NARUC Survey, "State Regulation of Energy Cost Adjustment Clauses," Table 6a.
15. Tenn. Code Ann. § 65-519 (1976).
16. Re South Central Bell Telephone Co., 22 P.U.R.4th 281, 296-97 (1977).
17. Id. at 299-300.
18. NARUC Survey, "Rate Structure Revision," Table 61(c).
19. Tenn. Code Ann. § 65-208 (1976).
20. Id. § 65-207.
21. Id. § 65-209.
22. Id. § 65-220.
23. Id. § 65-228.
24. Id. § 65-229.
25. Id. § 65-230.
26. Blue Ridge Transp. Co. v. Hammer, 313 S.W.2d 431 (Sup. Ct. Tenn. 1958).

TENNESSEE

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service				x ¹	Tenn. Code Ann. § 65-414 (1976)				
Declining Block Rates-Restructuring			x ²	x					
Time-of-day Rates				x ³					
Seasonal Rates				x ⁴					
Interruptible Rates			x	x		Re Nashville Gas Co., 11 P.U.R.4th 442, 450-51 (1975) ⁵			
Load Management ⁶									
Lifeline Rates ⁶									
Master Metering ⁶									
Automatic Adjust- ment Clauses			x ⁷	x					
Information to Consumers			x	x	Tenn. Code Ann. § 65-519 ⁸ (1976)				
Termination: Notice Provision ⁶									
Endangering Health Provision ⁶									

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Exclusion of Advertising			X	X					
Small Electric Systems ⁶									

TENNESSEE (Cont'd)

Re South Central
Bell Telephone
Co., 22 P.U.R.4th
281, 296-300 (1977)⁹

1. See text accompanying n. 6 of discussion.
2. See text accompanying n. 7 of discussion.
3. See text accompanying n. 8 of discussion.
4. See text accompanying n. 9 of discussion.
5. See text accompanying n. 10 of discussion.
6. Information unavailable.
7. See text accompanying n. 14 of discussion.
8. See text accompanying n. 15 of discussion.
9. See text accompanying nn. 16-17 of discussion.

TEXAS

Every public utility in Texas must "furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable."¹ Public utility rates shall be "just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of consumers."²

The Public Utility Commission of Texas ("commission") has "general power to regulate and supervise the business of every public utility within its jurisdiction and to do all things ...necessary and convenient to the exercise of this power and jurisdiction."³ Each municipality has exclusive original jurisdiction over "all electric ...utility rates, operations, and services provided by an electric ...utility within its city or town limits," although such jurisdiction may be surrendered by the municipality to the commission.⁴ The appropriate "regulatory authority" (either the commission or the municipality) is authorized "to fix and regulate rates of public utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates."⁵ It is the duty of the regulatory authority to insure that all rates are "just and reasonable."⁶ Also, the regulatory authority "may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all public utilities with respect to the services to be furnished...."⁷

The commission is "sensitive to the need to move all rates in the direction of costs," but does not wish to act so quickly as to create undue hardship for any single class of consumers.⁸ The commission requires that rates be cost-based and that rate filings be accompanied by a fully allocated historical cost-of-service study.⁹ The commission is "phasing out" declining block rates for electricity.¹⁰ Time-of-day electric rates have not been authorized,¹¹ but seasonal rates have been permitted.¹² Interruptible rates have been implemented¹³ and the commission encourages load management.¹⁴ The commission has ordered a utility to offer a rate break to customers using 500 Kilowatt hours per month or less in the summer months, which was labeled by some consumer groups as lifeline rates.¹⁵

Master metering has been prohibited by statute in new apartments and condominiums¹⁶ and the commission is required to promulgate rules under which the owners or operators of presently master-metered apartments may install submetering equipment.¹⁷ Before adjusting fuel costs to customers, the utility must file requested fuel contracts and cost data upon which total fuel costs are predicated with a schedule of anticipated adjustments. Changes in fuel costs to customers will be reviewed on a regular basis and improper increases may be disallowed. Provision is made for refunds to be made to affected customers. Adjustments for recovering the cost of economy energy purchased from different utilities may, at the commission's discretion, be allowed in the tariff of the purchasing utility.¹⁸ Service may be discontinued upon five days' written notice.¹⁹ The commission will not allow, for rate making purposes, expenses for any "institutional, consumption-inducing and other advertising" which the commission determines is not in the "public interest."²⁰ Expenditures promoting methods of conserving energy, methods to effect consumer savings, load factor improvement at off-peak times,

and membership in professional or trade associations may be allowed by the commission.²¹ No lobbying expenses will be allowed for rate making purposes.²² At present, the commission has no policy regarding electric rates which discriminate against or discourage the use of solar, wind or other small energy generating systems.²³

Rate changes must be indicated on tariffs filed with the commission.²⁴ Jurisdictional tariffs may not take effect prior to 35 days after filing without commission approval and the commission may suspend the effective date of the tariff change up to one hundred and fifty days.²⁵ Ratemaking proceedings are governed by the Administrative Procedure and Texas Register Act which considers such proceedings contested cases.²⁶ In contested cases, all parties must be afforded an opportunity for hearing after reasonable notice of not less than ten days.²⁷ The timing and scheduling of hearings is otherwise not governed by statute. The rules of evidence as applied in nonjury civil cases in the district courts of Texas shall be followed. Where necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable prudent men in the conduct of their affairs.²⁸ The commission may take official notice of all facts judicially cognizable.²⁹ Effect will be given to the rules of privilege recognized by law.³⁰ The commission may issue subpoenas to³¹ require the attendance of witnesses and the production of documents or things. Upon a showing of good cause the commission shall authorize taking of depositions, production of documents or things, entry on property, and discovery of identity and location of potential parties or witnesses, including factual observations and opinions of experts who will be called as witnesses.³² In contested cases, all parties³³ are entitled to be assisted by counsel and may conduct cross-examinations. Findings of fact must be based exclusively on the evidence and on matters officially noticed.³⁴ No rule, order or decision is valid or effective until it has been made available for public inspection.³⁵

Motion for rehearing must be filed within fifteen days of rendition of a final decision or order and commission action must be taken within forty-five days after rendition of final decision or order. If the commission does not act within that period, the motion for hearing is overruled by law. A motion for rehearing is a prerequisite to an appeal.³⁶ Petition for judicial review must be filed within 30 days after the decision is final and appealable in a district court in Travis County.³⁷ Such review is limited to the record made before the commission and is governed by the substantial evidence test, which limits the determination to whether the decision was in violation of constitutional or statutory provisions, was in excess of the statutory authority of the commission, was made upon unlawful procedure, was not reasonably supported by substantial evidence, was arbitrary or capricious or represented an abuse of or unwarranted exercise of discretion.³⁸

1. Tex. Rev. Civ. Stat. Ann. art. 1446c, §35 (Vernon Supp. 1963-78).
2. Id. §38.
3. Id. §16.
4. Id. §17. The Commission does have exclusive appellate jurisdiction to review the orders and ordinances of municipalities that regulate public utilities.
5. Id. §37.
6. Id. §38.

7. Id. §35.
8. Re Texas Power & Light Co., 20 P.U.R. 4th 243, 249 (1977).
9. NARUC Survey, Table 61(a).
10. Id., Table 61(b).
11. Id.
12. Id.
13. Id.
14. Id., Table 61(c).
15. Electrical Week, October 8, 1979 at 3.
16. Tex. Rev. Civ. Stat. Ann. art. 1446d, §2 (Vernon Supp. 1963-78).
17. Id. §3.
18. Substantive Rules, Pub. Util. Comm. of Tex. 052.02.03.032(b)(2)(4).
19. Id. 052.02.04.044(c).
20. Id. art. 1446c, §30.
21. Substantive Rules, Pub. Util. Comm. of Tex. 052.02.03.032(6)(c).
22. Tex. Rev. Civ. Stat. Ann. art. 1446d, §2 (Vernon Supp. 1963-78).
23. NARUC Survey, Table 61(c).
24. Substantive Rules, Pub. Util. Comm. of Tex. 052.02.03.034(b)(1).
25. Id. 052.02.03.034(i).
26. Tex. Rev. Civ. Stat. Ann. art. 6252-13a, §3(2).
27. Id. §13(a).
28. Id. §14(a).
29. Id. §14(q).
30. Id. §14(a).
31. Id. §14(c).
32. Id. §14(d); §14a(a), (c).
33. Id. §14(p), (r).
34. Id. §12(h).
35. Id. §4(3)(b).
36. Id. §16(e).
37. Id. §19(b), (b)(1).
38. Tex. Rev. Civ. Stat. Ann. art. 1446c, §69; Southwestern Bell Tel. Co. v. Texas Pub. Util. Comm., 26 P.U.R. 4th 61 (1978).

TEXAS (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Termination ¹¹		X		X		Substantive Rules. Pub. Util. Common of Tex. .052.02.04.044 (c).			
Advertising ¹²		X		X		Substantive Rules, Pub. Util. Common of Tex. .052.02.03.032 (6) (c).			
Exclusion of Advertising ¹³	X			X	Tex. Rev. Civ. Stat. Ann. art. 1446c, §30 (Vernon Supp. 1963-78)				
Small Electric Systems ¹⁴									

1. See text accompanying nn. 8-9 of the discussion.
2. See text accompanying n. 10 of the discussion.
3. See text accompanying n. 11 of the discussion.
4. See text accompanying n. 12 of the discussion.
5. See text accompanying n. 13 of the discussion.
6. See text accompanying n. 14 of the discussion.
7. See text accompanying n. 15 of the discussion.
8. See text accompanying n. 16-17 of the discussion.
9. See text accompanying n. 18 of the discussion.
10. Information unavailable.
11. See text accompanying n. 19 of the discussion.
12. See text accompanying n. 21 of the discussion.
13. See text accompanying n. 22 of the discussion.
14. See text accompanying n. 23 of the discussion.

UTAH

The public service commission of Utah (the "Commission") is given by statute the power and jurisdiction to "supervise and regulate" every public utility in the state.¹ The basic legal constraints on rates charged and service provided by the state's public utilities are defined by statute:

All charges made ... by any public utility ... shall be just and reasonable. ... Every public utility shall furnish ... such service ... as will be in all respects adequate, efficient, just and reasonable. All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. The scope of the definition "just and reasonable" may include, but shall not be limited to the cost of providing service to each category of customer, economic impact of charges on each category of customer, and on the well-being of the State of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services, and means of encouraging conservation of resources and energy.²

By statute no public utility may grant, as to rates, any preference or advantage to any person or subject any person to any prejudice or disadvantage; nor may it establish any unreasonable difference as to rates, either as between localities or as between classes of service.³

The Commission recently concluded under these statutes that a "lifeline" tariff under which the first 400 kwh used each month by persons 65 and over who are heads of households would be exempt from any rate increase was reasonable.⁴ The Commission found that this rate did not maintain any "unreasonable difference" with any other class of service, was not unjustly or unreasonably preferential or discriminatory, and was supported as "just and reasonable" by substantial evidence. The Commission found that the proposed senior citizen class was deserving of "separate class status",⁵ so a different rate of return could be authorized for that group of consumers. The Commission then found that the rate of return proposed for such a class as against the rate for the other residential class was "within a band of reasonableness."

Declining block rates are in effect in the state, and utilities have offered evidence that such rates are cost-justified.⁶

Neither time-of-day rates nor seasonal rates are currently offered by utilities in the state.⁷ Rates for interruptible service have been approved,⁸ and there has been some other load management activity on the part of the utilities.

The Commission is trying to discourage master metering in new buildings.¹⁰

Fuel adjustment clauses in Utah are governed by statute, which provides that:

No public utility shall raise any rate... except in the case of fuel cost increases to the utility by an independent contractor or other independent source of supply, and then only upon a showing before the commission and a finding by the commission that such increase is justified; provided, however, that a public hearing be held within 30 days after the date of any tentative order issued by the commission allowing such fuel cost increase.¹¹

The Commission recently approved a rate filing submitted by Utah Power & Light under which the utility will furnish the supplemental power needs for homes having solar- or wind-power sources at the usual residential rates if the customers permit the utility to monitor their load requirements. If the customers do not permit such metering, the utility still offers a residential rate for standby power with lower customer, demand and energy charges than is available to commercial or industrial customers that have their own primary source of self-generation.¹²

The Commission has concluded that the only advertising expenses that may be included as "above-the-line" items are expenses for conservation and safety advertising. Promotional advertising expenses are in no event to be allowed, and the inclusion of institutional advertising expenses is limited.¹³

Residential utility services may not be terminated and will be restored if terminated where termination will aggravate a serious illness or infirmity of the principal wage-earner in the residence.¹⁴ A customer who is unable to pay a delinquent account may have the right to receive residential utility service under a deferred payment agreement.¹⁵ The terms of such an agreement will be determined in part by the customer's ability to pay. Before terminating residential service, a utility must give the customer a late notice or reminder notice.¹⁶

At the time utility service is extended to a residential customer, the utility must provide the customer with an information pamphlet describing service and termination provisions.¹⁷

No public utility may raise its rates without filing a schedule showing such a change with the Commission and giving 30 days notice thereof to the Commission and the public.¹⁸ Notice to the public is made by keeping open for public inspection new schedules stating plainly the change to be made.¹⁹ The Commission may then, either on its own initiative²⁰ or on complaint,²¹ hold a hearing concerning the propriety of such change.²² A person may be allowed to intervene and become a party in a proceeding before the Commission if it appears to the Commission that he has a direct interest therein.²³ A person may participate as a protestant in a proceeding if it appears to the Commission that his contentions will be "reasonably pertinent to the issues."²⁴

All hearings before the Commission are governed by the public utilities statute and the Commission's rules and regulations. All parties are entitled to be heard and produce evidence.²⁵ The technical rules of evidence need not be applied.²⁶ The Commission has the power to issue subpoenas for the attendance of witnesses²⁷ and the production of documents²⁸ and may cause depositions to be taken.²⁹

When the Commission has made its final determination in any proceeding, it must prepare its report and order,³⁰ which must contain its findings, conclusions and order with respect to the proceeding.³¹

Within 30 days after the date of a final order of the Commission any aggrieved party to the proceeding may apply to the state supreme court for a writ of certiorari for the purpose of having the lawfulness of the order inquired into and determined.³² No new or additional evidence may be introduced on review, but the cause must be heard on the record of the Commission.³³ The court's determination is whether the Commission "regularly pursued its authority," and includes a determination of whether the order violated any of the petitioner's constitutional rights.³⁴

The findings and conclusions of the Commission, including its findings and conclusions on reasonableness and discrimination, are final and not subject to review.³⁵

1. Utah Code Annotated §54-4-1
2. Id. §54-3-1
3. Id. §54-3-8
4. Utah Power and Light Company, 27 P.U.R.4th 334 (1978)
5. The Commission based this finding on the existence of certain group characteristics: a lower annual income and lower energy use when compared to residential users as a whole.
6. NARUC Survey, Table 61(b)
7. Id.
8. Id.
9. NARUC Survey, Table 61(c)
10. NARUC Survey, Table 61(b). The Commission also has rules regarding sub-metering of mobile homes. Utah Administrative Rules A67-05-91:5
11. U.C.A. §54-7-12. See Re Utah Gas Service Co., 11 P.U.R.314 (1975)
12. Reported in Electrical Week, January 17, 1977, p.6
13. Utah Power & Light Co. 6 P.U.R.4th 263, 289-90 (1974)
14. Administrative Rules--State of Utah, A67-05-32(6)(c). These rules were originally promulgated in 1977 for a 6-month period. Nothing more recent was available at the time of this report.
15. Id. A67-05-32(5). See also (3)(a)(3) (provision for installment payments of security deposits in hardship cases).
16. Id.
17. Id. A67-05-32(1)(f)
18. U.C.A. §54-7-12(2)
19. A67-05-1:20.2
20. U.C.A. §§54-7-12, 54-4-2; also A67-05-1:20
21. U.C.A. §§54-7-12, 54-7-9, 54-7-11
22. Id. §54-7-12
23. Id. §54-7-10 and A67-05-1:6.8, 6.10
24. A67-05-1:6.9, 6.11
25. U.C.A. §54-7-10. See A67-05-1:14.8
26. Id. §54-7-1. Under A67-05-1:16, the court's rules of evidence apply subject to modification by the presiding hearing officer. Hearsay evidence may be received but no findings may be based solely on such evidence.
27. U.C.A. §54-7-3(1) and A67-05-1:15

- 28. Id.
- 29. Id. (2)
- 30. Id. S54-7-5 and A67-05-1:18
- 31. Id. A6705-1:18
- 32. U.C.A. S54-7-16 and A67-05-1:19.6. Rehearing procedures must be exhausted first.
- 33. Id. S54-7-16
- 34. Id.
- 35. Id.

UTAH

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service				X	Utah Code Annotated §54-4-1 ¹				Conservation U.C.A. §54-4-1
Declining Block Rates - Restructuring				X ²					
Time-of-day Rates				X	U.C.A. §54-4-1 ³				
Seasonal Rates				X	U.C.A. §54-4-1 ³				
Interruptible Rates		X ⁴	X						
Load Management		X ⁵	X						
Lifeline Rates		X	X		U.C.A. §54-3-1 ⁶		Utah Power & Light Co., 27 P.U.R. 4th 334 (1978)		
Master Metering ⁷									
Automatic Adjustment Clauses - Review ⁸									
Information to Consumers ⁹									
Termination: Notice Provision ¹⁰		X	X			A67-05-32			
Endangering Health Provision		X	X			A67-05-32			

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Exclusion of Advertising Expenses	x ¹¹						<u>Re Utah Power & Light Co., 6 P.U.R. 4th 263 (1974)</u>		
Small Electric Systems			x ¹²	x			<u>See Electrical Week, 1/17/77, p. 6</u>		

1. See text accompanying n. 2 of the discussion.
2. See text accompanying n. 6 of the discussion.
3. See text accompanying nn. 2, 7 of the discussion.
4. See text accompanying n. 8 of the discussion.
5. See text accompanying n. 9 of the discussion.
6. See text accompanying nn. 4-5 of the discussion.
7. See text accompanying n. 10 of the discussion.
8. See text accompanying n. 11 of the discussion.
9. See text accompanying n. 17 of the discussion.
10. See text accompanying nn. 14-16 of the discussion.
11. See text accompanying n. 13 of the discussion.
12. See text accompanying n. 12 of the discussion.

VERMONT

Utility rates may not be "unjust, unreasonable, insufficient or unjustly discriminatory" or "preferential".¹ In a 1974 decision, the Public Service Board (the "Board") found the then existing rate structure to be "unjust and unreasonable. It does not allocate costs fairly to those creating such costs."² The Board's policy is to discourage declining block rates, and only a few small municipal utilities still have such rates.³

Vermont has implemented time-of-day rates, seasonal rates and interruptible service rates.⁴ In a 1974 decision, the Board accepted time-of-day demand metering as an optional rate for rural, residential and general service customers.⁵

The Board has no policy with respect to master metering "but prefers individual metering;"⁶ some load management techniques have been implemented.⁷

After the Vermont Supreme Court struck down a Board order adopting termination of service regulations,⁸ the Vermont legislature enacted a statute expressly authorizing the Board to promulgate such regulations.⁹ It did so in General Order No. 58 issued on March 24, 1976. This order prohibits disconnection of residential service unless valid bills or charges totalling more than \$25 are delinquent, and proper notice of disconnection is provided to the rate payer prior to termination. Service may not be disconnected if the delinquent bills or charges are over two years old or concern a non-recurring charge, a physician certifies that the disconnection would represent an "immediate and serious hazard to the health of the rate payer or a resident within the rate payer's household" or the rate payer has not been given an opportunity to enter into a reasonable agreement to pay the delinquent bill. Termination must be made during specified hours on business days, as defined in the Order, and the rate payer has a right to submit the matter to the Consumer Affairs Division of the Vermont Public Service Board. A 1978 Board decision holds that a utility acted illegally when it refused to accept payment of a portion of a customer's delinquency from a third-party organization.¹⁰

All processes and hearing notices issued by the Board shall be at least twelve days in advance and shall be given by certified or registered mail or by publication.¹¹ The Board has the power to examine books and records.¹²

A party to a cause who feels himself aggrieved by a final order of the Board may appeal to the Supreme Court.¹³ The function of the Supreme Court is not to substitute its judgment for that of the Board, but only to determine whether the evidence was proper for consideration of the Board and whether it tended to support the Board's findings.¹⁴

1. Vt. Stat. Ann. tit. 30, § 218 (1970); see also *id.* § 219.
2. *Re Central Vermont Pub. Serv. Corp.*, 7 P.U.R.4th 67 (1974).
3. NARUC Survey, "Ratemaking", Table 61(b).
4. *Id.*
5. *Re Central Vermont Pub. Serv. Corp.*, *supra* n. 2.
6. NARUC Survey, "Ratemaking", Table 61(b).
7. *Id.*

8. Re Vermont Welfare Rights Organization, 7 P.U.R.4th 408, 326 A.2d 829 (S.Ct.Vt. 1974)
9. Vt. Stat. Ann. tit. 30, § 209(b)(2) (1979 Supp.).
10. Sorrell v. Franklin Electric Light Co., 25 P.U.R.4th 142 (1978).
11. Vt. Stat. Ann. tit. 30, § 10 (1979 Supp.).
12. Id. § 18.
13. Id. § 12.
14. In re Hathorn's Transportation Co., Inc., 99 Atl. 4 (1960).

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>VERMONT</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service Pricing						<u>Re Central Vermont Pub. Service Corp., 7 P.U.R.4th 67, 84 (1974)</u> ¹			
Cost Justification for Declining Circle Rates ²									
Time-of-day Rates ³			X	X		<u>Id.</u>			
Seasonal Rates ⁴			X	X					
Interruptible Service Rates ⁵			X	X					
Load Management Techniques ⁶			X	X					
Master Metering ⁷									
Termination of Service ⁸			X		Vt. Stat. Ann. tit. 30, § 209(b)(2) (1979 Supp.)	General Order No. 58, March 24, 1976; <u>Sorrell v. Franklin Electric Co., 25 P.U.R.4th 142 (1978)</u>	<u>Re Vermont Welfare Rights Organiza-tion, 7 P.U.R.4th 408, 326 A.2d 329 (S.Ct. Vt. 1976)</u> ⁹		

1. See text accompanying nn. 1-2 of discussion.

2. Id.

3. Id.

4. Id.

5. Id.

6. NARUC Survey, Table 61(b).

7. See text accompanying nn. 2-3 of discussion.

8. This decision declared an earlier Commission order promulgating termination of service regulations invalid. The legislature apparently adopted 30 V.S.A. §209(b)(2), which authorizes the Commission to adopt such regulations, in response to the Vermont Welfare Rights decision.

9. See text accompanying nn. 3-5 of discussion.

VIRGINIA

Public utilities operating in Virginia are required "to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same."¹ The Virginia State Corporation Commission (the "Commission") is empowered to fix rates if the rates are "found to be unjust, unreasonable, insufficient or unjustly discriminatory or to be preferential or otherwise in violation of the law;"⁴ the Commission is also granted several powers in order to regulate the provision of service by the utilities.³ The utilities are required to charge uniform rates of all persons or corporations using like service under like conditions.² The Commission is authorized to investigate public utilities for the purpose of determining the efficiency and economy of operations.⁵ In addition, the Commission is required to investigate the acts, practices, rates or charges of the utility to determine if they "are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in rendering utility services."⁶

While the Commission is statutorily directed to consider the conservation effects of the utilities' operations, the Commission is cautioned "that nothing in [the statute] shall be construed to authorize the adoption of any rate or charge which is clearly not cost-based or which is in the nature of a penalty for otherwise permissible use of utility services." Cost of service studies are utilized in rate-making determinations, but the Commission is not required to accept a cost of service study as either controlling or persuasive evidence in the determination.⁸ In a 1975 telephone rate case the Commission stated:

Charges for the various service categories must be established to generate the required revenue. Factors which are considered in setting the level of rates are the cost of providing the service, the relationship between classes of customers, value of the service, marketability, encouragement of efficient use of facilities, broad availability of service and a fair distribution of charges among the users.

Declining block rates have been approved by the Commission, and the Commission, while ordering a flattening of the rate structure, does not have a policy of discouraging declining block rates.¹⁰ Time-of-day rates have won Commission approval,¹¹ and such rates have been proposed for several large residential and commercial consumers¹² as well as for churches and synagogues.¹³ Seasonal rates have been approved by the Commission,¹⁴ while rates for interruptible service have yet to win Commission sanction.¹⁵ The Commission has approved such load management techniques as a pilot program using a radio transmitter¹⁶ to control customers' water heaters, electric furnaces and central air conditioners.¹⁷ Lifeline rates have not been approved by the Commission.

The Commission has a policy of discouraging master-metering.¹⁸ The statute provides that "any owner, operator, or manager of an apartment house which is not individually metered for electricity for each dwelling unit may install submetering equipment for each individual dwelling unit for the purpose of fairly allocating the cost of each individual dwelling unit's electrical consumption."¹⁹ Although

automatic fuel adjustment clauses have been approved by the Commission and no hearing was required before the adjustment became effective,²⁰ Virginia no longer has an automatic adjustment clause.²¹ Hearings are required for changes in the fuel charge amount. The Commission is directed to "monitor all fuel purchases, transportation costs, and contracts for such purchases of a utility to ascertain that all feasible economies are being utilized."²² The utilities are required to submit monthly reports concerning fuel purchases and fuel adjustment clauses,²³ and the Commission must hold quarterly hearings to review and evaluate the information filed.²⁴ The utilities are required to file schedules of rates and charges²⁵ with the Commission and to keep such schedules available for public inspection. The Commission is authorized to "provide for dissemination of information to the public, either through the Commission staff or through a public utility, in order to promote public understanding and cooperation in achieving effective conservation of [energy and capital] resources."²⁶ The utilities are required to give ten day's notice by mail before terminating a consumer's service.²⁷ The Commission has not adopted a policy for rates for consumers with solar, wind or small generation facilities, but has approved a VEPCO rider for wind and small power systems incorporating a time-of-day rate.²⁸

All formal proceedings before the Commission are set for hearing by order which, in the case of an application, shall also provide for notice to all necessary and potentially interested parties - either by personal service or publication, or both.²⁹ Any interested person may intervene in a proceeding by attending the hearing and executing and filing a notice of appearance.³⁰ Interveners are subject to challenge for lack of interest and are subject to the general rules of relevancy and redundancy.³¹

The Commission has the power to compel the production of documents³² and parties may be directed to file prepared exhibits.³³

Any final order of the Commission may be appealed only to the Supreme Court of Virginia.³⁴ An order of the Commission is not valid unless the Commission had jurisdiction and exercised such jurisdiction in a manner allowed by law.³⁵ The Court cannot substitute its opinion for that of the Commission.³⁶

1. Va. Code § 56-234 (Supp. 1978).
2. Id. § 56-235.
3. Id. § 56-246 et seq (Supp. 1978).
4. Id. § 56-234 (Supp. 1978).
5. Id. § 56-234.4 (Supp. 1978).
6. Id. § 56-235.1 (Supp. 1978).
7. Id.
8. Apartment House Council of Metropolitan Washington, Inc. v. Potomac Electric Power Co., 208 S.E.2d 764, 6 P.U.R.4th 488, 493 (Va.Sup.Ct.1974).
9. Re The Chesapeake and Potomac Telephone Company of Virginia, 10 P.U.R.4th 255, 265-66 (1975). See also Re The Chesapeake and Potomac Telephone Company of Virginia, 19 P.U.R.4th 349, 365-66 (1977); Re Potomac Electric Power Co., 3 P.U.R.4th 197, 203-04 (1974).
10. NARUC Survey, "Ratemaking," Table 61(b). See Re Potomac Electric Power Co., 25 P.U.R.4th 439, 448-49 (1978) (Commission ordered a flattening of the general service rate structure).

11. NARUC Survey, "Ratemaking," Table 61(b).
12. ELECTRICAL WEEK, p. 8-9 (December 6, 1976).
13. ELECTRICAL WEEK, p. 6 (January 30, 1978); see also Va. Code § 56-236.1 (Supp. 1978).
14. NARUC Survey, "Ratemaking," Table 61(b). See e.g., Re Potomac Electric Power Co., supra note 10, at 448.
15. NARUC Survey, "Ratemaking," Table 61(b).
16. NARUC Survey, "Rate Structure Revision," Table 61(c); ELECTRICAL WEEK, p. 5 (February 13, 1978).
17. NARUC Survey, "Ratemaking," Table 61(b).
18. Id.
19. Va. Code § 56-245.3 (Supp. 1978).
20. Re Appalachian Power Co., 22 P.U.R.4th 548, 560 (1977); NARUC Survey, "State Regulation of Energy Cost Adjustment Clauses," Table 6a.
21. Va. Code § 52-249.6 (Supp. 1978).
22. Id. § 56-248.1 (Supp. 1978).
23. Id. § 56-249.3 (Supp. 1978).
24. Id. § 56-249.4 (Supp. 1978).
25. Id. § 56-236.
26. Id. § 56-235.1 (Supp. 1978).
27. Id. § 56-247.1 (Supp. 1978); Re Appalachian Power Co., supra note 20, at 560.
28. Letter approving VEPCO Rider I to Schedule 1-P, effective November, 1978.
29. State Corporation Commission Rules of Practice and Procedure, Rule 6:l.
30. Rule 4:7.
31. Id.
32. Id. Rule 6:3.
33. Id. Rule 6:2.
34. Va. Code §§ 56-239, 12.1-39 (1976); Rule 7:l0.
35. Reynolds v. Alexandria Motor Bus Line, 141 Va. 213, 126 S.E. 201 (1925).
36. Aetna Ins. Co. v. Commonwealth, 160 Va. 698, 169 S.E. 859 (1933).

VIRGINIA

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹			X		Va. Code § 56-235.1 (Supp. 1978)		<u>Apt. House Council of Metropolitan Washington v. Potomac Co., 208 S.E.2d 764 (Sup. Ct. Va. 1974)</u>		
Declining Block Rates ²			X			<u>Re Potomac Electric Power Co., 25 P.U.R.4th 439, 448- 49 (1978)</u>			
Time of Day Rates ³			X		Va. Code § 56-236.1 (Supp. 1978)				
Seasonal Rates ⁴			X			<u>Re Potomac Electric Power Co., 25 P.U.R.4th 439, 448-49 (1978)</u>			
Load Management Techniques ⁵			X						
Master Metering ⁶			X		Va. Code § 56-245.3 (Supp. 1978)				
Automatic Adjustment Clauses ⁷			X			<u>Re Appalachian Power Co., 22 P.U.R.4th 548, 560 (1977)</u>			
Information to Consumers ⁸	X		X		Va. Code §§ 58-236, 235.1 (Supp. 1978)				
Procedures for Termination ⁹	X				Va. Code § 56-247.1 (Supp. 1978)				

VIRGINIA (cont'd)

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1. See text accompanying nn. 7-9 of discussion.
 2. See text accompanying n. 10 of discussion.
 3. See text accompanying nn. 11-13 of discussion.
 4. See text accompanying n. 14 of discussion.
 5. See text accompanying n. 16 of discussion.
 6. See text accompanying n. 18 of discussion.
 7. See text accompanying nn. 20-24 of discussion.
 8. See text accompanying nn. 25-26 of discussion.
 9. See text accompanying n. 27 of discussion.

WASHINGTON

The Washington Utilities and Transportation Commission (the "Commission") is created by statute¹ and given the power and duty to "[r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities and practices" of public utilities.² All charges demanded by public utilities in Washington must be "just, fair, reasonable and sufficient."³

Nothing in the Washington Code's chapter regulating utilities is to be construed to prohibit electrical companies from establishing a "sliding scale" of charges, "whereby a greater charge is made per unit for a lesser than a greater quantity of electricity."⁴ However, in dealing with declining block rates, the Commission has directed a reduction in number of rate steps.⁵ It has also accepted staff proposals for allocating a rate increase by a uniform cents per kilowatt charge, indicating that this was a more equitable method of spreading the increase among ratepayers since it put the greatest increase on the larger users and placed a smaller burden on residential ratepayers.⁶

In a 1975 case the Commission declined to apply a rate increase differently to different categories of customers based on economic circumstances, stating that "[e]conomic relief for the company's low and fixed-income customers is properly to be initiated by legislative bodies representing all citizens."⁷ Statutory provisions prohibit the giving of any "undue or unreasonable preference or advantage" to any person, corporation or locality or any particular description of service⁸ (or subjecting the same to any "undue or unreasonable prejudice or disadvantage"),⁸ and forbidding an electrical company to charge more or less for electricity (except as authorized in that chapter) than it charges any other customer for "like or contemporaneous service under the same or substantially similar circumstances or conditions."⁹

The Washington Commission does not generally require cost-based rate structures.¹⁰ No utilities offer time-of-day rates in Washington, but there are seasonal rates in effect.¹¹ In several cases the Commission has imposed a 5% surcharge on electric service to certain commercial and industrial customers during the winter peak demand period. The purpose of this effort is to:

emphasize the need to limit energy use wherever possible, especially during the period of winter peak demand; the effect of the surcharge is to provide an economic incentive to every businessman in respondent's service area in this state, to eliminate energy waste in commercial and industrial operations.¹²

A generic proceeding is presently underway in Washington on the subjects of rate structure and tariff design.¹³ Among other topics, consideration is being given to marginal cost pricing, flat or inverted rate structures, declining block rates, life-line rates and elimination of basic charges.¹⁴

The Commission has approved rates for interruptible service.¹⁵ It has no policy on master metering,¹⁶ or on non-discriminatory rates for alternative energy sources.¹⁷ There are no fuel adjustment clauses currently in effect.¹⁸

The Commission does not require the utility to transmit rate schedule information to customers, although such information must be available on request.¹⁹ According to Commission rules, service may be discontinued for nonpayment of bills, but the utility must first:

- (1) make at least two good faith attempts to reach the customer by phone to advise them of the pending disconnection;²⁰
- (2) provide written notice of disconnection by mail or personal delivery.²¹

With personal delivery of notice, service may be disconnected after 5 p.m. of the first business day following such notice; if mailed notice is elected, eight business days must pass before service may be disconnected. Notices of delinquency and pending disconnection must "detail procedures pertinent to the situation and provide notice of means by which the customer can make contact with the utility to resolve any differences."²² Furthermore, disconnection may not be accomplished on Saturdays, Sundays, legal holidays or on any other day on which the utility cannot re-establish service on the same or following day.²³ Where service is provided through a master meter, the utility must make all reasonable efforts to inform occupants at the service address of impending disconnection, and allow time (minimum 5 days) to permit the users to arrange for continued service.²⁴ Where service is provided to a hospital, medical clinic with resident patients, or nursing home, notice of impending disconnection must be provided to the Washington State Department of Social and Health Services as well as to the customer; the Department may request and must be granted a delay in disconnection (minimum 5 business days) so that the Department may take steps to protect the patients for whom it is responsible.²⁵

Finally, service may not be disconnected while a customer is pursuing any remedy or appeal provided for in the rules.²⁶

With respect to advertising expenses, the Commission has found it "appropriate to order that no allowance will attach to expenditures designed to encourage increased use of electricity for any purpose. Allowance will be made only for expenditures directly related to the conservation of electric energy, or directing use thereof to off-peak periods."²⁷ The Commission has prohibited advertising by an electric company intended to encourage new and additional use of electricity.²⁸ In a recent case, the Commission held that "lobbying expenses are not permissible expenses for ratemaking purposes" and should be borne by shareholders.²⁹

No rate may be changed by a public utility except upon 30 days' notice to the Commission and publication for 30 days.³⁰ For any contested case -- which term includes any rate making case where the requested rate change is denied or in which the granting of the application is contested by a person with standing³¹ -- all parties must be given an opportunity for a hearing on 20 days notice.³² A recent rule specifies procedures for notice to customers of certain rate increase requests.³³

A person who wishes to participate in proceedings before the Commission who does not desire to broaden the issues may petition for leave to intervene.³⁴ The Commission may grant the petition if a substantial interest in the subject matter is disclosed or if the participation may be in the public interest.³⁵ Persons whose interests would be adversely affected by the granting of an application or by a rate schedule becoming effective may file protests to such action.³⁶

The Commission at hearings may "admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs."³⁷ It may cause or take depositions,³⁸ compel the testimony of witnesses³⁹ and require the production of documents.⁴⁰

Decisions and orders of the Commission in contested cases must be in writing or stated⁴¹ in the record and must be accompanied by findings of fact and conclusions of law.

Review of a final⁴² decision in a contested case may be obtained by petition to the superior court. The court's review is confined to the record, except that if procedural irregularities are alleged, the court may take testimony on such allegations.⁴³ The court may reverse the Commission's decision if "substantial rights of the petitioner have been prejudiced" because its "administrative findings, inferences, conclusions or decisions" (1) violate constitutional provisions, (2) exceed the Commission's statutory authority or jurisdiction, (3) were made on unlawful procedure, (4) are affected by an error of law, (5) are clearly erroneous in view of the entire record and public policy contained in the legislative act authorizing the action, or (6) are arbitrary or capricious.⁴⁴

1. Revised Code of Washington Annotated §80.01.010.
2. Id. §80.01.040(3).
3. Id. §80.28.010.
4. Id. §80.28.070.
5. Washington Utilities & Transportation Commission v. Pacific Power & Light Co., 10 P.U.R.4th 449, 456 (1975).
6. Washington Utilities and Transportation Commission v. Washington Water Power Co., 18 P.U.R.4th 131 (1976). See also Washington Utilities and Transportation Commission v. Pacific Power & Light Co., 7 P.U.R.4th 470 (1974) (flattening rate schedules).
7. Washington Utilities and Transportation Commission v. Pacific Power & Light Co., *supra* n.5 at 457. See also Wash.Util. & Transp.Comm.v. Pacific Power & Light Co. 29 P.U.R.4th 225, 233-234 (1979)
8. R.C.W.A. §80.28.090.
9. Id. §80.28.100.
10. NARUC Survey, Table 61(a).
11. Id.
12. Washington Utilities and Transportation Commission v. Pacific Power & Light Company, 7 P.U.R.4th 470, 492 (1974), citing: Washington Utilities and Transportation Commission v. Puget Sound Power & Light Co., Cause No. U-73-4 (1974) and Washington Utilities and Transportation Commission v. Washington Water Power Co. Cause No. U-74-4 (1974).
13. Case No. U-78-05

14. See Pacific Power & Light, supra n.7 (1979). See also Stone & Webster Questionnaire, OMB O38-579052, Response of the Washington Utilities and Transportation Commission.
15. NARUC Survey, Table 61(b).
16. Id.
17. NARUC Survey, Table 61(c).
18. NARUC Survey, Table 6(a).
19. Rules relating to Electric Companies of the Washington Utilities and Transportation Commission, Washington Administrative Code §480-100-041. (hereafter "W.A.C.")
20. Id. §480-100-071(2)(a)
21. Id. §480-100-071(2)(b)
22. Id.
23. W.A.C. §480-100-071(2)(c)
24. Id. §480-100-071(2)(e)
25. Id. §480-100-071(2)(f)
26. Id. §480-100-071(2)(g)
27. Washington Utilities and Transportation Commission v. Pacific Power & Light Co., supra, n. 6 at 488.
28. Washington Utilities & Transportation Commission v. Puget Sound Power & Light, 7 P.U.R. 4th 44 (1974).
29. Washington Utilities & Transportation Commission v. Washington Water Power Co., 24 P.U.R. 4th 427, 448 (1978) (citing pertinent provisions of the Uniform System of Accounts).
30. R.C.W.A. §80.28.060
31. Id. §34.04.010(3)
32. Id. §34.04.090
33. Questionnaire, supra n.14, citing W.A.C. §480-80-125
34. W.A.C. §480-08-070(1)
35. Id.(3). The Commission also recently proposed rules relating to procedures for receiving public testimony. Pacific Power & Light, supra n.7 (1979)
36. W.A.C. §480-08-040(4). Protestants are not entitled to a hearing, but the Commission may hold one.
37. R.C.W.A. §34.04.100(1), .090(8)(a)
38. Id. §34.04.090
39. Id. §34.04.105(2)
40. Id. §34.04.090(8)(b), .105
41. Id. §34.04.120
42. Id. §34.04.130(2)
43. Id. (5)
44. Id. (6)

WASHINGTON

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Cost of Service ¹									
Declining Block Rates - Restructuring	X	X			R.C.W.A. §80.28.070 ²	Wash. Util. & Transp. Comm. v. Washington Water Power Co., 18 P.U.R. 4th 131 (1976); Wash. Util. & Transp. Comm. v. Pacific Power & Light Co., 10 P.U.R. 4th 449 (1975) ²			
Time-of-Day Rates ³									
Seasonal Rates		X	X			Wash. Util. & Transp. Comm. v. Pacific Power & Light Co., 7 P.U.R. 4th 470 (1974) ⁴			
Interruptible Rates		X ⁵	X						
Load Management									
Lifeline Rates ⁶		X				Wash. Util. & Transp. Comm. v. Pacific Power & Light Co., 10 P.U.R. 4th 449 (1975)			
Master Metering ⁷					X R.C.W. 80.28.080				
Automatic Adjustment Clauses ⁸									

WASHINGTON (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
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Information to Consumers X W.A.C. §480-100-041⁹

Termination Procedures¹⁰

1. Notice	X				W.A.C. §480-100-071
(2) (a)-(e)
2. Prohibited if Health Hazard					W.A.C. §480-100-071
(2) (f)

Exclusion of Advertising Expenses X X X

Wash. Util. & Transp. Comm. v. Pacific Power & Light Co., 7 P.U.R. 4th 470 (1974); Wash. Util. & Transp. Comm. v. Puget Sound Power & Light, 7 P.U.R. 4th 44 (1974); Wash. Util. & Power Co., 24 P.U.R. 4th 427 (1978)¹¹

Small Electric Systems¹²

1. See text accompanying n. 10, 14 of the discussion.
2. See text accompanying nn. 4-6, 14 of the discussion.
3. See text accompanying n. 11 of the discussion.
4. See text accompanying nn. 11-12 of the discussion.
5. See text accompanying n. 15 of the discussion.
6. See text accompanying nn. 7-10, 14 of the discussion.
7. See text accompanying n. 16 of the discussion.
8. See text accompanying n. 18 of the discussion.
9. See text accompanying n. 19 of the discussion.
10. See text accompanying nn. 20-26 of the discussion.
11. See text accompanying nn. 27-29 of the discussion.
12. See text accompanying n. 17 of the discussion.

WEST VIRGINIA

Public utilities doing business in West Virginia are required to furnish such service "as shall be reasonable, safe and sufficient for the security and convenience of the public."¹ All charges, tolls and rates exacted by the utilities are required to be "just and reasonable."² The West Virginia Public Service Commission (the "Commission") has jurisdiction over all public utilities in the state,³ and has power to regulate the operations of the utilities⁴ and to enforce, establish and change rates.⁵ Unreasonable, insufficient or unjustly discriminatory rates,⁶ practices and services,⁷ are statutorily prohibited.

The West Virginia Code requires that "in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost thereof."⁸ The Commission, in response to this statutory directive, has stated:

This means that cost allocation and cost segregation studies are usually essential in determining cost responsibilities for customers in various localities and jurisdictions, as among various classes of customers and in the various usage blocks within each class of service. Since cost apportionments involve judgments in a myriad of facts and have no claim to an exact science and since there are any number of cost apportionment methods which are equally valid in a given situation, the rate-making results of one or many cost apportionment methods of assigning cost responsibilities may be tested by other criteria including other valid cost apportionment techniques, in order for this commission to perform its statutory task of determining just, reasonable, and not unduly discriminatory rates. Stated another way, although consideration of cost apportionment evidence may be essential to a determination of proper rates, the results of such evidence are not automatically or precisely controlling.

Declining block rates have been approved by the Commission,¹⁰ although the Commission has a policy of flattening the historical declining block rate structure.¹¹ Time-of-day rates have been approved by the Commission,¹² but seasonal rates have yet to receive approval.¹³ Interruptible rates have been approved.¹⁴ No load management activity has been adopted by the Commission.¹⁵ Lifeline rates have not been approved by the Commission;¹⁶ however, while an inverted rate for the first 500 kwh was rejected as being unduly discriminatory,¹⁷ the Commission has approved rates which significantly reduced the minimum charge even though this resulted in a larger proportion of the utility's fixed costs being recovered in succeeding blocks of the tariffs.¹⁸

The Commission currently has no policy on master metering of multi-occupancy dwelling units.¹⁹ Fuel adjustment clauses are permitted, and a full public hearing is required to be held within thirty days of a request for an adjustment.²⁰ The Commission is also required to conduct annual audits of the books of all utilities which adopt such clauses.²¹ The utilities are required to file schedules, showing all rates, charges and tolls for services rendered, with the Commission and to

make available such schedules for public inspection.²² A utility may discontinue service for nonpayment of bills upon the giving of twenty-four hours' written notice; however, the right to discontinue service is subject to several conditions, including restrictions on terminating residential consumers during the period from November 1 through March 31.²³ The Commission has directed all utilities, in designing and implementing any promotional practice, to consider what impact the practice will have upon the conservation of energy; the utilities are prohibited from implementing any practice which would have an adverse impact on conservation.²⁴ The Commission has not yet adopted a policy on rates for consumers with solar, wind, or small generation facilities.²⁵

Generic hearings and specific rate proceedings are governed by the Commission's Rules of Practice and Procedure. When any application for authority or permission is filed with the Commission, the applicant is required to give notice of the time and place set for the hearing on the matter.²⁶

Any party having a legal interest in a matter before the Commission may petition or move orally for leave to intervene, stating the grounds for the proposed intervention, the intent of the petitioner, and a concise statement of the relief desired.²⁷

In major rate cases the Commission expects the parties to file prepared testimony.²⁸ Subpoenas for the production of documents may be issued upon written application.²⁹

Final orders of the Commission are reviewable by the Supreme Court.³⁰ Ratemaking is a legislative function and not subject to judicial review except as may be necessary to determine whether such rates are void on constitutional or other grounds.³¹ A final order based upon findings not supported by the evidence, or based upon a mistake of law, will be reversed and set aside.³²

1. W. Va. Code § 24-3-1 (1976).
2. *Id.*
3. *Id.* § 24-2-1 (1979 Supp.).
4. *Id.* § 24-2-2.
5. *Id.* § 24-2-3.
6. *Id.* § 24-3-2 (1976).
7. *Id.* §§ 24-3-2, 24-2-7.
8. *Id.* § 24-2-2 (1979 Supp.).
9. Re Equitable Gas Co., 17 P.U.R.4th 95, 98 (1976). See generally Re Columbia Gas of West Virginia, Inc., 20 P.U.R.4th 204, 215 (1977), for a discussion of basic principles of rate-making. See also, Re Union Power Co., 13 P.U.R.4th 509, 514, 517-20 (1976), for cost-of-service discussion in electric rate-making case.
10. NARUC Survey, "Ratemaking," Table 61(b).
11. *Id.*; see also Re Monogahela Power Co., 25 P.U.R.4th 449, 464 (1978).
12. NARUC Survey, "Ratemaking," Table 61(b).
13. *Id.*
14. *Id.*; see e.g., Re Columbia Gas of West Virginia, Inc., 10 P.U.R.4th 146, 151 (1975).

15. NARUC Survey, "Rate Structure Revision," Table 61(c).
16. NARUC Survey, "Ratemaking," Table 61(b).
17. Re Union Power Co., *supra* note 9, at 521.
18. Re Equitable Gas Co., *supra* note 9, at 103.
19. NARUC Survey, "Ratemaking," Table 61(b).
20. W. Va. Code § 24-2-15 (1979 Supp.).
21. *Id.*
22. Id. § 24-3-5. See also Rules and Regulations for the Government of Electric Utilities, § 4.01 (March 1, 1977).
23. In the matter of: Revision of Rules and Regulations for the Government of Electric Utilities, Order No. 184.1, § 4.08 (July 7, 1978).
24. Rules and Regulations for the Government of Electric Utilities, *supra* note 22, § 10.00. See also Re Monogahela Power Co., *supra* note 11, at 455 (disallowing expenses relating to institutional advertising).
25. NARUC Survey, "Rate Structure Revision," Table 61(c).
26. Rules of Practice and Procedure of the Public Service Commission, 10(K) (1977).
27. *Id.* Rule 12(f).
28. *Id.* Rule 13(c).
29. *Id.* Rule 14(b).
30. W. Va. Code § 24-5-1 (1979 Supp.).
31. City of Bluefield v. Bluefield Water Works & Imp. Co., 94 S.E. 121 (Sup. Ct. W. Va. 1917).
32. United Fuel Gas Co. v. Pub. Serv. Comm'n, 99 S.E. 2d 1 (Sup. Ct. W. Va. 1957).

<u>Standard/Policy</u>					WEST VIRGINIA			<u>Reference to PURPA Objectives</u>
	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	
Cost of Service		X	X		W. Va. Code § 24-2-2. (1979 Supp.) ¹	Re Columbia Gas of West Virginia, Inc., 20 P.U.R.4th 204, 215 (1977); Re Equitable Gas Co., 17 P.U.R.4th 95, 98 (1976); Re Union Power Co., 13 P.U.R.4th 509, 514, 517-20 (1976) ¹		
-267- Declining Block Rates-Restructuring			X	X		Re Monogahela Power Co., 25 P.U.R.4th 449, 464 (1978) ²		
Time-of-day Rates			X ³	X				
Seasonal Rates				X ⁴				
Interruptible Rates		X	X			Re Columbia Gas of West Virginia, Inc., 10 P.U.R.4th 146, 151 (1975) ⁵		
Load Management ⁶								
Lifeline Rates				X		Re Equitable Gas Co., 17 P.U.R.4th 95, 103 (1976); Re Union Power Co., 13 P.U.R.4th 509, 521 (1976) ⁷		
Master Metering ⁶								

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>
Automatic Adjust- ment Clauses		X	X		W. Va. Code §§ 24-2-15, 24-3-5 (1979 Supp.)
Information to Consumers ⁶					
Termination; Notice Provision		X	X		
Endangering Health Provision		X	X		
Exclusion of Adver- tising		X	X		
Small Electric Systems ⁶					

WEST VIRGINIA (cont'd)

<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Refined</u>	<u>Reference to PURPA Objectives</u>
<u>Rules and Regula- tions for the Government of Electric Utilities, \$4.01⁸ (March 1, 1977)</u>			
<u>In the matter of: Revision of Rules and Regula- tions for the Government of Electric Utili- ties, Order No. 184.1, \$4.08 (July 7, 1978)</u>			
<u>Rules and Regula- tions for the Government of Electric Utili- ties, \$10.00 (March 1, 1977); Re Monogahela Power Co., 25 P.U.R.4th 449, 455 (1978)¹⁰</u>			

WEST VIRGINIA (cont'd)

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1. See text accompanying nn. 8-9 of discussion.
 2. See text accompanying nn. 10-11 of discussion.
 3. See text accompanying n. 12 of discussion.
 4. See text accompanying n. 13 of discussion.
 5. See text accompanying n. 14 of discussion.
 6. Information unavailable.
 7. See text accompanying nn. 16-18 of discussion.
 8. See text accompanying nn. 20-22 of discussion.
 9. See text accompanying n. 23 of discussion.
 10. See text accompanying n. 24 of discussion.

WISCONSIN

By statute, public utilities operating in Wisconsin must furnish "reasonably adequate service and facilities" and their charges must be "reasonable and just."¹ The granting of "any unreasonable preference or advantage to any person" or the subjection of "any person to any unreasonable prejudice or disadvantage" shall constitute "unjust discrimination," which is forbidden.² The classification of utility service "may take into account the quantity used, the time when used, the purpose for which used, and any other reasonable consideration."³

The Wisconsin Public Service Commission (the "Commission") has "power and jurisdiction to supervise and regulate every public utility in [the] state, and to do all things necessary and convenient in the exercise of such power and jurisdiction."⁴ Whenever the Commission determines that rates, regulations, measurements, practices or services are "unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise unreasonable or unlawful," the Commission shall establish, in lieu thereof, reasonable rates, regulations, measurements, practices or services.⁵

The Commission considers cost of service in determining electric utility rates.⁶ However, the Commission is not required to apply a cost-of-service formula to each class of customers.⁷ Its rate design criteria include, *inter alia*, cost-based tariffs, avoidance of discrimination and "[d]iscouraging wasteful and inefficient use (conservation)."⁸ In order to "obtain an efficient allocation of resources" and "prevent wasteful use of electric energy," the Commission is committed to the principle of marginal cost pricing as an appropriate guide for rate design and has concluded that the long-run incremental cost method of pricing ("LRIC") provides a "reasonable approximation to marginal costing."⁹ According to the Commission,¹⁰ the implementation of pricing on the basis of LRIC requires peak-load pricing.

Seasonal rates are considered an appropriate "first step toward implementation of peak-load pricing,"¹¹ and have been made available.¹² However, full effect can be given to such pricing only through implementation of time-of-day rates.¹³

Time-of-day rates have been vigorously authorized and implemented; in fact, the Commission recently dismissed an four-year-old investigation for time-of-day electric studies because of the extensive progress that had been made in implementing time-of-use pricing through individual rate cases.¹⁴ Declining block rates have been approved, but the Commission has a policy of discouraging them¹⁵ and has approved flat electric rates.¹⁶ In a 1974 decision the Commission stated that in order to justify declining block rates, the applicant would have to show a "changing relationship between levels of consumption and load factor."¹⁷ Interruptible rates are allowed¹⁸ and forms of load management, such as controlled water-heating have been encouraged.¹⁹ In at least one proceeding, lifeline rates have failed to gain Commission approval.²⁰

Automatic fuel and energy adjustment clauses have been permitted,²¹ but recently several utilities have been required to submit to the Commission a monthly statement setting forth the expenses and adjustments used in calculating the adjustment factor for each clause.²² In a recent case the Wisconsin Supreme Court

held that expanded adjustment clauses, which authorized adjustment for such factors as purchased power, fuel, labor supplies and supervision, were not authorized by statute.²³ The court emphasized that the validity of more traditional fuel adjustment clauses under the state regulatory scheme was not at issue.²⁴

Utilities must notify consumers of the "general nature and effect" of proposed rate increases by means of a bill insert, if bills are rendered monthly in envelopes, or by special mailing or by advertisement in a newspaper of general circulation.²⁵

By statute, any utility furnishing heat, light or power to a residential customer must include with any notice of intent to disconnect service sent between December 1 and March 31 information concerning the state's emergency fuel and utilities assistance program.²⁶ The rate schedules of any utility, which must be filed with and approved by the Commission, must include all rules applicable to the discontinuance of the service to which the rate specified apply.²⁷ The Commission has reported that it does not discriminate against users of alternate energy sources,²⁸ and it has no policy concerning master metering of multi-unit dwellings.²⁹

No increase in rates to consumers may be made by a utility except by order of the Commission, after an investigation and hearing.³⁰ The Commission may also conduct investigations and hearings on utility rate and service matters on its own motion, upon such notice as it deems proper,³¹ or upon complaint by consumers.³²

As noted above, a utility applying for a rate increase must notify its customers of the "general nature and effect" of the proposed increase.³⁴ It appears that persons with an interest in the proceedings may intervene in hearings before the Commission.³⁵

At the hearing, the Commission hears evidence from interested parties.³⁶ The Commission may compel the attendance of witnesses³⁷ and the production of documents³⁸ and may order and take depositions.³⁹ The Commission is not bound by the rules of evidence.

Every final decision of the Commission must be in writing accompanied by findings of fact, which shall consist of a separate statement of the ultimate conclusions upon each material issue of fact without recital of evidence, and conclusions of law.⁴¹

Final Commission orders may be reviewed by petition to the circuit court within 30 days.⁴² The review of the court is confined to the record, except where procedural irregularities are alleged the court may take testimony.⁴³ The court may remand on the basis of a material error in procedure; set aside or remand for an error of law; set aside or remand if the Commission's action depends on a finding of fact not supported by substantial evidence; and reverse of remand if the Commission's exercise of discretion is (1) outside the range of discretion delegated to it by law, (2) inconsistent with an agency rule, official policy or prior practice, if the deviation is not satisfactorily explained,⁴⁴ or (3) is otherwise in violation of a constitutional or statutory provision.

1. Wis. Stat. Ann. §196.03 (West 1957).
2. Id. §196.62.
3. Wis. Stat. Ann. §196.02 (West Cum. Supp. 1978-79).
4. Id.
5. Wis. Stat. Ann. §196.37 (West 1957).
6. See Re Northern States Power Co., 23 P.U.R.4th 326 (1978); Re Wisconsin Michigan Power Co., 15 P.U.R.4th 488 (1976).
7. City of West Allis v. Pub. Serv. Comm'n., 2 Wis.2d 569, 167 N.W.2d 401 (1969).
8. Re Northern States Power Co., 23 P.U.R.4th 326, 336 (1978).
9. Re Madison Gas & Elec. Co., 5 P.U.R. 4th 28, 41-42 (1974).
10. Id. at 42.
11. Id.
12. Re Madison Gas & Elec. Co., 17 P.U.R.4th 109 (1976) (seasonal rates approved for residential, commercial and industrial customers); Re Wisconsin Michigan Power Co., 15 P.U.R.4th 488 (1976) (seasonal rates authorized for residential, farm, and general primary users); Re Madison Gas & Elec. Co., 5 P.U.R.4th 28 (1974) (summer-winter differentials for residential, commercial and industrial users).
13. Madison Gas & Elec. Co., supra n.9.
14. NARUC Bulletin No. 29, 1979, July 16, 1979. see e.g. Northern States Power Co., 23 P.U.R.4th 326 (1978) (time-of-day rates applied to commercial and industrial users); Re Madison Gas & Elec. Co., 17 P.U.R.4th 109 (1976) (time-of-day rates authorized for Oscar Meyer and the University of Wisconsin and hearing scheduled for development of time-of-day rates for large commercial and industrial users; other customers were added in 1979); Re Wisconsin Power & Light Co., 12 P.U.R.4th 325 (1976) (time-of-day rates prescribed for large industrial and commercial customers); Re Madison Gas & Elec. Co., 5 P.U.R.4th 28 (1974) (time-of-day rates must be implemented for large customers without delay and time-of-day metering experimentation for residential users must also proceed promptly); August 15, 1975 Notice in Rule-Making 01-ER-1 (any utility application for a change in electric rates is "presumptively deficient" unless it includes a proposal for time-of-day rates).
15. NARUC Survey, Table 61(b).
16. Re Wisconsin Michigan Power Co., 15 P.U.R.4th 488 (1976); Madison Gas & Elec. Co., 5 P.U.R.4th 28 (1974).
17. Id., at 42.
18. Re Northern States Power Co., 23 P.U.R.4th 326 (1978) (interruptible rate rider is approved and applicant is ordered to study and submit proposals for interruptible rate schedules). Re Madison Gas & Elec. Co., 5 P.U.R.4th 28 (1974) (interruptible rates have been offered by Wisconsin utilities "at various times").
19. Re Northern States Power Co., 23 P.U.R. 4th 326 (1978) (Commission's commitment to time-of-day pricing extends to development of other forms of load management and control. The utility is ordered to investigate other forms of physical load control).
20. Re Madison Gas & Elec. Co., 17 P.U.R.4th 109 (1976) (lifeline rates rejected because not shown to be cost-justified or to promote conservation or efficiency).

21. See, e.g., Re Northern States Power Co., 23 P.U.R.4th 326 (1978); Re Michigan Gas & Elec. Co., 17 P.U.R.4th 109 (1976); Re Wisconsin Power & Light Co., 12 P.U.R.4th 325 (1976).
22. Re Northern States Power Co., 23 P.U.R.4th 326 (1978); Re Michigan Gas & Elec. Co., 17 P.U.R.4th 109 (1976); Re Wisconsin Michigan Power Co., 15 P.U.R. 4th 488 (1976); Re Wisconsin Power & Light Co., 12 P.U.R.4th 325 (1976).
23. Wisconsin's Environmental Decade v. P.S.C., 81 Wis.2d 344, 260 N.W.2d 712 (1978), citing W.S.A. §196.20(2).
24. Id. 260 N.W.2d at 714, 716.
25. Wis. Admin. Code Ch. PSC 2.73 (1977).
26. W.S.A. § 196.035 (West Cum. Supp. 1979-1980) referring to W.S.A. § 49.05.
27. Id. § 196.20(1).
28. NARUC Survey, Table 61(c).
29. Id. Table 61(b).
30. W.S.A. § 196.20(2).
31. Id. §§ 196.02(7), .28, .29.
32. Id. § 196.26.
33. Id. § 196.30.
34. Supra n.25.
35. See, e.g. Wis. Admin. Code Ch. PSC 2.02, 2.34. The details of the intervention procedure were not available.
36. Id. 2.34.
37. W.S.A. 196.32, W.A.C. Ch. PSC 2.39.
38. Id. 2.39.
39. W.S.A. § 196.33.
40. Id. § 227.08.
41. Id. § 227.10.
42. Id. §§196.41, 227.16.
43. Id. § 227.20. See also § 227.19 for the presentation of additional evidence to the Commission.
44. Id. § 227.20.

WISCONSIN (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Time-of-Day Rates (cont'd)						<u>Re Madison Gas & Elec. Co., 5</u> P.U.R. 4th 28 (1974)			
						August 15, 1975, Notice in Rule- making 01-ER-1			
Seasonal Rates ⁴			X	X		<u>Re Madison Gas & Elec. Co., 17</u> P.U.R. 4th 109 (1976)			Efficiency, 15 P.U.R. 4th at 498
						<u>Re Wisconsin Michi- gan Power Co.,</u> 15 P.U.R. 4th 488 (1976)			Conservation and efficiency, 5 P.U.R. 4th at 41-42
						<u>Madison Gas & Elec. Co., 5 P.U.R. 4th</u> 28 (1974)			
Interruptible Rates ⁵			X	X		<u>Re Northern States Power Co., 23 P.U.R.</u> 4th 326 (1978)		5 P.U.R. 4th at 36	Conservation and efficiency, 5 P.U.R. 4th at 36, 41-42
						<u>Madison Gas & Elec. Co., 5 P.U.R. 4th</u> 28 (1974)			

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Load Management ⁶		X	X			<u>Re Northern States Power Co., 23 P.U.R. 4th 326 (1978)</u>			
Lifeline Rates ⁷			X			<u>Re Madison Gas & Elec. Co., 17 P.U.R. 4th 109 (1976)</u>			Conservation, 17 P.U.R. 4th at 124
Master Metering ⁸						<u>Madison Gas & Elec. Co., 17 P.U.R. 4th 109 (1976)</u>			
Automatic Adjust- ment Clauses		X	X			<u>Re Northern States Power Co., 23 P.U.R. 4th 326 (1978)</u>			
						<u>Re Madison Gas & Elec. Co., 17 P.U.R. 4th 109 (1976)</u>			
						<u>Re Wisconsin Michi- gan Power Co., 15 P.U.R. 4th 488 (1976)</u>			
						<u>Re Wisconsin Power & Light Co., 12 P.U.R. 4th 325 (1976)</u>			

WISCONSIN (cont'd)

<u>Standard/Policy</u>	<u>Mandated</u>	<u>Prohibited</u>	<u>Implemented</u>	<u>Considered</u>	<u>Constitution and Statutes</u>	<u>WISCONSIN (cont'd)</u> <u>Commission Rules and Decisions</u>	<u>Court Decisions</u>	<u>Defined</u>	<u>Reference to PURPA Objectives</u>
Information to Consumers ¹⁰					X Wis. Admin. Code Ch. PSC 2.73 (1977)				
Termination ¹¹									
Advertising ¹²									
Small Energy Systems ¹³			X	X					

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1. See text accompanying nn. 6-10 of the discussion.
 2. See text accompanying nn. 15-17 of the discussion.
 3. See text accompanying nn. 13-14 of the discussion.
 4. See text accompanying nn. 11-12 of the discussion.
 5. See text accompanying n. 18 of the discussion.
 6. See text accompanying n. 19 of the discussion.
 7. See text accompanying n. 20 of the discussion.
 8. See text accompanying n. 29 of the discussion.
 9. See text accompanying nn. 21-24 of the discussion.
 10. See text accompanying n. 25 of the discussion.
 11. See text accompanying nn. 26-27 of the discussion.
 12. Information unavailable.
 13. See text accompanying n. 28 of the discussion.

WYOMING

The Wyoming public service commission (the "Commission") is created by statute¹ and given "general and exclusive power to regulate and supervise" state public utilities.² If upon hearing and investigation, the Commission finds any rate to be "inadequate or unremunerative, or to be unjust, or unreasonable, or unjustly discriminatory, or unduly preferential" it may fix a just and reasonable rate in lieu thereof.³ By statute, rates charged by public utilities must be "just and reasonable", and no public utility may charge any person a greater or less or different compensation for any service rendered than is charged any other person by that utility for a like and contemporaneous service under similar circumstances and conditions.⁴ Furthermore, no utility may as to rates grant any undue or unreasonable preference or advantage to any person, locality or particular description of service, or subject the same to any undue or unreasonable prejudice or disadvantage.⁵ Classifications of service are not prohibited, provided such classification is not discriminatory between customers in the same class of business.⁶

The Commission does require cost-based rate structures,⁷ although other factors are considered as well (at least for gas utilities):

Cost-of-service studies are a basic criterion for rate making, but caution must be used in their application as wide variances can occur as a result of the selection and weight given to each criterion. Therefore, cost-of-service studies are evaluated in light of, and conditioned by, other essential considerations such as: value of service, availability and location of utility commodity supplies; magnitude of class use and cost of supply replacement; purpose of and desired method of utility commodity use; alternate fuel capability; ability to pay; and the current critical and essential considerations which reflect the nationwide gas shortages, including conservation, the environment, and end-use consideration. To meet these current considerations, the gas utility rate-making trend is to shift cost burden to larger uses by eliminating all rates that promote large use, by minimizing rate steps, by equalizing of rates toward flat rates, and where possible by incremental pricing to protect existing customers from bearing segregable costs caused by or required to serve new large use.⁸

The Commission has noted that rates and practices promoting gas use, although once supportable, are, because of economic and fuel supply conditions, no longer allowable as they are against the public interest.⁹ Hence, although declining block rates are in effect in Wyoming,¹⁰ the Commission has found rate adjustments toward flattening and rate schedule simplification allowable under Wyoming public utility statutes¹¹, and has approved flat rates.¹² Utilities have presented evidence that declining block rates are cost justified.¹³

No time of day rates are in effect in the state, although seasonal rates, primarily for irrigators and summer homes, are offered.¹⁴ Rates for interruptible service have been approved,¹⁵ although there is no other load management activity.¹⁶

In a recent case intervenor-protestants demanded rates that would provide some relief to low-income and retired persons. The Commission ruled that the protestants did not offer any evidence as to type or use levels of such rates, and that the case did not otherwise provide the legal basis to institute a "lifeline" type rate.¹⁷ The Commission has stated with respect to lifeline rates that a "clearly discriminatory approach - no matter how socially desirable or commendable be the purpose - is not permitted by Wyoming utility statutes."¹⁸

The Commission discourages master metering, at least in trailer courts.¹⁹

A Wyoming statute states: "No order shall be made by the commission which requires the change of any rate or service unless or until a public hearing has been held in accordance with the provisions of this act."²⁰ The commission requires that a hearing be held before a utility may recover costs under a fuel adjustment clause.²¹

The Commission recently disallowed expenses claimed for promotional and institutional advertising, as the utility had not, "in view of critical conservation need and severe effect of rate increases" supported its claims.²² Advertising expenses that are not excessive and are for public interest purposes have been allowed.²³

As noted above, the Commission must hold public hearings on rate changes.²⁴ The Commission may investigate and hold hearings on rate or service matters on its own motion²⁵ or upon complaint.²⁶ By agreement of the parties, the Commission may also arbitrate controversies between a utility and any other person.²⁷

When the Commission determines to hold an investigation and a hearing it must give at least 20 days notice of the hearing to the complainant, the persons complained of and such other persons "as it may deem proper."²⁸ At the hearing the Commission may take such evidence as may be offered.²⁹ The Commission may compel the attendance of witnesses and production of documents.³⁰

Every order of the Commission must be in writing and in important cases may be accompanied by an opinion setting forth in brief the facts on which the Commission has based its order.³¹

Any party in interest or a party authorized to file an original complaint before the Commission may appeal from a final decision or other Commission action or inaction. The conduct of hearings and of such appeals is governed by the provisions of the Wyoming Administrative Procedure Act.

1. Wyoming Statutes Annotated §37-2-101
2. Id. §37-2-112
3. Id. §37-2-121
4. Id. §37-3-101.
5. Id. §37-3-104
6. Id.
7. NARUC Survey, Table 61(a)

8. Montana - Dakota Utilities Co. 21 P.U.R. 4th 65, 84 (1977). See also Lincoln Service Corp. 1 P.U.R. 4th 411 (1973), stating that pure "cost-of-service" or "averaging" ratemaking approaches are extremes and must be applied with other criteria and supported before rates can be allowed.
9. Id. at 85.
10. NARUC Survey, Table 61(b)
11. Montana - Dakota Utilities Co. supra n. 8.
12. NARUC Survey, Table 61(b)
13. Id.
14. Id.
15. Id.
16. NARUC Survey, Table 61(c).
17. Montana - Dakota Utilities Co. supra n. 8.
18. Pacific Power & Light Co. (1976), Docket No. 9454 Sub 2, quoted in Montana - Dakota Utilities Co. supra n. 8, at 84.
19. NARUC Survey, Table 61(b).
20. W.S.A. §37-2-120
21. NARUC Survey, Table 6(a)
22. Montana - Dakota Utilities Co. supra n. 8.
23. Mountain States Telephone & Telegraph 14 P.U.R. 4th 147 (1976).
24. W.S.A. §37-2-120, -121
25. Id. §37-2-117, -201
26. Id. §37-2-118, -201
27. Id. §37-2-113
28. Id. §37-2-201
29. Id.
30. Id. §37-2-207
31. Id. §37-2-211

WYOMING

[illegible]

WYOMING (cont'd)

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1. See text accompanying nn. 7-8 of the discussion.
 2. See text accompanying nn. 9-13 of the discussion.
 3. See text accompanying n. 14 of the discussion.
 4. Id.
 5. See text accompanying nn. 15-16 of the discussion.
 6. See text accompanying nn. 17-18 of the discussion.
 7. See text accompanying n. 19 of the discussion.
 8. See text accompanying nn. 20-21 of the discussion.
 9. See text accompanying nn. 22-23 of the discussion.
 10. Information unavailable.

NONREGULATED ELECTRIC UTILITIES

PUBLICLY OWNED UTILITIES

Four publicly owned utilities not listed in the Table of Contents responded to the Stone & Webster survey, but they were not included in this report because they are regulated by other agencies.

Lakeland, Florida, and Richmond, Indiana, reported that their rates, terms, and conditions for electric service are subject to the jurisdiction of their state public service commissions.

Rates charged by the Electric Power Board of Chattanooga are regulated by the Tennessee Valley Authority.

The City of Colorado Springs is subject to the jurisdiction of the Colorado Public Utilities Commission on the rates charged for the sale of electric power outside the City's boundaries. The City Council has adopted the policy of applying those rates to sales of electricity within the City's boundaries. Under Section 9-9 of Article 3, Chapter IX of the City Code, "the rates charged for the commodities sold and services performed, and the rules and regulations, special and general, of the Electric Division of the Public Utilities Department of the City of Colorado Springs, shall be effective in the City of Colorado Springs as set forth in the effective tariffs of said Division now or hereafter filed with the Public Utilities Commission of the State of Colorado (PUC)."

Austin, Texas

The Austin City Council sets electric rates under the authority of Article 1175 of the Texas Revised Civil Statutes. By Ordinance No. 770602-D, the Council amended the Austin City Code by adding a Section 37-61 establishing rules for the sub-metering of apartments and mobile home parks. The rules were required to be established by Title 32 of the Texas Statutes, Article 1446D, Section 3. Under Section 2 of that Article, master metering of any new apartment house or condominium conversion was prohibited after January 1, 1978. The Council has established notice and hearing procedures governing the termination of service for reasons other than non-payment of bills. If the dispute is not resolved through an informal hearing with utility personnel, the customer may demand a formal hearing before the City Manager.

Under Section 1-12 of the Austin City Code, "any ordinance by which the City Council approves changes in electric ... rates shall be preceded by a public hearing at which evidence is adduced to determine the rates necessary to provide adequate and efficient services and operations and to determine the fairness, justice and reasonableness of such rates." The Council has not established formal rules governing hearing procedures.

Los Angeles, California

The Los Angeles Department of Water and Power (LADWP) is governed by a Board of Commissioners with rate making authority under Article XI, Section 9 of the Constitution of the State of California, and Section 220(2) of the Los Angeles City Charter. The Department has adopted rules or procedures relating to (1) master metering, Council Resolution 151,685; (2) information to consumers, Board Resolution 557; (3) advertising expenses, Board Resolution 295; and (4) termination of service, Board Resolution 464. The Department reports that Section 254035 of the California Public Resources Code may affect the implementation of time-of-day rates, seasonal rates, cost-of-service based rates, interruptible rates, and declining block rates. The Department also reports that lifeline rates and marginal cost pricing have been challenged in Case No. C223362, pending before the Superior Court of the State of California for the County of Los Angeles.

Proposed rate changes are considered at public hearings held by the Board, by the Energy and Natural Resources Committee of the City Council, and by the full City Council, "at the pleasure of the presiding president or chairman." Customers are notified through official notice published in various newspapers and through press releases. Electric Department information is available upon request.

Sacramento Municipal Utility District

The District is organized under Division 6 of the Public Utilities Code of the State of California, Sections 11501-14401, and is governed by a Board of Directors empowered to establish rates and charges for service under Section 12809 of the Code. The District reports that it has considered or adopted rules relating to restrictions on master metering, procedures for providing information to consumers, and procedures to protect ratepayers from abrupt termination of service.

Under Section 14401 of the Code, proposed rate changes must be submitted to the Board by the General Manager in the form of a report and recommendation in writing. "Within 40 days thereafter the Board shall hold a public hearing on the report and recommendation. Prior to the hearing, notice of the time and place of hearing shall be published within the district pursuant to Section 6066 of the government code."

Santa Clara, California

The Santa Clara Municipal Electric Utility provides electric service under the authority of Article XI, Section 9 of the California Constitution and Section 400 of the City Charter. The utility reports that it has considered or adopted restrictions on master metering and procedures to protect ratepayers from abrupt termination of service. The utility also reports that its rate design is influenced by Section 25403.5 of the California Public Resources Code.

Rate change proposals are considered at public hearings before the City Council. Customers may appear and offer written or oral evidence. Witnesses may be examined, and a written record is made of the hearing. Notice of hearing is provided through publication of the Council agenda; direct notice is given to

interested groups and organizations. Electric department information is available for public inspection in the office of the City Clerk.

Anaheim, California

The City of Anaheim provides electric service under the authority of Article XI, Section 9 of the Constitution of the State of California and the City Charter of Anaheim. The Public Utilities Department reports that the City has considered or adopted rules or procedures relating to restrictions on master metering, review of automatic adjustment clauses, and protection of ratepayers from abrupt termination of service. The Department also reports that no advertising expenses are incurred.

Central Lincoln P.U.D., Oregon

The Central Lincoln Peoples Utility District was established under the authority of Chapter 261 of the Oregon Revised Statutes. The District reports that it has not considered any rules or guidelines relating to the PURPA policy standards, except that its procedures for termination of service conform to the requirements of "recent federal judicial decisions."

Rates for electric service are set by the Board of Directors. Under Resolution No. 541, adopted January 10, 1975, the Board established a policy of setting rates "based on the cost to serve without presumption of the consumer's priority of needs." The Board apparently adopted a policy against lifeline rates: "The pricing policy will be based on the concept of providing the lowest reasonable cost to all consumers without manipulative or special rate categories for special social or economic classes of consumers."

The Board has adopted no formal rate-making procedures; however, customers are notified by newspaper announcement of proposed rate changes, and the District records are open to the public.

Gainesville-Alachua County, Florida

The Gainesville-Alachua County Regional Electric, Water, and Sewer Utilities Board was created by written agreement between the City of Gainesville and Alachua County under the authority of Section 163.01 of the Florida Statutes. Under Section 1 of the City-County Agreement, "the Board is charged with the responsibility of providing electric, water, and sanitary sewer services on a regional basis...." The Board reports that its rates are subject to the jurisdiction of the Florida Public Service Commission under Chapter 366 of the Florida Statutes. Other aspects of utility operation are governed by the Board.

On September 5, 1979, the Board held public hearings to consider adoption of the Section 113(b) PURPA standards. The staff recommendations and public comments were summarized in a memorandum of September 19, 1979, from the utility's chief executive officer to the Board.

Master Metering

The staff commented "that there is no justification for the master metering of electricity if the utility wishes to encourage conservation of energy." Staff recommended "that no approvals be given to the master metering of new buildings after the adoption of this standard," unless the applicant can prove that "the costs of purchasing and installing separate meters are not justified by the long run benefits to the electric consumers."

A question was raised at the hearing as to whether an applicant could argue that the elimination of multiple customer billing charges is a benefit of master metering, without considering the benefits of energy conservation from separate metering. In response, the staff proposed adding the requirement that "in evaluating the long-run benefits of master metering vs. the cost of separate metering, the applicant must demonstrate that master metering will not discourage conservation of energy by the individual unmetered occupants." The staff recommended that the master metering standard be adopted.

Automatic Adjustment Clauses

The staff reported that it could not at this time recommend a method to provide incentives for the efficient use of resources in the utility's fuel adjustment clause. Consequently, the staff recommended that the adjustment clause standard not be adopted at this time, but expressed its view that the standard should be adopted when the appropriate incentives have been devised. It was so recommended to the Board.

Information to Consumers

The staff recommended adoption of the information standard as defined in Section 115(f) of PURPA. It was suggested at the hearing that each customer's current bill show consumption data for the same month of the previous year. The staff is investigating the feasibility of that proposal and will present a new billing format to the Board at a later date.

Procedures for Termination of Service

The staff proposed a set of procedures that it believed would meet the requirements of the PURPA termination standard and would also be appropriate for the utility. Under the staff's recommendation, each delinquent customer would be mailed a termination notice at least seven days before service was to be terminated. The notice would explain how the customer could present a claim of billing error, and would inform the customer that a "Certificate of Termination Hardship" may be available to him. A Certificate would be obtained by submitting evidence that (1) termination would be dangerous to an occupant of the customer's residence, and (2) that the total income of all persons living in the residence is within certain limits. A Certificate of Termination Hardship would entitle the customer to a deferred payment arrangement for a period of up to ninety days. The staff recommendation also provided that "delinquent terminations will be made only on Monday through Thursday and no service will be disconnected on the day before a holiday."

Advertising

The staff recommended that no promotional or political advertising be funded from the utility's Operation and Maintenance account, "except in the case of political advertising to solicit support for legislation designed to reduce operating costs." Apart from the quoted exception, the standard proposed is the same as that set forth in Section 113(b)(5) of PURPA.

Lansing, Michigan

Electric service in Lansing is provided by the Board of Water and Light, established by the City Charter. The Board is responsible to the Mayor and the City Council for its management of utility services. Under Section 5-205 of the City Charter, the Board may "fix just and reasonable rates and other charges as it may deem advisable for services furnished."

The Board has defined each of the three PURPA objectives as follows:

Conservation is the elimination of inefficient, extravagant, unproductive, or uneconomical uses of energy.

Optimum efficiency is the use of procedures, programs, and rate structures so as to improve annual load factors while reducing system peaks.

Equitable rates return to the utility the full cost of providing a service plus a reasonable rate of return on investment based upon customer class and customers within the class. The paying of the full cost of service plus the reasonable rate of return assures equitable rates to customers.

Master metering is prohibited under the Board's electric rules and regulations. Termination of service is governed by established procedures providing for a hearing. Customers receive information relating to electric service through a newsletter.

Under Section 5-205 of the City Charter, the Board "shall conduct a public hearing at least 30 days prior to the effective date of any changes in rate structure." The Board must file with the City Clerk a statement explaining the rates and charges at least 45 days before the hearing. Notice is provided to customers through public posting, newspaper announcements, and a bill stuffer. Information relating to electric department operations is available to customers under the provisions of the State Freedom of Information Act.

Every customer has the right to appear at rate hearings and offer evidence. A written record is made of the proceedings, but the Board is not required to make written findings of fact or conclusions of law.

Nebraska Public Power District

Public Utility Districts in Nebraska operate under the authority of Chapter 70, Article 6 of the Revised Statutes of Nebraska. Under Section 70-655 of the Statutes, the power to establish rates for electric service is held by the District Board of Directors. This section also requires that all rates "shall be fair, reasonable, non-discriminatory, and so adjusted as in a fair and equitable manner to confer upon and distribute among the users and consumers of commodities and services furnished or sold by the district the benefits of a successful and profitable operation and conduct of the business of the district."

The District reports that it began "formal consideration of the PURPA Title I Standards as of September 10 [1979] and has not yet completed such considerations at this time." The District is "presently engaged in public hearings to collect data, reports, and studies."

Rate changes proposed by the staff are supported by cost analyses, which are presented to the Board of Directors and made available to customers. Rate changes are considered at public hearings; minutes of these hearings are kept and made available to the public. The District reports that a written record will be made of all PURPA hearings. Customers are notified of hearings through "printed public notice," and are granted access to electric department information upon written request. Under Section 70-622 of the Statutes, the District's records and books of account, and the minutes of Board meetings, must be kept at the District's principal place of business for public inspection during reasonable business hours.

Omaha Public Power District

The District reports that it has considered or adopted rules relating to each of the PURPA Section 113 standards. The District has adopted a detailed set of procedures governing termination of services for non-payment of bills. The customer must be given a hearing and the opportunity to appeal an adverse decision. Service will not be disconnected on a day when District business offices are closed, or on any day prior to a day on which the offices will be closed. No residential service will be disconnected if the local temperature is below 15°F.

Rate change proposals are based on a cost of service study prepared by the staff and outside rate consultants. Rate changes are considered at public meetings, at which the Board receives informal presentations by the staff and the public. Customers are notified of meetings through public notices and news releases; access to electric department information is "unlimited."

Greenville, North Carolina

The Greenville Utilities Commission has imposed restrictions on master metering, established termination procedures for the protection of ratepayers, and has a policy against promotional advertising. The Commission reports that "where possible" it establishes rates and procedures "parallel" to those set by the North Carolina Utilities Commission.

Customer complaints or comments on rate matters are heard at the Commission's regular meetings. Notice is provided by newspaper announcements. Customers have access to electric department information on request.

Wilson, North Carolina

Rates for electric service provided by the Wilson Utilities Department are set by the City Council under the authority of Section 160A-314 of the General Statutes of North Carolina. Master metering for service to any new residential building is prohibited under Section 143-151.42 of the Statutes. Although the City is authorized by statute to discontinue service to any customer whose account remains delinquent for more than ten days, it has established a more lenient termination policy. Under Section 31-14 of its Electric Service Rules, "it is the policy of the city to discontinue utility service to customers by reason by non-payment of bills only after notice and a meaningful opportunity to be heard on disputed bills." Customers delinquent for more than fifteen days receive a cutoff notice stating that service will be discontinued if payment is not received within five days. Upon demand, the customer is given a hearing before the department's office manager. If the dispute is not resolved, the matter is next referred to the finance director and then to the city manager. Finally, the customer may appeal to the City Council if his monthly consumption for the billing period is at least 50% greater than the preceding six months' average, and if his meter has been tested and found to be correct.

Rate matters are considered by the Council at its regularly scheduled meetings, which are subject to public notice and are open to public participation. The public has access to Utilities Department information.

Puerto Rico Water Resources Authority

The Authority's rates for electric service are set by a governing Board consisting of seven members. Five members are appointed by the governor of Puerto Rico, and the remaining two are elected by the Authority's electric energy customers. The Board has not specifically considered any of the PURPA standards.

The Authority's rates include a fuel adjustment clause. Residential customers with a monthly consumption of 400 kwh or less receive a credit in their bills equivalent to "the totality of what in the corresponding periods said consumer would have had to pay for fuel adjustment as above provided, plus any other charge resulting from the increase in the fuel price." Puerto Rico Water Resources Authority Act, Section 22(b). This credit, which was approved by the legislature on June 28, 1974, was intended to be a form of lifeline rate. In a prefatory "Statement of Motives," the legislature said that the bill amending Section 22 of the Act "has the purpose of granting to the economically underprivileged consumers an economic relief in the amount payable of their electric service bill, equivalent to fully exempt them from the payment of any amount by reason of fuel adjustment."

Rate change proposals are heard by an examining committee appointed by the governing board. Customers receive notice of hearings through announcements in newspapers and other media. Customers may participate in hearings and may

offer oral or written evidence. Witnesses are questioned by the examining committee. The committee submits a written report to the governing board; this report is made available to the public.

South Carolina Public Service Authority

The Authority, created under Section 58-31-10 of the Code of Laws of South Carolina, is governed by a Board of Directors consisting of 11 members appointed by the Governor. Under Section 58-31-360 of the Code, "the state will not alter, limit or restrict the power of the Public Service Authority to, and the Authority shall, fix, establish, maintain and collect rents, tolls, rates and charges for the use of the facilities of or for the services rendered or for any commodities furnished by the Public Service Authority"

At the time it submitted its survey response, the Authority had begun formal consideration of Section 113 PURPA Standards. Hearings were scheduled for September, 1979. The Authority has adopted procedures for termination of service designed to meet constitutional requirements as set forth in Memphis v. Kraft, 98 S.Ct.1554 (1978). Rate change recommendations made to the Board by the staff are supported by rate studies based on cost of service.

The Board considers rate changes at regular or special meetings, which are open to the public. Notice to the public and public access to electric department information is required under the South Carolina Freedom of Information Act of 1976, Sections 30-4-10 through 30-4-110 of the Code. Customers have an opportunity to be heard, and the staff's rate recommendations and any action taken by the Board are recorded in the minutes.

Clark County P.U.D., Washington

Public Utility Districts in the State Washington are governed by Title 54 of the Revised Code of Washington. Under Section 54.16.040 of the Code, a District may supply electric energy within or without its limits, "with full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges, and price thereof." Section 54.24.080 requires that rates be "fair and non-discriminatory and adequate to provide revenues sufficient for the payment of the principal of and interest on revenue obligations."

Public Utility District No. 1 of Clark County reports that it has considered or adopted rules relating to restrictions on master metering and procedures for providing information to consumers. The District notes that its advertising budget is limited to \$25,000, including amounts spent for official notices of meetings and rate increases.

The District reports that the implementation of lifeline rates "could be in conflict with the state law prohibiting public agencies from lending their credit. A determination has not as yet been rendered." However, Chapter 74.38 of the Revised Code of Washington provides that "notwithstanding any other provisions of law, any county, city, town, municipal corporation or quasi-municipal corporation providing utility services may provide such services at reduced rates for low-income

senior citizens." The term "low-income senior citizens" is to be defined by the governing body of the organization providing utility services.

The District is considering the adoption of extensive and detailed written procedures for the evaluation of PURPA standards. The draft under consideration has provisions for notice, intervention, conduct of hearings, discovery, orders, petitions for reconsideration, and appeals. The procedures were developed "solely for purposes of the [National Energy Act] and they are not applicable to other hearings or proceedings conducted by the District."

The proposed rules of procedure require 60 days' notice of hearings by publication in a newspaper of general circulation. The hearings procedures provide for direct and cross examination of witnesses, submission of written evidence, order of presentation of evidence, and substantive rules of evidence. Proceedings are recorded and transcripts are available to the public.

The intervention provisions allow potential intervenors to petition the District Commission for the appointment of counsel. Intervenors must demonstrate that they are "unable to intervene effectively in the hearing because they cannot afford to pay reasonable attorneys' fees, expert witness fees and other reasonable costs of intervening." If counsel is not appointed, intervenors may still recover attorneys' fees and other costs upon demonstrating financial hardship but only if their intervention has "substantially contributed to the approval and suggested final order, in whole or in part, of a position advocated by such intervenors."

Each party may file a proposed order and file written objections to other parties' proposed orders. The Commission must consider, at open deliberations, the hearing record, any proposed orders and objections thereto, and any comments of the Presiding Officer. The Commission must then prepare a suggested final order, which is subject to written comment by all parties within ten days, and issue its final order at its next regular meeting.

The final order must be in writing, and must include the following: (1) a determination as to whether each Section 111 standard is appropriate to carry out the three objectives set forth in Section 101 of PURPA, (2) a determination on whether or not to implement each Section 111 standard, and (3) a statement of the reasons for any determination not to implement a Section 111 standard found to be appropriate to carry out the purposes of Section 101. The order also provides for similar determinations relating to Section 113 standards and lifeline rates. The order must contain "findings upon which such determinations are based."

Cowlitz County P.U.D., Washington

The Cowlitz County Public Utility District has adopted informal guidelines and policies relating to restrictions on master metering and procedures to protect ratepayers from abrupt termination of service.

Rate change proposals are based on cost studies developed by the District staff, sometimes with the assistance of outside consultants. Public hearings are held, at which "any consumer may appear and present written or oral testimony

or examine the District staff." Notice of hearings is provided to customers through newspaper and radio announcements and bill stuffers. There are no written rules of evidence or requirements for a written record or findings of fact. Minutes are kept of all public meetings. The public has access to electric department information under written procedures set forth in the District Organizational Statement.

Grays Harbor County P.U.D., Washington

Public Utility District No. 1 of Grays Harbor has adopted procedures to protect ratepayers from abrupt termination of service. Customers have the right to an informal conference, and residential service customers may appeal an adverse decision to a hearing officer. On appeal, the customer has the right to counsel, the right to examine the records of the District relating to his account, the right to a written record of the hearing proceeding, and the right to a written decision setting forth the reasons for any action ordered.

Proposed rate changes are considered at public meetings. "The format of public meetings has been an informal one with staff presentation followed by a question and answer period." Customers attending meetings have an opportunity to make statements. Customers receive notice of meetings through news media, and have access to electric department information.

Lewis County P.U.D., Washington

Public Utility District No. 1 of Lewis County reports that it has considered or adopted rules relating to advertising expenses, procedures for providing adequate information to consumers, and procedures to protect ratepayers from abrupt termination of service.

Rate increase proposals are based on cost of service studies performed by the staff. Rate increases are considered at public meetings before the Commission, at which customers may appear and be heard. Customers receive notice through the Commission's regular notice of public meetings; electric department information is available to the public.

According to the preamble to Resolution No. 1418, which established the District's current rates, "adjustments within the various classes of electric service" were based on consideration of "the guidelines as set forth in the Public Utility Regulatory Policies Act of the National Energy Act," and rates were designed to "reflect the cost to serve each class of electric service as indicated by the electric rate study" prepared by an outside consultant.

Snohomish County P.U.D., Washington

Public Utility District No. 1 of Snohomish County reports that it has adopted informal policies governing restrictions on master metering, procedures for providing adequate information to consumers, treatment of advertising expenses, and procedures to protect ratepayers from abrupt termination of service.

The District staff presents rate change proposals at public hearings. Customers have an opportunity to appear, offer comments, and ask questions. Notice is provided through local media, and all pertinent electric department information is available upon request. The Board makes written findings at the conclusion of the hearings.

The District reports that its "BPA [Bonneville Power Administration] Power Sales Contract contains review provisions," but a hearing is not required.

Chelan County P.U.D., Washington

Public Utility District No. 1 of Chelan County reports that it has considered or adopted rules relating to procedures for providing adequate information to consumers and for protecting ratepayers from abrupt termination of service.

Rate change proposals are discussed at public meetings where customers have an opportunity to be heard. Customers receive notice through news media, and "all district documents are available to the public." All customer protests received at public meetings are noted and considered by the District's Commission before adopting new rate schedules. Commission resolutions adopting rates schedules "reflect the evidence received and the conclusions reached."

Benton County P.U.D., Washington

Public Utility District No. 1 of Benton County reports that it has considered or adopted rules relating to the treatment of advertising expenses and procedures to protect ratepayers from abrupt termination of service. The District's rates are subject to informal review by the Bonneville Power Administration.

Tacoma, Washington

The City of Tacoma provides electric service under the authority of Section 35.92.050 of the Revised Code of Washington. The Tacoma Department of Public Utilities, Light Division, reports that the utility has considered or adopted rules relating to restrictions on master metering, procedures for providing adequate information to consumers, and procedures to protect ratepayers from abrupt termination of service. The Department reports changes in monthly consumption from the preceding year on each residential customer's utility bill to inform that customer of any progress made in conservation of energy.

Rate changes are proposed by the Public Utility Board to the City Council. Hearings are held by the Board and by the Council; full public participation is allowed at both hearings. Electric Department information is available to consumers under Section 42.17.250 of the Revised Code of Washington. Rehearing may be held on a motion to reconsider made under the Council's rules of procedure.

COOPERATIVELY OWNED UTILITIES

Five cooperatively-owned utilities responded to the Stone & Webster survey, but three of them are not separately discussed in this report because they are

regulated by other agencies. Green River Electric Corporation, Owensboro, Kentucky, reported that it is regulated by the Kentucky Public Service Commission. Volunteer Electric Cooperative, Decatur, Tennessee, and Middle Tennessee Electric Membership Corporation, Murfreesboro, Tennessee, are both subject to rate regulation by the Tennessee Valley Authority.

Umatilla E.C.A., Oregon

Rates for electric service provided by the Umatilla Electric Cooperative Association are set by the Board of Directors under the Cooperative's by-laws. Umatilla reports that it has considered or adopted rules relating to restrictions on master metering, procedures for providing information to consumers, and procedures to protect ratepayers from abrupt termination of service. Under Board Policy 29, Umatilla is developing "a system-wide program of energy management, including energy conservation, a home weatherization and conservation program ..., and other commercial and industrial conservation programs. Alternate energy sources will be appropriately considered." The Cooperative is also developing "an information program so that the need for energy management is understood." The information program "extends to major groups involved in housing, including the building industry and local government organizations."

Jackson E.M.C., Georgia

The Jackson Electric Membership Corporation sets rates for electric service under Article 1, Section 3 of its by-laws. The Corporation reports that it has considered or adopted rules relating to the review of automatic adjustment clauses, the treatment of advertising expenses, procedures to provide information to consumers, and procedures to protect ratepayers from abrupt termination of services. The Corporation reports that the Georgia Legislature is considering legislation relating to automatic adjustment clauses, advertising expenses and termination procedures, and that "legislation has been introduced on the state level [to create] a lifeline rate reform study committee."

Customers receive notice of impending rate changes sixty days prior to implementation. Notice is provided through a monthly newsletter; consumer protests are heard at informal meetings. Written notice must be filed with the Rural Electrification Administration ninety days before the implementation of rate changes. Retail rates must be filed with the Georgia Public Service Commission, but they are not subject to the Commission's approval.

APPENDIX A

**GAS AND ELECTRIC UTILITIES COVERED
IN 1980 BY TITLES I AND III OF THE
PUBLIC UTILITY REGULATORY POLICIES ACT
OF 1978 AND TITLE II OF THE NATIONAL
ENERGY CONSERVATION POLICY ACT OF 1978**

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-79-43]

Gas and Electric Utilities Covered in 1980 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Title II of the National Energy Conservation Policy Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) and section 211(b) of the National Energy Conservation Policy Act of 1978 (NECPA) require the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility and electric utility to which Titles I and III of PURPA and Part 1 of Title II of NECPA apply during such calendar year. This Notice contains the list for 1980. Written comments are invited with respect to the inclusion of Citizens Utilities Company on the list.

DATE: Written comments must be received by January 21, 1980.

ADDRESSES: Written comments should be forwarded to the Department of Energy, Office of Public Hearings Management, 2000 M Street, NW. (Room 2313), Docket No. ERA-R-79-43, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Stephen S. Skjei, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW. (Room 4016), Washington, D.C. 20461, (202) 254-8209.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*) and section 211(b) of the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95-619, 92 Stat. 3206 *et seq.*, the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA and Part 1 of Title II of NECPA apply in 1980. State regulatory authorities are required by the above cited sections of PURPA and NECPA to notify the Secretary of Energy as to their ratemaking authority over the listed utilities.

On September 24, 1979, DOE issued a notice containing a list of utilities to which PURPA and NECPA apply in 1980 and requesting each State regulatory

authority to notify DOE in writing of each utility on the list for which it has ratemaking authority (44 FR 56602, October 1, 1979). DOE also requested public comment on the accuracy of the list of gas and electric utilities.

The notice issued today reflects changes made in the list as a result of notifications by State regulatory authorities. These changes include (1) additions and deletions of utilities based upon the annual sales criteria set forth in PURPA and NECPA, and (2) additions and deletions based upon sales or acquisitions of gas and electric distribution facilities.

The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible State regulatory authority under PURPA and NECPA.

II. Discussion of Comments

DOE received two comments from utilities in response to the October 1 notice.

CP National Corporation (CP) requested deletion from the list of covered utilities because it operates geographically separate distribution systems, none of which alone exceeds the coverage thresholds for Titles I and III of PURPA and Title II of NECPA. CP cited, in support of its request, an earlier determination by DOE to delete Citizens Utilities Company (Citizens) from the 1979 list.

In response to this comment, DOE has determined, after reconsideration of its determination not to include Citizens on the list, that both CP and Citizens should be included on the 1980 list. This is because sections 102(c) and 301(d) of PURPA and section 211(b) of NECPA require the Secretary of Energy to publish a list identifying those utilities which have retail sales exceeding the PURPA and NECPA thresholds and both CP and Citizens have companywide retail sales exceeding the statutory thresholds.

Since Citizens was not included on the list published with the October 1 Notice, written comments are invited, as provided in section III, with respect to DOE's determination to include Citizens on the 1980 list.

CP also asserted that its annual gas sales are below the PURPA and NECPA thresholds. After reexamination of available sales information and verification by appropriate State regulatory authorities, DOE has determined that CP's annual retail sales of natural gas exceed the PURPA and NECPA thresholds.

A comment was submitted by Cabot Corporation asserting that its annual natural gas sales are below the PURPA

and NECPA thresholds. Due to the lateness of this comment, DOE was not able to determine the validity of Cabot's assertion prior to publication of this list. After such determination is made, DOE will notify Cabot Corporation and the appropriate State regulatory authority and, if necessary, modify the list of gas and electric utilities appropriately.

III. Comment Procedures

All interested persons are invited to comment in writing with respect to DOE's determination to include Citizens Utilities Company on the 1980 list. Five copies of such comments should be sent to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. ERA-R-79-43." Written comments should include the commenter's name, address and telephone number.

Comments must be received by the date indicated in the "DATE" section of this Notice. All comments received will be available for public inspection in the DOE Reading Room, Room GA-152, James Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

IV. List of Electric Utilities and Gas Utilities

Appendix A is the list of utilities to which Titles I and III of PURPA and Title II of NECPA apply, with exceptions noted for listed utilities not covered by NECPA. The list is arranged alphabetically, but subdivided into electric and gas utilities and further subdivided by type of ownership: investor-owned utilities, publicly-owned utilities, and rural cooperatives.

DOE is also publishing, as Appendix B, a tabulation of utilities which separately identifies, by State, each State regulatory authority, the covered utilities it regulates, and other covered utilities in the State not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based solely on information provided to DOE by State regulatory authorities in response to the notice of October 1, 1979.

The utilities classified in Appendix B as not regulated by the State regulatory authority may in fact be regulated by local municipal authorities. Under "definitions" used in PURPA, these municipal authorities would be classified as a "State Agency" and thus have responsibilities under PURPA similar to those of the State regulatory authority.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); National Energy Conservation Act, Pub. L. 95-619, 92 Stat. 3208 *et seq.*)

Issued in Washington, D.C., on December 19, 1979.

Jerry L. Pfeffer,

*Assistant Administrator for Utility Systems,
Economic Regulatory Administration.*

Appendix A

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976, 1977 or 1978. All, except those marked (*), are covered by PURPA Title I and NECPA Title II. Utilities marked (*) either do not exceed the NECPA threshold of 750 million kilowatt-hours in 1978 or do not have residential sales and, therefore, are not covered by NECPA Title II. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned

Alabama Power Company
Appalachian Power Company (VA)
Appalachian Power Company (WV)
Arizona Public Service Company
Arkansas-Missouri Power Company (AR)
Arkansas-Missouri Power Company (MO)
Arkansas Power & Light Company (AR)
Arkansas Power & Light Company (LA)
Arkansas Power & Light Company (TN)
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company (MT)
Black Hills Power & Light Company (SD)
Black Hills Power & Light Company (WY)
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company (NC)
Carolina Power & Light Company (SC)
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Telephone & Utilities Corporation (CO)
Central Telephone & Utilities Corporation (KS)
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Citizens Utilities Company (AZ)
Citizens Utilities Company (HI)
Citizens Utilities Company (ID)
Citizens Utilities Company (VT)
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Community Public Service Company (NM)
Community Public Service Company (TX)
Connecticut Light & Power Company

Consolidated Edison Company of New York
Consumers Power Company
CP National Corporation (AZ)
CP National Corporation (CA)
CP National Corporation (NV)
CP National Corporation (OR)
CP National Corporation (UT)
Dallas Power & Light Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
Delmarva Power & Light Company of Maryland
Delmarva Power & Light Company of Virginia
Detroit Edison Company
Duke Power Company (NC)
Duke Power Company (SC)
Duquesne Light Company
Eastern Edison Company
El Paso Electric Company (NM)
El Paso Electric Company (TX)
Empire District Electric Company (AR)
Empire District Electric Company (KS)
Empire District Electric Company (MO)
Empire District Electric Company (OK)
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)
Hartford Electric Light Company
Hawaiian Electric Company, Inc.
Houston Lighting & Power Company
Idaho Power Company (ID)
Idaho Power Company (NV)
Idaho Power Company (OR)
Illinois Power Company
Indiana & Michigan Electric Company (IN)
Indiana & Michigan Electric Company (MI)
Indianapolis Power & Light Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kansas City Power & Light Company (KS)
Kansas City Power & Light Company (MO)
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company (KY)
Kentucky Utilities Company (TN)
Kingsport Power Company
*Lake Superior District Power Company (MI)
*Lake Superior District Power Company (WI)
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Metropolitan Edison Company
*Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Edison Company
Missouri Power & Light Company
Missouri Public Service Company
Missouri Utilities Company
Monongahela Power Company (OH)

Monogahela Power Company (WV)
Montana-Dakota Utilities Company (M)
Montana-Dakota Utilities Company (NI)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Narragansett Electric Company
Nevada Power Company
New Bedford Gas & Edison Light Company
*New Mexico Electric Service Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
Northern Indiana Public Service Company
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (SD)
Northern States Power Company (WI)
*Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company (AR)
Oklahoma Gas & Electric Company (OK)
*Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Gas & Electric Company
Pacific Power & Light Company (CA)
Pacific Power & Light Company (ID)
Pacific Power & Light Company (MT)
Pacific Power & Light Company (OR)
Pacific Power & Light Company (WA)
Pacific Power & Light Company (WY)
Pennsylvania Electric Company (NY)
Pennsylvania Electric Company (PA)
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
Potomac Electric Power Company (VA)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (ME)
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
*Southwestern Electric Service Company
Southwestern Public Service Company (K)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)

Southwestern Public Service Company (TX)
 — a Electric Company
 i Electric Service Company
 — — — — i Power & Light Company
 Toledo Edison Company
 Tucson Electric Power Company
 *UGI-Luzerne Electric Division
 Union Electric Company (IA)
 Union Electric Company (IL)
 Union Electric Company (MO)
 Union Light, Heat & Power Company
 United Illuminating Company
 *Upper Peninsula Power Company
 Utah Power & Light Company (ID)
 Utah Power & Light Company (UT)
 Utah Power & Light Company (WY)
 Virginia Electric & Power Company (NC)
 Virginia Electric & Power Company (VA)
 Virginia Electric & Power Company (WV)
 Washington Water Power Company (ID)
 Washington Water Power Company (MT)
 Washington Water Power Company (WA)
 West Penn Power Company
 West Texas Utilities Company
 Western Massachusetts Electric Company
 Wheeling Electric Company
 Wisconsin Electric Power Company (MI)
 Wisconsin Electric Power Company (WI)
 Wisconsin Power & Light Company
 Wisconsin Public Service Corporation (MI)
 Wisconsin Public Service Corporation (WI)

Publicly Owned

*Albany Water, Gas & Light Commission (CA)
 Anaheim Utilities Department (CA)
 Austin Electric Department (TX)
 *Bristol Tennessee Electric System (TN)
 *Burbank Public Service Department (CA)
 Central Lincoln People's Utility District (OR)
 Chattanooga Electric Power Board (TN)
 *Clarksville Department of Electricity (TN)
 *Clatskanie People's Utility District (OR)
 *Cleveland Division of Light & Power (OH)
 *Cleveland Utilities (TN)
 Colorado Springs Department of Public Utilities (CO)
 Decatur Electric Department (AL)
 *Dothan Electric Department (AL)
 Eugene Water & Electric Board (OR)
 Fayetteville Public Works Commission (NC)
 Florence Electricity Department (AL)
 *Gainesville-Alachua County Regional Electric, Water, and Sewer Utilities Board (FL)
 *Glendale Electric Department (TX)
 *Glendale Public Service Department (CA)
 *Greenville Light & Power System (TN)
 *Greenville Utilities Commission (NC)
 Huntsville Utilities (AL)
 Imperial Irrigation District (CA)
 *Independence Power & Light Department (MO)
 Jackson Utility Division—Electric Department (TN)
 Jacksonville Electric Authority (FL)
 Johnson City Power Board (TN)
 Kansas City Board of Public Utilities (KS)
 Knoxville Utilities Board (TN)
 *Lafayette Utilities System (LA)
 Lakeland Department of Electricity and Water (FL)
 Lansing Board of Water & Light (MI)
 — — — — ior City Utilities Board (TN)
 — — — — oln Electric System (NE)
 — — — — Angeles Department of Water and Power

*Lower Colorado River Authority
 *Lubbock Power & Light (TX)
 Memphis Light, Gas & Water Division (TN)
 *Modesto Irrigation District (CA)
 *Muscatine Power & Water (IA)
 Nashville Electric Service (TN)
 Nebraska Public Power District (NE)
 Nebraska Public Power District (SD)
 Omaha Public Power District (IA)
 Omaha Public Power District (NE)
 Orlando Utilities Commission (FL)
 Palo Alto Electric Utility (CA)
 Pasadena Water & Power Department (CA)
 *Power Authority of New York (NY)
 *Port Angeles Light & Water Department (WA)
 Public Utility District No. 1 of Benton County (WA)
 Public Utility District No. 1 of Chelan County (WA)
 Public Utility District No. 1 of Clark County (WA)
 Public Utility District No. 1 of Cowlitz County (WA)
 *Public Utility District of Franklin County (WA)
 Public Utility District of Grant County (WA)
 Public Utility District No. 1 of Grays Harbor County (WA)
 *Public Utility District No. 1 of Lewis County (WA)
 Public Utility District No. 1 of Snohomish County (WA)
 Puerto Rico Water Resources Authority (PR)
 *Richland Energy Services Department (WA)
 *Richmond Department of Public Utilities (VA)
 *Richmond Power & Light (IN)
 Riverside Public Utilities (CA)
 *Rocky Mount Public Utilities (NC)
 Sacramento Municipal Utility District (CA)
 Salt River Project Agricultural Improvement and Power District (AZ)
 San Antonio Public Service Board (TX)
 Santa Clara Electric Department (CA)
 Seattle City Light Department (WA)
 South Carolina Public Service Authority
 Springfield City Utilities (MO)
 *Springfield Utilities Board (OR)
 Springfield Water, Light & Power Department (IL)
 Tacoma Public Utilities-Light Division (WA)
 Tallahassee, City of (FL)
 *Turlock Irrigation District (CA)
 Vernon Municipal Light Department (CA)
 *Wilson Utilities Department (NC)

Rural Electric Cooperatives

*Anoka Electric Cooperative (MN)
 *Appalachian Electric Cooperative (TN)
 Chugach Electric Association (AK)
 *Clay Electric Cooperative (FL)
 Cumberland Electric Membership Corporation (TN)
 *Duck River Electric Membership Corporation (TN)
 *First Electric Cooperative Corporation (AR)
 *Flint Electrical Membership Corporation (GA)
 *4-County Electric Power Association (MS)
 *Gibson County Electric Membership Corporation (TN)
 Green River Electric Corporation (KY)
 Henderson-Union Rural Electric Cooperative Corporation (KY)
 *Jackson Electric Membership Corporation (GA)

*Lee County Electric Cooperative (FL)
 *Meriwether Lewis Electric Cooperative (TN)
 Middle Tennessee Electric Membership Corporation (TN)
 *Moon Lake Electric Association (UT)
 North Georgia Electric Membership Corporation (GA)
 *Pedernales Electric Cooperative (TX)
 *Pennyrile Rural Electric Cooperative Corporation (KY)
 *Prince William Electric Cooperative (VA)
 *Singing River Electric Power Association (MS)
 *South Central Power Company (OH)
 Southern Maryland Electric Cooperative, Inc. (MD)
 *Southern Pine Electric Power Association (MS)
 Southwest Louisiana Electric Membership Corporation (LA)
 *Southwest Tennessee Electric Membership Corporation (TN)
 *Tri-County Electric Membership Corporation (TN)
 *Umatilla Electric Cooperative Association (OR)
 *Upper Cumberland Electric Membership Corporation (TN)
 Volunteer Electric Cooperative (TN)
 *Warren Rural Electric Cooperative Corporation (KY)
 *West Kentucky Rural Electric Cooperative Corporation (KY)
 *Withlacoochee River Electric Cooperative (FL)

Federal Agencies

*Bonneville Power Administration (OR)
 *Tennessee Valley Authority (TN)
 *Western Area Power Administration (CO)

Gas Utilities

All utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977 or 1978 and are covered by PURPA Title III and NECPA Title II. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned

Alabama Gas Corporation
 Alabama-Tennessee Natural Gas Company
 Alaska Gas & Service Company
 Anadarko Production Company
 Arizona Public Service Company
 Arkansas-Louisiana Gas Company (AR)
 Arkansas-Louisiana Gas Company (KS)
 Arkansas-Louisiana Gas Company (LA)
 Arkansas-Louisiana Gas Company (OK)
 Arkansas-Louisiana Gas Company (TX)
 Arkansas-Oklahoma Gas Corporation (AR)
 Arkansas-Oklahoma Gas Corporation (OK)
 Arkansas Western Gas Company
 Atlanta Gas Light Company
 Baltimore Gas & Electric Company
 Bay State Gas Company
 Boston Gas Company
 Brooklyn Union Gas Company
 Cabot Corporation Utility Division
 Carnegie Natural Gas Company
 Carolina Pipeline Company
 Cascade Natural Gas Corporation (OR)

Cascade Natural Gas Corporation (WA)
 Central Illinois Light Company
 Central Illinois Public Service Company
 Chattanooga Gas Company (GA)
 Chattanooga Gas Company (TN)
 Cheyenne Light, Fuel and Power Company
 Cincinnati Gas and Electric Company
 Cities Service Gas Company (covered by NECPA only)
 City Gas Company of Florida
 Columbia Gas of Kentucky, Inc.
 Columbia Gas of New York, Inc.
 Columbia Gas of Ohio, Inc.
 Columbia Gas of Pennsylvania, Inc.
 Columbia Gas of Virginia, Inc.
 Columbia Gas of West Virginia, Inc.
 Commonwealth Gas Company
 Connecticut Light & Power Company
 Connecticut Natural Gas Corporation
 Consolidated Edison Company of New York, Inc.
 Consolidated Gas Supply Corporation
 Consumers Power Company
 CP National Corporation (AZ)
 CP National Corporation (CA)
 CP National Corporation (NV)
 CP National Corporation (OR)
 Dayton Power & Light Company
 Delmarva Power & Light Company (DE)
 East Ohio Gas Company
 East Tennessee Natural Gas Company
 Elizabethtown Gas Company
 Entex Inc. (LA)
 Entex Inc. (MS)
 Entex Inc. (WV)
 Equitable Gas Company (KY)
 Equitable Gas Company (PA)
 Equitable Gas Company (WV)
 Florida Gas Company
 Gas Company of New Mexico
 Gas Light Company of Columbus
 Gas Service Company (KS)
 Gas Service Company (MO)
 Gas Service Company (NE)
 Gas Service Company (OK)
 Greeley Gas Company (CO)
 Greeley Gas Company (KS)
 Greeley Gas Company (MN)
 Gulf States Utilities Company
 Illinois Power Company
 Indiana Gas Company
 Inland Gas Company
 Inter City Gas Limited
 Intermountain Gas Company
 Interstate Power Company (IA)
 Interstate Power Company (IL)
 Interstate Power Company (MN)
 Iowa Electric Light & Power Company (CO)
 Iowa Electric Light & Power Company (IA)
 Iowa Electric Light & Power Company (MN)
 Iowa Electric Light & Power Company (NE)
 Iowa-Illinois Gas & Electric Company (IA)
 Iowa-Illinois Gas & Electric Company (IL)
 Iowa Power & Light Company
 Iowa Public Service Company (IA)
 Iowa Public Service Company (NE)
 Iowa Public Service Company (SD)
 Iowa Southern Utilities Company
 Kansas-Nebraska Natural Gas Company (CO)
 Kansas-Nebraska Natural Gas Company (KS)
 Kansas-Nebraska Natural Gas Company (NE)
 Kansas-Nebraska Natural Gas Company (WY)
 Kansas Power & Light Company
 Kokomo Gas & Fuel Company
 Laclede Gas Company Consolidated
 Lone Star Gas Company (OK)
 Lone Star Gas Company (TX)
 Long Island Lighting Company
 Louisiana Gas Service Company
 Louisville Gas & Electric Company
 Lowell Gas Company
 Madison Gas & Electric Company
 Michigan Consolidated Gas Company
 Michigan Gas Utilities Company
 Michigan Power Company
 Minnesota Gas Company (IA)
 Minnesota Gas Company (MN)
 Minnesota Gas Company (NE)
 Minnesota Gas Company (SD)
 Mississippi Valley Gas Company
 Missouri Public Service Company
 Mobile Gas Service Corporation
 Montana-Dakota Utilities Company (MN)
 Montana-Dakota Utilities Company (MT)
 Montana-Dakota Utilities Company (ND)
 Montana-Dakota Utilities Company (SD)
 Montana-Dakota Utilities Company (WY)
 Montana Power Company
 Mountain Fuel Supply Company (UT)
 Mountain Fuel Supply Company (WY)
 Nashville Gas Company
 National Fuel Gas Distribution Corporation (NY)
 National Fuel Gas Distribution Corporation (PA)
 National Gas and Oil Company
 New Bedford Gas and Edison Light Company
 New Jersey Natural Gas Company
 New Orleans Public Service, Inc.
 New York State Electric & Gas Corporation
 Niagara Mohawk Power Corporation
 North Carolina Natural Gas Corporation
 North Central Public Service Company (IA)
 North Central Public Service Company (MN)
 North Shore Gas Company
 Northern Illinois Gas Company
 Northern Indiana Public Service Company
 Northern Natural Gas Company (KS)
 Northern Natural Gas Company (NE)
 Northern States Power Company (MN)
 Northern States Power Company (ND)
 Northern States Power Company (WI)
 North Penn Gas Company
 Northwest Natural Gas Company (OR)
 Northwest Natural Gas Company (WA)
 Northwestern Public Service Company (NE)
 Northwestern Public Service Company (SD)
 Oklahoma Natural Gas Company
 Orange & Rockland Utilities
 Pacific Gas & Electric Company
 Panhandle Eastern Pipeline Company (IL)
 Panhandle Eastern Pipeline Company (IN)
 Panhandle Eastern Pipeline Company (KY)
 Panhandle Eastern Pipeline Company (KS)
 Panhandle Eastern Pipeline Company (LA)
 Panhandle Eastern Pipeline Company (MI)
 Panhandle Eastern Pipeline Company (MO)
 Panhandle Eastern Pipeline Company (OK)
 Panhandle Eastern Pipeline Company (TN)
 Pennsylvania Gas & Water Company
 Peoples Gas, Light and Coke Company
 Peoples Gas System
 Peoples Natural Gas Company
 Peoples Natural Gas Division of Northern Natural Gas Company (CO)
 Peoples Natural Gas Division of Northern Natural Gas Company (IA)
 Peoples Natural Gas Division of Northern Natural Gas Company (KS)
 Peoples Natural Gas Division of Northern Natural Gas Company (MI)
 Peoples Natural Gas Division of Northern Natural Gas Company (MN)
 Peoples Natural Gas Division of Northern Natural Gas Company (MO)
 Peoples Natural Gas Division of Northern Natural Gas Company (NE)
 Peoples Natural Gas Division of Northern Natural Gas Company (ND)
 Peoples Natural Gas Division of Northern Natural Gas Company (SD)
 Peoples Natural Gas Division of Northern Natural Gas Company (TX)
 Peoples Natural Gas Division of Northern Natural Gas Company (WY)
 Penn Fuel Gas, Inc.
 Piedmont Natural Gas Company (NC)
 Piedmont Natural Gas Company (SC)
 Pioneer Natural Gas Company
 Providence Gas Company
 Public Service Company of Colorado
 Public Service Company, Inc. of North Carolina
 Public Service Electric and Gas Company
 Rochester Gas & Electric Corporation
 San Diego Gas & Electric Company
 South Carolina Electric & Gas Company
 South Jersey Gas Company
 Southeastern Michigan Gas Company
 Southern California Gas Company
 Southern Connecticut Gas Company
 Southern Indiana Gas & Electric Company
 Southern Union Gas Company (AZ)
 Southern Union Gas Company (OK)
 Southern Union Gas Company (TX)
 Southern Gas Corporation (AZ)
 Southwest Gas Corporation (CA)
 Southwest Gas Corporation (NV)
 Terre Haute Gas Corporation
 T. W. Phillips Gas and Oil company
 UGI Corporation
 Union Gas System Inc. (KS)
 Union Gas System Inc. (OK)
 Union Light, Heat & Power Company (KY)
 Union Light, Heat & Power Company (OH)
 United Cities Gas Company (GA)
 United Cities Gas Company (IL)
 United Cities Gas Company (NC)
 United Cities Gas Company (SC)
 United Cities Gas Company (TN)
 Virginia Electric & Power Company
 Washington Gas Light Company (DC)
 Washington Gas Light Company (MD)
 Washington Gas Light Company (VA)
 Washington Natural Gas Company
 Washington Water Power Company (ID)
 Washington Water Power Company (WA)
 West Ohio Gas Company
 Western Kentucky Gas Company
 Wisconsin Fuel & Light Company
 Wisconsin Gas Company
 Wisconsin Natural Gas Company
 Wisconsin Power & Light Company
 Wisconsin Public Service Corporation (MI)
 Wisconsin Public Service Corporation (WI)
Publicly-Owned
 Citizens Gas & Coke Utility (IN)
 City of Richmond, Virginia, Department of Public Utilities (VA)
 City Public Service Board (San Antonio) (TX)
 Colorado Springs Department of Public Utilities (CO)
 Long Beach Gas Department (CA)
 Memphis Light, Gas & Water Division (TN)
 Metropolitan Utilities District of Omaha (NE)
 Philadelphia Gas Works (PA)
 Springfield City Utilities (MO)

Appendix B

State: Alabama
 Regulatory authority: Alabama Public Service Commission
 Gas Utilities—Investor-owned:

Alabama Gas Corporation
 Mobile Gas Service Corporation
Electric Utilities—Investor-owned:
 Alabama Power Company
 The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:
Electric Utilities—Publicly-owned:
 Decatur Electric Department
 Dothan Electric Department
 Florence Electricity Department
 Huntsville Utilities
 State: Alaska
 Regulatory authority: Alaska Public Utilities Commission
Gas Utilities—Investor-owned: Alaska Gas and Service Company
Electric Utilities—Rural Electric Cooperatives: Chugach Electric Association
 State: Arizona
 Regulatory authority: Arizona Corporation Commission
Gas Utilities—Investor-owned:
 Arizona Public Service Company
 Southern Union Gas Company
 Southwest Gas Corporation
Electric Utilities—Investor-owned:
 Arizona Public Service Company
 Citizens Utilities Company
 CP National Corporation
 Tucson Electric Power Corporation
 The following covered utility within the State of Arizona is not regulated by the Arizona Corporation Commission:
Electric Utilities—Publicly-owned: Salt River Project Agricultural Improvement and Power District
 State: Arkansas
 Regulatory authority: Arkansas Public Service Commission
Gas Utilities—Investor-Owned:
 Arkansas-Louisiana Gas Company
 Arkansas-Oklahoma Gas Corporation
 Arkansas Western Gas Company
Electric Utilities—Investor-Owned:
 Arkansas-Missouri Power Company
 Arkansas Power and Light Company
 Empire District Electric Company
 Oklahoma Gas and Electric Company
 Southwestern Electric Power Company
 Rural Electric Cooperatives: *First Electric Cooperative Corporation
 State: California
 Regulatory Authority: California Public Utilities Commission
Gas Utilities—Investor-Owned:
 CP National Corporation
 Pacific Gas and Electric Company
 San Diego Gas and Electric Company
 Southern California Gas Company
 Southwest Gas Corporation
Electric Utilities—Investor-Owned:
 CP National Corporation
 Pacific Gas and Electric Company
 Pacific Power and Light Company
 San Diego Gas and Electric Company
 Sierra Pacific Power Company
 Southern California Edison Company
 The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:
Electric Utilities—Publicly-Owned:
 Anaheim Utilities Department
 Burbank Public Service Department
 Glendale Public Service Department
 Imperial Irrigation District

Los Angeles Department of Water and Power
 Modesto Irrigation District
 Palo Alto Electric Utility
 Pasadena Water and Power Department
 Riverside Public Utilities
 Sacramento Municipal Utility District
 Santa Clara Electric Department
 *Turlock Irrigation District
 Vernon Municipal Light Department
Gas Utilities—Publicly-Owned: Long Beach Gas Department
 State: Colorado
 Regulatory authority: Colorado Public Utilities Commission
Gas Utilities—Investor-Owned:
 Greeley Gas Company
 Iowa Electric Light and Power Company
 Kansas-Nebraska Natural Gas Company
 Peoples Natural Gas Division of Northern Natural Gas Company
 Public Service Company of Colorado
 Publicly-Owned: Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)
Electric Utilities—Investor-Owned:
 Central Telephone and Utilities Corporation
 Public Service Company of Colorado
 Publicly-Owned: Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)
 The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:
Gas Utilities—Publicly-Owned: Colorado Springs Department of Public Utilities (within city limits)
Electric Utilities—Publicly-Owned:
 Colorado Springs Department of Public Utilities (within city limits)
 State: Connecticut
 Regulatory authority: Connecticut Public Utilities Control Authority
Gas Utilities—Investor-Owned:
 Connecticut Light and Power Company
 Connecticut Natural Gas Corporation
 Southern Connecticut Gas Company
Electric Utilities—Investor-Owned:
 Connecticut Light and Power Company
 Hartford Electric Light Company
 United Illuminating Company
 State: Delaware
 Regulatory authority: Delaware Public Service Commission
Gas Utilities—Investor-Owned: Delmarva Power and Light Company
Electric Utilities—Investor-Owned:
 Delmarva Power and Light Company
 State: District of Columbia
 Regulatory authority: Public Service Commission of the District of Columbia
Gas Utilities—Investor-Owned:
 Washington Gas Light Company
Electric Utilities—Investor-Owned:
 Potomac Electric Power Company
 State: Florida
 Regulatory authority: Florida Public Service Commission
Gas Utilities—Investor-Owned:
 City Gas Company of Florida
 Florida Gas Company
 Peoples Gas System
Electric Utilities—Investor-Owned:
 Florida Power Corporation
 Florida Power and Light Company
 Gulf Power Company
 Tampa Electric Company

Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
 *Gainesville-Alachua County Regional Electric, Water and Sewer Utilities Board
 Jacksonville Electric Authority
 Lakeland Department of Electricity and Water
 Orlando Utilities Commission
 Tallahassee, City of
 Rural Electric Cooperatives: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
 *Clay Electric Cooperative
 *Lee County Electric Cooperative
 *Withlacoochee River Electric Cooperative
 State: Georgia
 Regulatory authority: Georgia Public Service Commission
Gas Utilities—Investor-Owned:
 Atlanta Gas Light Company
 Chattanooga Gas Company
 Gas Light Company of Columbus
 United Cities Gas Company
Electric Utilities—Investor-Owned:
 Georgia Power Company
 Savannah Electric and Power Company
 The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission:
Electric Utilities—Publicly-Owned:
 *Albany Water, Gas & Light Commission
 Rural Electric Cooperatives:
 *Flint Electrical Membership Corporation
 *Jackson Electric Membership Corporation
 North Georgia Electric Membership Corporation
 State: Hawaii
 Regulatory authority: Hawaii Public Utilities Commission
Gas Utilities—None
Electric Utilities—Investor-Owned:
 Citizens Utilities Company
 Hawaiian Electric Company, Inc.
 State: Idaho
 Regulatory authority: Idaho Public Utilities Commission
Gas Utilities—Investor-Owned:
 Intermountain Gas Company
 Washington Water Power Company
Electric Utilities—Investor-Owned:
 Citizens Utilities Company
 Idaho Power Company
 Pacific Power and Light Company
 Utah Power and Light Company
 Washington Water Power Company
 State: Illinois
 Regulatory authority: Illinois Commerce Commission
Gas Utilities—Investor-Owned:
 Central Illinois Light Company
 Central Illinois Public Service Company
 Illinois Power Company
 Interstate Power Company
 Iowa-Illinois Gas and Electric Company
 North Shore Gas Company
 Northern Illinois Gas Company
 Panhandle Eastern Pipeline Company
 Peoples Gas, Light and Coke Company
 United Cities Gas Company
Electric Utilities—Investor-Owned:
 Central Illinois Light Company
 Central Illinois Public Service Company
 Commonwealth Edison Company
 Illinois Power Company
 Interstate Power Company

Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities—Publicly-Owned:
Springfield Water, Light and Power
Department

State: Indiana
Regulatory authority: Indiana Public Service
Commission

Gas Utilities—Investor-owned:
Indiana Gas Company
Kokomo Gas and Fuel Company
Northern Indiana Public Service Company
Panhandle Eastern Pipeline Company
Southern Indiana Gas and Electric Company
Terra Haute Gas Corporation

Publicly-Owned: Citizens Gas and Coke
Utility

Electric Utilities—Investor-Owned:
Indiana and Michigan Electric Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
Public Service Company of Indiana
Southern Indiana Gas and Electric Company

Publicly-Owned: *Richmond Power and
Light

State: Iowa
Regulatory authority: Iowa Commerce
Commission

Gas Utilities—Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Minnesota Gas Company
North Central Public Service Company
Peoples Natural Gas Division of Northern
Natural Gas Company

Electric Utilities—Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Union Electric Company

Publicly-Owned: The Iowa Commerce
Commission has service and safety regulation
over the following utilities—

*Muscatine Power and Light
Omaha Public Power District

State: Kansas
Regulatory authority: Kansas State
Corporation Commission

Gas Utilities—Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Northern Natural Gas Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Division of Northern
Natural Gas Company
Union Gas System Inc.

Electric Utilities—Investor-Owned:
Central Telephone and Utilities Corporation
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Light Company

Southwestern Public Service Company

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities—Publicly-Owned: Kansas
City Board of Public Utilities

State: Kentucky
Regulatory Authority: Kentucky Energy
Regulatory Commission

Gas Utilities—Investor-Owned:
Columbia Gas of Kentucky, Inc.

Equitable Gas Company
Inland Gas Company
Louisville Gas and Electric Company
Panhandle Eastern Pipeline Company
Union, Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities—Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union, Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative
Corporation

State: Louisiana
Regulatory authority: Louisiana Public
Service Commission

Gas Utilities—Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.

Louisiana Gas Service Company
Panhandle Eastern Pipeline Company

Electric Utilities—Investor-Owned:
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company
(jurisdiction only outside of the Parish of
Orleans)

Southwestern Electric Power Company
The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Gas Utilities—Investor-Owned:
Gulf States Utilities Company

New Orleans Public Service, Inc.
Electric Utilities—Investor-Owned:
New Orleans Public Service, Inc.
Louisiana Power and Light Company (within
the Parish of Orleans)

Publicly-Owned: *Lafayette Utilities
System

Rural Electric Cooperatives: Southwest
Louisiana Electric Membership Corporation

State: Maine
Regulatory authority: Maine Public Utilities
Commission

Gas Utilities—None

Electric Utilities—Investor-Owned:
Bangor Hydro-Electric Company
Central Maine Power Company
Public Service Company of New Hampshire
State: Maryland

Regulatory authority: Maryland Public
Service Commission

Gas Utilities—Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Electric Utilities—Investor-Owned:
Baltimore Gas and Electric Company
Delmarva Power and Light Company of
Maryland

Potomac Edison Company
Potomac Electric Power Company

Rural Electric Cooperatives: Southern
Maryland Electric Cooperative, Inc.

State: Massachusetts
Regulatory authority: Massachusetts

Department of Public Utilities
Gas Utilities—Investor-Owned:

Bay State Gas Company
Boston Gas Company
Commonwealth Gas Company
Lowell Gas Company
New Bedford Gas and Edison Light Company

Electric Utilities—Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Eastern Edison Company
Massachusetts Electric Company
New Bedford Gas and Edison Light Company
Western Massachusetts Electric Company

State: Michigan
Regulatory authority: Michigan Public
Service Commission

Gas Utilities—Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Power Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Division of Northern
Natural Gas Company

Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities—Investor-Owned:
Consumers Power Company

Detroit Edison Company
Indiana and Michigan Electric Company

*Lake Superior District Power Company
*Michigan Power Company

*Upper Peninsula Power Company
Wisconsin Electric Power Company

Wisconsin Public Service Corporation
The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission:

Electric Utilities—Publicly-Owned:
Lansing Board of Water and Light

State: Minnesota
Regulatory authority: Minnesota Public
Service Commission

Gas Utilities—Investor-owned:

Greeley Gas Company
Inter City Gas Limited
Interstate Power Company

Iowa Electric Light and Power Company
Minnesota Gas Company

Montana-Dakota Utilities Company
North Central Public Service Company

Northern States Power Company
Peoples Natural Gas Division of Northern

Natural Gas Company
Electric Utilities—Investor-owned:

Interstate Power Company
Minnesota Power and Light Company

Northern States Power Company
Otter Tail Power Company

The following covered utility within the State of Minnesota is not regulated by the Minnesota Public Service Commission:

Electric Utilities—Rural Electric
Cooperatives: *Anoka Electric Cooperative

State: Mississippi
Regulatory authority: Mississippi Public
Service Commission

Gas Utilities—Investor-owned:
Entex, Incorporated

Mississippi Valley Gas Company
Electric Utilities—Investor-owned:

Mississippi Power and Light Company

Mississippi Power Company
 The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission:
Electric Utilities—Rural Electric Cooperatives:
 *4-County Electric Power Association
 *Singing River Electric Power Association
 *Southern Pine Electric Power Association
 State: Missouri
 Regulatory authority: Missouri Public Service Commission
Gas Utilities—Investor-Owned:
 Gas Service Company
 Laclede Gas Company Consolidated
 Missouri Public Service Company
 Panhandle Eastern Pipeline Company
 Peoples Natural Gas Division of Northern Natural Gas Company
Electric Utilities—Investor-Owned:
 Arkansas-Missouri Power Company
 Empire District Electric Company
 Kansas City Power and Light Company
 Missouri Edison Company
 Missouri Power and Light Company
 Missouri Public Service Company
 Missouri Utilities Company
 St. Joseph Light and Power Company
 Union Electric Company
 The following covered utilities within the State of Missouri are not regulated by the Missouri Public Service Commission:
Gas Utilities—Investor-Owned: Cities Service Gas Company
 Publicly-Owned: Springfield City Utilities
Electric Utilities—Publicly-Owned:
 * Independence Power and Light Department
 Springfield City Utilities
 State: Montana
 Regulatory authority: Montana Public Service Commission
Gas Utilities—Investor-Owned:
 Montana-Dakota Utilities Company
 Montana Power Company
Electric Utilities—Investor-Owned:
 Black Hills Power and Light Company
 Montana-Dakota Utilities Company
 Montana Power Company
 Pacific Power and Light Company
 Washington Water Power Company
 State: Nebraska
 Regulatory authority: Nebraska Public Service Commission
 The Commission does not regulate the rates and services of the gas and electric utilities of the State of Nebraska.
 The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission:
Electric Utilities: Publicly-Owned:
 Lincoln Electric System
 Nebraska Public Power District
 Omaha Public Power District
Gas Utilities—Investor-Owned:
 Gas Service Company
 Iowa Electric Light and Power Company
 Iowa Public Service Company
 Kansas-Nebraska Natural Gas Company
 Minnesota Gas Company
 Northern Natural Gas Company
 Northwestern Public Service Company
 Peoples Natural Gas Division of Northern Natural Gas Company
 Publicly-Owned: Metropolitan Utilities District of Omaha
 State: Nevada

Regulatory authority: Nevada Public Service Commission
Gas Utilities—Investor-Owned:
 CP National Corporation
 Southwest Gas Corporation
Electric Utilities—Investor-Owned:
 CP National Corporation
 Idaho Power Company
 Nevada Power Company
 Sierra Pacific Power Company
 State: New Hampshire
 Regulatory authority: New Hampshire Public Utilities Commission
Gas Utilities—None
Electric Utilities—Investor-Owned: Public Service Company of New Hampshire
 State: New Jersey
 Regulatory authority: New Jersey Department of Energy, Board of Public Utilities
Gas Utilities—Investor-Owned:
 Elizabethtown Gas Company
 New Jersey Natural Gas Company
 Public Service Electric and Gas Company
 South Jersey Gas Company
Electric Utilities—Investor-Owned:
 Atlantic City Electric Company
 Jersey Central Power and Light Company
 Public Service Electric and Gas Company
 Rockland Electric Company
 State: New Mexico
 Regulatory authority: New Mexico Public Service Company
Gas Utilities—Gas Company of New Mexico
Electric Utilities—Investor-Owned:
 Community Public Service Company
 El Paso Electric Company
 *New Mexico Electric Service Company
 Public Service Company of New Mexico
 Southwestern Public Service Company
 State: New York
 Regulatory authority: New York Public Service Commission
Gas Utilities—Investor-Owned:
 Brooklyn Union Gas Company
 Columbia Gas of New York, Inc.
 Consolidated Edison Company of New York, Inc.
 Long Island Lighting Company
 National Fuel Gas Distribution Corporation
 New York State Electric and Gas Corporation
 Niagara Mohawk Power Corporation
 Orange and Rockland Utilities
 Rochester Gas and Electric Corporation
Electric Utilities—Investor-Owned:
 Central Hudson Gas and Electric Corporation
 Consolidated Edison Company of New York
 Long Island Lighting Company
 New York State Electric and Gas Corporation
 Niagara Mohawk Power Corporation
 Orange and Rockland Utilities
 Rochester Gas and Electric Corporation
 The following covered utilities within the State of New York are not regulated by the New York Public Service Commission:
Electric Utilities—Publicly-Owned: *Power Authority of New York
 State: North Carolina
 Regulatory authority: North Carolina Utilities Commission
Gas Utilities—Investor-Owned:
 North Carolina Natural Gas Corporation
 Piedmont Natural Gas Company
 Public Service Company, Inc. of North Carolina

United Cities Gas Company
Electric Utilities—Investor-Owned:
 Carolina Power and Light Company
 Duke Power Company
 Virginia Electric and Power Company
 The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:
Electric Utilities—Publicly-Owned:
 Fayetteville Public Works Commission
 *Greenville Utilities Commission
 *Rocky Mount Public Utilities
 *Wilson Utilities Department
 State: North Dakota
 Regulatory authority: North Dakota Public Service Commission
Gas Utilities—Investor-Owned:
 Montana-Dakota Utilities Company
 Northern States Power Company
Electric Utilities—Investor-Owned:
 Montana-Dakota Utilities Company
 Northern States Power Company
 Otter Tail Power Company
 State: Ohio
 Regulatory authority: Ohio Public Utilities Commission
Gas Utilities—Investor-Owned:
 Cincinnati Gas and Electric Company
 Columbia Gas of Ohio, Inc.
 Dayton Power and Light Company
 East Ohio Gas Company
 National Gas and Oil Company
 West Ohio Gas Company
Electric Utilities—Investor-Owned:
 Cincinnati Gas and Electric Company
 Cleveland Electric Illuminating Company
 Columbus and Southern Ohio Electric Company
 Dayton Power and Light Company
 Monongahela Power Company
 Ohio Edison Company
 Ohio Power Company
 Toledo Edison Company
 The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:
Electric Utilities—Publicly-Owned:
 *Cleveland Division of Light and Power
 Rural Electric Cooperatives: *South Central Power Company
 State: Oklahoma
 Regulatory authority: Oklahoma Corporation Commission
Gas Utilities—Investor-Owned:
 Arkansas-Louisiana Gas Company
 Arkansas-Oklahoma Gas Corporation
 Gas Service Company
 Lone Star Gas Company
 Oklahoma Natural Gas Company
 Panhandle Eastern Pipeline Company
 Southern Union Gas Company
 Union Gas System Inc.
Electric Utilities—Investor-Owned:
 Empire District Electric Company
 Oklahoma Gas and Electric Company
 Public Service Company of Oklahoma
 Southwestern Public Service Company
 The following covered utility within the State of Oklahoma is not regulated by the Oklahoma Corporation Commission:
Gas Utilities—Investor-Owned: Cities Service Gas Company
 State: Oregon
 Regulatory authority: Published Utility Commissioner of Oregon
Gas Utilities—Investor-Owned:

CP National Corporation
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Electric Utilities—Investor-Owned:

CP National Corporation
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commissioner of Oregon:

Electric Utilities—Publicly-Owned:
Central Lincoln People's Utility District
*Clatskanie People's Utility District
Eugene Water and Electric Board.
*Springfield Utilities Board

Rural Electric Cooperative: *Umatilla
Electric Cooperative Association
State: Pennsylvania
Regulatory authority: Pennsylvania Public Utility Commission

Gas Utilities—Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Penn Fuel Gas, Inc.

Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T. W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities—Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
*UGI—Luzerne Electric Division
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities—Publicly-Owned:
Philadelphia Gas Works

State: Puerto Rico
Regulatory authority: Puerto Rico Public Service Commission

Gas Utilities—None.
Electric Utilities—None

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities—Publicly-Owned: Puerto Rico Water Resources Authority
State: Rhode Island
Regulatory authority: Rhode Island Public Utilities Commission

Gas Utilities—Investor-Owned: Providence Gas Company

Electric Utilities—Investor-Owned:
Blackstone Valley Electric Company
Narragansett Electric Company
State: South Carolina
Regulatory Authority: South Carolina Public Service Commission

Gas Utilities—Investor-Owned:
Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company
United Cities Gas Co.

Electric Utilities—Investor-Owned:
Carolina Power and Light Company
Duke Power Company

South Carolina Electric and Gas Company
The following covered utility within the State of South Carolina is not regulated by the South Carolina Public Service Commission:

Electric Utilities—Publicly-Owned: South Carolina Public Service Authority
State: South Dakota
Regulatory authority: South Dakota Public Utilities Commission

Gas Utilities—Investor-Owned:
Iowa Public Service Company
Minnesota Gas Company
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities—Investor-Owned:
Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
*Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities—Publicly-Owned:
Nebraska Public Power District
State: Tennessee

Regulatory authority: Tennessee Public Service Commission

Gas Utilities—Investor-Owned:
Alabama-Tennessee Natural Gas Company
Chattanooga Gas Company
East Tennessee Natural Gas Company
Nashville Gas Company
Panhandle Eastern Pipeline Company
United Cities Gas Company

Electric Utilities—Investor-Owned:
Arkansas Power and Light Company
Kentucky Utilities Company
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

Electric Utilities—Publicly-Owned:
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
*Greenville Light and Power System
*Jackson Utility Division—Electric Department

Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis Light, Gas and Water Division
Nashville Electric Service

Rural Electric Cooperatives:
Cumberland Electric Membership Corporation

*Duck River Electric Membership Corporation
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

Gas Utilities—Publicly-Owned: Memphis Light, Gas and Water Division

State: Tennessee
Regulatory authority: Tennessee Valley Authority

Gas Utilities—None
Electric Utilities—Publicly-Owned:

*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
Decatur Electric Department
Florence Electricity Department
*Greenville Light and Power System
Huntsville Utilities
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis, Light, Gas and Water Division
Nashville Electric Service

Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*4-County Electric Power Association
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
*Pennyrite Rural Electric Cooperative Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
*Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

State: Texas
Regulatory authority: Railroad Commission of Texas

Gas Utilities—Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Lone Star Gas Company
Peoples Natural Gas Division of Northern Natural Gas Company
Pioneer Natural Gas Company
Southern Union Gas Company
(The Railroad Commission of Texas has appellate jurisdiction only over the activities of the above companies within incorporated cities.)

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas:

Gas Utilities—Investor-Owned: Cities Service Gas Company
Publicly-Owned: City Public Service Board (San Antonio)
State: Texas
Regulatory authority: Texas Public Utility Commission

Gas Utilities—Investor-Owned: None
Electric Utilities—Investor-Owned:
Central Power and Light Company
Community Public Service Company
Dallas Power and Light Company

El Paso Electric Company
 Gulf States Utilities Company
 Houston Lighting and Power Company
 Northwestern Electric Power Company
 Northwestern Electric Service Company
 Southwestern Public Service Company
 Texas Electric Service Company
 Texas Power and Light Company
 West Texas Utilities Company
 Publicly-Owned: *Lower Colorado River Authority
 Rural Electric Cooperatives: *Pedernales Electric Cooperative
 The Texas Public Utility Commission has special appellate jurisdiction over ratemaking decisions of the governing body of any municipality which affect the rates of a municipally-owned electric utility as provided by State statute. The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over electric utility rates, operation, and services provided by an electric utility within its city or town limits.
 The following municipally-owned electric utilities are *not* under the Commission's original ratemaking jurisdiction. The Commission's jurisdiction over these utilities is limited to appeal de novo.
Electric Utilities—Publicly-Owned:
 Austin Electric Department
 Garland Electric Department
 *Lubbock Power and Light
 San Antonio Public Service Board
 State: Utah
 Regulatory authority: Utah Public Service Commission
Gas Utilities—Investor-Owned: Mountain Fuel Supply Company
Electric Utilities—Investor-Owned:
 CP National Corporation
 Utah Power and Light Company
 Rural Electric Cooperatives: *Moon Lake Electric Association
 State: Vermont
 Regulatory authority: Vermont Public Service Board
Gas Utilities—None
Electric Utilities—Investor-Owned:
 Central Vermont Public Service Corporation
 Citizens Utilities Company
 Green Mountain Power Corporation
 Public Service Company of New Hampshire
 State: Virginia
 Regulatory authority: Virginia State Corporation Commission
Gas Utilities—Investor-Owned:
 Columbia Gas of Virginia, Inc.
 Virginia Electric and Power Company
 Washington Gas Light Company
Electric Utilities—Investor-Owned:
 Appalachian Power Company
 Delmarva Power and Light Company of Virginia
 *Old Dominion Power Company
 Potomac Edison Company
 Potomac Electric Power Company
 Virginia Electric and Power Company
 Rural Electric Cooperatives: *Prince William Electric Cooperative
 The following covered utility within the State of Virginia is not regulated by the Virginia State Corporation Commission:
Electric Utilities—Publicly-Owned:
 Richmond Department of Public Utilities
 State: Washington

Regulatory authority: Washington Utilities and Transportation Corporation
Gas Utilities—Investor-Owned:
 Cascade Natural Gas Corporation
 Northwest Natural Gas Company
 Washington Natural Gas Company
 Washington Water Power Company
Electric Utilities—Investor-Owned:
 Pacific Power and Light Company
 Puget Sound Power and Light Company
 Washington Water Power Company
 The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Corporation:
Electric Utilities—Publicly-Owned:
 *Port Angeles Light and Water Department
 Public Utility District No. 1 of Benton County
 Public Utility District No. 1 of Chelan County
 Public Utility District No. 1 of Clark County
 Public Utility District No. 1 of Cowlitz County
 Public Utility District No. 1 of Franklin County
 Public Utility District No. 1 of Grant County
 Public Utility District No. 1 of Grays Harbor County
 *Public Utility District No. 1 of Lewis County
 Public Utility District No. 1 of Snohomish County
 *Richland Energy Services Department
 Seattle City Light Department
 Tacoma Public Utilities—Light Division
 State: West Virginia
 Regulatory authority: West Virginia Public Service Commission
Gas Utilities—Investor-Owned:
 Cabot Corporation Utility Division
 Columbia Gas of West Virginia, Inc.
 Consolidated Gas Supply Corporation
 Equitable Gas Company
Electric Utilities—Investor-Owned:
 Appalachian Power Company
 Monongahela Power Company
 Potomac Edison Company
 Virginia Electric and Power Company
 Wheeling Electric Company
 State: Wisconsin
 Regulatory authority: Wisconsin Public Service Commission
Gas Utilities—Investor-Owned:
 Madison Gas and Electric Company Northern States Power Company
 Wisconsin Fuel and Light Company
 Wisconsin Gas Company
 Wisconsin Natural Gas Company
 Wisconsin Power and Light Company
 Wisconsin Public Service Corporation
Electric Utilities—Investor-Owned:
 *Lake Superior District Power Company
 Madison Gas and Electric Company
 Northern States Power Company
 Wisconsin Electric Power Company
 Wisconsin Power and Light Company
 Wisconsin Public Service Corporation
 State: Wyoming
 Regulatory authority: Wyoming Public Service Commission
Gas Utilities—Investor-Owned:
 Cheyenne Light, Fuel and Power Company
 Kansas-Nebraska Natural Gas Company
 Montana-Dakota Utilities Company
 Mountain Fuel Supply Company
Electric Utilities—Investor-Owned:
 Black Hills Power and Light Company
 Montana-Dakota Utilities Company
 Pacific Power and Light Company

Utah Power and Light Company
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