

THE RATE CASE:
HOW UTILITY RATES
ARE SET

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By
The Michigan Public Service Commission

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THE RATE CASE

The rate case is a legal proceeding, conducted like a courtroom trial, where the two basic issues of utility pricing are decided; namely, (1) whether a utility company is to be allowed to change the price of its service, and (2) if a change is allowed, the amounts and which groups of its customers will be affected, e.g., residential commercial or industrial.

Michigan law requires that rate-regulated utilities (all gas, telephone and electric companies, except those operated by cities or those with rates set by local franchises, member-regulated cooperatives, and a few small water companies) must have approval from the Michigan Public Service Commission (MPSC), before they may pass business costs on to the consumer through increased rates.

The Michigan Public Service Commission is comprised of three Commissioners appointed by the Governor to set utility process and regulations. The prices set must be reasonable and in the public interest. They must allow the utility companies the opportunity to earn enough revenue to stay financially healthy and continue to provide service. Two of the three Commissioners must agree for a rate change to be approved.

Investor Owned Utilities (IOUs) are regulated utility companies which are privately owned. Expenditures made entirely from stockholder funds are not subject to MPSC regulation, although the Commission may decide which costs are to be paid with stockholder moneys and which from customer sales. Electric cooperatives are owned by their members. An electric cooperative has the option of choosing to have their rates regulated by the Commission or by their members.

The Administrative Law Judge (ALJ) is the lawyer who presides over the rate case in much the same way a judge presides over a courtroom trial. After receiving and evaluating the testimony and evidence, the ALJ writes a **Proposal for Decision (PFD)**, a document which sets forth his or her conclusions as to how the issues should be decided. The Commission may accept, reject or modify the PFD.

In certain circumstances, in order to speed the resolution of a case, the Commission will dispense with the PFD and read the record.

THE RATE CASE PARTICIPANTS

The following are the typical parties to a rate case:

The Michigan Public Service Commission Staff (Staff)

The MPSC Staff consists of the technical and the financial experts who assist the commission and the lawyers who represent it in rate cases. Staff reviews the evidence submitted by the other parties, compiles its own evidence, cross-examines other parties to the case and makes recommendations to the Commission as to how the case should be decided. As with all recommendations to the Commission, Staff recommendations may be accepted, rejected or modified.

The Intervenors

Intervenors are the individuals, business, organizations and government agencies who actively participate in rate cases. The Attorney General and the Association of Business Advocating Tariff Equity (ABATE) are frequent intervenors in Michigan rate case proceedings.

Parties potentially affected by the utilities' rate relief request may be granted permission to intervene after filing a **petition to intervene** with the MPSC at least five (5) days before the hearings are scheduled to begin. Intervenors that have the right to submit evidence, cross-examine witnesses and appeal the Commission's decision in court, are represented by their attorneys in rate proceedings.

Persons or groups who wish to participate in a rate case without being formal intervenors may do so by **applying** to the MPSC at least five (5) days before hearings begin. Such participation, which does not require the assistance of legal counsel, is, however, generally limited to making position statements on the issues. Although these participants' statements become part of the record that the Commission reviews in making its decision, they do not ordinarily have the right to submit evidence, cross-examine witnesses or appeal MPSC decisions in court.

The Utility Company

Utility companies are represented by their lawyers and financial and technical personnel during rate case proceedings. The company supports its request for a rate change by presenting its position and by questioning Staff and intervenors on their positions. If dissatisfied with a Commission decision, utility companies may appeal the decision in court.

THE RATE CASE PROCEEDINGS

I. The Preliminary Steps

- The rate case begins when the utility company submits its written **application** for a rate adjustment to the MPSC. The application is accompanied by documents supporting the request, including information on the company's current and projected expenses and other information the Commission requires to make a decision.. If the Commission does not notify the company within 30 days of the receipt of the application as to whether the application is complete, the **application is considered to be complete as of the date it was filed.**
- The Commission may, upon a showing of good cause, prevent the company from implementing their proposed self-implementation rates by issuing a Temporary Order within 180 days of the filing date of the utilities' completed application.
- The revenue generated by any self-implemented rates are subject to refund with interest, if the revenue was greater than what would have been provided by the final rate approved.
- In conformance with the Uniform Electronic Transactions Act (Public Act 305 of 2000) if all parties are in agreement, filings by the company, intervenors and staff are made via **electronic submission** in lieu of paper copies, and are available on the Commissions E-file website.
- There are **two types of hearings** in the rate case proceeding: the **pre-hearing, where preliminary matters are discussed such as the applications for intervention, citizen's comments and schedules** and the **evidentiary hearing, during which parties present evidence and testimony and file briefs (written statements of their positions on the issues).** The information gathered from these proceedings, including the citizen comments, form the record on **which the Commissioners will base their decision.**

- The Commission will schedule hearings in order to enable it to reach a final decision with respect the applications within a period of 12 months from the filing of the complete application.
- After the public hearings are scheduled, notice as to when and where the hearings will be held is published in newspapers and distributed to local governments in the utilities' service area. Notice of the time and place of hearings is also locally distributed and forwarded to the parties.
- The parties engage in discovery, a process during which each party may submit written questions about the case to the other parties and, likewise, provide written responses to questions from other parties. Discovery may continue throughout the case.

II. The Evidentiary Hearing

- The evidentiary hearing provides the Commission with the evidence and testimony it needs for an informed decision. The hearing begins with utility company lawyers questioning company witnesses about the company's request for a rate change. All witnesses, including intervenor and staff witnesses, are scheduled to answer questions on their filing during the same time period.. When this questioning is completed, the parties may offer **rebuttal evidence** which tends to disprove the evidence the other parties have already introduced.
- The company, staff and intervenors may **file testimony regarding the company's self-implementation proposal**. The schedule will also provide an opportunity to question the witnesses on their testimony. By law, absent an order from the Commission that either prevents or delays self implementation, the company may self-implement up to the full amount of its proposed rate increase.
- For good cause, the Commission may issue a temporary order preventing or delaying the utility from self-implementing its proposed rate or charges. The temporary order must be issued within 180 days of the date the completed application was received.

- Rebuttal concluded, the parties file briefs and the record (briefs, citizen comments, testimony and evidence) is closed. All the information needed for a decision has been acquired at this point. After reviewing the record, the ALJ writes the Proposal for Decision (PFD) stating his or her recommendations as to how the issues should be decided. Intervenors, Staff and the company may **except**, or differ, with the PFD by filing **exceptions**, written statements of their positions and why they differ from those expressed in the PFD. The parties are also allowed to file **replies to exceptions**, which provide a counter response to the exceptions.

III. The Decision

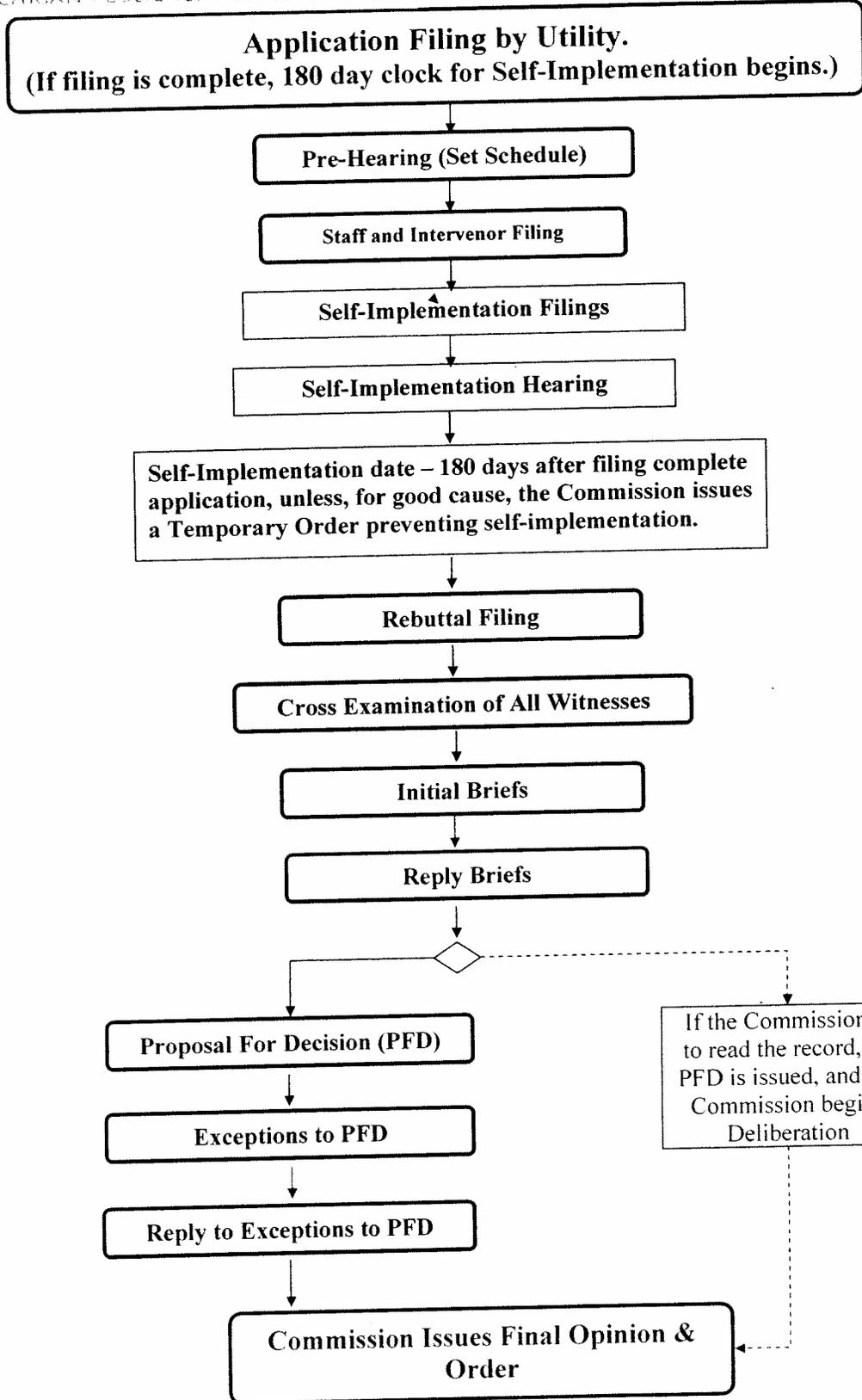
- After studying the record, the Commissioners decide whether to approve a rate change, the amount and which customer groups will be affected. The MPSC decision, issued in the form of an order, is binding on all parties unless overturned by a court of law or reversed by a later Commission decision. At this point, the rate case is complete.
- If a utility has self implemented a rate increase before the Commission issues its final order, **the utility is required to refund any over collection with interest.**
- At any time during the Rate Case process, the parties may agree to **settle** the case in which case the proceeding would stop. The Commission would issue a final order based upon the terms of the settlement agreement.

IV. Questions

- If you have questions about the rate case process, or want more information, contact the **Service Quality Division, Customer Support Section of the Michigan Public Service Division.** Your call or letter will then be directed to the appropriate division. You may contact the Customer Support Section at the address and phone numbers listed on the next page.



The Rate Case Step - by - Step



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*Provided so that the public may better
understand the complex processes by which
utility rates are set . . .*



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