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December 14, 2009

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case Nos. 09-786-EL-UNC

Dear Sir/Madam:

Please find enclosed an original and ten (10) copies of the JOINT COMMENTS OF THE OFFICE OF OHIO CONSUMERS' COUNSEL, THE OHIO MANUFACTURERS' ASSOCIATION, THE OHIO HOSPITAL ASSOCIATION AND THE OHIO ENERGY GROUP to be filed in the above-referenced matter.

Please place this document of file.

Respectfully yours,

Mike L. Kurtz

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BOEHM, KURTZ & LOWRY

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Cheryl Roberto
Greta See, Hearing Examiner
Steve Lesser, Esq.

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter Of The Investigation Into The Development Of The Significantly Excessive Earnings Test Pursuant To S.B. 221 For Electric Utilities	:	**Case No. 09-786-EL-UNC**

JOINT COMMENTS OF THE OFFICE OF OHIO CONSUMERS' COUNSEL, THE OHIO MANUFACTURERS' ASSOCIATION, THE OHIO HOSPITAL ASSOCIATION AND THE OHIO ENERGY GROUP

The OCC (representing Ohio's 4.5 million residential households), the OMA (representing over 1600 large and small industrial manufacturers), the OHA (representing 170 primary care facilities and 40 health systems across Ohio) and the OEG (representing 22 of Ohio's most energy-intensive industries) referred to herein as "Customer Parties" submit these Joint Comments to the November 18, 2009 Recommendations by the Staff of the Public Utilities Commission of Ohio ("PUCO" or "Commission"). The Staff's Recommendations relate to the provision in Senate Bill 221 for protecting customers against paying rates that would allow utilities to have significantly excessive earnings.

SUMMARY OF JOINT COMMENTS

A. Staff's new position is to determine the return on equity (ROE) threshold for the significantly excessive earnings test (SEET) through a statistical standard deviation method. Staff's new position is that the ROE threshold for SEET should be the <u>higher of</u>: 1) the mean (average) return of the comparable group plus 200 basis points; or 2) the mean (average) return of the comparable group plus the standard deviation times 1.28. When Staff's standard deviation method is applied to the comparable group proposed by AEP in its electric security plan (ESP) case, the ROE threshold is **55.5%.** This astonishingly high result demonstrates that Staff's new proposal is unreasonable. The original position taken by Staff in the ESP cases was much more balanced. Staff's original position was to specifically reject any statistical standard deviation method in favor of a straightforward 200-400 basis point premium above the mean return of the comparable group. We support a 200 basis point premium.

B. The basis for determining the comparable group is critical. Staff's new position is that this critical decision should be left to the utilities and should be decided on a case-by-case basis. This abdication of responsibility provides the utilities the discretion to design the comparison groups to result in the highest possible SEET threshold. This would lead to mini rate cases for each utility every year. Staff's original position was the opposite: *"The Staff feels strongly that ... a single methodology should be adopted across all EDUs for the selection of comparable companies in an annual earnings test."* Staff's strongly held original position was far more reasonable. The comparable group selection method of OCC witness Dr. Woolridge should be utilized. Dr. Woolridge's method results in a comparable group including electric utilities and thus ensures a stable ROE baseline.

C. Staff's interpretation of the statute regarding whether an ESP adjustment (rate increase) caused significantly excessive earnings seriously misconstrues the law. Under Staff's approach, if a utility whose earnings are already significantly excessive receives an ESP rate increase – thus resulting in even higher profits for the already over earning utility – no refund would be warranted because excess profits was a preexisting condition and was not caused by the ESP rate increase. We think this is a misguided reading of the statute. If a utility is already excessively profitable, then every dollar of an ESP rate increase should be refunded in order to avoid exacerbating the situation.

D. The Staff's recommendation was silent on the issue of deferrals. We believe that for SEET purposes the earnings for each of Ohio's electric utilities should be determined with the deferrals included. The deferral of expense will raise earnings and result in a higher ROE. The inclusion of deferrals in earnings for SEET purposes is consistent with how the per-book earnings of the utilities are reported to the SEC and FERC. If the Commission determines that the per-book ROE exceeds the SEET threshold, then any refund should first be used to pay off the deferral. In other words, excess utility profits should first be used to write down the amount of money the customers owe the utility.

These Joint Comments address the issues in Staff's recommendations in order of importance, not numerically.

JOINT COMMENTS

SEET Workshop Topic No. 5

What is the definition of "significantly in excess of the return on common equity"?

Staff Recommendation: The ROE threshold for SEET should be the greater of: 1) the mean return of the comparable group plus 200 basis points; or 2) the mean return of the comparable group plus the standard deviation of the comparable group multiplied by 1.28.

Earnings equal total revenue less total expense. By prohibiting Ohio's electric utilities from receiving ESP rate adjustments which result in earnings that are "*significantly excessive*" compared to comparable businesses, in S.B. 221 the Legislature imposed a new form of PUCO ratemaking jurisdiction over all generation, transmission and distribution revenues received by the utilities and all generation, transmission and distribution expenses incurred by them. This was a major departure from the full generation deregulation which existed previously.[1]

The protection against ESP rate adjustments that result in significantly excessive utility profits is a fundamental consumer protection and is an essential piece of the new law. This protection exists even if the rates charged to customers in the ESP are below market or otherwise deemed to be low compared to some other measure, such as comparison to a regional or national average. Through the SEET, the Legislature overwhelmingly determined that Ohio consumers cannot be made to fund significantly excessive utility profits even if the rates paid by them are alleged to be low by some other measure.

The method for implementing the SEET proposed by Staff on November 18, 2009 would severely undermine this important consumer protection. Staff's new position is also a dramatic departure from its original position set forth in the ESP cases just one year ago. Staff's new position on SEET would allow a utility complete discretion to propose the group of companies it believes are comparable to it. Then, Staff would allow the utility to earn a rate of return on equity which is the greater of: 1) the mean (average) return of its self-selected comparable group plus 200 basis points; or 2)

[1] The vote for S.B. 221 was 93-1 in the House and 32-0 in the Senate.

the mean (average) return of its self-selected comparable group plus the standard deviation of that group multiplied by 1.28. By adopting a statistical standard deviation approach and then allowing the utility to self-select its comparable group, Staff has put the fox in charge of the hen house.

The selection of the comparable group is critical for two reasons. First, it determines the mean (average) rate of return on equity. Obviously a group of high earning comparable companies results in a high mean (average) return so the utilities have every incentive to select a high-earning comparison group. Second, the comparable group also determines the variability of earnings from which the statistical standard deviation is derived. For example, if a group of 50 very stable companies has a mean return on equity of 12%, with the high return of 13% and the low of 11%, then the standard deviation among the group will be small. Compare that to a group of 50 widely fluctuating companies that also have a mean return of 12%, but with a low of negative 2% and a high of 26%. Here the standard deviation would be large resulting in a high SEET threshold under Staff's new statistically based method.

As presented by OCC witness Dr. Woolridge in his testimonies in the FirstEnergy and AEP electric security plans, the use of the statistical standard deviation approach requires an assumption that the ROEs for the comparable companies are normally distributed.[2] No witness in the ESP proceedings provided any evidence that the ROE range is normally distributed. Dr. Woolridge also warned, as validated in the following AEP example, that the standard deviation of the comparable company ROEs could be greatly inflated by outliers.[3]

A precursor to the unreasonable results that will occur by using a statistical standard deviation approach and then putting the utilities in charge of the comparable group is shown in the ESP testimony of AEP witness Dr. Makhija. In his final recommendation, Dr. Makhija selected a group of 25

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[2] Direct Testimonies of Dr. J. Randall Woolridge at 12, 13, Case No. 08-935-EL-SSO at 13, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

[3] *Id.*

comparable companies that had a 2007 mean return on common equity of 13.91%.[4] The low return of his group was negative 46.15% and the high return was 98.02%.[5] This was a spread of 14,417 basis points. This vast variability yielded a standard deviation in Dr. Makhija's group of comparable companies of 32.51%.[6] Here are the threshold returns on equity that would have to be exceeded to be considered significantly excessive using Dr. Makhija's comparable group and Staff's new methodology:

> The greater of: 1) 13.91% plus 200 basis points – which yields 15.91%; or 2) 13.91% plus (32.51% multiplied by 1.28) – which yields **55.5%.**

A SEET ROE threshold of 55.5% is unreasonable on its face for protecting customers from significantly excessive earnings. It is twice as high as even the most aggressive utility dared recommend in the ESP cases. A 55.5% ROE threshold demonstrates that Staff's new method is fundamentally unworkable and unrealistic. It should not be accepted.

Is there some hidden flaw in S.B. 221 which is responsible for making the significantly excessive earnings test a safe heaven for windfall utility profits rather than a consumer protection? No, absolutely not.

The significantly excessive earnings test is grounded in well-established U.S. Supreme Court constitutional law. The significantly excessive earnings standard is very similar to the "*comparable earnings*" standard which has guided public utility commissions across the U.S. for generations in setting reasonable returns for public utilities and protecting customers from excessive profits.

In *Bluefield Water Works v. West Virginia,* 262 U.S. 679, 692 (1923) the United States Supreme Court set out the *"comparable earnings"* standard as follows:

> *"A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and*

[4] Direct Testimony of Dr. Makhija at 70.
[5] Direct Testimony of J. Randall Woolridge at 18, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.
[6] Direct Testimony of Dr. Makhija at 70.

> *uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally."*

Building on *Bluefield*, the U.S. Supreme Court later confirmed the "*comparable earnings*" test as the proper Constitutional standard for setting utility rates: "*the return to the equity owner should be commensurate with the returns on investments in other enterprises having corresponding risks.*" *F.P.C. v. Hope Natural Gas*, 320 U.S. 591, 603 (1944).

The significantly excessive earnings test is more generous to Ohio's electric utilities than the U.S. Supreme Court "*comparable earnings*" standard because Ohio's electric utilities are allowed to be more profitable than comparable businesses in the private sector, just not "significantly" more profitable. But, under S.B. 221, there is a required annual earnings review and refund mechanism. That approach is different than under traditional ratemaking where earnings typically are only reviewed in a rate case and excess profits from a prior period are not refunded. Therefore, while S.B. 221 allows for greater utility profitability, there is an offsetting consumer protection of annual Commission oversight and refund protection.

The implementation of the comparable earnings approach by state commissions over the decades since *Hope* and *Bluefield* was discussed at length in the seminal work *"The Regulation of Public Utilities Theory and Practice,"* Charles F. Phillips, Jr., Public Utilities Reports, Inc. 1993 at pages 394-398 as follows:

> *"The most difficult problem in determining the overall cost of capital arises in estimating the cost of equity capital.*

* * *

There are several approaches for estimating the cost of equity capital, but two principal methods have evolved in recent years: the 'market-determined' standard and the 'comparable earnings' standard. [Footnote omitted]. *The former is a market-oriented approach that focuses on investor expectations in terms of a utility's earnings, dividends and market prices. The latter is an alternative investment approach that focuses on what capital can earn in various alternatives with comparable risk.*

* * *

The comparable earnings standard [footnote omitted] *recognizes a fundamental economic concept; namely, opportunity cost. This concept states that the cost of using any resource — land, labor and/or capital — for a specific purpose is the return that could have been earned in the next best alternative use.*

* * *

The comparable earnings approach is implemented by examining earnings on book common equity for enterprises that have comparable risks or by examining earnings on book common equity for enterprises that have different risks and then making an allowance for those risk differences. Earnings on book common equity are used since the resulting cost of common equity is to be applied to an original cost rate base (in most jurisdictions). The comparable earnings approach, further, requires that comparisons be made with both regulated and nonregulated alternatives ... .

* * *

The most difficult problem in applying the comparable earnings standard is the determination of relative risk.

* * *

Despite the difficulty of measuring relative risk, the comparable earnings standard is no harder to apply than is the market-determined standard."

Using the comparable earnings approach of Hope and Bluefield, as well other methods, state commissions have consistently authorized returns on equity which are one-fifth of the 55.5% resulting from the PUCO Staff's new method. As shown on Attachment A (Regulatory Research Associates, Regulatory Focus Major Rate Case Decisions, October 2, 2009), here are the average returns on equity authorized by state commissions across the U.S. to electric utilities since 1996.

Electric Utilities – Summary Table *

		ROE %	(# Cases)
1996		11.39	(22)
1997		11.40	(11)
1998		11.66	(10)
1999		10.77	(20)
2000		11.43	(12)
2001		11.09	(18)
2002		11.16	(22)
2003		10.97	(22)
2004		10.75	(19)
2005		10.54	(29)
2006		10.36	(26)
2007		10.36	(39)
2008		10.46	(37)
2009	**Year to Date**	**10.43**	**(22)**

* Number of observations in each period indicated in parentheses.

Attachment B is the Public Utilities Fortnightly 2009 ROE Survey. It confirms the most recent information provided by Regulatory Research Associates.

The astonishing 55.5% ROE threshold that results from Staff's standard deviation method applied to AEP's comparison group for 2007 represents a fundamental departure from the far more reasonable position advocated by Staff just one year ago in the ESP cases. Consider the contrast:

In their new position, Staff embraces the statistical standard deviation approach. Specifically, the mean return plus the standard deviation times 1.28. In its original position in the ESP cases, Staff specifically rejected the statistical standard deviation approach and repeatedly criticized it. In its original position, Staff ultimately concluded that the SEET centers around fairness and balancing the interests of consumers and the utility and that instead of a statistical test there should be a zone of reasonableness made up of a 200-400 basis point premium over the mean return:

> *"Third, I do not think that the statistical definition of 'significant' provides a useful or satisfactory interpretation of the legislative language."* (Cahaan testimony at 10, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO).

"I do not think that the concept of 'significant' as used in statistics is really useful or relevant to making decisions regarding the word 'significantly' in SB 221." (Id. at 18).

"The words 'significantly in excess of' and 'significantly excessive' can have a common meaning with other, non-statistical, definitions of the word 'significant', but not with the statistical definition. The use of a statistical definition as the criterion for applying the annual test causes the statute to have internal incoherencies." (Id. at 19).

"Q. If the statistical approach is not useful, then how do you view the 'significantly excessive earnings' issue?

A. I see this as a 'fairness' issue. It is a familiar issue that the Commission over all of its history, that of balancing the interests of the customers and the utility. The word 'excessive' is the key, and the word 'significant,' rather than having some esoteric statistical meaning, simply means 'large' or 'important.'" (Id. at 21).

"Q. How would you quantify the concept of 'significantly excessive' if it is a fairness issue rather than a statistical issue?

A. There is no way to objectively determine the meaning of 'significantly excessive,' but, as we have seen the statistical approach is not free from subjectivity, either. However, I could suggest certain considerations that might frame a zone of reasonableness ... I think that the 200 basis point adder represents a reasonable lower bound... I think 400 basis points is a reasonable upper bound." (Id at 21-23).

"To have a computer spit out the answer to the question of 'How much is too much?' may give an impression of objectivity, but beneath the analytical surface of spurious precision lies a large amount of subjectivity in the specification of the test, the level of proof demanded, and, indeed, the unstated and underlying theoretical basis behind the use of a statistical test in the first place. I suggest that looking at the risk premium on the negative side of the issue provides an intuitive sense of the issue in a way superior to one, two, or 1.28 standard deviations. For the purposes of determining 'significantly excessive returns on equity' in the annual earnings test, I recommend that the Commission consider an amount over the average of the comparable group of 200 to 400 basis points." (Id at 24).

While Staff's original approach of establishing the SEET threshold at 200-400 basis points above the mean return of the sample group is far superior to the "*greater of*" statistical approach under Staff's new thinking, the method proposed by OEG witness Mr. King should be adopted. Mr. King recommended that the SEET threshold be set at a simple 200 basis points above the mean return of the comparable group. A 200 basis point premium is equal to the ROE adder used by FERC to incentivize utilities to make especially risky transmission investments. 200 basis points provides the utilities with an ample ROE premium. Using 2008 year-end numbers (which reflect no ESP rate increases), we have quantified the revenue requirement effect of each 100 basis point (1%) ROE premium for each of the utilities subject to the SEET in the following Table.

Ohio Utility Companies
Revenue Requirement/Refund for Each 1% Change in Return on Common Equity
($000's)

Source: FERC Form 1 Pages 112, 114, 115, 117

		Toledo Edison Company	Ohio Edison Company	Cleveland Electric Illuminating Company	Columbus Southern Power Company	Ohio Power Company	Duke Energy/ CGE (2),(3)	Dayton Power and Light Company
Total Common Equity - December 31, 2007		485,191	1,576,175	1,489,835	1,166,677	2,291,017	2,410,549	1,369,361
Total Common Equity - December 31, 2008		480,050	1,294,054	1,603,882	1,249,440	2,421,945	2,546,888	1,453,526
Average Common Equity - 2008		482,621	1,435,114	1,546,859	1,208,059	2,356,481	2,478,718	1,411,444
Net Income - Total Company	(1)	*74,915*	*211,746*	*284,526*	*237,130*	*231,123*	*353,582*	*285,788*
% ROE		**15.52%**	**14.75%**	**18.39%**	**19.63%**	**9.81%**	**14.26%**	**20.25%**
Each 1% ROE		**4,826**	**14,351**	**15,469**	**12,081**	**23,565**	**24,787**	**14,114**
Gross-Up Factor	(4)	1.5385	1.5385	1.5385	1.5385	1.5385	1.5385	1.5385
Rev Req/Refund for Each 1% ROE		**7,425**	**22,079**	**23,798**	**18,586**	**36,254**	**38,134**	**21,715**

(1) Net Income does not reflect reduction for preferred dividends, (affects only Dayton P&L and Ohio Power and only by minimal amounts).

(2) The Duke Energy-Ohio Form 1 common equity was reduced to remove the acquisition premium from the paid in capital component in accordance with the settlement agreement in Case Nos. 08-920-EL-SSO, 08-921-EL-AAM, 08-922-EL-UNC and 08-923-EL-ATA. The paid in capital component of common equity was reduced from $5.570 billion to $1.447 billion to remove this acquisition premium. The amount of the acquisition premium adjustment is noted on page 263 in the 2006 Form 1 for FERC account 211 which reads "Purchase Accounting Valuations due to Merger w/Duke Energy." The same amount was removed from 2007 and 2008 common equity.

(3) Duke Energy-Ohio common equity was not adjusted to remove net income effects of merger with Cinergy, mark to market accounting or nonrecurring gains/losses. Although these amounts are required to be removed from Duke Energy-Ohio's net income for the SEET test pursuant to the settlement in Case Nos. 08-920-EL-SSO, 08-921-EL-AAM, 08-922-EL-UNC and 08-923-EL-ATA, the information is not publicly available to quantiy these adjustments.

(4) Federal income tax rate of 35% used in gross-up factor. The income based franchise tax will be completely phased out by 2010 due to effects of Ohio House Bill 66.

As long as the Commission retains ultimate authority regarding the ROE premium that should be added to the comparable group ROE, then a reasonable balancing of customer and shareholder interests can be maintained. This is true no matter what future economic conditions may exist. But a rigid statistical standard deviation approach applied to a utility-conceived comparison group will allow the utilities to dictate the outcome of SEET proceedings and a reasonable customer-shareholder balance is much less likely.

SEET Workshop Topic No. 6

> **How should companies "that face comparable business and financial risk" be determined? and 9. How should the earnings of a comparable company be adjusted to compensate for the financial risk difference associated with the difference in capital structures?**
>
> Staff Recommendation: There should not be a standardized method of determining the comparable group. The comparable group will be proposed by each utility every year and determined by the Commission on a case-by-case basis. Staff also recommends that the leverage (i.e., ratio of common equity) consideration should be of secondary significance (in comparison to the consideration of selecting a larger sample of comparable companies) in the group selection process.

In its new position, "*Staff believes it is appropriate that a comparable group be determined and utilized on a case-by-case basis... The method for comparable group sample selection should vary case to case, as different companies are structured differently and economic conditions will vary over time.*" (November 18, 2009 Recommendation at 4-5). We have earlier characterized this as putting the fox in charge of the hen house. Leaving this critical decision to the utilities can lead to unreasonable results, such as a 55.5% ROE threshold. In contrast, in its original position Staff wisely understood the consequences of this abdication of responsibility. "*The Staff feels strongly that, excepting for cases in which the issue can be resolved by stipulation, a single methodology should be adopted across all EDUs for the selection of comparable companies in an annual earnings test.*"[7] Staff's original position should be adopted.

The Customer Parties believe this issue is a key element in the calculation of SEET. A clearly defined and transparent methodology in selecting a comparable group of companies and adjusting risk associated with capital structure should be used by all EDUs subject to the SEET. The business and financial risks of the Ohio EDUs may be different but a common methodology should be used. If this issue is to be decided on a case-by-case basis, then each SEET calculation will become essentially a mini-rate-case, which is exactly the situation the Staff intends to avoid.

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[7] Cahaan testimony at 8, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

There are two aspects to this question. First, how should the companies that face comparable business and financial risk be determined? And second, how should the earnings of comparable companies be adjusted for the financial risk difference associated with the difference in capital structure?

On the important issue of comparable group selection we recommend that the method proposed by OCC witness Dr. Woolridge be adopted. Dr. Woolridge's methodology results in comparison groups that are dominated by electric utilities, thus establishing a stable ROE baseline. This helps ensure that the SEET will result in stable and predictable earnings limits for Ohio electric utilities and the protection for customers that is intended in Senate Bill 221. It will also help avoid mini rate cases each year for every utility. Here is how Dr. Wooldridge's comparable group selection methodology works:

1) Identify a proxy group of electric utilities. The proxy group must have: a) an investment grade bond rating; b) total revenue less than $10 billion; c) percent of regulated electric revenue of at least 75%; and d) a three-year history of paying cash dividends.

2) Identify a list of business and financial risk measures to insure that the comparable private sector companies are similar to the proxy group of electric utilities. These business and financial risk measures are: a) stock price beta (a measure of stock price volatility); b) asset turnover ratio (measures capital intensity); c) common equity ratio (shareholder equity as percent of total capitalization); and d) no foreign companies.

3) Determine the business and financial risk measures identified above (beta, asset turnover ratio, and common equity ratio) for the proxy group of electric utilities.

4) Use the beta, asset turnover ratio, and common equity ratios for the proxy group of electric utilities to screen the thousands of companies in the Value Line database. The result was 64 comparable companies, 44 of which were electric utilities.

5) Calculate the mean (average) ROE for the 64 company comparable group.

6) Finally, adjust the mean (average) ROE for the 64 company comparable group for the actual capital structure of the Ohio electric utility being examined.

There is a consensus among the experts as to how the earnings of comparable companies should be adjusted for the financial risk difference associated with the difference in capital structure. Dr. Woolridge, Dr. Vilbert and Mr. King all provided much the same methodology for making this adjustment. The process involves computing the pre-tax return on capital for the comparable companies, and then making adjustments to reflect the difference in the benchmark ROE based on the capital structure of the Ohio electric utility relative to the average of the comparable public companies. Dr. Woolridge's three-step process to make this adjustment includes:

1. Compute the average pre-tax return on total capital for the comparable group of public companies, using the average ROE, debt/equity percentages, income tax rates, and long-term debt cost rates;
2. Compute the pre-tax ROEs for the Ohio electric utility using (a) the average pre-tax return on total capital for the comparable companies; and (b) the individual debt/equity percentages, income tax rates, and long-term debt cost rates of the Ohio electric utility; and
3. Compute the after-tax benchmark ROEs for the Ohio electric utility using its income tax rates.

Using 2007 data, Dr. Woolridge's methodology resulted in a comparable group with a mean ROE of 11.37% and a relatively stable standard deviation of 4.52. By contrast, Dr. Makhija's 2007 comparable group had a mean ROE of 13.91% and a standard deviation of 32.51. The OCC and AEP witnesses both determined a similar mean ROE (11.37% versus 13.91%). But the standard deviation of the OCC's and AEP's comparable group was wildly different, 4.52 versus 32.51. This again shows why a statistical standard deviation approach to SEET cannot be relied on for protecting customers under the statutory standard.

The selection of the comparable group is too important to leave to the discretion of the utilities. Dr. Woolridge's method should be utilized, at least for the annual SEET reviews during the current ESPs, subject to review in future ESPs/MROs.

SEET Workshop Topic Nos. 3 and 11

What adjustments should be included in the SEET calculation, and how should write-offs and deferrals be reflected in the return on equity calculation for SEET?

Staff Recommendation: 1) In general, stated financial results without adjustment should be used for calculation of the SEET; 2) If a utility has significantly excessive earnings before considering the additional revenue from ESP adjustments, then the ESP adjustments did not cause the excessive earnings and no refund is appropriate.

1. **We agree that the stated financial results including any deferrals should generally be used for SEET purposes.**

The Customer Parties concur with the Staff's position that the stated financial results for the utility, without adjustment, should generally be used for calculation of the SEET. We concur with Staff that proven extraordinary items that were not created as an adjustment in the ESP or MRO, be they gains or losses, should not be included in the SEET. This will result in an objective threshold return on equity for the SEET. We concur with Staff that where applicable, adjustments should be made to remove items associated with non-Ohio service areas. In addition, we agree with the Staff that extraordinary items that are created as an adjustment in the ESP or MRO should be included for purposes of the SEET.

We do need to make an additional observation. Any SEET refund should be excluded from the SEET calculations in the year the refunds are reported in the income statement. Otherwise the process would be self-defeating. For example, if it is determined that a utility earned significantly excessive profits in 2009 the refund would be made in 2010. The refund would reduce the 2010 reported earnings. But since the refund is to compensate for 2009 overcharges the refund should be excluded from the 2010 financial results.

In the Staff Recommendations, there is no direct reference to write-offs and deferrals to be reflected in the return on equity calculation for SEET. The Customer Parties believe that any deferral of fuel costs or other items should be reflected in the return on equity calculation for SEET in the year when the retail sales occur, not in later years when the deferred revenues are received. This is consistent with the Staff position that, in general, stated financial results (which include the deferred items) should be used for calculation of the SEET.

Some of the utilities have argued that deferrals (which increase earnings in the stated financial results) should not be recognized in the SEET process because it could result in an anomaly: a finding of excessive profits and a customer refund at the same time that the utility was deferring recovery of certain of its costs. There is a simple way to address this concern. In any year where there is a deferral and a SEET finding of excess profits, the excess profits should first be used to pay down the deferrals already ordered by the Commission to be collected from customers before any cash refund is awarded.

For point of reference, according to AEP's September 2009 SEC Form 10q, the *"FAC deferrals at September 30, 2009 were $36 million and $238 million for CSPCo and OPCo, respectively, inclusive of carrying charges at the weighted average cost of capital"*.

2. We strongly disagree that a utility which has excess profits before considering the additional revenue from ESP adjustments should be exempt from refund exposure because this will result in the utility becoming even more excessively profitable.

There is one very important aspect of Staff's Recommendation with which we strongly disagree. At page 3 Staff states:

> *"If these adjustments, in total, are excluded from the earned return deemed to be excessive and, consequently, reduce that return to a level no longer deemed excessive, then it would be requisite to return the amount of the excess to consumers. If the return with the adjustments excluded is still excessive, then the adjustments cannot be at fault for excessive earnings, and no amount need be returned to the consumers."*

The Staff has created a two-pronged test in the event earnings are deemed to be excessive. The first prong is reasonable. The second prong reflects a fundamental misinterpretation of the law.

Under the first prong of the test, if the ESP rate increases are removed from earnings and the ROE drops below the SEET threshold, then the "*excess*" should be returned to consumers. Although Staff does not define "*excess*," we can reasonably assume that the "*excess*" is the amount necessary to bring the return down to the SEET threshold. For example, if the SEET ROE threshold is 15%, the utility's actual ROE is 19%, and elimination of all ESP rate adjustments would lower the ROE to 14.9%, then all of the ESP rate increases (except 0.1%) would be refunded. This would bring the utility's ROE down to 15%, but not below. We agree with this process.

However, under the second prong test, if the ESP rate increases are removed from the earnings and the ROE still is above the SEET threshold, then the Staff claims that no amount should be returned to consumers. Under Staff's approach, if a utility whose earnings are already significantly excessive receives an ESP rate increase – thus resulting in even higher profits for the already over-earning utility – no refund would be warranted because excess profits was a preexisting condition and was not caused by the ESP rate increase. For example, if the SEET ROE threshold is 15%, the utility's actual ROE is 19% and the elimination of all ESP rate adjustments would lower the ROE to 15.1%, then Staff would refund nothing. This conclusion is unexplained and clearly wrong. The correct conclusion would be that all of the adjustments contributed to the excessive earnings and the entirety of the adjustments should be returned to customers. One more example just to be clear. Under the second prong of Staff's test, if a utility with $110 million of significantly excessive profits received an ESP rate increase of $40 million, Staff would refund nothing and would allow the excess profits to grow to $150 million. We think this is a fundamental misreading of the statute. If a utility is already excessively profitable, then every dollar of an ESP rate increase should be refunded in order to avoid exacerbating the situation. To interpret the statute as the Staff has, would be to nullify the very reason for the statute.

SEET Workshop Topic No. 8

> **What does "in the aggregate" mean in relation to the adjustments resulting in significantly excess earnings?**
>
> Staff Recommendation: All the adjustments created by the implementation of an ESP are to be assessed for their impact in determining whether the company achieved a return on common equity significantly in excess of the benchmark ROE.

The full statutory provision to which Staff refers reads: "*If the Commission finds that such adjustments, in the aggregate, did result in significantly excessive earnings, it shall require the electric distribution utility to return to consumers the amount of the excess by prospective adjustments ...*" O.R.C. §4928.143(F).

This provision means that a utility's SEET refund exposure is limited to the aggregate amount of ESP rate adjustments it has received. For example, if a utility experienced significantly excessive earnings of $60 million in 2009, but its ESP rate increase in 2009 was only $40 million, then the refund to consumers would be limited to $40 million. The SEET process cannot "*claw back*" the additional $20 million of excess profits as this amount resulted from something other than ESP adjustments.

"*In the aggregate*" also means cumulative. Over time, the cumulative level of ESP rate adjustments (rate increases) are subject to refund. To continue with the prior example, assume the utility that was awarded $40 million in 2009 received another $40 million ESP rate increase in 2010, for an aggregate ESP rate increase recovered during 2010 of $80 million. If the utility experienced significantly excessive earnings in 2010 of $50 million, then the full $50 million would be refunded. This would be the case because the aggregate ESP adjustments recovered during 2010 were $80 million, which exceeded the excess profit level in 2010 of $50 million.

SEET Workshop Topic No. 1

> **Should off-system sales (OSS) be included in the significantly excessive earnings test (SEET) calculation?**
>
> Staff Recommendation: Off-system sales (OSS) should be included in the net earnings used to calculate return on equity for the SEET.

The Customer Parties concur with the Staff's Position that profits from off-system sales ("OSS") should be included in the net earnings used to calculate return on equity for the SEET. There is no basis for eliminating revenues that are normally recurring.

The SEET compares the *"earned return on common equity of the electric distribution utility"* with the *"return on common equity that was earned during the same period by* [comparable] *publicly traded companies, including utilities ...."* R.C. 4928.143(F). The *"return on common equity that was earned*" by each of the electric distribution utilities that own generation could include profits from off-system sales. Therefore, if profits from off-system sales were ignored, the Commission would be comparing only part of the electric distribution utility's earnings with 100% of the earnings of the comparable group. This would result in a distorted comparison and Staff correctly avoided this asymmetry. Additionally, because the cost of the power plants used to make off-system sales are included in the utility's capitalization, all revenue produced by these customer-funded assets are properly included in the SEET.

The Customer Parties support offsetting the electric utility's ESP costs by profits from off-system sales. Sharing of the off-system sales profits between customers and utilities recognizes that if plant has been constructed for the benefit of jurisdictional customers and was ultimately paid for by those customers, in fairness there should be some sharing of the revenues realized by the utility utilizing that plant when it makes non-jurisdictional sales. This issue is one of the issues being appealed to the Ohio Supreme Court. If the Court reverses the Commission and orders a sharing of the profits from off-system sales, there may be a need to consider adjusting how off-system sales are treated in the SEET.

SEET Workshop Topic No. 2

Should the Commission determine SEET on a single-entity basis or company-wide basis?

Staff Recommendation: The SEET should be calculated for the single entity, being the Applicant.

The Customer Parties agree with the Staff's position that the SEET should be calculated for the single entity. The single entity should be the underlying utility company. For example, in the AEP Ohio ESP proceedings, each utility, Columbus Southern Power and Ohio Power, should be considered an Applicant on a stand-alone basis. Similarly, in the case of FirstEnergy, the Applicants to be considered for the SEET should be FirstEnergy's EDUs in Ohio, namely Cleveland Electric Illuminating Company, Ohio Edison and Toledo Edison. Staff properly quoted from the provisions of S.B. 221 which mandate this result.

SEET Workshop Topic No. 4

What is the precise accounting definition of "earned return on common equity" that should be used?

Staff Recommendation: Earned return should be the net income for the year divided by the average common equity over all months of the year

The Customer Parties concur with the Staff's position that the earned return should be the net income for the year divided by the average common equity over all months of the year.

SEET Workshop Topic No. 7

> **How are "significantly excessive earnings" to be determined? (Located in the third sentence of Section 4928.143(F), Revised Code.)**
>
> Staff Recommendation: Staff endorses the concept that a return on common equity in excess of 1.28 times the standards deviation above the mean of a comparable group of companies should be defined as earnings significantly in excess, except in a low earning environment when 200 basis points should be substituted.

We do not concur with the Staff with respect to threshold ROE that constitutes SEET. The Staff's recommendation is a threshold ROE computed as the higher of: (1) 200 basis points above the mean of the comparable group; or (2) the mean return of the comparable group plus the standard deviation of the comparable group multiplied by 1.28. The reasons for our significant disagreement have already been stated. We believe a 200 basis point premium above the mean return of the comparable group is appropriate.

SEET Workshop Topic No. 10

What mechanism should be employed to return to customers the amount of excess earnings?

Staff Recommendation: The return mechanism should be decided on a case-by-case basis in each company's annual SEET proceeding. The Commission would also have the latitude to return the money in varying time periods and/or as reduction to other EDU imposed charges as it deems appropriate.

We generally concur with Staff but only if the "other EDU imposed charges" are charges affecting customer rates, and thus, a reduction of such charges results in a reduction in customers' rates. However, we believe that after a Commission finding of significantly excessive earnings, the parties should endeavor to stipulate the mechanism the Commission should employ to return the amount of the excess to consumers. In the absence of such stipulation, then the Commission should determine the mechanism to be utilized after parties are provided a fair opportunity to present their positions to the Commission. SEET refunds raise many questions that are generally better left to the particular circumstances of any given case. For example:

1). Should a SEET refund be a bypassable or non-bypassable credit?
2) Over what period of time should the refund be made?
3) Should there be interest on the unamortized SEET refund balance and if so, at what level?
4) Should a customer on discounted economic development contract (reasonable arrangement or unique arrangement) receive an additional discount through a SEET refund? and
5) Should any SEET refund first be used to pay off monies owed by customers to the utility in the form of deferrals?

The recommendation that the Commission have the latitude to return the money in varying time periods does raise some concerns in that the Consumer Parties believe that consumers should get the full refund to which they are entitled as promptly as possible and without delay.

CONCLUSION

WHEREFORE, on behalf of the residential and business customers of this state, we urge the Commission to improve the SEET review process as set forth herein to afford Ohio customers the protection intended in Senate Bill 221 against paying significantly excessive profits to electric utilities.

Respectfully submitted,

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December 14, 2009

COUNSEL FOR THE OHIO ENERGY GROUP

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by ordinary mail, unless otherwise noted, this 14th day of December, 2009 to the individual listed on the Certificate of Service.

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ATTACHMENT A

(The report includes proprietary information. Please do not use this report, or information contained herein, outside the context of this proceeding.)

Regulatory Research Associates

REGULATORY FOCUS

Special Study

October 2, 2009

MAJOR RATE CASE DECISIONS--JANUARY-SEPTEMBER 2009

For the first nine months of 2009, the average of electric equity return authorizations by state commissions was 10.43% (22 determinations) almost identical to the 10.46% average for calendar-2008. The average gas equity return authorization for the first three quarters of 2009 was 10.11% (14 determinations), slightly below the 10.37% average for calendar-2008.

After reaching a low in the early-2000's, the number of rate case decisions for energy companies has generally increased over the last several years. There were 83 electric and gas rate decisions in 2008 versus only 32 in 2001. Increased costs, including environmental compliance expenditures, the need for generation and delivery infrastructure upgrades and expansion, and renewable generation requirements argue for a continuation of the increased level of rate case activity over the next several years. However, cost efficiencies from technological improvements, the use of multi-year settlements, and a reduced number of companies due to mergers may prevent the number of rate cases from increasing significantly further.

We note that electric industry restructuring in certain states has led to the unbundling of rates and retail competition for generation. The state commissions in those states are now authorizing revenue requirement and return parameters for delivery operations only (which we footnote in our chronology), thus complicating historical data comparability. We also note that the current financial uncertainty and resulting increase in corporate debt yields may indicate that utility equity costs have also increased and lead to higher authorized ROEs by commissions. However, increased authorized equity returns have not materialized thus far in 2009.

The table on page 2 shows the annual average equity returns authorized since 1990, and by quarter since 2003, in major electric and gas rate decisions, followed by the number of determinations during each period. The tables on page 3 present the composite industry data for items in the chronology of this and earlier reports, summarized annually since 1996, and quarterly for the most recent seven quarters. The individual electric and gas cases decided in the first nine months of 2009 are listed on pages 4-7, with the decision date (generally the date on which the final order was issued) shown first, followed by the company name, the abbreviation for the state issuing the decision, the authorized rate of return (ROR), return on equity (ROE), and percentage of common equity in the adopted capital structure. Next we show the month and year in which the adopted test year ended, whether the commission utilized an average or a year-end rate base, and the amount of the permanent rate change authorized. The dollar amounts represent the permanent rate change ordered at the time decisions were rendered. Fuel adjustment clause rate changes are not reflected in this study. We note that the cases and averages included in this study may be slightly different from those in our online rate case history database. Any differences are likely the result of this study's inclusion of ROE determinations that are rendered in cost of capital only proceedings in California or that apply only to specific generation plants. Both of these types of determinations are not included in the database, which encompasses major base rate cases only.

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Average Equity Returns Authorized January 1990 - September 2009

Year	Period	Electric Utilities ROE %	(# Cases)	Gas Utilities ROE %	(# Cases)
1990	Full Year	12.70	(44)	12.67	(31)
1991	Full Year	12.55	(45)	12.46	(35)
1992	Full Year	12.09	(48)	12.01	(29)
1993	Full Year	11.41	(32)	11.35	(45)
1994	Full Year	11.34	(31)	11.35	(28)
1995	Full Year	11.55	(33)	11.43	(16)
1996	Full Year	11.39	(22)	11.19	(20)
1997	Full Year	11.40	(11)	11.29	(13)
1998	Full Year	11.66	(10)	11.51	(10)
1999	Full Year	10.77	(20)	10.66	(9)
2000	Full Year	11.43	(12)	11.39	(12)
2001	Full Year	11.09	(18)	10.95	(7)
2002	Full Year	11.16	(22)	11.03	(21)
	1st Quarter	11.47	(7)	11.38	(5)
	2nd Quarter	11.16	(4)	11.36	(4)
	3rd Quarter	9.95	(5)	10.61	(5)
	4th Quarter	11.09	(6)	10.84	(11)
2003	**Full Year**	**10.97**	(22)	**10.99**	(25)
	1st Quarter	11.00	(3)	11.10	(4)
	2nd Quarter	10.54	(6)	10.25	(2)
	3rd Quarter	10.33	(2)	10.37	(8)
	4th Quarter	10.91	(8)	10.66	(6)
2004	**Full Year**	**10.75**	(19)	**10.59**	(20)
	1st Quarter	10.51	(7)	10.65	(2)
	2nd Quarter	10.05	(7)	10.54	(5)
	3rd Quarter	10.84	(4)	10.47	(5)
	4th Quarter	10.75	(11)	10.40	(14)
2005	**Full Year**	**10.54**	(29)	**10.46**	(26)
	1st Quarter	10.38	(3)	10.63	(6)
	2nd Quarter	10.68	(6)	10.50	(2)
	3rd Quarter	10.06	(7)	10.45	(3)
	4th Quarter	10.39	(10)	10.14	(5)
2006	**Full Year**	**10.36**	(26)	**10.43**	(16)
	1st Quarter	10.27	(8)	10.44	(10)
	2nd Quarter	10.27	(11)	10.12	(4)
	3rd Quarter	10.02	(4)	10.03	(8)
	4th Quarter	10.56	(16)	10.27	(15)
2007	**Full Year**	**10.36**	(39)	**10.24**	(37)
	1st Quarter	10.45	(10)	10.38	(7)
	2nd Quarter	10.57	(8)	10.17	(3)
	3rd Quarter	10.47	(11)	10.49	(7)
	4th Quarter	10.33	(8)	10.34	(13)
2008	**Full Year**	**10.46**	(37)	**10.37**	(30)
	1st Quarter	10.29	(9)	10.24	(4)
	2nd Quarter	10.55	(10)	10.11	(8)
	3rd Quarter	10.46	(3)	9.88	(2)
2009	**Year-To-Date**	**10.43**	**(22)**	**10.11**	(14)

Electric Utilities--Summary Table*

	Period	ROR %	(# Cases)	ROE %	(# Cases)	Eq. as % Cap. Struc.	(# Cases)	Amt. $ Mil.	(# Cases)
1996	Full Year	9.21	(20)	11.39	(22)	44.34	(20)	-5.6	(38)
1997	Full Year	9.16	(12)	11.40	(11)	48.79	(11)	-553.3	(33)
1998	Full Year	9.44	(9)	11.66	(10)	46.14	(8)	-429.3	(31)
1999	Full Year	8.81	(18)	10.77	(20)	45.08	(17)	-1,683.8	(30)
2000	Full Year	9.20	(12)	11.43	(12)	48.85	(12)	-291.4	(34)
2001	Full Year	8.93	(15)	11.09	(18)	47.20	(13)	14.2	(21)
2002	Full Year	8.72	(20)	11.16	(22)	46.27	(19)	-475.4	(24)
2003	Full Year	8.86	(20)	10.97	(22)	49.41	(19)	313.8	(12)
2004	Full Year	8.44	(18)	10.75	(19)	46.84	(17)	1,091.5	(30)
2005	Full Year	8.30	(26)	10.54	(29)	46.73	(27)	1,373.7	(36)
2006	Full Year	8.24	(24)	10.36	(26)	48.67	(23)	1,465.0	(42)
2007	Full Year	8.22	(38)	10.36	(39)	48.01	(37)	1,401.9	(46)
	1st Quarter	8.36	(9)	10.45	(10)	49.25	(8)	802.9	(9)
	2nd Quarter	8.21	(7)	10.57	(8)	47.64	(7)	510.5	(8)
	3rd Quarter	8.32	(10)	10.47	(11)	48.96	(10)	737.5	(13)
	4th Quarter	8.09	(9)	10.33	(8)	47.58	(8)	848.5	(12)
2008	Full Year	8.25	(35)	10.46	(37)	48.41	(33)	2,899.4	(42)
	1st Quarter	8.19	(8)	10.29	(9)	48.52	(8)	857.0	(14)
	2nd Quarter	8.05	(9)	10.55	(10)	47.66	(9)	1,425.7	(17)
	3rd Quarter	8.48	(3)	10.46	(3)	47.20	(3)	317.1	(7)
2009	**Year-To-Date**	**8.17**	**(20)**	**10.43**	**(22)**	**47.94**	**(20)**	**2,599.8**	**(38)**

Gas Utilities--Summary Table*

	Period	ROR %	(# Cases)	ROE %	(# Cases)	Eq. as % Cap. Struc.	(# Cases)	Amt. $ Mil.	(# Cases)
1996	Full Year	9.25	(23)	11.19	(20)	47.69	(19)	193.4	(34)
1997	Full Year	9.13	(13)	11.29	(13)	47.78	(11)	-82.5	(21)
1998	Full Year	9.46	(10)	11.51	10)	49.50	(10)	93.9	(20)
1999	Full Year	8.86	(9)	10.66	(9)	49.06	(9)	51.0	(14)
2000	Full Year	9.33	(13)	11.39	(12)	48.59	(12)	135.9	(20)
2001	Full Year	8.51	(6)	10.95	(7)	43.96	(5)	114.0	(11)
2002	Full Year	8.80	(20)	11.03	(21)	48.29	(18)	303.6	(26)
2003	Full Year	8.75	(22)	10.99	(25)	49.93	(22)	260.1	(30)
2004	Full Year	8.34	(21)	10.59	(20)	45.90	(20)	303.5	(31)
2005	Full Year	8.25	(29)	10.46	(26)	48.66	(24)	458.4	(34)
2006	Full Year	8.51	(16)	10.43	(16)	47.43	(16)	444.0	(25)
2007	Full Year	8.12	(32)	10.24	(37)	48.37	(30)	813.4	(48)
	1st Quarter	8.78	(7)	10.38	(7)	52.07	(7)	129.6	(7)
	2nd Quarter	8.28	(3)	10.17	(3)	51.80	(3)	52.0	(4)
	3rd Quarter	8.33	(7)	10.49	(7)	50.58	(7)	312.8	(10)
	4th Quarter	8.45	(13)	10.34	(13)	49.25	(13)	390.4	(20)
2008	Full Year	8.48	(30)	10.37	(30)	50.47	(30)	884.8	(41)
	1st Quarter	8.01	(5)	10.24	(4)	43.81	(4)	156.4	(7)
	2nd Quarter	8.05	(7)	10.11	(8)	48.84	(7)	92.5	(8)
	3rd Quarter	8.30	(2)	9.88	(2)	51.00	(2)	19.2	(4)
2009	**Year-To-Date**	**8.07**	**(14)**	**10.11**	**(14)**	**47.62**	**(13)**	**268.1**	**(19)**

* Number of observations in each period indicated in parentheses.

ELECTRIC UTILITY DECISIONS

Order Date	Company (State)	ROR %	ROE %	Common Eq. as % Cap. Str.	Test Year & Rate Base	Amt. $ Mil.
1/14/09	Public Service Oklahoma (OK)	8.31	10.50	44.10	2/08-YE	59.3 (1)
1/21/09	Westar Energy (KS)	---	---	---	---	65.0 (B)
1/21/09	Kansas Gas & Electric (KS)	---	---	---	---	65.0 (B)
1/21/09	Cleveland Electric Illuminating (OH)	8.48	10.50 (E)	49.00	2/08-DC	29.2 (D)
1/21/09	Ohio Edison (OH)	8.48	10.50 (E)	49.00	2/08-DC	68.9 (D)
1/21/09	Toledo Edison (OH)	8.48	10.50 (E)	49.00	2/08-DC	38.5 (D)
1/30/09	Idaho Power (ID)	8.18	10.50	49.27	12/08-YE	27.0 (R)
2/4/09	United Illuminating (CT)	7.59	8.75	50.00	12/07-A	6.8 (D,R,2)
2/4/09	Interstate Power & Light (IA)	---	10.10 (3)	---	---	---
2/5/09	Kentucky Utilities (KY)	---	---	---	---	-8.9 (B)
2/5/09	Louisville Gas & Electric (KY)	---	---	---	---	-13.2 (B)
2/10/09	Union Electric (MO)	8.34	10.76	52.01	3/08-YE	161.7
3/4/09	Indiana Michigan Power (IN)	7.62	10.50	45.80 *	9/07-YE	19.1 (4)
3/11/09	Entergy Texas (TX)	---	---	---	3/07	30.5 (B,I,5)
3/17/09	Southern California Edison (CA)	---	---	---	12/09-A	308.1 (6)
2009	***1ST QUARTER: AVERAGES/TOTAL***	**8.19**	**10.29**	**48.52**		**857.0**
	MEDIAN	**8.33**	**10.50**	**49.00**		**---**
	OBSERVATIONS	**8**	**9**	**8**		**14**
4/2/09	Entergy New Orleans (LA)	---	11.10	---	12/08-YE	-24.7 (B,7)
4/16/09	PacifiCorp (ID)	---	---	---	---	4.4 (B)
4/21/09	PacifiCorp (UT)	8.36	10.61	51.00	12/09-A	45.0 (B)
4/24/09	Consolidated Edison of New York (NY)	7.79	10.00	48.00	3/10-A	523.4 (D)
4/30/09	Tampa Electric (FL)	8.29 (R)	11.25	47.49 *(R)	12/09-A	147.7 (Z,R)
5/4/09	Minnesota Power (MN)	8.45	10.74	54.79	6/09-A	21.1 (I)
5/20/09	Oklahoma Gas & Electric (AR)	6.43	10.25	36.04 *	12/07-YE	13.3 (B)
5/20/09	NorthWestern Corp. (MT)	8.38	10.25	50.00	---	--- (8)
5/20/09	PacifiCorp (WY)	---	---	---	---	18.0 (B)
5/28/09	Public Service New Mexico (NM)	8.77	10.50	50.47	3/08-YE	77.1 (B,Z)
5/29/09	Idaho Power (ID)	---	---	---	---	10.5 (9)
6/2/09	Southwestern Public Service (TX)	---	---	---	12/07	57.4 (B,I)
6/9/09	Public Service Co. of Colorado (CO)	---	---	---	---	112.2 (B)
6/10/09	Kansas City Power & Light (MO)	---	---	---	12/07-YE	95.0 (B)
6/10/09	KCP&L Greater Missouri Oper-L&P (MO)	---	---	---	12/07-YE	15.0 (B)
6/10/09	KCP&L Greater Missouri Oper-MPS (MO)	---	---	---	12/07-YE	48.0 (B)
6/22/09	Central Hudson Gas & Electric (NY)	7.28	10.00	47.00	6/10-A	39.6 (D)
6/24/09	Nevada Power (NV)	8.66 (10)	10.80 (10)	44.15	6/08-YE	222.7 (Z)
2009	***2ND QUARTER: AVERAGES/TOTAL***	**8.05**	**10.55**	**47.66**		**1,425.7**
	MEDIAN	**8.36**	**10.56**	**48.00**		**---**
	OBSERVATIONS	**9**	**10**	**9**		**17**

ELECTRIC UTILITY DECISIONS (continued)

Order Date	Company (State)	ROR %	ROE %	Common Eq. as % Cap. Str.	Test Year & Rate Base	Amt. $ Mil.
7/8/09	Duke Energy Ohio (OH)	8.61	10.63 (E)	51.59 (E)	12/08-DC	55.3 (D,B)
7/14/09	Southwestern Public Service (NM)	---	---	---	---	14.2 (B)
7/17/09	Avista Corp. (ID)	8.55	10.50	50.00	9/08-A	12.5 (B)
7/24/09	Kansas City Power & Light (KS)	---	---	---	12/07-YE	59.0 (B)
7/24/09	Oklahoma Gas & Electric (OK)	---	---	---	9/08-YE	48.3 (B)
8/21/09	Texas-New Mexico Power (TX)	---	---	---	3/08	12.7 (B)
8/31/09	Oncor Electric Delivery (TX)	8.28	10.25	40.00	12/07-YE	115.1 (D)
2009	***3RD QUARTER: AVERAGES/TOTAL***	**8.48**	**10.46**	**47.20**		**317.1**
	MEDIAN	**8.55**	**10.50**	**50.00**		**---**
	OBSERVATIONS	**3**	**3**	**3**		**7**
2009	***YEAR-TO-DATE AVERAGES/TOTAL***	**8.17**	**10.43**	**47.94**		**2,599.8**
	MEDIAN	**8.35**	**10.50**	**49.00**		**---**
	OBSERVATIONS	**20**	**22**	**20**		**38**

GAS UTILITY DECISIONS

Order Date	Company (State)	ROR %	ROE %	Common Eq. as % Cap. Str.	Test Year & Rate Base	Amt. $ Mil.
1/7/09	*Vectren Energy Delivery of Ohio (OH)*	8.89	---	---	5/08-DC	14.8 (B)
1/13/09	Michigan Gas Utilities (MI)	7.60	10.45	46.49 *	12/09	6.0 (B)
2/2/09	New England Gas (MA)	7.74	10.05	34.19	12/07-YE	3.7
2/5/09	Louisville Gas & Electric (KY)	---	---	---	---	22.0 (B)
2/26/09	Equitable Gas (PA)	---	---	---	12/08	38.4 (B)
3/9/09	Atmos Energy (TN)	8.24	10.30	48.12	6/08-A	2.5 (B)
3/25/09	Northern Illinois Gas (IL)	7.58	10.17	46.42	12/09-A	69.0
2009	***1ST QUARTER: AVERAGES/TOTAL***	**8.01**	**10.24**	**43.81**		**156.4**
	MEDIAN	**7.74**	**10.24**	**46.46**		**---**
	OBSERVATIONS	**5**	**4**	**4**		**7**
4/2/09	Entergy New Orleans (LA)	---	10.75	---	12/08-YE	5.0 (B,7)
5/15/09	*Niagara Mohawk Power (NY)*	7.70	10.20 (11)	43.70	3/10-A	39.4 (B)
5/29/09	EnergyNorth Natural Gas (NH)	8.28	9.54	50.00	6/07-A	5.5 (B,I)
6/3/09	Black Hills/Iowa Gas Utility (IA)	8.71	10.10	51.38	12/07-A	10.4 (B,I)
6/9/09	Peoples Gas System (FL)	8.50	10.75	48.51 *	12/09-A	19.2 (I)
6/22/09	Central Hudson Gas & Electric (NY)	7.28	10.00	47.00	6/10-A	13.8
6/29/09	Minnesota Energy Resources (MN)	7.98	10.21	48.77	12/08-A	15.4 (I)
6/30/09	Connecticut Natural Gas (CT)	7.92	9.31 (12)	52.52	6/08-(13)	-16.2
2009	***2ND QUARTER: AVERAGES/TOTAL***	**8.05**	**10.11**	**48.84**		**92.5**
	MEDIAN	**7.98**	**10.15**	**48.77**		**---**
	OBSERVATIONS	**7**	**8**	**7**		**8**
7/17/09	Southern Connecticut Gas (CT)	8.05	9.26 (12)	52.00	6/08-(13)	-12.5
7/17/09	Avista Corp. (ID)	8.55	10.50	50.00	9/08-A	1.9 (B)
8/27/09	*UGI Penn Natural Gas (PA)*	---	---	---	9/09	19.8 (B)
8/27/09	UGI Central Penn Gas (PA)	---	---	---	9/09	10.0 (B)
2009	***3RD QUARTER: AVERAGES/TOTAL***	**8.30**	**9.88**	**51.00**		**19.2**
	MEDIAN	**8.30**	**9.88**	**51.00**		**---**
	OBSERVATIONS	**2**	**2**	**2**		**4**
2009	***YEAR-TO-DATE AVERAGES/TOTAL***	**8.07**	**10.11**	**47.62**		**268.1**
	MEDIAN	**8.02**	**10.19**	**48.51**		**---**
	OBSERVATIONS	**14**	**14**	**13**		**19**

FOOTNOTES

A- Average
B- Order followed stipulation or settlement by the parties. Decision particulars not necessarily precedent-setting or specifically adopted by the regulatory body.
D- Applies to electric delivery only
DC- Date certain
E- Estimated
I- Interim rates implemented prior to the issuance of final order, normally under bond and subject to refund.
R- Revised
YE- Year-end
Z- Rate change implemented in multiple steps.
* Capital structure includes cost-free items or tax credit balances at the overall rate of return.

(1) Recovery of an additional $22.1 million authorized through adjustment mechanisms.
(2) Second-year distribution rate increase of $19.4 million authorized based on a 7.76% ROR. This increase is subject to adjustment for pension expense.
(3) Adopted ROE applies only to the company's proposed 649-MW, coal-fired Sutherland Unit 4 plant. The company subsequently cancelled plans to construct the plant.
(4) Commission decision modified a settlement. Recovery of an additional $22.5 million authorized through tracking mechanisms.
(5) Indicated rate increase includes a $46.7 million base rate increase offset by a net $16.2 million decrease in revenues collected under certain riders.
(6) Indicated rate increase is retroactive to January 1, 2009 and reflects the one-time refund of a $72.5 million overcollection of postretireement benefits other than pension costs. Additional rate increases of $205.3 million and $219 million authorized for 2010 and 2011, respectively. Rate of return was not an issue in this case.
(7) Rate changes effective June 1, 2009.
(8) Authorized return parameters apply only to the 120-150 MW, gas-fired Mill Creek generating plant.
(9) Rate increase associated with implementation of advanced metering infrastructure. Return parameters are those adopted in the company's previous rate case.
(10) Reflects incentive ROE (and ROR) for demand side mangement programs and the Chuck Lenzie generating plant. Without the incentives, a 10.5% ROE was authorized.
(11) Indicated ROE includes a 20 basis-point premium associated with the multi-year term of the settlement.
(12) Adopted ROE reflects a 10-basis point penalty for billing errors.
(13) Rate base valued as of 12/31/09.

Dennis Sperduto

ATTACHMENT B

Commission Watch

2009 ROE Survey
Austerity Savings

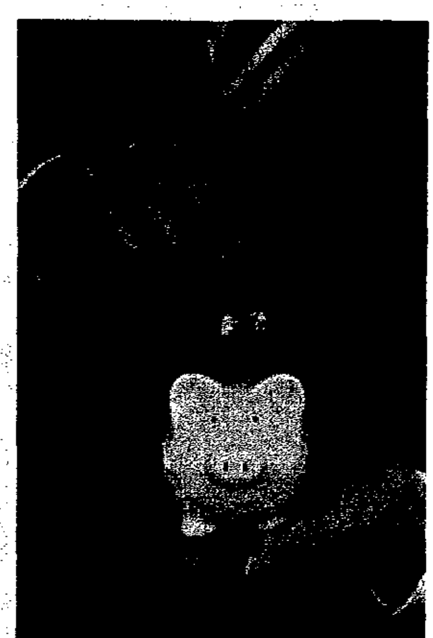
Volatile economic conditions push regulators in new directions.

By Phillip S. Cross

A review of the rate cases decided over the past year indicates that the economy remains at the forefront in the news, and on the minds of regulators in rate-case proceedings. The issue has taken a new twist, however, as regulators are now placed in the unenviable position of determining an allowance for return on equity (ROE) that's fair to consumers and investors in a volatile economy. When *Fortnightly* presented this feature last year, we reported that regulators were seeking to determine the effect the dip in the stock market, falling interest rates and tightening credit might have on financial modeling, as well as subjective views of the return necessary to attract investors. This time, the cases that stand out are those in which regulators are exploring the limits of their discretion under the regulatory compact to balance the interests of consumers and shareholders in the face of a severe economic downturn.

The task of setting the return or profit component of regulated rates for utility service is one that begins with a review of mathematically derived estimates of the return expected by investors in the future. Regulators also are called on to use their informed judgement to produce a result that's fair to consumers and investors alike. The final answer often is expressed as a range of "reasonable" results that would at either end provide a fair return to investors and reasonable rates for consumers. This gives regulators some wiggle room when determining a final ROE figure or when seeking other ways to hold down rates for consumers—or to keep rates high enough to make sure a utility has access to capital.

A recent case decided in Michigan shows how the financial crisis might redound to the benefit of shareholders in a rate-case setting. In that case, the state public service commission (PSC) ruled that Detroit Edison's ROE should remain at 11 percent, even though its staff recommended a rate of 10.5 percent and other parties presented evidence supporting lower figures. The utility had asked for an allowance of 11.25 percent, a rate only slightly above the approved rate set in 2006. The PSC concluded that maintaining the status quo on the company's ROE in light of Michigan's economic circumstances and the U.S. credit crisis was the most prudent course



of action. The commission said the worldwide crisis and ensuing breakdown in confidence among financial institutions led to rising long-term borrowing rates. It also noted that the credit-system freeze causes concern for the utility's continued ability to provide financing for infrastructure investment needs, and then to continue to provide safe, reliable and abundant power at reasonable rates. The PSC concluded that "a cautious approach in changing the company's ROE is necessary to ensure investor confidence and company access to capital markets" [*Re The Detroit Edison Co., Case No. U-15244, 270 PUR4th 134 (Mich.P.S.C.2008)*].

Discretionary Cuts

Regulators in Connecticut looked at the crisis another way. While setting rates for United Illuminating (UI), the Connecticut Department of Public Utility Control (DPUC) lowered the company's ROE from a level of 9.7 percent set in 1996 to 8.75 percent in a rate case heard this year. It rejected a claim by the electric utility that financial models relied on in the past should be adjusted to account for a change in investor behavior as a result of the crisis, including a shift away from looking at dividend payments as a measure of long-term growth and instead focusing more on earnings per share as a guide to investment decisions. The company claimed that dividend growth has remained stagnant due to heightened financial concerns in the utility industry. Expressing a keener interest in the macroeconomic issues at play, the DPUC concluded that although the overall outlook for the economy as a whole is weak, investors likely will continue looking to the utility sector as a safe haven amidst a volatile market

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environment. The DPUC said that even though the company was embarking on a high volume of capital spending and infrastructure improvements, that would be offset by UI's strong financial position, limited risk profile, visible forward-earnings stream, high dividend yield, strong balance sheet and strong cash position. Despite higher spreads and yields, utilities still outperform most sectors of the bond market. As such, the cost of equity for the electric industry is among the lowest of all industries in the United States. All these indicators suggested a substantial decline in the overall equity cost rate, in the view of the DPUC [*Re The United Illuminating Co., Docket No. 08-07-04, Feb. 4, 2009 (Conn.D.P.U.C.)*].

Focusing directly on the plight of consumers during the current economic crisis, the DPUC in a second case reduced rates for a natural gas local distribution company (LDC) by $16.2 million, reflecting an allowed ROE of 9.31 percent. The department rejected claims by the utility that a rate increase was required due to current economic conditions that had resulted in nearly 15,000 residential service terminations due to non-payment of bills. Rather than hike rates to cover past-due bills, the current economic conditions required the LDC to share in the economic difficulties of Connecticut citizens by aggressively managing its operational expenses and capital investments, the department said. Driving home this point, the DPUC disallowed for rate-making purposes, costs incurred for non-qualified pension plans, finding that ratepayers shouldn't have to fund excessive pension benefits in difficult economic times [*Re Connecticut Natural Gas Corp.,274 PUR4th 345 (Conn.D.P.U.C. 2009)*].

In perhaps the most dramatic example of ratemaking meets an economy in crisis, the New York Public Service Commission (PSC) has in recent cases addressed consumer issues by imposing what it calls an "austerity savings" adjustment for energy utilities operating in the state. In those cases, the PSC actually increased the ROE in accordance with the results of financial models, but at the same time took away revenues by adjusting cost-of-service estimates to reflect the savings expected under mandated austerity savings programs. The PSC was careful to explain, however, that if the cost savings weren't found, the utility could petition for a deferral of the costs and possible recovery in a future rate period.

When consumers are experiencing a harsh economic climate, regulators expect frugality from utilities.

For example, the PSC recently has approved a rate increase of $721 million for Consolidated Edison of New York. In that case, the PSC established an ROE of 10 percent for the utility, an increase from its earlier authorized ROE of 9.1 percent. The PSC reviewed several measures designed to reduce the level of the increase in the context of the current economic downturn. It determined that Con Edison should impose additional cost-cutting measures and directed the company to identify and implement an "austerity budget" that would reduce its revenue requirement by $60 million for the coming year.

The issue of the proper ROE remained separate from the austerity savings ruling, however. Through the trial briefing stage, the company supported an 11-percent equity return allowance but reflected only 10 percent in its May 2008 tariff filing. The PSC noted that it's unusual for a utility to support one equity return in testimony and to reflect a lower one in the revenue request set forth in its tariff filing, but accepted the filing and went on to examine the results of financial models presented in the case. The PSC did note that the revenue requirement difference between 10 percent and 11 percent was approximately $115 million a year. The company described its 10-percent request as part of its proposal to "ameliorate bill impacts on customers." The PSC went on to find that assigning a two-thirds weight to results under its own discounted cash flow analysis, and one-third weight to an average of the capital asset pricing model to the results presented by the parties to the case, showed that independent of the company's offer to settle for a 10-percent return based on its original request,

ROE Survey Methodology

Fortnightly's 2009 ROE survey covers cost of equity capital determinations by state public utility commissions during the period Sept. 1, 2008 through Aug. 31, 2009. (A few more recent cases outside the period are provided where available.) *Fortnightly's* methodology remains similar to its previous ROE surveys; requests for information on the results of recent rate proceedings were sent to both regulators and utility financial officials. In addition, direct examination of commission rate orders, when available, provided more information.

The traditional cost-of-service rate case remains the primary source of information on how utility regulators view the issue of shareholder earnings requirements. Nevertheless, performance-based rate plans and cases called to conduct periodic earnings reviews also contain findings about the appropriate ROE for utilities, and are reported in this survey. Explanatory notes accompany most entries, and citations are provided for orders published in *Public Utilities Reports, Fourth Series (PUR4th)*.–**P.S.C.**

the same increase in the company's ROE proved to be the one that the evidence had shown to be adequate to compensate investors and attract capital in the near future.

Nevertheless, turning back to the issue of the macroeconomic concerns in the marketplace, the PSC stated that expenditures that are reasonable during average or good economic times aren't necessarily reasonable when economic conditions are extremely poor. When consumers are experiencing an extraordinarily harsh economic climate, a certain measure of frugality is properly expected from utilities and a reprioritizing of expenditures may be needed, the PSC said, citing such measures as freezing executive pay, restricting hiring, cutting travel costs and other so-called "discretionary" expenses. With this said, it ordered a downward adjustment to the company's revenue requirement amounting to $60 million, half of which will be subject to further review and potential deferral based on a review of the company's ability and best efforts to implement the required measures effectively. It pointed out that this amounts to approximately 3.6 percent of non-fuel operation and maintenance costs and emphasized that the company's management will be responsible for determining how best to achieve the $60 million revenue requirement reduction while maintaining reliability, service quality, and safety [*Re Consolidated Edison Co. of New York, Inc., Cases 08-E-0539, 08-M-0618, Apr. 24, 2009 (N.Y.P.S.C.); See also Central Hudson Gas & Electric Corp., 274 PUR4th 257 (N.Y.P.S.C. 2009) where the PSC also discussed macroeconomic conditions that may be used as a basis for requiring the so-called austerity adjustments to a company's revenue requirements*]. ◘

Company	Utility Type	Case, Docket or Decision	Application Date	Order Date	Test-year End Date	Increase (Decrease) Requested ($Million)	Increase (Decrease) Granted ($Million)	Rate of Return on Common Equity	
								Previously Authorized Rate (%)	Newly Authorized Rate (%)
Arkansas									
Oklahoma Gas & Electric	Electric	08-103-U	8/29/08	5/20/09	12/31/07	26.4	13.6	10	10.25
Arizona									
Southwest Gas	Gas	G-01551A-07-0504, 270 PUR4th 465	8/31/07	12/24/08	4/30/07	50.2	33.5	9.5	10
California									
Southwest Gas - Northern Jurisdiction	Gas	07-12-022	12/21/07	11/21/08	12/31/09	-0.1	-1.04	10.9	10.5
Southwest Gas - South Lake Tahoe Jurisdiction	Gas	07-12-022	12/21/07	11/21/08	12/31/09	2.1	1.82	NA	10.5
Southwest Gas - Southern Jurisdiction	Gas	07-12-022	12/21/07	11/21/08	12/31/09	7.1	2.44	10.9	10.5
Colorado									
Black Hills Energy	Gas	08S-2906	6/30/08	3/10/09	12/31/07	2.7	1.38	12	10.25
Public Service of Colorado	Electric	08S-520E, C09-0595, 275 PUR4th 149	11/25/08	6/9/09	12/31/09	174.4	12.0	10.5	10.5[1]
Connecticut									
Connecticut Natural Gas	Gas	08-12-06, 274 PUR4th 345	1/16/08	6/30/09	6/30/08	16.4	-16.2	10.1	9.41[2]
Southern Connecticut Gas	Gas	08-12-07	1/20/08	7/17/09	6/30/10	50.1	-12.46	10	9.26
United Illuminating	Electric	08-07-04	8/6/08	6/3/09	12/31/07	52.2	25.27[3]	9.75	8.75
Delaware									
Chesapeake Utilities	Gas	07-186, 268 PUR4th 370	7/6/07	9/2/08	3/31/07	1.9	0.329	10.86	10.25
Florida									
Peoples Gas System	Gas	080318-GU, 274 PUR4th 177	8/1/08	6/9/09	12/1/09	26.5	19.2	11.25	10.75
Tampa Electric	Electric	080317-EI	8/1/08	4/30/09	12/1/09	228.2	147.3	11.75	11.25
Idaho									
Atlanta Power	Electric	ATL-E-08-02, 271 PUR4th 134	5/1/08	12/19/08	12/31/06	0.109	0.106	NA	12[4]
Avista	Electric	AVU-E-08-01	4/3/08	9/30/08	12/31/07	32.3	23.20*	NA	10.2
Avista	Gas	AVU-G-08-01	4/3/08	9/30/08	12/31/07	4.7	3.90*	NA	10.2
Rocky Mountain Power	Electric	PAC-E-08-07	9/19/08	4/16/09	12/31/07	5.9	4.38	10.25	10.25[5]
Illinois									
Commonwealth Edison	Electric	07-0566, 268 PUR4th 1	10/17/07	9/10/08	12/31/06	362.3	273	10.045	10.3
Northern Illinois Gas	Gas	08-0363, 272 PUR4th 161	4/29/08	3/25/09	12/31/09	140.4	69	8.85	10.11

Company	Utility Type	Case, Docket or Decision	Application Date	Order Date	Test-year End Date	Increase (Decrease) Requested ($Million)	Increase (Decrease) Granted ($Million)	Rate of Return on Common Equity	
								Previously Authorized Rate (%)	Newly Authorized Rate (%)
Indiana									
Indiana Michigan Power	Electric	43306, 273 PUR4th 310	6/19/07	3/4/09	9/30/07	125.5	41.6	12	10.5
Indiana Natural Gas	Gas	43434	1/30/08	10/8/08	8/31/07	0.7	0.5	10.4	10.2
Indiana Utilities	Gas	43520	6/17/08	1/21/09	12/31/07	0.4	0.4	10.4	10.3
Iowa									
Black Hills Energy	Gas	RPU-08-3, 275 PUR4th 44	6/2/08	6/3/09	12/31/07	13.56	10.39*	NA*	10.1
Interstate Power & Light	Electric	RPU-08-1	3/31/08	2/13/09	NA	NA	NA	NA	10.1[6]
MidAmerican Energy	Electric	RPU-08-4	7/23/08	8/27/08	NA	NA	NA	NA	11.7[7]
Kansas									
Westar Energy	Electric	08-WSEE-1041-RTS	5/28/08	1/21/09	12/31/07	90	65	10	10.4[8]
Kentucky									
Kentucky Utilities	Electric	2007-00565	7/1/08	2/5/09	4/30/08	22.2	-8.9*	11	10.63
Louisiana									
Cleco Power LLC	Electric	U-21496-K	6/1/09	NA	9/30/08	NA[9]	NA	11.25	11.25
Cleco Power LLC	Electric	U-30689	7/14/08	NA	6/30/09[10]	250.1	173.3	11.25	NA[11]
Massachusetts									
New England Gas	Gas	08-35, 271 PUR4th 1	7/17/08	2/2/09	12/31/07	5.6	3.68	NA	10.05
Michigan									
Detroit Edison	Electric	U-15244	4/13/07	12/23/08	12/31/06	123	83.629	11	11
Michigan Gas Utilities	Gas	U-15549	5/16/08	1/13/09	12/31/09	13.9	6	11.4	10.45
Minnesota									
Minnesota Energy Resources	Gas	GR-08-835	7/31/08	6/29/09	12/31/08	22	15.4	11.71	10.21
Minnesota Power	Electric	E-015/GR-08-415	5/2/08	5/4/09	6/30/09	39.8	20.4	11.6[12]	10.74
Missouri									
AmerenUE	Electric	ER-2008-0318, 271 PUR4th 475	4/4/08	1/27/09	3/31/08	251	162	10.2	10.76
Kansas City Power & Light	Electric	ER-2009-0089	9/5/08	6/10/09	12/31/07	101.5	95	10.75	NA*
Kansas City Power & Light (Greater Missouri Operations[13])	Electric	ER-2009-0090	9/5/08	6/10/09	12/31/07	83.1	63	10.25	NA*
Mississippi									
CenterPoint Energy	Gas	Rider RRA[14]	1/2/08	11/17/08	9/30/07	2.5	0.9	9.86	9.67
Montana									
Montana-Dakota Utility	Electric	D2007.7.79, 264 PUR4th 516	7/12/07	4/23/08	12/31/06	7.77	4.1	12.3	10.25
NorthWestern Energy	Electric	D2007.7.82	7/31/07	7/7/08	12/31/06	31.37	10	10.75	NA*
NorthWestern Energy	Gas	D2007.7.82	7/3/07	7/7/08	12/31/06	10.5	5	10.75	NA*
NorthWestern	Electric	D2008.6.69, 269 PUR4th 277[16]	6/27/08	11/13/08	NA				10[15]
Nevada									
Nevada Power dba NV Energy	Electric	08-12002	12/1/08	6/24/09	6/30/08	324	224	10.7	10.5
New Jersey									
New Jersey Natural Gas	Gas	GR07110889	11/20/07	10/3/08	4/30/08	58.36	32.5	11.5	10.3
New Mexico									
Southwestern Public Service	Electric	08-00354-UT	12/18/08	7/14/09	6/30/08	24.6	14.2	10.5	NA*
Zia Natural Gas	Gas	08-00036-UT	1/31/08	11/25/08	8/31/08	3.2	2.5	NA	10.27[17]
New York									
Central Hudson Gas & Electric	Electric	08-E-0887	7/31/08	6/22/09	6/30/10	66.1	38[18]	9.6	10
Central Hudson Gas & Electric	Gas	08-G-0888, 274 PUR4th 257	7/31/08	6/22/09	6/30/10	20.2	13.6[18]	9.6	10
Consolidated Edison of New York	Electric[19]	08-E-0539	5/9/09	3/24/09	3/31/10	935.1	721.4	9.1	10
Corning Natural Gas	Gas	08-G-1137	9/24/08	8/20/09	6/30/10	1.7[20]	0.973[21]	10[22]	10.7[23]
North Carolina									
Piedmont Natural Gas	Gas	G-9, Sub 550, 269 PUR4th 320	2/29/08	10/24/08	12/31/08	40.51	15.68	NA	10.6[24]
North Dakota									
Northern States Power	Electric	PU-07-776, 271 PUR4th 333	12/7/07	1/14/09	12/31/08	17.9	10.9	12	10.75

Company	Utility Type	Case, Docket or Decision	Application Date	Order Date	Test-year End Date	Increase (Decrease) Requested ($Million)	Increase (Decrease) Granted ($Million)	Rate of Return on Common Equity	
								Previously Authorized Rate (%)	Newly Authorized Rate (%)
Ohio									
Cleveland Electric Illuminating	Electric	07-552-EL-UNC[25]	5/8/07	1/21/09	2/29/08	108.6	29.2	NA	10.5[26]
Columbia Gas of Ohio	Gas	08-72-GA-AIR	3/3/08	12/3/08	9/20/08	87.81	47.14	NA	10.39
Duke Energy Ohio	Electric	08-709-EL-AIR	7/25/08	7/8/09	12/31/08	85.6	55.3	10.29	10.63
East Ohio Gas dba Dominion East Ohio	Gas	07-829-GA-AIR	10/30/07	10/15/08	12/31/07	76.02	37.48	12.15	9.92
Ohio Edison	Electric	07-552-EL-UNC[25]	5/8/07	1/21/09	2/29/08	160.7	68.9	NA	10.5
Toledo Edison	Electric	07-552-EL-UNC[25]	5/8/2007	1/21/09	2/29/08	70.5	38.5	NA	10.5
Vectren Energy Delivery of Ohio	Gas	07-1081-GA-AIR	11/20/07	1/7/09	5/31/08	27.33	14.78	10.60	10.65
Oklahoma									
CenterPoint Energy	Gas	PUD-20900055	3/13/09	7/9/09	12/31/07	1.9	1.5	10.25	10.5
Oregon									
Portland General Electric	Electric	UE 197	2/27/08	1/1/09	12/31/09	146	120	10.1	10.1
Pennsylvania									
Columbia Gas of Pennsylvania	Gas	2008-2011621	1/28/08	10/28/08	9/30/08	58.9	41.5	NA*	NA*
Equitable Gas	Gas	R-2008-2024325	6/30/08	2/26/09	12/31/08	51.949	38.35[27]	NA*	NA*
Rhode Island									
Narragansett Electric	Gas	3943, 272 PUR4th 96	4/1/08	1/29/09	9/30/07	20.04	13.66	NA	10.5
South Dakota									
Otter Tail Power	Electric	EL08-030	10/31/08	6/30/09	12/31/07	3.9	3	11.75[28]	NA*
Texas									
Entergy Texas	Electric	34800	9/26/07	3/16/09	3/31/07	605	46.7	10.95	10
Oncor Electric Delivery	Electric	35717	6/27/08	8/31/09	12/31/07	253.5	115.1	11.25	10.25
Southwestern Public Service	Electric	35763	6/12/08	6/2/09	12/31/07	84.2	57.4	11.50	NA[29]
Texas-New Mexico Power	Electric	36025	8/20/08	8/21/09	3/31/08	8.7	6.8	11.25	10.25*
Utah									
Rocky Mountain Power, a division of PacifiCorp	Electric	08-035-38	4/7/08	4/21/09	12/31/07	160.6	45.0	10.25	10.61[26]
Vermont									
Central Vermont Public Service	Electric	7485	10/31/08	2/13/09	12/31/07	0.94	NA	10.21	9.77[30]
Virginia									
Appalachian Power[31]	Electric	PUE-2008-00045	5/30/08	10/15/08	12/31/07	66.5	60.6	10.2	10.2[24]
Appalachian Power	Electric	PUE-2008-00046	5/30/08	11/17/08	12/31/07	207.9	167.9	10	10.2[24]
Atmos Energy	Gas	PUE-2008-00007	3/6/08	9/30/08	9/30/07	0.9	0.9	10	10[24]
Roanoke Gas	Gas	PUE-2008-00088	9/16/08	6/10/09	6/30/08	1.2	1.2	10.1	10.1[24]
Washington									
Avista	Electric	UE-080416	3/4/08	12/29/08	12/31/07	36.6	32.5	10.2	10.2
Avista	Gas	UG-080417	3/4/08	12/29/08	12/31/07	6.6	4.8	10.2	10.2
Northwest Natural Gas	Gas	UG-080546	3/28/08	12/26/08	9/30/07	4.3	2.72	NA	10.1
PacifiCorp	Electric	UE-080220	2/6/08	10/8/08	6/30/07	34.9	20.4	10.2	10.2
Puget Sound Energy	Electric	UE-072300	12/3/07	10/8/08	9/30/07	174.8	130.2	10.4	10.15
Puget Sound Energy	Gas	UG-072301	12/3/07	10/8/08	9/30/07	56.8	49.2	10.4	10.15
Wisconsin									
Northern States Power	Electric	4220-UR-115, 264 PUR4th 236	6/1/07	1/8/08	12/31/08	67.4	39.4	11	10.75
Northern States Power	Gas	4220-UR-115, 264 PUR4th 236	6/1/07	1/8/08	12/31/08	5.3	5.3	11	10.75
Wisconsin Power & Light	Electric	6680-UR-116	2/22/08	12/30/08	12/31/09	93.3	0	10.8	10.8[32]
Wisconsin Power & Light	Gas	6680-UR-116	2/22/08	12/30/08	12/31/09	0.8	-3.9	10.8	10.8[32]
Wisconsin Public Service	Electric	6690-UR-119, 270 PUR4th 421	4/1/08	12/30/08	12/31/09	84.8	0	10.9	10.9[32]
Wisconsin Public Service	Gas	6690-UR-119, 270 PUR4th 421	4/1/08	12/30/08	12/31/09	15.7	-3	10.9	10.9[32]
Wyoming									
Rocky Mountain Power	Electric	20000-333-ER-08, 275 PUR4th 127	NA	5/20/09	NA	NA	18	10.25	10.25[33]
Wyoming Gas	Gas	30009-48-GR-08	10/17/08	7/1/09	5/31/08	1.61	1.31		10.87
Questar Gas	Gas	30010-94-GR-08	NA	7/1/09	12/31/08	.483	.378	NA	10.5

NOTES

* Settlement agreement. No ROE figure stated.

1. Parties to approved settlement agree to use currently authorized ROE of 10.5% to calculate new rates and for future regulatory filings through 12/31/09.
2. Authorized rate shown is reduced by 10-basis points in setting final revenue requirement for management imprudence concerning billing problems.
3. Revenue amount is award for final two years of company's four-year rate plan.
4. Commission states that 12% rate is equal to return allowed for other small utilities in the state.
5. No ROE stated in settlement agreement on commission order reflecting significant difference in party positions. Parties agree to use existing rate of 10.25% for other purposes such as avoided cost filings.
6. Result from an "advanced ratemaking principles" case involving a coal-fired generating facility.
7. Result from an "advanced ratemaking principles" case (settlement) involving wind-power projects.
8. Figure reflects specific finding by commission regarding appropriate ROE for future environmental cost recovery filings.
9. Proceeding to review level of earnings under established formula rate plan.
10. Test year utilized is actual year ending Sept. 30, 2007 with *pro formas* to June 30, 2009 and Rodemacher Unit No. 3 full year operations.
11. ROE range of 10.7% to 11.3%.
12. Figure shown contained in rate case order decided in 1994.
13. Formerly Aquila Electric Operations.
14. Rate Regulation Adjustment Rider. Formula rate mechanism features an annual recalculation of the allowed ROE and a graduated sharing of earnings above the authorized figure.
15. Order authorizing an electric utility to include in rate base, at a value of $407 million, its interest in a coal-fired generating plant.
16. Revenue requirement for the life of the plant is based on the ROE figure shown.
17. Order states that the ROE figure adopted only for the current rate case has no precedential value. Commission cites as a basis for this comment the utility's small size relative to other gas utilities in the state, as well as its status as a privately held entity.
18. Figures reflected downward "austerity adjustment" to revenue requirement of $2.4 million for electric service and $.6 million for natural gas. Adjustment reflects recognition of economic downturn. Adjustment will have no effect on ROE if utility defers or reduces expenses by an equal amount.
19. Delivery Service for full-service and retail-access customers.
20. Annual increase for year ending June 30, 2010. Joint proposal submitted supplants rate application and calls for a three-year rate plan with earnings sharing adjustment mechanism.
21. Rate period 9/1/09 through 8/31/10.
22. Settlement approved 5/22/06.
23. If utility elects to file for new rates prior to 10/1/2010, ROE resets to 10.5%.
24. Figure included in approved settlement agreement.
25. Rate filing for First Energy operating companies' electric distribution services.
26. Midpoint of range of 10% to 11% adopted by commission.
27. Total award includes a separate adjustment for low-income customer assistance program, which is reconciled annually.
28. Figure shown approved in 1987 rate order.
29. Settlement agreement. 10.25% ROE set for calculation of allowance for funds used during construction during rate-effective period.
30. Calculated using formula set forth in alternative regulation plan.
31. Proceeding concerning environmental and system reliability costs only.
32. Company reports that figure shown is implied as part of revenue settlement process. ROE not stated in commission order.
33. Approved revenue stipulation does not state authorized ROE. Commission found it appropriate to continue to use 10.25% ROE adopted in the company's last rate case for purposes of evaluating earnings on a prospective basis.