



PARTICIPATING IN A NYS PUBLIC SERVICE COMMISSION RATE CASE



PUBLIC UTILITY
LAW PROJECT
OF NEW YORK, INC.

ENTER



THE PUBLIC UTILITY LAW PROJECT (PULP)

- Incorporated in 1981, PULP is New York’s only independent, nonprofit and public-interest law firm whose mission is to advocate for low- and fixed-income utility consumers.
- Our organization intervenes in all major utility (regulated, electric, natural gas, and water) rate cases before the State Public Service Commission (“PSC”), as well as in “generic proceedings” that will impact energy affordability for low- and fixed-income customers and disadvantaged communities (“DACs”).
- PULP also provides direct assistance to low-income utility customers by helping them negotiate payment agreements with their utilities, apply for financial assistance, and seek energy efficiency assistance to help lower energy consumption etc.
- PULP has been a party to over a dozen rate cases since 2012, mostly focusing upon affordability issues, rate design, collection practices, customer complaints, energy efficiency and more.



GLOSSARY OF TERMS

- **The Public Service Commission ("PSC" or "Commission"):** a 7-member body responsible for the provision of safe and reliable service at just and reasonable rates, without unjust discrimination. They vote on matters and issue orders for the regulated utilities to follow. In September 2021, Governor Hochul appointed Commissioner Rory Christian as Chair of the PSC.
- **The Dept. Of Public Service Staff:** the “worker bees” or staff wing of the Commission. They report to the Commission and regulate the private utilities.
- **Intervening parties:** individuals and groups can apply to become a party. Common intervenors include, local municipalities; representatives of business, industrial, and commercial customers; representatives of residential, low-income, and elderly customers; environmental advocacy organizations; dedicated community advocates; NYS Agencies/Authorities; and more.
- **Delivery rates:** determined and approved by the Commission through the rate case process. Delivery rates fund the infrastructure and operations providing the safe and reliable delivery of energy.
- **Supply rates:** these rates are not regulated by the Commission. The cost of electricity and natural gas purchased from power generators and suppliers of natural gas is simply passed through to customers.
 - Since deregulation in the late-1990’s, NYS’ utilities are generally not permitted to own generation assets or facilities. Instead, the utilities just deliver these commodities. Supply rates are market-based and they fluctuate.



GLOSSARY OF TERMS CONT.

- **Administrative Law Judges (“ALJs”)**: ALJs are assigned to all proceedings in which hearings are held and to other cases where the assistance of a judge would be beneficial. Judges oversee development of the official case record, analyze arguments and evidence offered by parties, offer advice and recommendations about how issues should be resolved by the Commission or N.Y.S.
- **Recommended Decision (“RD”)**: A recommended decision represents an outcome prepared by the Administrative Law Judge(s)
- **Joint Proposal (“JP”)**: the document representing the negotiated outcome from confidential settlement negotiations. Once the JP is done, DPS staff file it on the Department’s website, making it public for comment. Parties can support, oppose, be neutral, or provide limited support/opposition on the JP. An Evidentiary Hearing will be held on the JP and the JP will be sent to the Commission for a vote (accept, reject, or modify).



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Common Types of Proceedings at the PSC

- **Major Rate Cases** – current: National Grid (aka KEDLI/KEDNY), Veolia Water Co., New York State Electric & Gas/Rochester Gas & Electric
 - *Recently completed: Consolidated Edison*
- **Policy proceedings** ex: the Energy Affordability Proceeding, the effects of the COVID-19 pandemic on the utilities, implementation and compliance w the CLCPA, Thermal network pilots and more.
- **Cable Mergers or Franchise Renewals**
- **Consumer Complaints**



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How do Proceedings begin?

- **Company Filing**
 - Ex: [National Grid](#) downstate- the regulated utility prepared a rate case filing to change its natural gas rates
- **Appeal of Consumer Complaints**
- **Commission Action**
 - Ex: investigations into the utilities for outages etc.
- **Legislative Action** (federal or state)
 - Ex: Governor Hochul signs a new law and there's a rulemaking process to implement it.
- **Petitions**
 - Ex: PULP's petition to open a proceeding on the COVID-19 health pandemic



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Why get involved in utility rate cases?

- In many cases they only occur every 2-3 years
- There are many ways to get involved depending on your circumstances
- They are ***cumulative***; every increase lifts the cost from which the next case's increase begins!
- Transparency: a chance to see inside the utility and advocate for change
- The PSC, DPS, Company get to hear from the public, what are the needs and interests of consumers & ratepayer (stories are powerful)
- It reinforces community strength as actors
- The cases matter- they result in direct bill impacts for NYS residential utility consumers, customer service practices, environmental practices and more



PARTICIPATING IN A NYS PUBLIC SERVICE COMMISSION RATE CASE CONT.

Timing of a Major Rate Case

- Under state law, a rate case is an 11 month long litigated proceeding, and a “rate plan” – the result of the litigation over the Company’s, DPS Staff’s and Intervenors’ cases – is 1 year long.
- The case starts when the utility company files updates and proposals on how to handle issues such as property taxes, rates of return, depreciation costs, operation and maintenance expenses, rate design, reliability, low income and customer service
- Ex: on April 28, 2023- National Grid filed its rate case



WHAT NATIONAL GRID'S RATE CASE IS ASKING FOR:

- National Grid's proposed tariff amendments would increase delivery rates for its natural gas customers in Kings, Nassau, Queens, Richmond and Suffolk counties.
- KEDNY is asking for a 28% increase in base delivery revenue of approximately \$414 million. A typical KEDNY residential heating account may see an average increase on their monthly bill of \$30.95. KEDLI is asking for a 24% increase in base delivery revenues of approximately \$228 million. A typical KEDLI residential heating account may see an average increase on their monthly bills of \$28.52.
- There are several customer service proposals PULP is reviewing now
- So, what happens next?



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Months 1-4:

- Intervening parties review the rate filing
- DPS Staff is responsible for analyzing the utility rate filing and representing the public interest. The DPS team works to develop a counter-proposal to the rate filing
- Intervening Parties- can include entities such as, the City of NY, MTA, AARP, PULP, WeAct for Envi. Justice, Earthjustice, AGREE, Sane Energy, Multiple Intervenors, individuals
- The DPS team and the Intervening Parties can engage in discovery by using Interrogatory Requests (written questions to the Company to learn more about their rate filing and proposals)
- The DPS team and the Intervening Parties have the opportunity to write testimony, challenge the utility rate filing, and offer proposals of their own
- One or more Administrative Law Judges (ALJs) are assigned to preside over the case, to hear all the evidence and provide recommendations to the PSC
- Public Statement hearings (virtual/in-person) often occur during this time period. They give the public the opportunity to share their thoughts on the rate case. You do NOT need to be a party to participate. Anyone can participate – Nat Grid’s virtual hearings are on August 1 & 2 (at 1pm and 6pm each day).



TIMING OF A MAJOR RATE CASE

- *There are two "tracks" for how to proceed!*

Track 1: Litigated Outcome

- **Months 5-7:** Direct testimony is filed by staff and other interested groups; rebuttal testimony is filed by the utility company, and usually by intervenors; then evidentiary hearings with cross-examination of all expert witnesses are conducted.
- **Months 7-9:** Initial and reply briefs are filed with the ALJs;
- ALJs may issue a recommended decision ("RD");
 - Public statement hearings are held in affected service territories.
- **Months 9-11:** Additional briefs may be filed with the PSC.
 - Commission deliberations are held in open and public meetings;
 - A written order is issued resolving all outstanding issues and matters necessary to determine the utility company's revenue requirements and the amounts to charge customers.



TIMING OF A MAJOR RATE CASE CONT.

Track 2: Confidential Settlement Negotiations

- *This is the track most rate cases follow, as opposed to the full litigation!*
- **Months 5-7:** Typically, after rebuttal testimony is filed, the utility company files a request to enter confidential settlement negotiations with DPS Staff and the Intervening parties. The ALJs will share settlement guidelines (found in Case 90-M-0255).
- **Months 7-9:** Parties can join settlement meetings with the goal of working towards developing "Joint Proposal" that will be submitted to the Administrative Law Judges for review
 - Settlement meetings are confidential. It's common to have 1-2 meetings scheduled per day, which can be several hours long, but the meetings are often scheduled based on specific topic areas such as "customer service issues," "gas operations and safety" "electric reliability" and more.
 - As a party, you can attend any of these meetings.



TIMING OF A MAJOR RATE CASE CONT.

Months 9-10:

- Settlement negotiations will continue until an agreed upon Joint Proposal (JP) is filed publicly
- The JP will have at least two parties in agreement, which are usually the Company and DPS
- For the JP itself, intervening parties have the option to support, limited support/opposition, neutrality, or opposition to the JP
- During this time period the public can submit comments on the JP (sometimes another round of public statement hearings occur)
- Next, there will be party briefs supporting and/or opposing the JP
- Then there will be an evidentiary hearings on the JP, where the Company, DPS, and other parties supportive of the JP have the burden of showing that the JP is in the public interest
- At issue in the evidentiary hearing is whether that settlement is in the public interest.
- The Company, DPS, and any parties opposing the JP may have the opportunity to file one final brief, based on the Evidentiary Hearing



TIMING OF A MAJOR RATE CASE CONT.

- **Month 11:** The Commission will then review and vote on either the RD or the JP
- The Commission can approve, reject, or modify the RD or JP



PARTICIPATING IN A NYS PUBLIC SERVICE COMMISSION RATE CASE CONT.

- **How much work does it take to be a party/intervenor?**
 - **Full-Party:** To join as a party, you must complete a request form (located on DPS' website). Once accepted as a party, you will be provided the opportunity to participate in any or all of the following activities: file Interrogatory Requests, sponsor one or more expert witnesses, prepare testimony, participate in settlement discussions to form the JP, participate in the Evidentiary Hearing, etc. You are not required to do all the above, you can choose based on your circumstances (which settlement meetings to attend etc).
 - **Non-Party:** You do not join as a formal party. You can still participate in the “public process” by activities such as attending public statement hearings, submitting public comments, writing letters to the editor, telling friends and family about the case and more.



EXAMPLE: THE 2022/2023 CON EDISON RATE CASE

- **2022/2023 Con Edison Rate Case**—Case No. 22-E-0064 and 22-G-0065

See: <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=22-e-0064&CaseSearch=Search>

- Public comments were filed: total of 7,558.
- 91 parties; about 30 were ratepayers, advocate groups or local groups.
- PULP joined as a party - we were concerned about the double-digit rate increase and wanted to propose stronger customer service protections, advocate for affordability measures and push for financial efficiencies.
- Ex: PULP (and other parties including WeAct, the City of NY) were concerned about service terminations in “extreme heat.” ConEd already had a policy of not terminating service on 93 degree days. PULP filed testimony and advocated to lower this to 85 degrees.
- PULP was also concerned about affordability and advocated for proposals to cut costs and increase enrollment in the Company’s energy affordability program.



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- The final JP included the updated policy where ConEd will not terminate utility service when it's 90 degrees (1 day before and 2 days after).
- In the end, even though there were some customer service improvements like the change to the extreme heat policy, we ultimately decided to oppose the JP mainly because the rate increases themselves were just too high, and we believed that more could have been done to lower the overall increased amount.
- Specifically, PULP's data showed that more than 400,000 residential Con Ed customers were behind on their energy bills as of June 2023, while nearly 150,000 households received final termination notices that month. Collectively, these customers owe over \$560 million, an increase of nearly 19% since the application of the State's Phase II utility debt relief in February. See, Collections Activity Reports filed by the utilities in Case No. 91-M-0744.
- PULP is deeply concerned about these customers and their inability to afford the rate increase.



OUTCOME OF THE CON EDISON RATE CASE

What Con Edison Wanted When They Filed Their Rate Case:

- The Company originally sought an increase of \$1.75 billion, which would result in 11.2 percent for electricity and 18.2 percent for gas more in delivery charges respectively for customers. Con Ed also sought an increase to fixed charges.
- Outcome of the rate case: On July 20th, the Commission approved the JP:

The average residential rate payer should expect cumulative delivery bill increases by 2025 of

- \$17 per month for electric service (a 24% increase);
- \$41 per month for gas heating service (a 28% increase); and
- \$6 per month for gas non-heating service (a 19% increase).
- Change to the Company's extreme heat policy for service terminations



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Conclusion

- Rate cases are a lot of work but are a powerful way to intervene and advocate for change
- Being a party means that you have a seat at the “table,” which is very different from non-party participation
- But the end of the day, the most important recommendation PULP makes to people is to “share your story.” It’s powerful and it is taken into account.

