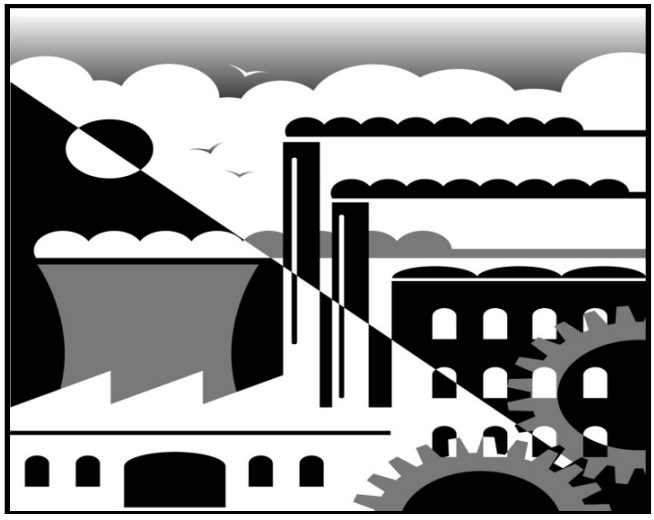
Second Annual Missouri Energy Law Seminar

~Sponsored by the Missouri Public Service Commission~



Saint Louis University, School of Law
William H. Kniep Courtroom
Date: September 14, 2012
Time: 10:25am-4:45pm

5.7 CLE HOURS

CURRENT JOB OPPORTUNITIES

MISSOURI PUBLIC SERVICE COMMISSION

Ref #	Job Title	Salary	Location	Application Deadline	Posting Level
AD040512	Information Technology Specialist I	$51,072 to $61,536	Jefferson City	6/30/2013	External
UO090912	Utility Engineering Specialist III / Regulatory Engineer I	$52,176 to $59,016	Jefferson City	9/10/2012	External
AD070912	Executive II	$34,092-$36,672	Jefferson City	9/10/2012	External
OU050712	Regulatory Economist I/II	$37,296 to $48,084	Jefferson City	06/30/2013	External

If you experience any difficulties or have questions regarding the application process, please contact the Human Resources Department at 573-526-5869.

www.psc.mo.gov

The Second Annual Missouri Energy Law Seminar

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William H. Kniep Courtroom
Date: September 14, 2012
Time: 10:25 a.m. – 4:45 p.m.

FREE 5.7 CLE HOURS

8:45 a.m. – 10:15 a.m.	Registration (Continental Breakfast Provided)
10:25 a.m.	Welcome by Dean Thomas Keefe, St. Louis University, School of Law
10:30 a.m.	Opening Remarks by Commissioner Robert S. Kenney, Missouri Public Service Commission
10:30 a.m. – 11:45 a.m.	"What Goes Into My Utility Bill? Fundamentals of Rate-Making" Sarah Kliethermes, Senior Counsel, Staff General Counsel for the Missouri Public Service Commission
11:45 a.m. - 12:55 p.m.	*Lunch (Will Be Provided)*
1:00 p.m. – 2:15 p.m.	"Missouri's Renewable Energy Standard: Past, Present and Future" Commissioner Robert S. Kenney of the Missouri Public Service Commission
2:15 p.m. - 2:25 p.m.	*Break (Refreshments Provided)*
2:30 p.m. – 3:40 p.m.	"Transmission Law and Development: Planning & Cost-Allocation" Steve Gaw, Wind Coalition and former Speaker of the Missouri House of Representatives and Chairman of the Missouri Public Service Commission
3:45 p.m. – 4:45 p.m.	"Trial Advocacy Before the Missouri Public Service Commission" Brent Roam, Associate at Bryan Cave LLP

The seminar will be live-streamed on the internet. Please go to www.psc.mo.gov and click on the link to the Missouri Energy Law Seminar.

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Second Annual Missouri Energy Law Seminar

Live Seminar & Webcast:

September 14, 2012

St. Louis University, School of Law

8:45 a.m.—4:45 p.m.

5.7 MCLE Hours

A

Biographical Information

Biographies of 2012 Missouri Energy Law Seminar Speakers

Sarah Kliethermes, Senior Counsel, Staff Counsel for the Missouri Public Service Commission. She graduated from the University of Missouri, Columbia, School of Law in 2007. She has been employed with the Missouri Public Service Commission since 2006. Prior to her employment at the Commission, she worked for the Contract and Organization Research Institute, the Missouri Department of Elementary and Secondary Education, the Missouri Department of Natural Resources, and the Missouri House of Representatives.

Commissioner Robert S. Kenney was appointed to the Missouri Public Service Commission on July 29, 2009 by Governor Jay Nixon. Prior to his appointment Kenney was Chief of Staff for Attorney General Chris Koster. Prior to working for the Attorney General, Kenney was a shareholder with the law firm Polsinelli Shughart where his practice focused on commercial litigation. He is President of the Organization of MISO States and Co Vice Chair of the Missouri Bar's Environmental and Energy Law Committee.

Steve Gaw, a Missouri attorney, former Speaker of the Missouri House of Representatives and former Chair of the Missouri Public Service Commission, currently consults with the Wind Coalition focusing on policy issues regarding electricity within the Southwest Power Pool region and matters of national interest that impact the advancement of wind energy. He was one of the founding directors of the Organization of MISO States (OMS) and the SPP Regional State Committee. He served in every officer position with the OMS including the office of President. Steve currently serves as the representative of the renewable generators on the Steering Committee of the Eastern Interconnect Planning Corroborative.

Brent Roam, an attorney with Bryan Cave, has successfully litigated many cases in state and federal court, and before the Missouri Public Service Commission. His clients include corporate defendants in multi-million dollar cases as well as individual pro-bono clients who cannot afford legal representation. He is an alumnus of Arizona State University School of Law where he was Senior Note and Comment Editor. Roam is a Rhodes Scholar and Woodrow Wilson Fellow. He is also an inductee of the Academy of Television Arts and Sciences and member of the Screen Actors Guild.

B

Welcome &
Opening Remarks

A Snapshot Of What We Do

A Publication Of The Missouri Public Service Commission

Utility services and infrastructure are essential to the economy of Missouri. Virtually every Missouri citizen receives some form of utility service (electric, natural gas, telecommunications, steam, water or sewer) from a company regulated by the Missouri Public Service Commission.

The Public Service Commission is the state government agency charged with ensuring that you receive safe, adequate, and reliable utility services at reasonable rates. The commission must balance the interests of the public — ratepayers as well as company shareholders. In proceedings before the commission, rates are set to give the utility company an opportunity, but not a guarantee, to earn a reasonable return on its investment after recovering its prudently incurred expenses.

Missouri's Regulated Utilities

Electric -- The PSC regulates four investor-owned electric companies (Ameren Missouri, Kansas City Power and Light, KCP&L Greater Missouri Operations [formerly Aquila] and The Empire District Electric Company). These companies serve more than 1.9 million customers. The commission **does not** regulate the rates of rural electric cooperatives or municipal electric systems. The commission **does** regulate rural electric cooperatives when it comes to safety issues.

Natural Gas -- Seven investor-owned natural gas companies are regulated by the PSC (Ameren Missouri, The Empire District Gas Company, Atmos Energy Corporation, Laclede Gas, Missouri Gas Energy, Missouri Gas Utilities and Southern Missouri Gas Company). These companies serve nearly 1.4 million customers. While the commission **does not** regulate the rates of municipal gas systems, the PSC **does** have jurisdiction in terms of safety. The PSC **does not** regulate propane.

Water and Sewer -- The PSC regulates 58 water companies. The largest company is Missouri-American Water Company, serving more than 455,000 customers. The PSC also regulates 48 investor-owned sewer companies, ranging in size from 19 to just over 2,850 customers. Water quality issues are regulated by the Missouri Department of Natural Resources. The commission **does not** regulate the rates of municipal water and/or sewer systems, public water supply districts or public sewer districts.

Telephone -- The PSC regulates, in different forms, nearly 515 telecommunications providers (local telephone service providers, long distance companies, pay phone providers, and shared tenant service providers) in Missouri. The PSC **does not** regulate wireless telephones, internet providers or cable television.

Manufactured Housing -- The PSC regulates manufacturers and retail dealers who sell new and used manufactured homes and modular units. There are 131 registered manufacturers, 232 registered dealers and 137 licensed installers in Missouri.

Steam -- Two steam companies are under PSC jurisdiction -- KPC&L Greater Missouri Operations (formerly Aquila Networks-L&P) and Trigen-Kansas City Energy Corporation. These companies serve approximately 62 customers, primarily commercial and industrial.

C

What Goes Into My Utility bill?

Fundamentals of Rate-Making

Sarah Kliethermes

What Goes into My Utility Bill?
The Fundamentals of Ratemaking

The Second Annual
Missouri Energy Law Seminar
September 14, 2012

DISCLAIMER

- This presentation is not binding on anyone, least of all the Missouri Public Service Commission, any individual Commissioners, or the Staff of the Commission.
- While I have attempted to make this presentation as factual and impartial as possible, I am involved with several cases pending before the Commission, and this presentation is not intended to reflect Staff's position in any particular case, whether or not I am the assigned attorney responsible for a particular issue.
  - **My reference to Ameren Missouri bills and tariff sheets is only for purposes of providing a meaningful example, and is not intended to be taken as evidence or argument in any pending or contemplated cases.**
  - Staff is a party in cases before the Commission. I am an attorney for Staff and my job is to present Staff's recommendation to the Commission, as well to participate in all phases of litigation to develop, present, and defend that recommendation.

Questions -

- Please feel free to ask questions as we work through the material.
  - I may indicate we're about to get a point, but we may need to touch on something we've already addressed.
  - If we start running short on time we may wait to take it up at the end.

Gas & Electric Residential Customer

Gas & Electric Residential Customer

PRES RDG	PREV RDG	USE	READING	RATE	AMOUNT
50956	49135	1821	Actual	1M	200.84
2317	2306	11	Actual	RS GS P	26.81
Fuel Adjustment Charge					5.24
Energy Efficiency Pgm Charge					1.27
Infrastructure Replacement Surcharge					.00
MO Local Sales Tax					4.69
Late Pay Charge @ 1.5%					.35
Budget Adjustment					-18.85
Prior Balance					23.30
Amount Due on 08/17					**$243.65**

PGA **$0.27818182** per CCF

How did we get here?

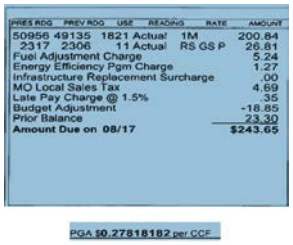
$$\mathbf{RR = C + (V - D)\,R}$$

- Where:
  - RR = Revenue requirement;
  - C = Prudent operating costs;
  - V-D = Rate base less accumulated depreciation;
  - R = Rate of return (weighted average cost of capital).

How did we get here?

- Gas elements
  - We will walk through bill line items to discuss how those items come out of a cost-of-service calculation and rate design.
  - We will end up with discussion of the elements of cost-of-service.
- Electric elements
  - We will walk through a discussion of a cost-of-service calculation and rate design to discuss how bill line items fall out.
  - We will end up with discussion of bill line items.

Gas & Electric Residential Customer



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PRES RDG	PREV RDG	USE	READING	RATE	AMOUNT
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- This line deals with the Gas portion of the bill
- Meter Readings and Usage in 100 cubic feet (CCF)
- Whether the read was “actual,” or “estimated”
- Identify the rate schedule under which the customer receives service
- (CCF) x (applicable per CCF rate)
  + (CCF) x (PGA) + customer charge

What is the applicable Customer charge, per CCF rate, and PGA rate?

It depends.

Rate Structure

- Refers to what elements exist on a particular rate schedule.
- Examples:
  - Per-unit charge
  - Customer charge
  - Demand charge
  - Blocked rate
  - Seasonal differential

Rate Design

- Refers to the values of elements of the rate structure on a particular rate schedule.
- Examples:
  - Straight-Fixed-Variable (SFV) customer charges
  - Declining/Inclining Block rates
- Also refers to the relation of charges to one another on different rate schedules.
- Also refers to the phase of the case dealing with determining who gets charged what.

Gas Tariff Sheets

Gas Monthly Customer and Volumetric Meter Reading Rates Section of Tariff

1. Monthly Customer and Volumetric Meter Reading Rates.

Customer Charge	$15.00 per month
Delivery Charge	
0-30 Ccf	79.52¢ per Ccf
All Over 30 Ccf	0.00¢ per Ccf

2. Minimum Monthly Charge. The Customer Charge.

3. Purchased Gas Adjustment. Applicable to all metered and/or billed Ccf, pursuant to the provisions of Rider A - Purchased Gas Adjustment Clause.

PRES RDG	PREV RDG	USE	READING	RATE	AMOUNT
2317	2306	11	Actual	RS GS P	26.81

- $.7952 x 11 = $8.75
  - Only 11 CCF were used, so all usage falls in first block at 79.52¢/CCF
- $.27818182 x 11 = $3.06
  - PGA rate = 27.818182¢/CCF
- Customer charge of $15.00
- Total Gas Line Value = $26.81

Where did those rates come from?

- In most instances, we don't officially know.
- Staff, the Utility, the Office of Public Counsel, and other interveners can provide Class Cost of Service Studies (CCoS Study).
  - These studies assign and allocate costs among classes, customers, levels of usage, and rate elements.
  - The parties almost never recommend exact implementation of their CCoS Studies.
  - Many cases are resolved by "black box" stipulation.
  - The Commission almost never completely accepts a study, must less exactly implements it.

Where did those rates come from?

- Even if the Commission did implement a specific CCoS recommendation, and even if that recommendation was based precisely on a party's CCoS study, and the Commission found with that party precisely on every item contained in that party's direct case, the resulting rate design still would not tie directly back to costs, because costs change constantly.
- A CCoS study is a snapshot that guides expert recommendations that consider other factors, including rate shock and volatility.

Where did those rates come from?

- Customer charge:
  - Generally based on the cost of the utility being able to provide you with gas, whether or not you use a molecule
  - Typically includes:
    - Cost of rendering and issuing a bill
    - Cost of having a meter and gas lines available
    - Cost of the utility employing people to provide service
    - Cost of the utility having equipment to provide service

Where did those rates come from?

- Delivery charge:
  - Generally based on the costs that change depending on how much gas you use
  - May or may not include:
    - Cost of having gas in storage
    - Cost of employing gas buyers to purchase gas, which may require more skill if you have high usage
  - May be used as a rate shock mitigation strategy, or to facilitate affordable access to utility service.
  - Many gas utilities have a Straight-Fixed Variable (SFV) rate structure. They do not have delivery charges.

Where did those dollars come from?

- The delivery charge and customer charge are based on the cost of providing certain services, but how do we know how much it costs to provide those services?
- Revenue Requirement =

$$\mathbf{RR = C + (V - D) R}$$

Revenue Requirement

$$\mathbf{RR = C + (V - D) R}$$

- Where:
  - RR = Revenue requirement;
  - C = Prudent operating costs;
  - V-D = Rate base less accumulated depreciation;
  - R = Rate of return (weighted average cost of capital).

Where did those rates come from?

- Where's the gas?
- PGA Charge:
  - The actual cost of the gas.
  - Determined in a separate proceeding.
    - The rate is periodically adjusted.
    - The rate is periodically audited.

What's Missing?

- ISRS (Infrastructure Replacement Surcharge)
  - A charge that certain utilities can collect from customers to cover costs related to replacing inadequate facilities with modern facilities.
- Sales Taxes
- Adjustments for Budget Billing

Where do rates come from?

- The PSC, through a rate case.
  - The PSC's statutory duty is to set "just and reasonable" rates.
- What's a "just and reasonable" rate?
  - It's a rate that is fair to both the utility and to its customers.

Where do rates come from?

- Just and Reasonable rates are sufficient to cover prudent operating and maintenance expenses,
- Just and Reasonable rates sufficient to allow an opportunity to earn a reasonable return on the value of the capital investment reflected in the assets used to provide utility services. A public utility is generally a private, investor-owned corporation.
  - A public utility is in business to make a profit.
  - The PSC determines the amount of profit the utility will make.

Where do rates come from?

- The PSC makes just and reasonable rates using traditional cost-of-service ratemaking.
- It is ratemaking based on the utility's cost of providing the service.
- Plus an opportunity for a reasonable profit.

What's in a rate case?

- The first part of a cost-of-service rate case is simply determining the values to plug into the revenue requirement formula.
- The second part is designing rates that will produce the necessary revenue over the course of a year.

How does the PSC determine the Cost of Service?

- Rates are determined on an annual basis.
- The basis of this prediction is a year's worth of actual data.
- This is called the "test year."
- Missouri traditionally uses a *historical* test year, that is, historical data.
- Some states use a projected test year.

How does the PSC determine the Cost of Service?

- **COST-OF-SERVICE RATEMAKING:**

$$RR = C + (V - D) R$$

- Where:
  - RR = Revenue requirement;
  - C = Prudent operating costs;
  - V-D = Rate base less accumulated depreciation;
  - R = Rate of return (weighted average cost of capital).

COST-OF-SERVICE

- Cost-of-service ratemaking is based upon the test year revenues and expenses as documented in the company's books.
- To facilitate the use of the company's books in ratemaking, utility's are required to keep their books according to the Uniform System of Accounts ("USOA").

COST-OF-SERVICE

- The USOA is a comprehensive system of accounts including various assets, liabilities, revenues, and expenses under which the financial transactions of a regulated utility are categorized and recorded.
- The use of the USOA greatly facilitates Staff's audit of the utility.

RR = C + (V – D) R

- Revenue requirement cost-of-service components include operating expenses, rate base, capital structure and return on rate base, and depreciation expense.
- Staff's position on the utility's revenue requirement is presented in its Cost-of-Service Revenue Requirement Report and in Staff's Accounting Schedules.

RR = C + (V – D) R

- Test year revenues and expenses are *annualized* and *normalized* to improve their predictive value.
  - *Annualization* is an adjustment to a test year value to make it more predictive of what the utility will experience going forward.
    - Price-level changes and volume-level changes are annualized.
  - *Normalization* is an adjustment that removes data outliers and anomalies from the test year data.
    - Unusual events are normalized.

RR = C + (V – D) R

- In public utility accounting, costs and expenses are characterized as either “above the line” or “below the line.”
- The “line” is the line drawn under *Total Operating Expenses* on the income and expense statement.
- Only items “above the line” are chargeable to ratepayers.

RR = C + (V – D) R

- Some expenses, although recoverable, are amortized into rates over a period of years.
- An example would be costs associated with a major storm.
- Storm recovery expense from a specific storm is generally amortized over a number of years; for example, in a given case, one-sixth of a particular storm’s expense is put into rates.

RR = C + (V – D) R

- Test year expenses and new plant additions are also subjected to a prudence review.
- Expenses or rate base additions will be excluded if they were not incurred prudently, and if harm to rate payers resulted.
- Items will also be excluded if they are not necessary, reasonable, or beneficial to ratepayers.

RR = C + (V – D) R

- Under cost-of-service ratemaking, shareholders are entitled to both a return **ON** their investment and a return **OF** their investment.
- The return **ON** their investment is provided by the profit allowed by the PSC.
- The return **OF** their investment is provided by depreciation expense.

RR = C + (V – D) R

- Depreciation expense is a significant part of every rate case.
- It provides a cash flow directly from the ratepayers to the company.
- This cash flow reflects the gradual loss of value of the utility assets as they are used up and worn out in providing service.

RR = C + (V – D) R

- Depreciation expense is accumulated and the total is deducted from the total of rate base to reflect the current value of the utility assets in service.
- "Rate base" is the total gross investment in utility assets at original cost.

RR = C + (V – D) R

- Rate base includes all utility plant-in-service.
- To be included in rate base, an asset must be "used and useful," that is, actually used in the provision of service to the ratepayers.
- Rate base also includes other items such as tools, supplies, fuel stocks, capitalized construction costs, prepaid expenses, and cash working capital.

RR = C + (V – D) R

- "Cash working capital" is the money that the utility needs to operate during the interval between the provision of service and the receipt of payment for the service.
- The necessary amount of cash working capital is generally determined by a Lead-Lag Study.

RR = C + (V – D) R

- Some items are subtracted from rate base
  - Accumulated depreciation
  - Customer deposits
  - Accumulated deferred income tax
  - Disallowed plant
    - Approximately $90 million of Taum Sauk

RR = C + (V – D) R

- Timing of the completion of major construction is often the driver of a utility rate case.
- The company cannot receive a return on and of its new plant until it is added to rate base in a rate case.
  - By agreement, recently utilities have received "construction accounting" for major plant additions to reduce the financial impact of delay in beginning depreciation expense recovery.

RR = C + (V – D) R

- During construction, capital investments in new plant are tracked as Construction Work in Progress or CWIP.
- CWIP is excluded from rate base because it represents investment in plant that is not yet used and useful.

RR = C + (V – D) R

- Rate base, net of accumulated depreciation and other items, is multiplied by the **rate of return** to yield the return **on** the shareholders' investment.
- The rate of return is the **weighted average cost of capital.**
- This is the profit opportunity allowed to the shareholders.

RR = C + (V – D) R

- The Due Process Clause requires that the shareholders be allowed an opportunity to earn a reasonable return on their investment.
- Financial theory holds that a fair rate of return is an amount sufficient to meet the utility's capital costs.
- That is, its **weighted average cost of capital.**

RR = C + (V – D) R

- On the utility's balance sheet, the value of its assets is matched by the value of its liabilities, including equity.
- The array of debt, preferred equity and common equity on the balance sheet is the utility's **capital structure.**
- Each type of capital has an associated cost.

RR = C + (V – D) R

- Interest must be paid on debt. That is its cost.
- A specified return must be paid on preferred equity. That is its cost.
- These costs are called "embedded" because they can be readily determined from the terms of the securities.

RR = C + (V – D) R

- The value of common equity is set by the market.
  - The cost of common equity is always a matter for expert financial analysis and testimony.
  - The cost of common equity is often the largest single item by dollar value in a rate case and the most contentious.

RR = C + (V – D) R

- The cost of each component of the capital structure is weighted by a percentage reflecting its proportion of the whole.
  - These weighted values are summed to derive the **weighted average cost of capital** or rate of return.

RR = C + (V – D) R

- Capital structure:
  - Many utilities are publicly traded.
  - Some are not.
  - Many utilities are owned by holding companies that own other entities.

RR = C + (V – D) R

- The estimation of the cost of common equity is guided by certain decisions of the United States Supreme Court.
  - ***Federal Power Commission v. Hope Natural Gas Company*** (***"Hope,"*** 1943)
  - ***Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia*** (***"Bluefield,"*** 1923).

RR = C + (V – D) R

- **Cost of Equity**
- Expert financial analysts typically estimate the cost of common equity by applying a number of well-known measures to a group of proxy companies.
- The proxy group is constructed on the basis of **risk.**

RR = C + (V – D) R

- **Cost-of-Equity**
- Commonly used analytical tools for estimating the cost of common equity are:
  - The Discounted Cash Flow Method (DCM), which can be employed in a number of varieties;
  - The Risk Premium Method; and
  - The Capital Asset Pricing Method (CAPM).
- It is not the particular method used that is important, but the impact of the rate order.

RATE DESIGN

- The second half of a rate case is rate design.
  - Rate design is the process of constructing rates that, when multiplied by the billing determinants, yield the necessary annual revenue.
  - Rate design starts with determining the cost to serve:
    - Specific classes
    - Specific services

RATE DESIGN

- A guiding principle in rate design is to match costs to the cost-causer.
- The first step of rate design is to sort the customers into classes based on usage characteristics.
- Typical classes are residential, large and small commercial, industrial, and government.
  - The Rate Schedules that appear in the Tariff can be, and are, very different from these CCoS classes.

CLASS COST OF SERVICE

- The residential class consists of thousands of families in houses and apartments.
- Expensive and extensive distribution systems are necessary to link each residence to the utility.
- Residential usage peaks in the morning, the evening, and on weekends.

CLASS COST OF SERVICE

- The residential class also characteristically uses more electricity in the summer (for running air conditioners) and more natural gas in the winter (for heating).
- The utilities' production and distribution facilities must be sized to meet these demands.

CLASS COST OF SERVICE

- The large and small commercial classes consist of scores or hundreds of office buildings, malls, stores, churches, hospitals, and businesses of all kinds, large and small.
- These customers tend to use less service on the weekends and overnight.

CLASS COST OF SERVICE

- The industrial class consists of large volume users, often connected directly to the transmission system, whose usage tends to be steady through the year.

RATE DESIGN

- The responsibility of each customer class for the revenue requirement is determined via a Class Cost of Service Study.
- A Class Cost of Service Study has three steps.
  - Functionalization;
  - Classification; and
  - Allocation.

RATE DESIGN

- Functionalization is the process of categorizing utility assets and operations – and the associated costs and expenses – based on the role each plays in service delivery.
- In electric rate cases, these functional roles are:
  - Generation,
  - Transmission,
  - Distribution,
  - Customer Services, and
  - Administrative and General.

RATE DESIGN

- Classification is the process of subdividing the functionalized costs into sub-categories that further specify cost-causation.
- Sub-categories include:
  - Customer-related costs,
  - Demand-related costs,
  - Commodity costs, and
  - "Other" costs.

RATE DESIGN

- Allocation is the process of distributing the functionalized and classified costs across the various rate classes based on the principle of cost responsibility.
- Allocation is performed using allocation factors, which are ratios that reflect the proportion of total units that may be attributed to each customer class.

RATE DESIGN

- The results of the CCOS study can be controversial because they may show that current rates do not accurately reflect the cost of serving each customer class.
- Class shifts are changes made to the proportional responsibility of each customer class in order to more accurately align costs with cost causers.

RATE DESIGN

- Rate Design experts will often use a CCoS study as a starting point.
- Final rate design recommendations typically consider:
  - A CCoS is a snapshot in time
  - Rate volatility
  - Rate continuity
  - Rate shock

RATE DESIGN

- The final step is designing tariffs that will collect the appropriate revenue from each customer class.
- Typically, electric utility rates include two elements, a fixed customer charge and a variable volumetric charge.
  - Many rate schedules feature demand charges.
  - Many utilities have seasonal rates.
  - Some rate schedules feature blocked rates.

RATE DESIGN

- The customer charge applies regardless of whether or not any amount of service was actually used by the customer during the billing period.
- It reflects some or all of the fixed costs incurred by the utility in serving that customer.

RATE DESIGN

- The volumetric part of the rate varies in accordance with the customer's usage of the utility service.
- Usage is measured by a meter which must be read periodically by the utility.

PRES RDG	PREV RDG	USE	READING	RATE	AMOUNT
50956	49135	1821	Actual	1M	200.84

- This line deals with the Electric portion of the bill.
- Meter Readings and Usage in kilowatt hours (kWh)
- Whether the read was “actual,” or “estimated”
- Identify the rate schedule under which the customer receives service
- (kWhs) x (applicable per kWh rate) + customer charge

What is the applicable Customer charge, and per kWh rate?

It depends.

What’s left?

- Fuel Adjustment Charge
- Energy Efficiency Program Charge
- Taxes

Fuel Adjustment Charge

- A Fuel Adjustment Clause requires a utility to pass on increases or decreases in the cost of its fuel and purchased power.
- During an **accumulation period**, the utility compares the amount it spends on fuel and purchased power to the amount that was included in rates in its last rate case.

Fuel Adjustment Charge

- The difference between the amount a utility spent on fuel and purchased power and the amount that was included in rates in its last rate case gets reduced by 5%.
- The remaining 95% of the difference from an accumulation period gets applied to customer bills during a **recovery period**.

Fuel Adjustment Charge

- Fuel and purchased power costs are periodically reviewed for prudence.
- Under- and over-recovery of Fuel Adjustment Clause charges are periodically "trued-up."
- Because a Fuel Adjustment Clause is introduced in a rate case, it is considered part of that utility's rates.
  - It is a variable rate.

Energy Efficiency Charge

- Some customers are allowed, by statute, to "opt out" of providing rate support for certain types of energy efficiency charges.
- To facilitate the opt out, and to send price signals to all customers, the energy efficiency costs are a separate line item on regulated utility's bills.

Taxes

- The Public Service Commission does not regulate local sales and franchise taxes.
- Utilities are allowed to charge the appropriate tax rate for these taxes on customer bills without coming in for a rate case.

Questions?

What Goes into My Utility Bill?
The Fundamentals of Ratemaking

D

Missouri's Renewable Energy Standard: Past, Present and Future

Commissioner Robert S. Kenney

Missouri's Renewable Energy Standard: Past, Present, and Future

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Overview

- Legislative Pathways to Renewable Energy
  - Green Power Initiative
  - Renewable Energy Standard (Prop C)
- Public Service Commission Rulemaking
- Litigation

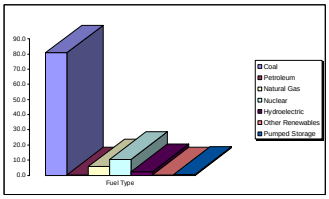
Overview

- Two Paths to Enact a Statute
- Promulgation of Administrative Rules
- The Legislature versus the Executive Branch (JCAR)
- The Constitution (US and MO)
- Public Policy

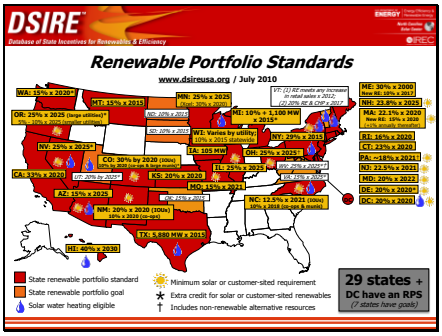
Renewable Energy: Why

- Environmental Benefits
- Economic Development Benefits
- Reduce Dependence on Foreign Sources of Fossil Fuels

PERCENTAGE OF FUEL TYPES



Wind, Solar and Geothermal comprise .2% of the total energy consumed in Missouri in 2008. Source: *United States Department of Energy, Energy Information Administration, State Energy Data 2008: Generation*



Legislative Paths to Renewable Energy

- In 2007, the Missouri General Assembly passed and the Governor signed into law, Missouri's Green Power Initiative.
- The Green Power Initiative provided that every electric corporation shall make a *good faith effort* to generate or procure electricity generated from renewable energy resources to meet the following:
  - 2012 = 4%
  - 2015 = 8%
  - 2020 = 11%

9/14/2012

Legislative Paths to Renewable Energy

- In 2008, the citizens of the State of Missouri adopted by initiative petition, commonly referred to as Proposition C, an amendment that established Missouri's Renewable Energy Standard.
- Renewable Energy requirements to be generated or purchased:
  - 2011 to 2013 = No less than 2%
  - 2014 to 2017 = No less than 5%
  - 2018 to 2020 = No less than 10%
  - 2021 and beyond = No less than 15%

9/14/2012

Missouri's Renewable Energy Standard

- What is a renewable energy resource?
  - Wind
  - Solar thermal
  - Photovoltaic cells/panels
  - Dedicated Crops
  - Cellulosic agricultural residues
  - Plant residues
  - Methane from landfills, from agricultural operations, or from wastewater treatment
  - Thermal depolymerization or pyrolysis for converting waste material to energy
  - Clean and untreated wood
  - Hydropower (not including pumped storage) less than 10 MW
  - Hydrogen fuel cells
  - Other resources not including nuclear that become available at a later date and that are approved by the Department of Natural Resources

9/14/2012

Missouri's Renewable Energy Standard

- Two percent of the RES requirements must come from solar energy.
- Each electric utility (with, maybe, one exception) must make available to its customers a rebate of at least two dollars for each installed watt for solar electric systems sited on the customer's premises.
- Compliance with RES requirements can be accomplished through the purchasing of Renewable Energy Credits (RECs). A REC is a tradeable certificate of proof that one MWh of electricity has been generated from renewable energy sources.
- The use of RECs gives rise to other complicated issues: Where is the renewable energy generated? Does the energy have to be sold to Missouri consumers? Is the REC divisible from the energy associated with it?
- Hydropower (not including pumped storage) less than 10MW. What Facilities Count?

Missouri's Renewable Energy Standard

- The Commission is required to promulgate rules setting forth the various requirements for all electric utilities to generate or purchase electricity generated from renewable resources.
- The rulemaking process lead to legal challenges and to difficult decision making around important public policy considerations.

Missouri's Renewable Energy Standard

- "Geographic Sourcing"
  - Renewable Energy Credits may be used to comply with the RES so long as the energy associated with those RECs is "sold to" Missouri consumers.
- Retail Rate Impact
  - The cost of compliance may not increase retail rates by more than one percent.
- Hydropower Less than 10 MW: What Facilities Qualify?

Litigation

- Geographic Sourcing
- One Percent Rate Cap Language
- Constitutional Challenges
  - United States Constitution
    - Commerce Clause
  - Missouri Constitution
    - Takings Clause
    - Due Process

Conclusion

- Good Public Policy …(?)
- Obstacles to Good Public Policy
- From the Green Power Initiative to the Court of Appeals
- Where Do We Go From Here?

Questions?

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E

Transmission Law and Development: Planning & Cost Allocation

Steve Gaw

TRANSITION TO ORDER 1000

- Commission held three technical conferences prior to the NOPR
- Opinions expressed ranged from everything is working fine to serious concerns about the lack of transmission infrastructure being built
- In the end FERC was convinced that Order 890 represented incremental progress and that more needed to be done

FERC ORDER 1000&1000A

Issued late last year Order 1000 builds on past FERC Orders

Focuses on:

1. Planning
2. Cost Allocation
3. Federal Rights of First Refusal to build transmission.

FERC ORDER 888-OPEN ACCESS

- In Order No. 888, issued in 1996, the Commission found that it was in the **economic interest of transmission providers to deny transmission service** or to offer transmission service to others on a basis that is inferior to that which they provide to themselves. P. 17-18
- Changed Open Access and planning rules to allow for more **transparency** in transmission use and planning.

ORDER 890-TRANSPARENCY

- "[O]ne of the primary goals of the reforms undertaken in Order No. 890 was to address the lack of specificity regarding how stakeholders should be treated in the transmission planning process." P. 19

ORDER 890

- Order 890 planning principles
  - Coordination
  - Openness
  - Transparency
  - Information exchange
  - Comparability
  - Dispute Resolution
  - Regional Participation
  - Economic Planning Studies
  - Cost Allocation of New Projects

BUILDING ON 890

- "Specifically, the requirements of this Final Rule build on the following transmission planning principles that we required in Order No. 890: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning." P. 120
- "We do not include the regional participation transmission planning principle and the cost allocation transmission planning principle here because we address interregional transmission coordination and cost allocation for transmission facilities selected in a regional transmission plan for purposes of cost allocation elsewhere in this Final Rule." FT. Note 141

BUILDING ON ORDER 890

- Expands significantly on two of the principles in Order 890
  - Planning
  - Cost Allocation

ORDER 1000

- Three main topics addressed
  - Cost Allocation
    - Regional
    - Interregional
  - Planning
    - Regional
    - Interregional
  - Right of First Refusal

FERC

- "On balance, the Commission concludes that the reforms adopted herein are necessary for more **efficient and cost-effective regional transmission planning**. As discussed further below, the electric industry is currently facing the possibility of substantial investment in future transmission facilities to meet the challenge of **maintaining reliable service at a reasonable cost**. The Commission concludes that it is appropriate to act now to ensure that its transmission planning processes and cost allocation requirements are adequate to allow public utility transmission providers to address these challenges more efficiently and cost-effectively." P.8

FERC CONCLUSION

- "Through this Final Rule, we conclude that the existing requirements of Order **No. 890 are inadequate**. Public utility transmission providers are currently under no affirmative obligation to develop a regional transmission plan that reflects the evaluation of whether **alternative regional solutions may be more efficient or cost-effective** than solutions identified in local transmission planning processes. Similarly, there is no requirement that public utility transmission providers consider **transmission needs at the local or regional level driven by Public Policy Requirements**. Nonincumbent transmission developers seeking to invest in transmission can be discouraged from doing so as a result of **federal rights of first refusal in tariffs** and agreements subject to the Commission's jurisdiction. While neighboring transmission planning regions may coordinate evaluation of the reliability impacts of transmission within their respective regions, few procedures are in place for identifying and evaluating the **benefits of alternative interregional transmission solutions**. Finally, **many cost allocation methods in place within transmission planning regions fail to account for the beneficiaries of new transmission facilities**, while cost allocation methods for potential interregional facilities are largely nonexistent." P.9-10

JUSTIFICATION

- "Taken together, the requirements imposed in this Final Rule work together to remedy deficiencies in the existing requirements of Order No. 890 and enhance the ability of the transmission grid to support wholesale power markets. This, in turn, will fulfill our statutory obligation to ensure that Commission-jurisdictional services are provided at rates, terms, and conditions of service that are just and reasonable and not unduly discriminatory or preferential."

OBJECTIVES

- "…the specific reforms adopted in this Final Rule are intended to achieve two primary objectives: (1) ensure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet transmission needs more efficiently and cost-effectively; and (2) ensure that the costs of transmission solutions chosen to meet regional transmission needs are allocated fairly to those who receive benefits from them." P 10

REFORM MEASURES IN REGIONS ALREADY ENACTED

- We acknowledge that public utility transmission providers in some transmission planning regions already may have in place transmission planning processes or cost allocation mechanisms that satisfy some or all of the requirements of this Final Rule.
- Rather, the Commission is acting here to identify a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential.

RIGHT OF FIRST REFUSAL

- "To implement the elimination of such rights, we adopt below a framework that requires the development of qualification criteria and protocols to govern the submission and evaluation of proposals for transmission facilities to be evaluated in the regional transmission planning process. We further require that **any nonincumbent developer of a transmission facility selected in the regional transmission plan have an opportunity comparable to that of an incumbent transmission developer to allocate the cost of such transmission facility through a regional cost allocation method or methods**." P. 174-175

STATE AUTHORITY

+ "We acknowledge that there is longstanding state authority over certain matters that are relevant to transmission planning and expansion, such as matters relevant to siting, permitting, and construction. However, nothing in this Final Rule involves an exercise of siting, permitting, and construction authority." P. 85

ROFR: RULE IS NOT INTENDED TO PRE-EMPT STATE AND LOCAL LAWS

+ "However, we note that nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities." P. 176

ROFR

+ "To address these issues, the Commission proposed to reform provisions in public utility transmission providers' OATTs or other agreements subject to the Commission's jurisdiction that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities that are in a regional transmission plan." P. 177

ROFR: REASONS FOR ELIMINATING

- "As the Commission recognized in Order Nos. 888 and 890, it is not in the economic self-interest of public utility transmission providers to expand the grid to permit access to competing sources of supply." P. 200

ROFR

- "Just as it is not in the economic self-interest of public utility transmission providers to expand transmission capacity to allow access to competing suppliers, it is not in the economic self-interest of incumbent transmission providers to permit new entrants to develop transmission facilities, even if proposals submitted by new entrants would result in a more efficient or cost-effective solution to the region's needs." P. 202-203

ROFR

- "…[W]e do not believe that, just because an incumbent public utility transmission provider may have certain strengths, a nonincumbent transmission developer should be categorically excluded from presenting its own strengths in support of its proposals or bids." P. 206-207

ROFR

- "The court in ***CAISO v. FERC*** explained that the Commission is empowered under section 206 to assess practices that directly affect or are closely related to a public utility's rates and "not all those remote things beyond the rate structure that might in some sense indirectly or ultimately do so." The Commission here is focused on the effect that federal rights of first refusal in Commission-approved tariffs and agreements have on competition and in turn the rates for jurisdictional transmission services. *CAISO v. FERC*, 372 F.3d 395 at 403." P. 226

ROFR

- "In addition, federal rights of first refusal create opportunities for undue discrimination and preferential treatment against nonincumbent transmission developers within existing regional transmission planning processes." P. 226

ROFR

- "First, the Commission requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a nonincumbent transmission developer." P. 256

ROFR

- "Second, the Commission requires that each public utility transmission provider revise its OATT to identify: (a) the information that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional transmission planning process; and (b) the date by which such information must be submitted to be considered in a given transmission planning cycle." P. 258

ROFR

- "Third, the Commission requires each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation." P. 260

ROFR

- "The Commission also requires that a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation." P. 264

ROFR

- "To ensure comparable treatment of all resources, the Commission has required public utility transmission providers to include in their OATTs language that identifies how they will evaluate and select among competing solutions and resources." P. 249

ROFR: RULE DOES NOT:

- "In addition, the Proposed Rule emphasized that our reforms do not affect the right of an incumbent transmission provider to build, own and recover costs for upgrades to its own transmission facilities, such as in the case of tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. **In other words, an incumbent transmission provider would be permitted to maintain a federal right of first refusal for upgrades to its own transmission facilities**." P. 253

ROFR ALSO REMAINS FOR:

- A local transmission facility is a transmission **facility located solely** within a public utility transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.

ROFR

- "…[O]ur reforms are not intended to alter an incumbent transmission provider's use and control of its existing rights-of-way." P. 253

ROFR: QUALIFICATIONS TO BUILD

- "The qualification criteria must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities." P. 256

MOBILE SIERRA

- "We decline to address at this time the merits of National Grid's arguments that section 3.09 of the ISO New England Transmission Operating Agreement establishes a federal right of first refusal that can be modified only if the Commission makes the findings that National Grid contends are required by application of the *Mobile-Sierra* doctrine. We find that the record is not sufficient to address the specific issues raised by National Grid in this generic proceeding." P. 231

ROFR

- "We require that each public utility transmission provider must participate in a regional transmission planning process that makes each transmission facility selected in the regional transmission plan for purposes of regional cost allocation eligible for such cost allocation. **In other words, eligibility for regional cost allocation is tied to the transmission facility's selection in the regional transmission plan for purposes of cost allocation and not to a specific sponsor.**" P. 266

PLANNING REQUIREMENTS OVERVIEW

- Transmission Planning
  - Each public utility transmission provider must participate in a regional transmission planning process.
  - Each region must produce a single transmission plan under the principles of Order 890
  - Each region must consider the transmission needs driven by policies set by Federal, State and political subdivision requirements
  - Each region must have an agreement to plan with each adjoining region to address interregional transmission solutions

COST EFFECTIVE REGIONAL SOLUTIONS

- Regional Planning must evaluate regional transmission alternatives that are more cost effective than those at the utility level.
- Non-transmission and transmission alternatives must be evaluated on an equivalent basis

SIZE OF PLANNING REGIONS

- One utility cannot be an island.
- "However, to the extent necessary, we clarify that an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements of either Order No. 890 or this Final Rule." P. 128

PLANNING

- **Transmission needs driven by policy requirements must considered**
  - State RES requirements
    - SPP
    - MISO
  - Federal and state policies
  - Local policies?
  - What about goals?
  - Considered: thought about or met?

PUBLIC POLICY CHALLENGES

- "…[S]ome regions are struggling with how to adequately address transmission expansion necessary to, for example, comply with renewable portfolio standards. These difficulties are compounded by the fact that planning transmission facilities necessary to meet state resource requirements must be integrated with existing transmission planning processes that are based on metrics or tariff provisions focused on reliability or, in some cases, production cost savings." P. 67

POLICY REQUIREMENTS

- Does not mean that transmission solutions must be approved
- Seems to track with the approach taken in SPP and MISO filings accepted by FERC prior to the issuance of Order 1000.
- Rule is not a limitation
  - SPP tariff currently contemplates that goals of states in meeting levels of renewable energy can justify transmission expansion.

PUBLIC POLICY-FERC JURISDICTION

- "Public Policy Requirements can directly affect the need for interstate transmission facilities, which are squarely within the Commission's jurisdiction. …. [W]e are not specifying the Public Policy Requirements that must be considered in individual local and regional transmission planning processes." P. 88

PUBLIC POLICY

- "Moreover, these reforms will remedy opportunities for **undue discrimination** by requiring public utility transmission providers to have in place processes that provide <u>all stakeholders the opportunity to provide input</u> into what they believe are transmission needs driven by Public Policy Requirements, rather than the public utility transmission provider planning only for its own needs or the needs of its native load customers." P. 158

PUBLIC POLICY

- "…[W]e clarify that by considering transmission needs driven by Public Policy Requirements, we mean: (1) the identification of transmission needs driven by Public Policy Requirements; and (2) the evaluation of potential solutions to meet those needs." P. 160

PUBLIC POLICY

- "We do not in this Final Rule require the identification of any particular transmission need driven by any particular Public Policy Requirements." P. 161

PUBLIC POLICY

- "Instead, we require each public utility transmission provider to **establish procedures for identifying those transmission needs driven by Public Policy Requirements** for which potential transmission solutions will be evaluated in the local or regional transmission planning processes." P. 161

PUBLIC POLICY

- "…to ensure that requests to include transmission needs are reviewed in a fair and non-discriminatory manner, we require public utility **transmission providers to post on their websites an explanation of which transmission needs driven by Public Policy Requirements will be evaluated for potential solutions** in the local or regional transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated." P. 163

PUBLIC POLICY: CONSIDERATION IS SUFFICIENT

- "To be clear, however, while a public utility transmission provider is required under this Final Rule to evaluate in its local and regional transmission planning processes those identified transmission needs driven by Public Policy Requirements, that obligation does not establish an independent requirement to satisfy such Public Policy Requirements." P. 166

PUBLIC POLICY

- "Based on the record before us, we believe it is sufficient to ensure just and reasonable rates and to avoid the potential for undue discrimination to restrict the requirement for public policy consideration to state or federal laws or regulations that drive transmission needs. Likewise, **we will not require restrictions on the type or number of Public Policy Requirements to be considered as long as any such requirements arise from state or federal laws or regulations that drive transmission needs and as long as the requirements of the procedures required herein are met.**" P. 167

PUBLIC POLICY

- "…[A] public utility transmission provider and its stakeholders are not precluded under this Final Rule from choosing to plan for state public policy **goals** that have not yet been codified into state law, which they nonetheless consider to be important long-term planning considerations." Ft. Note 193

PUBLIC POLICY: COSTS ALLOCATED TO BENEFICIARIES

- "We clarify that any such consideration of transmission needs driven by Public Policy Requirements, to the extent that it results in new transmission costs, must follow the cost allocation principles discussed separately herein. Particularly, the costs of new transmission facilities allocated within the planning region must be allocated within the region in a manner that is at least roughly commensurate with estimated benefits. Those that receive no benefit from new transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those facilities. That is, a utility or other entity that receives no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those facilities." P. 170

PUBLIC POLICY: STATE INVOLVEMENT

- "…[W]e strongly encourage states to participate actively in the identification of transmission needs driven by Public Policy Requirements. Public utility transmission providers, for example, could rely on committees of state regulators or, with appropriate approval from Congress, compacts between interested states to identify transmission needs driven by Public Policy Requirements for the public utility transmission providers to evaluate in the transmission planning process." Ft. Note 189

INTERREGIONAL PLANNING

- Coordination of Planning must be done by adjoining regions within the same Interconnect
- FERC does not require planning across multiple non-adjoining regions

INTERREGIONAL PLANNING

- "First, the Commission requires the development and implementation of procedures that provide for the **sharing of information** regarding the respective needs of neighboring transmission planning regions, as well as the **identification and joint evaluation** by the neighboring transmission planning regions of potential interregional transmission facilities that address those needs." P. 272

INTERREGIONAL PLANNING

- "Second, to ensure that developers of interregional transmission facilities have an opportunity for their transmission projects to be evaluated, the Commission requires the development and implementation of **procedures** for neighboring public utility transmission providers to identify and jointly evaluate transmission facilities that are proposed to be located in both regions." P. 272

INTERREGIONAL PLANNING

- "Third, to facilitate the joint evaluation of interregional transmission facilities, the Commission requires the **exchange of planning data and information** between neighboring transmission planning regions at least annually." P. 272

INTERREGIONAL PLANNING

- "Finally, to ensure transparency in the implementation of the foregoing requirements, the Commission requires public utility transmission providers, either individually or through their transmission planning region, to maintain **a website or e-mail list** for the communication of information related to interregional transmission coordination." P. 272-273

INTERREGIONAL PLANNING

- "In light of the comments received on this issue, the Commission in the Proposed Rule expressed concern that the lack of coordinated transmission planning processes across the seams of neighboring transmission planning regions could be needlessly increasing costs for customers of transmission providers, which may result in rates that are unjust and unreasonable and unduly discriminatory or preferential." P. 272

INTERREGIONAL PLANNING

+ "The Commission requires each public utility transmission provider, through its regional transmission planning process, to establish further procedures with each of its neighboring transmission planning regions for the purpose of coordinating and sharing the results of respective regional transmission plans to **identify possible interregional transmission facilities that could address transmission needs more efficiently or cost-effectively than separate regional transmission facilities.**" P. 304

INTERREGIONAL PLANNING: SUMMARY

+ "To comply with the requirements in this Final Rule, each public utility transmission provider, through its regional transmission planning process, must develop and implement additional procedures that provide for the sharing of information regarding the respective needs of each neighboring transmission planning region, and potential solutions to those needs, as well as the identification and joint evaluation of interregional transmission alternatives to those regional needs by the neighboring transmission planning regions. On compliance, public utility transmission providers must describe the methods by which they will identify and evaluate interregional transmission facilities. While the Commission does not require any particular type of studies to be conducted, this Final Rule requires public utility transmission providers in neighboring transmission planning regions to jointly identify and evaluate whether interregional transmission facilities are more efficient or cost-effective than regional transmission facilities." P. 307

INTERREGIONAL PLANNING

+ "We clarify here that the interregional transmission coordination requirements that we adopt do not require formation of interregional transmission planning entities or creation of a distinct interregional transmission planning process to produce an interregional transmission plan.." P. 308

BOTH REGIONS MUST APPROVE

- However, as discussed below, an interregional transmission facility must be selected in both of the relevant regional transmission plans for purposes of cost allocation in order to be eligible for interregional cost allocation pursuant to an interregional cost allocation method required under this Final Rule. P. 309

INTERREGIONAL PLANNING

- "Final Rule neither requires nor precludes longer-term interregional transmission planning, including the identification of conceptual or contingent elements, the consideration of transmission needs driven by Public Policy Requirements, or the evaluation of economic considerations." P. 317

INTERREGIONAL PLANNING

- "The Commission requires the development of a formal procedure to identify and jointly evaluate interregional transmission facilities that are proposed to be located in neighboring transmission planning regions." P. 330

INTERREGIONAL PLANNING

- "The Commission declines to expand the interregional transmission coordination requirements adopted herein to require joint evaluation of the effects of a new transmission facility proposed to be located solely in a single transmission planning region." P. 317-318

INTERREGIONAL PLANNING

- "The Commission also requires the developer of an interregional transmission project to first propose its transmission project in the regional transmission planning processes of each of the neighboring regions in which the transmission facility is proposed to be located." P. 331

INTERREGIONAL PLANNING

- "Further, although we decline to impose a joint evaluation by more than one region of a facility located solely in one transmission planning region, nothing in this Final Rule precludes public utility transmission providers from developing and proposing interregional processes for that purpose." P. 318

INTERREGIONAL PLANNING

- "…[We require that both regions conduct joint evaluation of an interregional transmission project in the same general timeframe." P. 333

INTERREGIONAL PLANNING

- "Furthermore, the Commission did not propose in the Proposed Rule, and will not require in this Final Rule, that interregional transmission coordination procedures provide for the costs of an interregional transmission project sponsored by one transmission planning region to be **involuntarily** imposed on another transmission planning region." P. 334

INTERREGIONAL PLANNING

- "The Commission requires each public utility transmission provider, through its regional transmission planning process, to adopt interregional transmission coordination procedures that provide for the exchange of planning data and information at least annually." P. 341-342

REGIONAL ANALYSIS OF COST EFFECTIVE SOLUTIONS: NON-RTO REGIONS

- "We conclude that it is necessary to have an affirmative obligation in these [Non-RTO regions] transmission planning regions to evaluate alternatives that may meet the needs of the region more efficiently or cost-effectively." P. 65

COST ALLOCATION SIX PRINCIPLES

- Each Transmission Provider must participate in a regional cost allocation method that satisfies six cost allocation principles
- Transmission providers must have a cost allocation method for interregional cost sharing with their adjoining regions which satisfy the six principles
- The regional and interregional cost allocation methods cannot be participant funding-but participant funding is permitted outside of the regional and interregional cost allocation methods

COST ALLOCATION

- "We recognize that identifying which types of benefits are relevant for cost allocation purposes, which beneficiaries are receiving those benefits, and the relative benefits that accrue to various beneficiaries can be difficult and controversial. We believe that a transparent transmission planning process is the appropriate forum to address these issues. By linking transmission planning and cost allocation through the transmission planning process, we seek to increase the likelihood that transmission facilities in regional transmission plans are actually constructed." P. 370

COST ALLOCATION

- "It noted that the D.C. Circuit defined the cost causation principle stating that "it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them." Moreover, the Commission noted that while the cost causation principle requires that the costs allocated to a beneficiary be at least roughly commensurate with the benefits that are expected to accrue to it, the D.C. Circuit has explained that cost causation "does not require exacting precision in a ratemaking agency's allocation decisions" P. 371-372
- *Illinois Commerce Commission*, 576 F.3d 470 at 476-77 ("We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.") Ft. Note 395

COST ALLOCATION

- "In Order No. 890, the Commission recognized that the cost causation principle provides that costs should be allocated to those who cause them to be incurred and those that otherwise benefit from them. We conclude now that this principle cannot be limited to voluntary arrangements because if it were "the Commission could not address free rider problems associated with new transmission investment, and it could not ensure that rates, terms and conditions of jurisdictional service are just and reasonable and not unduly discriminatory." P. 391

COST ALLOCATION

- "The Proposed Rule would require that every public utility transmission provider develop a method, or set of methods, for allocating the costs of new transmission facilities that are included in the transmission plan produced by the transmission planning process in which it participates." P. 401

COST ALLOCATION

- "Moreover, as we have established above, there is a fundamental link between cost allocation and planning, as it is through the planning process that benefits, which are central to cost allocation, can be assessed." P. 406-407

COST ALLOCATION INTERREGIONAL

- "The Proposed Rule would require that each public utility transmission provider within a transmission planning region develop a method for allocating the costs of a new interregional transmission facility between the two neighboring transmission planning regions in which the facility is located or among the beneficiaries in the two neighboring transmission planning regions." P. 410

COST ALLOCATION

- "…[T]he cost allocation method or methods used by the pair of neighboring transmission regions can differ from the cost allocation method or methods used by each region to allocate the cost of a new interregional transmission facility within that region." P. 416

COST ALLOCATION

- "…[R]egions are free to negotiate interregional transmission arrangements that allow for the allocation of costs to beneficiaries that are not located in the same transmission planning region as any given interregional transmission facility. P. 419

COST ALLOCATION

- (1) **The cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits.** In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting public policy requirements established by state or federal laws or regulations that may drive transmission needs.

COST ALLOCATION

- (2) Those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated the costs of those facilities.

COST ALLOCATION: 1.25 B/C

- (3) If a benefit to cost threshold is used to determine which facilities have sufficient net benefits to be included in a regional transmission plan for the purpose of cost allocation, it must not be so high that facilities with significant positive net benefits are excluded from cost allocation. A transmission planning region or public utility transmission provider may want to choose such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds **1.25** unless the transmission planning region or public utility transmission provider justifies and the Commission approves a greater ratio.

COST ALLOCATION

- (4) The allocation method for the cost of a regional facility must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if there is an agreement for the original region to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the entities in the original region. In addition, the Commission preliminarily found that this principle does not affect the cross-border cost allocation methods developed by PJM and MISO in response to Commission directives related to their intertwined configuration.

COST ALLOCATION

- (5) The cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.

COST ALLOCATION

- (6) A transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional plan, such as transmission facilities needed for reliability, congestion relief, or to achieve public policy requirements established by state or federal laws or regulations. Each cost allocation method must be set out clearly and explained in detail in the compliance filing for this Final Rule.

COST ALLOCATION

- Allocation **Principle 6 permits but does not require the public utilities in a transmission planning region to designate different types of transmission facilities**, and it permits but does not require the public utilities in a transmission planning region that choose to designate different types of transmission facilities to have a different cost allocation method for each type. However, we clarify that if the public utilities choose to have a different cost allocation method for each type of transmission facility, there can be only one cost allocation method for each type. P. 486-487

COST ALLOCATION

- "The Commission recognizes that a variety of methods for cost allocation may satisfy a set of general principles. For example, a postage stamp cost allocation method may be appropriate where all customers within a specified transmission planning region are found to benefit from the use or availability of a transmission facility or class or group of transmission facilities, **especially if the distribution of benefits associated with a class or group of transmission facilities is likely to vary considerably over the long depreciation life of the transmission facilities amid changing power flows, fuel prices, population patterns, and local economic considerations**." P. 437

COST ALLOCATION

- "…[W]e conclude that public utility transmission providers in each transmission planning region or pair of transmission planning regions must be allowed the opportunity to determine for themselves the cost allocation method or methods to adopt based on their own regional needs and characteristics, consistent with the six cost allocation principles." P. 437

COST ALLOCATION

- "In the event of a failure to reach an agreement on a cost allocation method or methods, the Commission will use the record in the relevant compliance filing proceeding as a basis to develop a cost allocation method or methods that meets its proposed requirements." P. 438

COST ALLOCATION: MUST BE A CA METHOD

- "However, a public utility transmission provider must have a regional cost allocation method for any transmission facility selected in a regional transmission plan for purposes of cost allocation. **It may not designate a type of transmission facility that has no regional cost allocation method applied to it**, which would effectively exclude that type of transmission facility from being selected in a regional transmission plan for purposes of cost allocation." P. 487-488

COST ALLOCATION

- "We are **no**t persuaded to adopt a rebuttable presumption that the costs of extra-high voltage facilities, such as 345 kV and above, should be allocated widely across a transmission planning region. Such a presumption would be akin to a default cost allocation method which, as discussed above, we do not adopt. For the same reason, we do not agree that a *pro forma* cost allocation method is appropriate." P. 499

PARTICIPANT FUNDING

- In addition, the Commission finds that participant funding is permitted, but not as a regional or interregional cost allocation method. P.15

PARTICIPANT FUNDING

- "The Commission finds that participant funding is permitted, but not as a regional or interregional cost allocation method. If proposed as a regional or interregional cost allocation method, participant funding will not comply with the regional or interregional cost allocation principles adopted above. The Commission is concerned that reliance on participant funding as a regional or interregional cost allocation method increases the incentive of any individual beneficiary to defer investment in the hopes that other beneficiaries will value a transmission project enough to fund its development." P. 508

PARTICIPANT FUNDING

+ "Because of this, it is likely that some transmission facilities identified as needed in the regional transmission planning process would not be constructed in a timely manner, adversely affecting ratepayers. On the other hand, we agree that if the costs of a transmission facility were to be allocated to non-beneficiaries of that transmission facility, then those non-beneficiaries are likely to oppose selection of the transmission facility in a regional transmission plan for purposes of cost allocation or to otherwise impose obstacles that delay or prevent the transmission facility's construction. For this reason, we adopt the cost allocation principles above that seek, among other things, to ensure that any regional cost allocation method or methods developed in compliance with this Final Rule allocates costs roughly commensurate with benefits." P. 508

NON-PUBLIC UTILITIES

+ "To maintain a safe harbor tariff, a non-public utility transmission provider must ensure that the provisions of that tariff substantially conform, or are superior, to the *pro forma* OATT as it has been revised by this Final Rule. As noted in the Proposed Rule, we are encouraged, based on the efforts that followed Order No. 890, that both public utility and non-public utility transmission providers collaborate in a number of regional transmission planning processes. We therefore do not believe it is necessary at this time to invoke our authority under FPA section 211A, which gives us authority to require non-public utility transmission providers to provide transmission services on a comparable and not unduly discriminatory or preferential basis. However, if the Commission finds on the appropriate record that non-public utility transmission providers are not participating in the transmission planning and transmission cost allocation process required by this Final Rule, the Commission may exercise its authority under FPA section 211A on a case-by-case basis." P. 559

GENERATION INTERCONNECTION COSTS

+ The Commission agrees with the California ISO and other commenters that issues related to the generator interconnection process and to interconnection cost recovery are outside the scope of this rulemaking.

RATE PANCAKING

- "We decline to make new findings with respect to pancaked rates in this Final Rule as it is beyond the scope of this proceeding. In particular, we do not make any modifications to the Commission's pancaked rate provisions for an RTO under Order No. 2000. If rate pancaking is an issue in a particular transmission planning region, stakeholders may raise their concerns in the consultations leading to the compliance proceedings for this Final Rule or make a separate filing with the Commission under section 205 or 206 of the FPA, as appropriate."

DISSENT

- Moeller dissenting in part on the FERC proposal primarily on Right of First Refusal.

ORDER 1000A

- Affirmed Order 1000 in all parts
- Made clarifications in a few places

CLARIFICATION ROFR

- "We clarify that Order No. 1000 does not require elimination of a federal right of first refusal for a new transmission facility if the regional cost allocation method results in 100% of the facility's cost being allocated to the public utility transmission provider in whose retail distribution service territory or footprint the facility is to be located." Para. 423

ROFR

- "In general, any regional allocation of the cost of a new transmission facility outside a single transmission provider's retail distribution service territory or footprint, including an allocation to a "zone" consisting of more than one transmission provider, is an application of the regional cost allocation method and that new transmission facility is not a local transmission facility." Para. 424

ROFR

- "However, we recognize in response to Duke's request that special consideration is needed when a small transmission provider is located within the footprint of another transmission provider." Para 424

EXCEPTIONS TO ROFR

- …[W]e will address whether a cost allocation to a multi-transmission provider zone is regional on a case-by-case basis based on the specific facts presented. Para. 424

ROFR

- "The concept is that there should not be a federally established monopoly over the development of an entirely new transmission facility that is selected in a regional transmission plan for purposes of cost allocation to others. However, neither is the Commission eliminating the right of an owner of a transmission facility to improve its own existing transmission facility by allowing a third-party transmission developer to, for example, propose to replace the towers or the conductors of a transmission line owned by another entity." Para 426

MOBILE SIERRA

- "Accordingly, we reject arguments that the Commission must address in this generic rulemaking proceeding whether any particular agreement is protected by a *Mobile-Sierra* provision. Furthermore, in response to PSEG Companies, the Commission decided in Order No. 1000 when it will address the issue of whether a federal right of first refusal provision is protected by *Mobile-Sierra*; it did not and cannot shift the burden to defend such provisions to contracting parties." Para. 390

MOBILE SIERRA

- "As the Commission explained in Order No. 1000, a public utility transmission provider that considers its contract to be protected by a *Mobile-Sierra* provision may present its arguments as part of its compliance filing. We clarify, however, that any such compliance filing must include the revisions to any Commission-jurisdictional tariffs and agreements necessary to comply with Order No. 1000 as well as the *Mobile-Sierra* provision arguments. The Commission will first decide, based on a more complete record, including the viewpoints of other interested parties, whether the agreement is protected by a *Mobile-Sierra* provision, and if so, whether the Commission has met the applicable standard of review such that it can require the modification of the particular provisions." Para. 390

MOBILE SIERRA

- "If the Commission determines that the agreement is protected by a *Mobile-Sierra* provision and that it cannot meet the applicable standard of review, then the Commission will not consider whether the revisions submitted to the Commission-jurisdictional tariffs and agreements comply with Order No. 1000. However, if the Commission determines that the agreement is not protected by a *Mobile-Sierra* provision or that the Commission has met the applicable standard of review, then the Commission will decide whether the revisions to the Commission-jurisdictional tariffs and agreements comply with Order No. 1000 and, if such tariffs and agreements are accepted, would become effective consistent with the approved effective date." Para. 390

MOBILE SIERRA

- "As a result, the Commission is not requiring public utility transmission providers to eliminate a federal right of first refusal before the Commission makes a determination regarding whether an agreement is protected by a *Mobile-Sierra* provision and whether the Commission has met the applicable standard of review, while at the same time the Commission is ensuring that the Order No. 1000 compliance process proceeds expeditiously and efficiently." Para. 390

PUBLIC POLICY

- "We grant APPA's clarification that Public Policy Requirements established by state or federal laws or regulations includes duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government." Para 319

PUBLIC POLICY

- "In response to AEP, we reiterate that Order No. 1000 provides only that public utility transmission providers must *consider* transmission needs driven by Public Policy Requirements. Order No. 1000 does not require that every potential transmission need proposed by stakeholders must be selected for further evaluation." Para 320

PUBLIC POLICY

- "As with other Order No. 1000 transmission planning reforms, our concern is that the process allows for stakeholders to submit their views and proposals for transmission needs driven by Public Policy Requirements in a process that is open and transparent and satisfies all of the transmission planning principles set out in Order Nos. 890 and 1000, and that there is a record for the Commission and stakeholders to review to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential." Para.

PUBLIC POLICY

- "However, we reiterate that not every proposal by stakeholders during the identification stage will necessarily be identified for further evaluation." Para 321

PUBLIC POLICY

- "We are also not prescribing how active a public utility transmission provider should itself be in identifying transmission needs driven by Public Policy Requirements, although it certainly may take a more proactive approach if it, in consultation with its stakeholders, so chooses. Even if a public utility transmission provider takes a less active approach on this issue, our expectation is that interested stakeholders will participate and suggest transmission needs driven by Public Policy Requirements. An open and transparent transmission planning process will identify those transmission needs that should be evaluated, regardless of whether they are suggested by the public utility transmission provider or by an interested stakeholder. We emphasize that, although a public utility transmission provider is not obligated to proactively identify transmission needs driven by Public Policy Requirements, it still must consider the transmission needs driven by Public Policy Requirements raised by other stakeholders in the transmission planning process." Para 322

INTERREGIONAL PLANNING

- "…[W]e clarify that each public utility transmission provider must describe in its OATT how its regional transmission planning process will enable stakeholders to provide meaningful and timely input with respect to the consideration of interregional transmission facilities. Moreover, as requested by PSEG Companies, we require that each public utility transmission provider must explain in its OATT how stakeholders and transmission developers can propose interregional transmission facilities for the public utility transmission providers in neighboring transmission planning regions to evaluate jointly." Para. 522

COST ALLOCATION

- "We affirm the Commission's finding in Order No. 1000 that in determining the beneficiaries of transmission facilities, Regional Cost Allocation Principle 1 should permit a regional transmission planning process to "consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements." Para 681

COST ALLOCATION

- "Accordingly, we continue to believe that it is appropriate to allow public utility transmission providers in a transmission planning region to propose a cost allocation method that considers the benefits and costs of a ***group*** of new transmission facilities, although they are not required to do so." Para. 682

COST ALLOCATION

- "We affirm Order No. 1000's adoption of Regional and Interregional Cost Allocation Principle 2. Accordingly, we deny PSEG Companies' request for rehearing, which largely repeats arguments it made in the rulemaking proceeding. The Commission disagreed with PSEG Companies in Order No. 1000 that basing a determination of who constitutes a "beneficiary" on "likely future scenarios" necessarily would result in inexact and speculative proposed transmission plans and cost allocation methods. The Commission explained that scenario analysis is a common feature of electric power system planning, and that it believed that public utility transmission providers are in the best position to apply it in a way that achieves appropriate results in their respective transmission planning regions." Para. 689

PROCEDURAL MATTERS

- Appeals are pending
- Regional Compliance Filings due (motions for extension of time have been filed)
- Interregional Compliance filings are due in the spring.

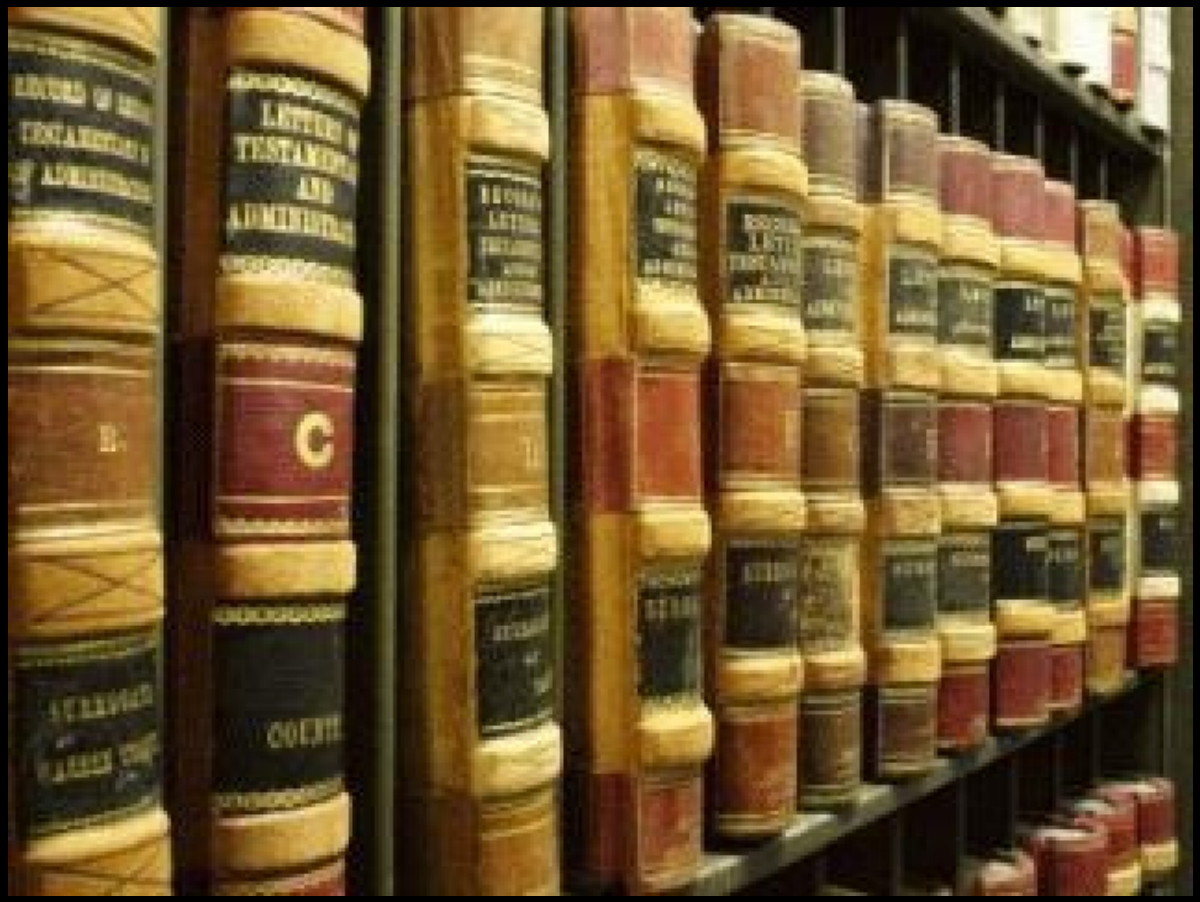
THANK YOU!

F

Trial Advocacy Before the Missouri Public Service Commission

Brent Roam

Trial Advocacy Before the Missouri Public Service Commission

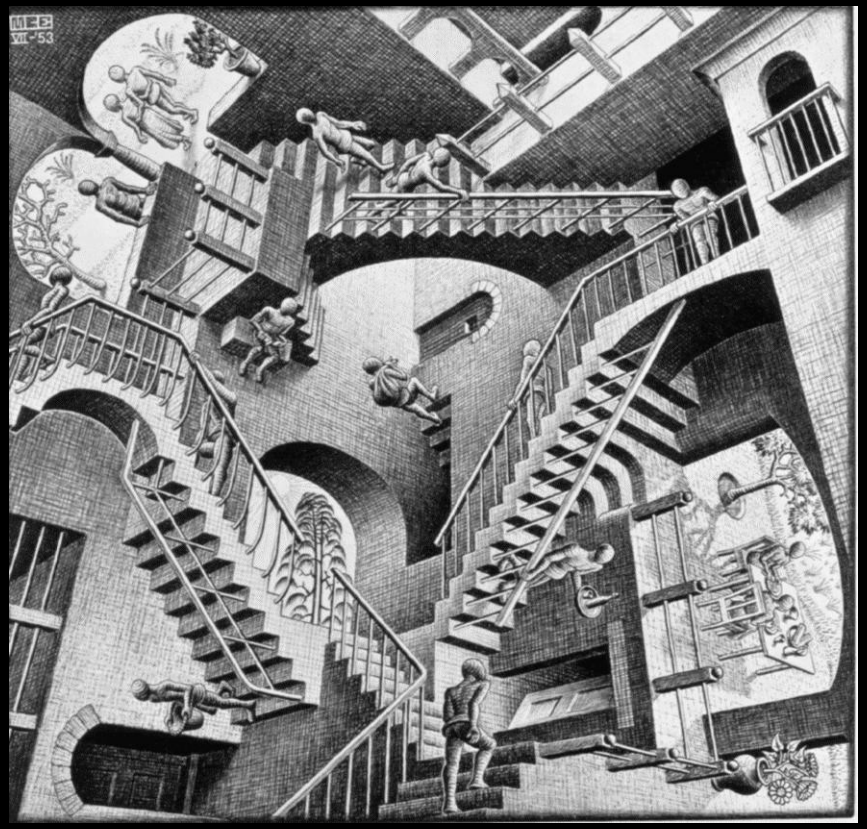


Understanding Your Audience

- What is a public Utility?
- Who comprises the Commission?
- What is the Commission's Role?

Getting the Lay of the Land

- Unique Features of 4 CSR 240-2
- Pre-Filed Testimony and its Ramifications
- Res Judicata, Collateral Estoppel and other Commission anomalies

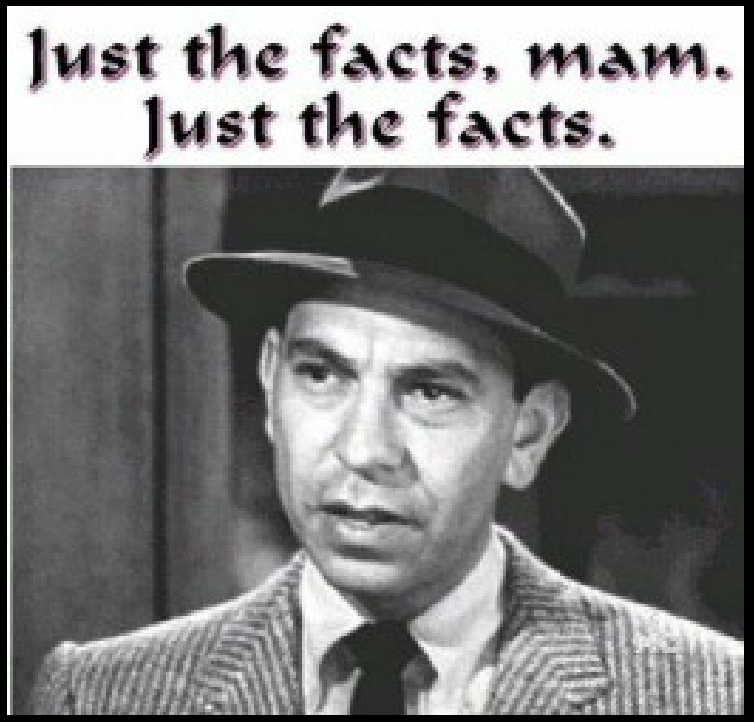


Effective Opening Statements

- Understanding the Issues
- Framing the Issues
- Anticipating the Commission's Questions
- Anticipating Opponent's Positions

Effective Cross-Examinations

- Getting Your Admissions
- Managing Hostile Witnesses
- Quitting While You Are Ahead



Effective Brief Writing

- Provide a Coherent Theme
- Focus on Precision and Clarity
- Be Brief (Literally)

Questions?

MCLE Form
Second Annual
Missouri Energy Law Seminar

~Sponsored by the Missouri Public Service Commission~

September 14, 2012 • St. Louis University • School of Law

10:25 am — 4:45 pm

5.7 MCLE Hours

This document is provided to assist you in tracking CLE program attendance. **Retain it for your records**.

To comply with the MCLE requirement, you will submit an Annual Report of Compliance to The Missouri Bar listing all CLE programs attended for the reporting year. It is not necessary to send this form. To determine the MCLE credit you will accrue at this program, add the total number of minutes actually attended, divide by 50 and round to the nearest tenth of an hour. This program qualifies for **5.7 hours** of MCLE Credit to be applied to the current reporting year of July 1, 2012 to June 30, 2013.

Minutes Attended		Sessions Scheduled
_____	10:25 – 10:30	Welcome & Opening Remarks
_____	10:30 – 11:45	What Goes Into My Utility Bill? Fundamentals of Rate-Making
_____	1:00 – 2:15	Missouri's Renewable Energy Standard: Past, Present and Future
_____	2:30 – 3:40	Transmission Law and Development: Planning & Cost-Allocation
_____	3:45 – 4:45	Trial Advocacy Before the Missouri Public Service Commission
_____	**TOTAL MINUTES ATTENDED**	