



How **NOT** to Do A Transmission Rate Case: Lessons from the Trenches

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HOW **NOT** TO DO A RATE CASE: RULE NO. 1

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RULE NO. 1

- ❖ Whether you adopt a formula rate or a stated rate should largely be determined by whether your unit charges will increase or decrease over the next five years.
- ❖ If costs will increase faster than load, a formula rate is a good choice.
- ❖ If load will increase faster than costs, a stated rate is better.

HOW TO DO A RATE CASE: RULE NO. 1

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HOW **NOT** TO DO A RATE CASE: RULE NO. 2

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RULE NO. 2

- ❖ Some utilities appear to have little concern over whether rates reflect current expenditures.
- ❖ This is particularly true for utilities with formula rates. Many utilities have formula rates that are based on historic periods.
- ❖ The timing of cost recovery can have a huge impact on cash flow.
 - Assume that a major transmission line goes into service in November, 2008.
 - If rates are based on a historic test year, only 1/6 of the line will be included in rates that are in effect from May 1, 2009 through April 30, 2010.
 - The line won't be fully in rate base until May 1, 2010.
 - When the line is fully depreciated, the utility will get all of its investment back. Are you willing to defer recovery for 40 years?

HOW TO DO A RATE CASE: RULE NO. 2

- Consider matching rates and expenses; the time value of money is important.

HOW **NOT** TO DO A RATE CASE: RULE NO. 3

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RULE NO. 3

- ❖ Some utilities consider the issue of whether a rate gets a nominal suspension or a 5-month suspension to be a “black box” that isn’t worth trying to figure out.
- ❖ In fact, FERC is supposed to (and generally does) follow the “10% excessive” rule.
- ❖ FERC also does its suspension analysis based on settled ratemaking principles.
- ❖ If you want to maximize your chances of avoiding a 5-month suspension, do the math. How much of your requested increase in rates is based on solid FERC precedent, and how much is wishful thinking?
- ❖ Do a sensitivity analysis. How much of your requested increase is affected by a change in the return on equity?

HOW TO DO A RATE CASE: RULE NO. 3

- Replicate FERC's suspension analysis; it's not all "magic".

HOW **NOT** TO DO A RATE CASE: RULE NO. 4

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RULE NO. 4

- ❖ Asking for too much increases the odds of a 5-month suspension.
- ❖ A 5-month suspension typically costs far more than a substantial reduction in the ROE.
- ❖ Not much about the cost of service (other than ROE) is subject to substantial debate. In settlement and litigation, extreme positions typically are negotiated away without much to show for them.

HOW TO DO A RATE CASE: RULE NO. 4

- Request a reasonable revenue requirement; it won't hurt your settlement or litigation position and may avoid a suspension.

HOW **NOT** TO DO A RATE CASE: RULE NO. 5

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RULE NO. 5

- ❖ The cost of service study almost always benefits from a careful, independent review.
- ❖ Problems can exist with how material is presented.
- ❖ Errors can be hidden in formulas in the Excel spreadsheet.
- ❖ Experts who typically do retail rate cases may incorporate ratemaking principles that are inconsistent with FERC precedent.

HOW TO DO A RATE CASE: RULE NO. 5

- Evaluate the cost of service analysis; that's not just for rate experts.

HOW **NOT** TO DO A RATE CASE: RULE NO. 6

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RULE NO. 6

- ❖ Rate of return analysis isn't as complex as the witness makes it seem.
- ❖ Witnesses frequently are so enamored of their own ROE methodologies that they forget that FERC will evaluate the requested ROE using its own principles, not theirs.
- ❖ Witnesses are not necessarily aware of the latest changes in policy at FERC.
- ❖ Sometimes witnesses simply make mistakes.

HOW TO DO A RATE CASE: RULE NO. 6

- Evaluate the rate of return witness's testimony; it's a critical part of the case.

HOW **NOT** TO DO A RATE CASE: RULE NO. 7

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RULE NO. 7

- ❖ Historically FERC set every contested rate filing for hearing.
- ❖ FERC is now accepting some formula rate filings without hearings, and is issuing summary judgment on contested issues.
- ❖ FERC is ruling on all incentive rate filings by summary judgment.
- ❖ Extensive documentation – especially for incentive rates – makes it much harder for protestors to dispute material facts, and makes it easier for FERC to approve the request.

HOW TO DO A RATE CASE: RULE NO. 7

- Fully document your filing. FERC reads it and relies on it.

HOW **NOT** TO DO A RATE CASE: RULE NO. 8

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RULE NO. 8

- ❖ Utilities sometimes underestimate the cost of litigation – not out-of-pocket attorney expenses, but the cost to the utility of being distracted from its core business.
- ❖ Be sure you don't litigate principles at the expense of principal.
- ❖ Given the new administration, the upcoming appointment of a new Commissioner and perhaps a new Chairman, it is possible that Commission policies will change. That creates litigation risk that is hard to measure.



HOW TO DO A RATE CASE: RULE NO. 8

➤ Consider reasonable settlement offers.