

HOW THE COMMISSION SETS RATES FOR WATER UTILITIES

The following is a summary of how water and sewer rate cases are typically conducted before the Commission. It's not intended to offer a legal opinion regarding how the proceedings are or should be conducted, or regarding how any party should conduct a case before the Commission. People, organizations and municipalities that want to participate in Commission proceedings should, at the very least, consult the applicable statutes and the Commission's Rules of Practice, both of which can be found on the Commission's website under "[Legal Authority and Rules](#)," as noted above. Since failure to comply with legal and regulatory requirements and deadlines can have significant adverse consequences, it is highly advisable to consult a lawyer.

General things to know about rate increases:

- By law, the Commission can't tell a utility not to request a rate increase. Utilities seek rate increases when they determine an increase is necessary.
- There's no specific legal limit on how large of an increase a utility can seek. That said, the Commission is bound by the Public Utilities Act to determine rates that take into account the necessary and prudent expenses the utility has incurred and allow them to make a just and reasonable return on their investment.
- A utility can request a rate increase as often as it believes is necessary. However, since the preparation of a request for a rate increase is a lengthy and difficult process, and the Commission process takes nearly a year, utilities rarely seek increases more often than once every two to three years, and some far less often.
- Not all of the charges on a customer's water bill are Commission-set rates resulting from Commission Orders.
 - The utility often recovers the cost for the water itself through what's called a "purchased water adjustment," which is a pass-through surcharge reflecting the price the utility itself paid to obtain the water. Often, the utility purchases the water from third parties and has little or no control over the price. This charge can be a significant part of a customer's bill.
 - The utility may seek to recover investments in qualifying infrastructure plant between rate cases, through a surcharge on customer bills that is set outside of rates. Generally, this surcharge reflects the costs of investments in infrastructure
 - water mains, services, meters, fire hydrants – that require replacement in the short term to keep the system working properly.

Here is an illustration of how the rate-setting process typically works:

A. A utility requests an increase

When the owners of a public utility believe that an increase in rates is required, the utility files tariffs with the Commission describing the increase that the utility is seeking. These tariffs are public documents that establish the rates, terms and conditions under which the utility will make its service available to its customers. The purpose of tariffs is to make certain that utilities offer service to similar customers (such as, for example, residential customers) at the same rates and on the same terms. While tariffs aren't legally binding contracts, it's useful to think of them as such. Tariffs describe what customers will pay the utility, and what they'll get in return.

When a utility seeks a rate increase of more than 2%, it's required to file with the Commission a large amount of detailed supporting information, such as financial documents, expense reports, summaries of investments, and accounting information.

B. Notice is given to customers and municipalities

After a utility files its tariffs, it must notify the customers likely to be affected by the increase, by including in their next bill a detailed description of the proposed increase, how to contact the utility and how to intervene in a proceeding before the Commission.

By law, municipalities whose residents are likely to be affected by the increase must also receive notice.

C. The Commission suspends the tariffs and orders an investigation of the proposed rate increase

By law, tariffs filed by a utility generally go into effect 45 days after the utility files them. The Commission, however, can suspend tariffs – prevent them from going into effect – so that it can investigate whether they should be allowed to go into effect, or be changed before they do. For many years, the Commission has always suspended tariffs of major utilities seeking rate increases so that it can investigate whether the increases should be allowed. By law, the Commission must complete this investigation within 11 months from the date the tariffs are filed. Otherwise, the tariffs go into effect as filed.

The utility must give notice to customers likely to be affected on their next bill that the Commission has suspended the tariffs. It must also give notice to municipalities whose residents are likely to be affected.

D. There is an investigation of the tariffs in a formal Commission proceeding

The Chief Clerk of the Commission assigns a docket number to the investigation, and one or more of the Commission's Administrative Law Judges are assigned to preside over the matter. Members of Commission Staff – accountants, financial analysts, engineers, economists, lawyers, consumer affairs specialists and safety analysts – investigate the company's proposed increase. Other parties with an interest in the outcome – large customers, the Citizens Utility Board, the Attorney General, municipalities and individual ratepayers – may intervene in the proceeding and offer their own opinion regarding the proposed increase.

The docketed proceeding resembles a legal trial. There is discovery, in which the utility, other parties and Commission Staff request information from one another regarding specifics of the increase, such as the proposed rate of return and proposed expenses to be recovered in rates. Expert witnesses for the utility, parties and Commission Staff offer testimony, and are subject to cross-examination. Other evidence is submitted. This testimony and evidence forms the record on which the Commission ultimately bases its decision, aided by briefs prepared and submitted by the utility, parties and Commission Staff that state their respective positions on the case based on the law and the facts presented.

After the Administrative Law Judges have considered the evidence and briefs of the utility, the parties and Commission Staff, they prepare a Proposed Order, to which parties may take exception – i.e., state any objections they have.

E. The Commission issues a Final Order

The Commission receives the Proposed Order prepared by the Administrative Law Judges, and considers the exceptions and the evidence offered by the utility, the parties and Commission Staff. The utility, the parties and Commission Staff may at this time request to make oral presentations to the Commission; the Commission may also direct them to do so.

After consideration of all the evidence, the Proposed Order, and the positions of all parties involved, the Commission issues its Final Order, setting rates. The Commission can grant the proposed rate increase, grant it in part, or deny it. The Commission can lower rates if it believes this is called for by the evidence. The Commission's Final Order may in some cases significantly change the Proposed Order or reject it. However, the Commission must base its Final Order on the law and evidence from the proceeding, and must make findings of fact and conclusions of law that support the ultimate decision it reaches. In rate cases, the Commission's Final Order is often hundreds of pages long.

F. The utility or any other party may seek rehearing

If the utility or other party believes the Commission didn't decide the matter correctly, it

can seek rehearing. In doing so, the utility or party must specifically identify what, in its opinion, the Commission didn't decide correctly, and why the Commission's decision is incorrect. If the Commission, having reviewed any requests for rehearing, decides that it may have made an error, it can grant rehearing. If not, it will deny rehearing.

G. The Commission-approved rates go into effect

After the Commission issues its Final Order, and even if the utility or other party seeks rehearing, the utility must file tariffs that conform to the Commission's Final Order. These tariffs, generally containing new rates, go into effect.

H. If an appeal is taken, the Appellate Court reviews the Commission's Final Order

If the utility or other party believes the Commission didn't decide the matter correctly, it can request that the Illinois Appellate Court review the Commission's decision. The utility or party can only ask the Court to consider the issues that the utility or party identified in its request for rehearing. The Appellate Court limits its review of the Commission's decision to whether the Commission followed the law, and whether there is evidence to support the decision. The Appellate Court doesn't reconsider the evidence itself to decide whether its decision would be the same as the Commission's. Rather, it determines whether, based on the evidence, the Commission reasonably could have reached the decision it reached. Appellate review of Commission decisions can sometimes take as long as one to two years. If the Appellate Court finds that the Commission's decision was lawful and supported by evidence, it affirms the decision. If it finds that the Commission didn't follow the law, or that the Commission's decision wasn't supported by evidence, it send the case back to the Commission for additional proceedings.