APPENDIX: SURVEY OF HOW REGULATORS IN THE 50 STATES, THE DISTRICT OF COLUMBIA, AND PUERTO RICO TREAT RECOVERY OF UTILITY RATE CASE EXPENSES

The following survey describes the treatment of utility rate case expense by utility regulators and courts in the fifty states, the District of Columbia, and Puerto Rico.

ALABAMA

Utilities regulated by the Alabama Public Service Commission (PSC) may recover reasonable rate case expenses from ratepayers, although the need to do so may have been largely eliminated through procedural streamlining. This practice is not governed by a specific statutory or regulatory provision but is rather implied by general cost-of-service ratemaking. The level of recoverable expense must be "reasonable."[1] Alabama's PSC has not explicitly stated how this reasonable level should be determined but appears to accept the "actual" test period expenditures submitted as "updates" to previously submitted estimates.[2] Portions of this allowed rate case expense have been excluded from rate recovery by the Alabama PSC when they were included expenses related to a Commission audit.[3] The manner of recovery has historically been via amortization over a period of several years.[4]

However, the imposition of rate case expenses upon Alabama consumers may have diminished in the past few decades. Specifically, beginning in 1983, the Alabama PSC began establishing "Rate Stabilization and Equalization" or RSE mechanisms for various utilities.[5] The RSE provides a simplified means for utilities to increase their rates automatically via formula—without a fully disputed rate case.[6] The Alabama PSC has discussed "the benefits to consumers of reducing rate case expense" among the benefits of its RSE mechanism.[7]

1. *Cf.* Community Utils. of Ala., Inc., Docket No. 32553, 2023 Ala. PUC LEXIS 893, at *23 n.8 (Dec. 22, 2023).

2. *Id*. (accepting rate case expense level with "an upwards adjustment . . . for the test year").

3. Continental Tel. Co. of S. -- Ala., Docket No. 18978, 1984 Ala. PUC LEXIS 8, at *79-81 (Aug. 16, 1984).

4. *See* Mobile Gas Serv. Corp., Docket No. 24794, 1995 Ala. PUC LEXIS 626, at *13-14 (Nov. 27, 1995) (adopting a 3-year amortization period for rate case expenses as proposed by the PUC's CPA witness, over the company's proposed 2-year amortization period).

5. Alabama Gas Corp., Docket Nos. 18046 & 18328, 2013 Ala. PUC LEXIS 578, at *2 (Dec. 20, 2013). The Alabama PSC's RSE mechanism was affirmed by the state's Supreme Court. *See* Airco, Inc. v. Alabama Pub. Serv. Comm'n, 496 So.2d 21 (Ala. 1986) (*affirming* Alabama Metallurgical Corp. v. Alabama Pub. Serv. Comm'n, 441 So.2d 565 (Ala. 1983)).

6. *See generally* Alabama Metallurgical Corp. v. Ala. Pub. Serv. Comm'n, 441 So.2d 565 (Ala. 1983).

7. Community Utils. of Ala., Inc., Docket No. 32553, 2019 Ala. PUC LEXIS 362, at *6 (Oct. 8, 2019). *See also* Alabama Gas Corp., Docket Nos. 18046 & 18328, 2013 Ala. PUC LEXIS 578, at *38-39 (Dec. 20, 2013) (describing the testimony of one witness that "rate case expenses at the state level have been virtually eliminated through Rate RSE.").

ALASKA

Alaska's energy regulator, the Regulatory Commission of Alaska (RCA), typically permits utilities to include "an estimate of rate case expense in [their] revenue requirement" that is amortized over several years.[8] This is not governed by a specific statutory or regulatory provision but is rather implied by general cost-of-service ratemaking. The RCA disfavors basing the level of rate case expense "on a post-hearing calculation of the actual rate case costs incurred."[9] Rather, the RCA policy is that recoverable rate case expenses "should be based on the best determination possible of the rate case expense that will normally be incurred on an average annual basis."[10] Since 1988, the RCA has employed "a trend analysis of rate case expenses" to determine a reasonable level.[11] The RCA has also excluded "actual expenses from consideration if they were not normal or typical."[12] The RCA has also left the door open to excluding imprudently incurred litigation expenses but was clear that such expenses are not imprudent simply because they were incurred in defending an imprudent practice.[13] The RCA typically requires the utility to amortize this over a period of years intended to coincide with the time the rates will be in effect.[14] This is "usually over several years."[15]

There are exceptions to this approach, though. Notably in 2016, the RCA authorized the Trans Alaska Pipeline System (TAPS, also regulated by FERC) to recover their rate case expense through a six-year surcharge "due to the highly unusual situation presented" in the proceeding that spread over a dozen dockets, including parallel FERC litigation.[16]

ARIZONA

The Arizona Corporation Commission (ACC), the state's utility regulator, allows recovery of some (but not all) rate case expenses. As with most jurisdictions, this is not governed by a specific statutory or regulatory provision but rather is implied by general cost-of-service ratemaking. The ACC appears to

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8. Cook Inlet Nat. Gas Storage Alaska., LLC, Order No. 15, 2019 Alas. PUC LEXIS 149, at *18-19 (Aug. 16, 2019).

9. *Id*. at *19.

10. *Id*.

11. Golden Heart Utils., Inc., Order No. 20, 2011 Alas. PUC LEXIS 89, at *10 (Mar. 4, 2011).

12. *Id*. at *5 (citing College Utils. Corp., Order No. 5, Docket Nos. U-92-54 & U-92-55, at 9 (Alaska. Pub. Utils. Comm'n Dec. 8, 1992), https://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=E9587B20-F876-487F-BD2E-5373A7DD6E72).

13. ConocoPhillips Trans. Alaska., Inc. Order No. 40 et al., 2016 Alas. PUC LEXIS 129, at *28-29 (June 2, 2016).

14. Cook Inlet Nat. Gas Storage Alaska., LLC, Order No. 15, 2019 Alas. PUC LEXIS 149, at *19-20 (Aug. 16, 2019); *see also* Amerada Hess Pipeline Co., Order Nos. 151 & 110, 2002 Alas. PUC LEXIS 630, at *278 (Nov. 27, 2002) ("Typically, rate case expense would be amortized over a three to five-year period. Because we are setting rates for a four-year period it would be reasonable, if this were an ordinary case, to simply take the total rate case expense, divide it by four, and include that amount in the revenue requirement for each of the years 1997-2000.").

15. ConocoPhillips Trans. Alaska., Inc., 2016 Alas. PUC LEXIS 129, at *10.

16. *Id*. at *4, 10-11.

scrutinize these costs more than most jurisdictions with an eye to the potential perverse incentives that rubber-stamping recovery would create. The ACC has articulated that although "[i]ncurring expenses in presenting a rate case for the Commission's consideration is a necessary cost of doing business that is appropriately recovered in rates collected from ratepayers . . . the level of recoverable expense is limited to what is just and reasonable."[17] Of particular note, the ACC recognizes the concern that "uncritical acceptance of all expenditure levels can promote a cycle of escalating rate case expenses."[18]

The ACC does not appear to grant recovery of the utilities' "actual" rate case expense but rather a figure based on a reasonable proxy, often lower that what was requested.[19] In assessing such reasonableness, the ACC has rejected "straightforward benchmarking" and rather employed different factors to assess the appropriate level of rate case expense to recover.[20] For instance, it has faulted the utility for sponsoring a witness who provided "duplicative testimony."[21] It has also relied on prior reasonable levels adjusted for inflation.[22]

Once a recoverable level of rate case expense is established, the ACC appears to employ a surcharge method, rather than an embedded amortized level, which expires once the allowable expense is recovered or after a set time.[23]

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17. Global Water-Palo Verde Utils. Co., Decision No. 78644, Docket No. SW-20445A-20-0214 et al., slip op. at 147 (Ariz. Corp. Comm'n July 27, 2022), https://docket.images.azcc.gov/0000207261.pdf?i=1759938067789.

18. *Id*. (also noting that "the expenditure of resources toward rate case presentation is largely within an applicant's control").

19. *See, e.g.*, *id*. at 145-49 (approving $500,000 in rate case expense when the applicant requested $755,000); Arizona Water Co., Decision No. 73736, 2013 Ariz. PUC LEXIS 45, at *69 (Feb. 20, 2013) (approving $350,000 in rate case expense when the applicant requested $476,874); *but see* Valley Utils. Water Co., Decision No. 79360, 2024 Ariz. PUC LEXIS 97, at *38-39 (May 13, 2024) (approving $160,000 level of rate case expense requested in updated exhibit but uncontested by other participants in the dispute).

20. Global Water-Palo Verde Utils. Co., Decision No. 78644, Docket No. SW-20445A-20-0214 et al., slip op. at 147 (Ariz. Corp. Comm'n July 27, 2022), https://docket.images.azcc.gov/0000207261.pdf?i=1759938067789.

21. *Id*.

22. Arizona Water Co., 2013 Ariz. PUC LEXIS 45, at *69 (encouraging the utility "thoroughly to consider, prior to preparing and filing its next rate case application, whether the effectiveness of presenting outside expert witness testimony outweighs the expense of those witnesses' services.").

23. Global Water-Palo Verde Utils. Co., Decision No. 78644, Docket No. SW-20445A-20-0214 et al., slip op. at 147-48 (Ariz. Corp. Comm'n July 27, 2022), https://docket.images.azcc.gov/0000207261.pdf?i=1759938067789 ("we find that the use of a surcharge mechanism to recover the expense is reasonable and that the amount recovered through the surcharge should be amortized over a two year period"); Valley Utils. Water Co., 2024 Ariz. PUC LEXIS 97, at *41 (utility was "authorized to implement the following rate case expense surcharge, which shall terminate without further order of the Commission four years from the effective date of this Decision, or once a total of $160,000 has been collected, whichever occurs first"); Pima Util. Co., Decision No. 73573, 2012 Ariz. PUC LEXIS 226, at *36 (Nov. 21, 2012) ("While it is certainly not inappropriate to allow recovery of rate case expense through rates, we find that the [utility's] adoption of [intervenor's] alternative recommendation for a surcharge as a means of preventing over-recovery of rate case expense is reasonable in this case.").

ARKANSAS

The Arkansas Public Service Commission (PSC) permits utilities to recover normal rate case expenses amortized over the interval of time expected between rate cases. As with most jurisdictions, this is not governed by a specific statutory or regulatory provision but is rather implied by general cost-of-service ratemaking.

As a preliminary matter, the Arkansas PSC has specifically addressed—and rejected—proposals to include rate case expense in rate base.[24] Rather, the PSC "includes a normal level of these expenses in the revenue requirement."[25] The period of amortization is intended to match the intervals between rate cases.[26] However, in at least one instance the Arkansas PSC has permitted a settlement agreement under which a utility recovered its actual rate case expense via a surcharge subject to true-up.[27]

The Arkansas PSC has not articulated specific standards for calculating the level of recoverable expense. However, it has rejected theories limiting recovery across the board. Interestingly, as noted in the main article, the Arkansas PSC has actually faced the argument "that rate case expense should be adjusted to exclude a percentage of such expense equal to the percentage of the requested revenue increase that is denied."[28] The PSC expressed an appreciation for "the financial handicaps under which [the public consumer advocate] operates in preparing for rate proceedings" but found it improper to "equally handicap the company."[29] It has also explicitly rejected the argument that all rate case expenses should be borne by shareholders as a non-recurring expense.[30]

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24. Entergy Ark. Inc, Order No. 21, Docket No. 13-028-U, slip op. at 29 & n.10 (Ark. Pub. Serv. Comm'n Dec. 30, 2013), http://www.apscservices.info/pdf/13/13-028-U_431_1.pdf. On rehearing, the Arkansas PSC permitted the utility to create a regulatory asset for rate case expense provided that the asset not be included in rate base or earn a return. *See* Entergy Ark. Inc., Order No. 35, 2014 Ark. PUC LEXIS 286, at *42-43 (Aug. 15, 2014).

25. Entergy Ark. Inc., Order No. 21, Docket No. 13-028-U, slip op. at 69 (Ark. Pub. Serv. Comm'n Dec. 30, 2013), http://www.apscservices.info/pdf/13/13-028-U_431_1.pdf.

26. Arkansas Okla. Gas Corp., Order No. 7, 2005 Ark. PUC LEXIS 430, at *16 (Dec. 1, 2005) ("The Commission finds the Company's three-year recovery period to be reasonable. The Company's method is based on the interval between the current rate case and its prior rate case, a period of three years. Notwithstanding the provisions of [other decisions], the [Arkansas PSC] finds that a far less complicated method for calculating the rate case expense recovery period is to utilize the amount of time between a utility's current rate filing and its last rate case filing, in this instance a period of three years."); *see also* Morrilton Water Co., Docket No. U-2382, 1972 Ark. PUC LEXIS 1, at *4 (Oct. 30, 1972) ("The allowable amortization period for the recovery for rate case expenses should be that which the [Arkansas PSC] judges to be a realistic interval between rate cases."); *cf.* Arkansas-Missouri Power Co., Docket Nos. U-2675 & U-2679, 1977 Ark. PUC LEXIS 9, at *11 (Sep. 9, 1977) ("We have previously indicated our preference for applying a standard three-year amortization rule rather than quibble over how often a particular utility can be expected to apply for rate increases.").

27. Coronado Utils., Inc., Decision No. 78228, 2021 Ark. PUC LEXIS 406, at *24-25 (June 23, 2021).

28. Southwestern Bell Tel. Co., Docket No. U-2916, 1979 Ark. PUC LEXIS 7, at *85-86 (Jan. 15, 1979).

29. *Id*. ("In addition, [petitioner's] proposal overlooks the fact that rate case expenditures cannot be directly related to revenue requirement. For example, the company spent a substantial amount of money on cost-of-service methodology and rate design which had no direct effect on revenue which was nonetheless very beneficial to the commission.").

30. Morrilton Water Co., 1972 Ark. PUC LEXIS 1, at *3-4.

CALIFORNIA

The California Public Utilities Commission (CPUC) takes different approaches to rate case expense recovery, permitting some utilities to recover a reasonable forecast of their rate case expense, and utilizing a backward-looking average in other contexts. California does not have specific statutory or regulatory provisions applicable to rate case expense. The CPUC sometimes refers to rate case expense in other terms including "regulatory commission expense"[31] or "rate case litigation expense,"[32] or simply including the item as a subset of outside counsel expenses.[33]

In regulating major gas and electric utilities, the CPUC appears to allow recovery of rate case expenses as part of the larger account 928 grouped with other outside legal expenses and set at a normalized level using a historic average of costs over the prior several years.[34] In water utility and oil pipeline cases the CPUC has identified that "[r]ate case litigation expenses are necessary to establish reasonable rates"[35] and employs a forecast method of recovering these expenses consistent with "its longstanding practice [which] is to set rates based on forecasted expenses and recover them during the rate case cycle in which they occur."[36] Notably, the CPUC has articulated that allowing utilities to amortize previously incurred rate case expenses constitutes retroactive ratemaking.[37] In regulating the telecommunications industry, the CPUC employs the FCC's corporate expense cap.[38] This cap was adopted in part "to reduce the burden of litigation costs on ratepayers" by creating "incentives" for applicants "to reduce

31. *See, e.g.*, San Jose Water Co., Decision No.14-08-006, 2014 Cal. PUC LEXIS 345, at *99-101 (Aug. 14, 2014).

32. *See, e.g.*, Crimson Cal. Pipeline L.P., Decision No. 24-05-007, 2024 Cal. PUC LEXIS 268, at *16 (May 9, 2024), *modified on other grounds*, Decision No. 25-12-027, 2024 Cal. PUC LEXIS 643 (Dec. 5, 2024).

33. *See, e.g.*, Southern Cal. Edison Co., Decision No. 19-05-020, 2019 Cal. PUC LEXIS 226, at *387-88 (May 16, 2019), *modified on other grounds*, Decision No. 20-01-029, 2020 Cal. PUC LEXIS 560 (Jan. 16, 2020).

34. *See generally* Southern Cal. Edison Co., Decision No. 15-11-021, 2015 Cal. PUC LEXIS 688, at *427-34 (Nov. 5, 2015) (rejecting utilities forecast of outside counsel expenses for FERC Accounts 923, 925, and 928 where utility relied on one year and instead adopting average of several years excluding anomalous ones), *modified on other grounds*, Decision No. 17-12-016, 2017 Cal. PUC LEXIS 539 (Dec. 14, 2017); Southern Cal. Edison Co., 2019 Cal. PUC LEXIS 226, at *387; San Diego Gas & Elec. Co., Decision No. 19-09-051, 2019 Cal. PUC LEXIS 569, at *767, 770-74 (Sep. 26, 2019), *modified on other grounds*, Decision No. 20-07-038, 2020 Cal. PUC LEXIS 589 (July 16, 2020).

35. Crimson Cal. Pipeline L.P., 2024 CAL. PUC LEXIS 268, at *16.

36. Suburban Water Sys., Decision No. 14-12-038, 2014 Cal. PUC LEXIS 643, at *19 (Dec. 18, 2014) (citing California-American. Water Co., Decision No. 12-06-016, 2012 Cal. PUC LEXIS 273, at *29 (June 7, 2012)).

37. *Id.*; California-American Water Co., 2012 Cal. PUC LEXIS 273, at *29.

38. *See generally* Decision Adopting Rules and Regulations in Phase 1 of the Rulemaking for the California High Cost Fund-A Program, Decision No. 14-12-084, 2014 Cal. PUC LEXIS 646 (Dec. 18, 2014), *reh'g denied* Decision No. 20-10-019, 2020 Cal. PUC LEXIS 929 (Oct. 22, 2020).

rate case litigation costs."[39] To that end, the CPUC has held that where applicable, the utilities' rate case expenses are subject to this cap.[40]

The CPUC employs the normal preponderance of the evidence standard for a utility to justify rate case expense recovery,[41] at times reducing the allowable amount significantly.[42] The CPUC has also expressed in a different context that it was "troubled by the idea of the utility being provided a blank check, paid by ratepayers, funding the defense of a claim, the defense of which is aimed, in part, at establishing the ratepayers are responsible."[43]

COLORADO

The treatment of rate case expenses in Colorado has been the subject of recent changes, with much remaining to be seen. In May 2023 the state enacted Senate Bill 291, which mandated among other things that the Colorado's Public Utilities Commission "establish rules to limit the amount of rate case expenses that a utility may recover from ratepayers."[44] The statute enumerates several options the PUC may consider, including: (1) implementing a "symmetrical incentive to motivate the utility to limit expenses," (2) limiting "the amount of expenses for outside experts, consultants, and legal resources that are recoverable," (3) setting "an overall percentage of the utility's expense in a rate case that are not recoverable," and (4) establishing discovery parameters in a rate case proceeding, and requiring technical conferences in rate cases.[45] The bill prohibits outright the recovery of other expenses such as lobbying, advertising, and more than 50% of board salaries.[46]

On August 9, 2023, the Colorado PUC adopted temporary rules to implement the reporting requirements of SB 23-291.[47] On March 27, 2024, the PUC initiated a formal rulemaking proceeding to implement SB 23-291's provisions limiting the

39. Pinnacles Tel. Co., Decision No. 19-12-011, 2019 Cal. PUC LEXIS 956, at *19-20 (Dec. 5, 2019) (citing and quoting Decision Adopting Rules and Regulations in Phase 1 of the Rulemaking for the California High Cost Fund-A Program, 2014 Cal. PUC LEXIS 646, at *41-42).

40. Decision Addressing Select General Rate Case-Related Matters of the Small Incumbent Local Exchange Carriers, Decision No. 21-06-004, 2021 Cal. PUC LEXIS 271, at *28 (June 3, 2021).

41. Crimson Cal. Pipeline L.P., Decision No. 24-05-007, 2024 Cal. PUC LEXIS 268, at *16-17 (May 9, 2024), *reh'g denied*, Decision No. 22-02-027, 2022 Cal. PUC LEXIS 51 (Feb. 24, 2022).

42. San Jose Water Co., Decision No. 14-08-006, 2014 Cal. PUC LEXIS 345, at *100-101 (Aug. 14, 2014), *modified on other grounds*, Decision No. 15-03-048, 2015 Cal. PUC LEXIS 149 (Mar. 26, 2014); *see also* Southern Cal. Edison Co., Decision No. 19-05-020, 2019 Cal. PUC LEXIS 226, *387-88 (May 16, 2019) (applying an across-the-board 10% reduction to outside counsel expenses, including to FERC accounts 923, 925, 928), *modified on other grounds*, Decision No. 20-01-029, 2020 Cal. PUC LEXIS 560 (Jan. 16, 2020).

43. Southern Cal. Edison Co., 2019 Cal. PUC LEXIS 226, at *381.

44. S.B. 23-291 § 2, 75th Gen. Assemb., Reg. Sess. (Colo. 2023) (codified at COLO. REV. STAT. § 40-3-102.5). The statute also requires utilities to provide the Commission with a "rate trend report," when filing for a rate increase.

45. *Id*. § 2(I)-(V).

46. S.B. 23-291 § 3, 75th Gen. Assemb., Reg. Sess. (Colo. 2023) (codified as amended at COLO. REV. STAT. § 40-3-114).

47. Commission Decision Adopting Temporary Rules, Decision No. C23-0538, 2023 Colo. PUC LEXIS 520 (Aug. 9, 2023).

recoverability of rate case expense.[48] The Notice of Proposed Rulemaking did not put forward specific measures but simply enumerated placeholder regulations to be developed based on comments.[49] The Colorado PUC noted that previous stakeholder discussions did not reveal any consensus as to the best approach.[50] The PUC indicated it was persuaded not to pursue incentive mechanisms but intended to "explore the use of caps and other limits" and develop a record to "establish potential rules for either overall expenditure limits or targeted allocations of costs borne by ratepayers versus the utility's shareholders."[51] A hearing was held June 3, 2024,[52] with a Recommended Decision issued March 28, 2025.[53] On May 14, 2025, the PUC issued its final order, which implemented the following rules for electric and gas utilities:

> The Commission may limit the amount of a utility's rate case expenses that are recovered through rates. When limiting recoverable expenses, the Commission shall consider the presented facts and circumstances, including, but not limited to, the associated benefits that accrue to the utility's shareholders and whether the sharing of costs motivates the utility to limit expenses. Limits may apply either to overall expenses or to expenses for outside experts, consultants, and legal resources.[54]

This is a very general standard. The PUC's rationale was short:

> SB 23-291 specifically permits the Commission to establish recoverable rate case expenses below the total amount that is incurred by the utility in litigating before the Commission [and that] [t]he rules recognize that it is reasonable for the Commission to limit the amount of rate case expenses recoverable through rates by considering the specific facts and arguments presented in the base rate case.[55]

The PUC indicated that it anticipated the comments it received would justify a more structured rule.[56] The Recommended Decision provided more elaboration, specifying that "determination of recoverable expenses is fact and case specific and cannot be determined through the promulgation of a rule of general applicability" and that after-the-fact assessment of rate case expense was unnecessary and impractical.[57] It also rejected a proposal to "deny expenses

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48. Notice of Proposed Rulemaking, Decision No. C24-0285, 2024 Colo. PUC LEXIS 258, at *1 (Mar. 27, 2024).

49. *Id*. at *48.

50. *Id*. at *48-49.

51. *Id*. at *49.

52. *See generally* COLO. PUB. UTILS. COMM'N, *24R-0168EG Proposed Rules Regul. Elec. & Gas SB23-291 – 6-3-24, HRB* (YouTube, June 3, 2024), https://www.youtube.com/watch?v=QWY1PayjQm4.

53. *See generally* Recommended Decision Adopting Rules and Closing Proceeding, Decision No. R25-0215, 2025 Colo. PUC LEXIS 203 (Mar. 28, 2025).

54. Commission Decision Addressing Exceptions to Recommended Decision No. R25-0215 and Adopting Rule Amendments, with Modifications, Decision No. C25-0376, 2025 Colo. PUC LEXIS 349, at *34 (May 14, 2025).

55. *Id*.

56. *Id*. at *33 ("The Commission anticipated this rulemaking may provide the opportunity to develop a record to help establish potential rules for either overall expenditure limits or targeted allocations of costs borne by ratepayers versus the utility's shareholders. The Commission likewise solicited further comment.").

57. Recommended Decision Adopting Rules and Closing Proceeding, 2025 Colo. PUC LEXIS 203, at *25.

related to utility requests not granted" on the ground that such an approach "is contrary to the due process" and was not justified by a history of utility conduct.[58]

With such a general standard, it remains to be seen how it will be implemented. Pending final rules, the PUC had already acted on the "clear" legislative intent to reduce the recoverable expenses of two specific witnesses by 50%, reasoning that "[t]he benefits that inure to ratepayers from a utility rate increase are at least matched, if not substantially exceeded, by the benefits enjoyed by shareholders."[59] This approach was endorsed by the Recommended Decision that led to PUC's final rule.[60]

Colorado's previous approach was to permit recovery of rate case expenses as "a normal and legitimate activity for a regulated utility."[61] It has also rejected across-the-board restrictions on rate case expense recovery, such as applying a "lodestar" test[62] or splitting the burden of rate case expenses between ratepayers and utility shareholders, finding that the "better course for controlling [such] expenses is rigorous oversight."[63] Consistent with this goal of rigorous oversight, recent decisions by the Colorado PUC have limited the recovery of rate case expenses to figures less than what the utility had sought. For instance, in a May 2023 order the PUC limited the utility's recoverable rate case expenses to "a cap of $650,000," when the utility requested $750,000, which the PUC believed would "result in recovery of only those costs prudently incurred in the preparation and presentation of this case."[64] In another decision from October 2022, the PUC encouraged the applicant "to better manage its expenses related to rate cases" and limited its recovery to $2 million, amortized over three years with no return, when the utility had requested $2.2 million.[65] It remains to be seen if Colorado will ultimately reconsider and adopt such across-the-board measures in light of recent legislation.

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58. *Id.*

59. Public Serv. Co. of Colo., Decision No. C24-0778, 2024 Colo. PUC LEXIS 702, at *111 (Oct. 16, 2024) (" . . . hence we find it appropriate for shareholders to carry an equal proportion of the cost of those consultants' services for which they too receive a benefit.").

60. Recommended Decision Adopting Rules and Closing Proceeding, 2025 Colo. PUC LEXIS 203, at *71.

61. Public Serv. Co. of Colo., Decision No. C09-1446, 2009 Colo. PUC LEXIS 1470, *60 (Dec. 3, 2009). *See also* Mountain States Tel. & Tel. Co. v. Public Utils. Comm'n, 576 P.2d 544, 547 (Colo. 1978) ("the PUC has always allowed Mountain Bell to charge off as a proper operating expense attorneys' fees and legal costs incurred in its efforts before the PUC to increase rates.").

62. Atmos Energy Corp., Decision No. C23-0293, 2023 Colo. PUC LEXIS 289, at *24-25 (Apr. 21, 2023) ("Determining whether those costs were prudently incurred (which is our charge in a rate case) is a different inquiry than determining whether the winning party in a court case incurred a reasonable amount of attorney fees (that the losing side must pay). Therefore, we decline to apply the 'lodestar test' to determine whether the legal and consulting fees—one of the utility's operating expenses—were prudently incurred so as to be recoverable in utility rates.").

63. Public Serv. Co. of Colo., 2009 Colo. PUC LEXIS 1470, at *60.

64. Atmos Energy Corp., 2023 Colo. PUC LEXIS 289, at *22-27.

65. Public Serv. Co. of Colo., Decision No. C22-0642, 2022 Colo. PUC LEXIS 511, at *67, 70 (Oct. 19, 2022). *See also* Public Serv. Co, of Colo., Decision No. R15-1204, 2015 Colo. PUC LEXIS 1312, *113 (Nov. 16, 2015) (approving $335,863 annually when company originally requested $727,704).

CONNECTICUT

Connecticut is another state adopting a new approach to rate case expense recovery. In fact, recent legislation in Connecticut imposes a bright-line prohibition against all rate case expense recovery by utilities. Specifically, in 2023 the state's General Assembly enacted updates to the "Take Back Our Grid" Act, which included the following broad prohibition:

> For any rate proceeding initiated on or after January 1, 2024, no electric distribution company, gas company, pipeline company or water company with more than seventy-five thousand customers shall recover through rates its direct or indirect costs associated with its attendance in, participation in, preparation for, or appeal of such rate proceeding. Such costs shall include, but need not be limited to, attorneys' fees, fees to engage expert witnesses or consultants, the portion of employee salaries associated with such attendance, participation, preparation or appeal of a rate proceeding and related costs identified by the [Connecticut Public Utilities Regulatory Authority ("PURA")].[66]

This provision has yet to be *applied* by PURA in a final decision. However, it has been definitively interpreted by PURA as being "plain and unambiguous and preclud[ing utilities] from recovering any rate case expenses."[67] It has also been applied to prohibit all rate case expense recovery in a non-final proposed decision, which remains pending.[68] It remains to be seen whether regulated entities will overturn or bypass this new restriction, or whether this measure will result in lower expenses and more restrained litigation on the part of utilities.

Prior to the Take Back Our Grid Act's prohibition, the Connecticut PURA had a relatively well-developed framework for scrutinizing rate case expenses, as it has recently applied and recounted.[69] Specifically, PURA conducted a "a two-step analysis."[70] The first step was to determine whether the costs reflected "prudent and efficient management" by examining whether the applicant engaged in competitive selection for the firms involved and whether the costs are consistent with past experience, other jurisdictions, and industry averages.[71]

The second step is to "weigh the interests of ratepayers and the Company in determining whether the Company is entitled to recover its costs."[72] PURA's analysis at the second step considers that "[r]ate case expenses implicate both shareholder and ratepayer interests" and that "not all rate case expenses are

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66. H.B. 6941, Gen. Assemb., Jan. Sess. (Conn. 2023) (codified at CONN. GEN. STAT. § 16-243p(b)).

67. United Illuminating Co., Docket No. 22-08-08, 2023 Conn. PUC LEXIS 498, at *366-71 (July 21, 2023) (interpreting statute to confirm reading of prior, more limited version of this provision).

68. Yankee Gas Servs. Co., Docket No. 24-12-01, 2025 Conn. PUC LEXIS 539, at *263-65 (Sep. 22, 2025). Note however, that the agency did permit the utility to recover Office of Consumer Counsel fees that the agency incurred in the proceeding under a different statutory provision). *Id.*

69. Connecticut Water Co., Docket No. 23-08-32, 2024 Conn. PUC LEXIS 305, at *165-72 (June 28, 2024).

70. *Id*. at *167-70.

71. *Id*. *See also e.g.*, *id*. (finding company did not meet burden of showing its subjective actions were reasonable in hiring firm even when the level of cost did "not appear unreasonable when compared to other recent water rate cases brought before" PURA).

72. Connecticut Water Co., 2024 Conn. PUC LEXIS 305, at *167-68.

necessary for supplying utility service to customers."[73] PURA also demonstrated a notable awareness of the incentives at play and articulated that "allocating at least some rate case expense to shareholders incentivizes the Company to control its rate case expenses."[74] In another recent order, PURA expressed concern that "there is no intrinsic motivation for the Company to curtail such expenses if the Company and its outside lawyers and consultants assume such costs will be fully recovered from ratepayers."[75]

As to the method of recovery, Connecticut, similar to many jurisdictions, amortized rate case expense over a three-year period.[76] Also like most jurisdictions, it did not permit rate case expenses to be included in rate base.[77] It did, however, allow for recovery of carrying charges calculated at the weighted average cost of capital.[78] Presumably, this prior approach would still apply to water utilities with fewer than 75,000 customers not covered by the new prohibition.

DELAWARE

Delaware's Public Service Commission maintains a "longstanding policy of normalizing rate case expense."[79] As in most states, there are no specific statutory or regulatory provisions that are directly applicable. Delaware's PSC articulated that it believes "normalization is more consistent with the essential concept that rates are set to allow the Company to recover normal recurring expenses during the period the rates are to be in effect, and not to guarantee a dollar-for-dollar recovery of past expenses."[80] The Commission has rejected the use of estimates as a rule.[81] Rather, "expenses are normalized by determining a historical cycle of

73. *Id*. at *170. ("Unlike conventional operating expenses, rate case expenses are connected to an adversarial process in which the Company's lawyers and experts advocate for a rate case outcome that best serves the Company's shareholders rather than ratepayers. For instance, in the current proceeding, the Company requested an ROE that was higher than what other parties advocated for and sought recovery for compensation expenses related to director and officer salaries and incentive compensation.").

74. *Id*. at *170-71 (The regulated utility "determines when to file a rate application, what issues to pursue in the proceeding, which consultants and attorneys to retain to advocate on its behalf, and whether to leverage internal resources or utilize outside counsel or consultants to advocate on its behalf.").

75. Aquarion Water Co., Docket No. 22-07-01RE01, 2024 Conn. PUC LEXIS 356, at *14-15 (July 31, 2024) ("In a typical attorney-client or consultant arrangement, the client is incentivized to monitor the attorney's or consultant's fees and work product to avoid inefficient or unnecessary costs. At the same time, the attorney or consultant is similarly incentivized to provide efficient services to avoid the risk that billed work will be rejected by the client. However, if full cost recovery is assumed, the incentive structure has no inherent cost containment measure. As such, the requirement that the Company produce evidence in support of the prudency of the requested rate case costs is essential to ensure just and reasonable rates.").

76. Connecticut Water Co., 2024 Conn. PUC LEXIS 305, *171-72.

77. *Id*. at *172 ("This method of recovery allows the Company to recover its costs while ensuring that rate base is not improperly inflated by the inclusion of a deferred cost with a rapidly declining annual balance").

78. *See, e.g.*, Connecticut Nat. Gas Corp., Docket No. 23-11-02, 2024 Conn. PUC LEXIS 516, at *252 (Nov. 18, 2024).

79. Tidewater Env't Serv., Inc., Order No. 8045, 2011 Del. PSC LEXIS 150, at *8 (Sep. 20, 2011).

80. Diamond State Tel. Co., Docket No. 92-47, 1993 Del. PSC LEXIS 22, at *19 (Nov. 30, 1993) (citing Artesian Water Co., Docket No. 90-10, 1991 Del. PSC LEXIS 12 (May 28, 1991)).

81. United Water Del., Order No. 4548, 1997 Del. PSC LEXIS 258, at *36 (July 15, 1997) ("The Company's claimed level of rate case expenses, however, were not 'legitimately and properly incurred;' indeed,

known and measurable costs and then averaging those costs over that specific time period."[82] However, under unique circumstances, the Delaware PSC has relied upon the most recent rate case expense level rather than a normalization.[83] The PSC has rarely disallowed specific rate case expenses[84] and has a general policy that costs actually incurred by a utility (including rate case expenses) are presumed recoverable unless shown otherwise.[85]

DISTRICT OF COLUMBIA

The District of Columbia's Public Service Commission allows utilities to recover their rate case expense via the amortization of a regulatory asset over several years. This does not originate from a specific statutory provision but rather from general cost-of-service ratemaking. Recent DC PSC decisions on this topic do not provide much elaboration on its rationale but show practical deference to utilities, generally allowing recovery of all expenses incurred.[86] For instance, the DC PSC has rejected arguments by an intervenor that "allowed recovery of rate case expenses be tied to the proportion of the Company's initial request that is ultimately approved by the Commission" when the amount incurred grew to more than $3.6 million.[87] The DC PSC has also found that "protracted schedule[s]" and "contentious" proceedings are reasonable bases for increasing recoverable rate case costs.[88] Under DC PSC policy, rate expenses are amortized over a multiyear period,[89] which is intended to match the amortization period with the historical frequency of rate case proceedings.[90]

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they were not even incurred because they are *estimates*.") (emphasis in original); *see also* Delmarva Power & Light Co., Docket No. 20-0149, 2022 Del. PSC LEXIS 25, at *63 (Jan. 26, 2022) (rejecting the partial use of a projection).

82. United Water Del., Inc. v. Public Serv. Comm'n Del., 1998 Del. Super. LEXIS 122, at *31-32 (Del. Super. Ct. 1998) (quoting United Water Del., 1997 Del. PSC LEXIS 258, at *34-35).

83. *See* Delmarva Power & Light Co., Order No. 8589, 2014 Del. PSC LEXIS 77, at * 110 (Aug. 5, 2014).

84. Cat Hill Water Co., Docket No. 88-30, 1990 Del. PSC LEXIS 16, at *30-31 (May 30, 1990) (faulting utility and witnesses for pursuing unique theories with unqualified witnesses), *aff'd* Cat Hill Water Co., Order No. 3200, 1990 Del. PSC LEXIS 29 (Aug. 28. 1990).

85. United Water Del., Inc. v. Public Serv. Comm'n Del., 1998 Del. Super. LEXIS 122, at *6 (Del. Super. Ct. 1998); *see also* Wilmington Suburban Water Corp., 367 A.2d 1338, 1347 (Del. Super. Ct. 1976) (reversing Delaware PSC on disallowance of rate case expenses).

86. *See* Potomac Elec. Power Co., No. 1156, 2021 D.C. PUC LEXIS 77, at *234-35 (June 8, 2021) (approving of all rate case expenses and rejecting intervenor argument that the utility's "mismanagement of its rate filings and multiple corrections to its testimony and exhibits have greatly protracted this proceeding and increased excess costs").

87. Potomac Elec. Power Co., No. 1139, 2017 D.C. PUC LEXIS 187, at *177-78 (July 25, 2017) ("The Commission rejects [intervenor's] recommendation and reaffirms its position regarding this issue taken as early as Formal Case No. 715 and repeated in several subsequent cases.") (citing Potomac Elec. Power Co., No. 715, 1980 D.C. PUC LEXIS 2 (May 15, 1980)).

88. Potomac Elec. Power Co., 2021 D.C. PUC LEXIS 77, at *235.

89. *See, e.g.*, Potomac Elec. Power Co., 2017 D.C. PUC LEXIS 187, at *177-78; *see also* Potomac Elec. Power Co., 2021 D.C. PUC LEXIS 77, at *235.

90. Chesapeake & Potomac Tel. Co., No. 729, 1981 D.C. PUC LEXIS 6, at *3-5, 118-20 (June 19, 1981) ("Those commissions which, by contrast, have discussed the issue on its merits uniformly have based their selection of a particular amortization period on the historical or projected frequency of rate filings by the applicant utility. . . While it is obvious that there is no precise method of predicting future occurrences, we believe that

FLORIDA

Florida utilities can recover rate case expenses amortized over a period of years, and the practice is governed by a statute in the context of water utilities. Specifically, in regulating water utilities, the Florida Public Service Commission must determine "the reasonableness of rate case expenses and shall disallow all rate case expenses determined to be unreasonable."[91] In making this determination, the statute directs the PSC to consider "the extent to which a utility has utilized or failed to utilize" separate indexing procedures for increasing rates, as well as "such other criteria as [the PSC] may establish by rule."[92] Florida statute also prohibits a water utility from recovering rate case expenses "if a utility receives staff assistance in changing rates . . . unless the Office of Public Counsel or interested parties have intervened."[93] The Florida PSC does not appear to have promulgated regulations implementing any additional criteria, but it has elaborated on its policy in its precedent.

As to energy utilities not subject to this statutory limit, the Florida PSC and courts have held that because "it is the Utility's burden to justify its requested costs," it would "constitute an abuse of discretion to automatically award rate case expense without reference to the prudence of the costs incurred in the rate case proceedings."[94] Consistent with this view, Florida's PSC has exercised more granular oversight of utility rate case expenses than most regulators, making many disallowances—some as small as a few hundred dollars.[95] Although several recent orders express more deference to the utility,[96] one interesting rule articulated by the PSC is that a utility may only recover rate case expenses incurred from appealing a PSC decision in court if that appeal is successful, reasoning that the prudency of the appeal is tied to its success.[97] The PSC has expressed mixed

establishing an amortization period on the basis of the historical frequency of rate case filings is the appropriate way to handle the matter.").

91. FLA. STAT. § 367.081(7) (2025) ("No rate case expense determined to be unreasonable shall be paid by a consumer.").

92. *Id*.

93. FLA. STAT. § 367.0814(3) (2025).

94. Aqua Utils. Fla., Inc., Order No. PSC-09-0385-FOF-WS, 2009 Fla. PUC LEXIS 415, at *247 (May 29, 2009) (citing Meadowbrook Util. Sys., Inc. v. Fla. Pub. Serv. Comm'n, 518 So.2d 326, 327 (Fla. Dist. Ct. App. 1987) ("automatic award of rate case expense in every case, without reference to the prudence of the costs incurred in the rate case proceedings, clearly would constitute an abuse of discretion, we find no such abuse of discretion in the record before us.")). *See also* Florida Crown Util. Servs., Inc. v. Utility Regul. Bd., 274 So. 2d 597, 598 (Fla. Dist. Ct. App. 1973) ("While we recognize the well settled rule that a regulatory board is vested with broad discretion concerning the allowance of rate hearing expense, it is equally well settled that whether a rate increase is granted is not the sole criteria on which that discretion rests") (reversing *dis*allowance of rate case expense recovery).

95. *See, e.g.*, Aqua Utils. Fla., Inc., Order No. PSC-12-102-FOF-WS, 2012 Fla. PUC LEXIS 216, at *318-34 (Mar. 5, 2012) (Florida PSC disallowing and reducing numerous expenses for numerous reasons).

96. Florida Pub. Utils. Co., Order No. PSC-2023-0103-FOF-GU, 2023 Fla. PUC LEXIS 53, at *199 (Mar. 15, 2023) (granting request of utility to increase its initial request based on more data and faulting intervenor's for not conducting more vetting of the expenses they challenged); Peoples Gas Sys., Inc., Order No. PSC-2023-0288-FOF-GU, 2023 Fla. PUC LEXIS 378, at *212 (Dec. 27, 2023) (approving stipulation with three years amortization period).

97. Sunshine Utils. Of Cent. Fla., Inc., Order No. PSC-94-0738-FOF-WU, 1994 Fla. PUC LEXIS 613, at *32 (June 15, 1994) ("It is our belief that we are justified in depending upon the court's determination of success

messages regarding the argument that costs be shared between ratepayers and shareholders, stating once that there was "no statutory or precedential support" for sharing them evenly (i.e., by reducing the recoverable level),[98] but has denied earning a return on these expenses as consistent with "long-standing policy that the cost of the rate case should be shared."[99]

Florida statute prohibits water utilities from "earn[ing] a return on the unamortized balance of the rate case expense."[100] Rather, it mandates that any rate case expenses deemed reasonable "shall be apportioned for recovery over 4 years unless a longer period can be justified and is in the public interest," and requires that the utility "immediately reduce its rates by the amount of the rate case expense previously included in rates" at the conclusion of that period.[101] The PSC applies similar treatment for energy utilities not covered by the statute, although the precedent does not elaborate on the amortization period chosen.[102] However, for those utilities, the PSC has articulated that in the absence of the statutory provision, "rates are not reduced after the amortization period ends."[103] The PSC also prohibits energy utilities from earning a return on rate case expenses.[104]

GEORGIA

The Georgia Public Service Commission permits utilities to recover their rate case expenses via an amortization over several years. This practice is not governed by a specific statute. While the stated goal is not to permit over-recovery, recent Georgia PSC decisions have been relatively deferential to utilities regarding the amount of rate case expenses, although the issue has not always been vigorously contested.[105] The Georgia PSC has also rejected arguments raised by an intervenor that ratepayers "should not be required to pay for the [litigation] costs to justify increased costs."[106] Amortization periods set by the Georgia PSC are typically

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in making its determination of reasonableness or prudence. In other words, if a utility succeeds in an appeal, the Commission can fairly conclude it was prudent. On the other hand, if a utility fails in its appeal, the Commission can fairly assume it was not a prudent appeal. Because it is the ratepayers that bear the burden of appellate rate case expense, the Commission is justified in denying appellate rate case expense for appeals in which utilities are unsuccessful. Because we find that this Commission may depend on success at the appellate level as a basis for determining the reasonableness of an appeal, we also conclude that reasonable appellate rate case expense can only mean expense related to issues on which the utility prevails.").

98. Aqua Utils. Fla., Inc., 2012 Fla. PUC LEXIS 216, at *334-35.

99. Tampa Elec. Co., Order No. PSC-09-0283-FOF-EI, 2009 Fla. PUC LEXIS 251, at *79 (Apr. 30, 2009).

100. FLA. STAT. § 367.081(9) (2025).

101. *Id.* § 367.081(8).

102. Progress Energy Fla., Inc., Order No. PSC-10-0131-FOF-EI, 2010 Fla. PUC LEXIS 199, at *331 (Mar. 5, 2010) ("We do not believe [utility] has provided sufficient evidence to vary from established practice. Given the differences among the parties, the four-year period falls between the high and low amortization periods and is consistent with our recent practice. We believe a four-year amortization is appropriate."); Florida City Gas, Order No. PSC-2023-0177-FOF-GU, 2023 Fla. PUC LEXIS 174, at *129 (June 9, 2023) ("The four-year amortization period requested by [utility] is not disputed by any of the intervenors, and we find it is reasonable.").

103. Tampa Elec. Co., 2009 Fla. PUC LEXIS 251, at *77.

104. *See* Florida Pub. Utils. Co., Order No. PSC-2023-0103-FOF-GU, 2023 Fla. PUC LEXIS 53, at *89 (Mar. 15, 2023); *see also* Florida City Gas, 2023 Fla. PUC LEXIS 174, at *59.

105. *E.g.* Atmos Energy Corp., Docket No. 27163, 2008 Ga. PUC LEXIS 115, at *63-64 (Sep. 17, 2008).

106. *See generally* Atlanta Gas Light Co., Docket No. 42315, at 13 (Ga. Pub. Serv. Comm'n Dec. 19, 2019), https://services.psc.ga.gov/api/v1/External/Public/Get/Document/DownloadFile/179967/62381 (granting rate

meant to align with the interval between base rate proceedings.[107] However, on at least one occasion the Georgia PSC has found that poor economic conditions justified a shorter amortization period, insofar as those conditions made it more likely the utility would file another rate case sooner.[108]

HAWAII

The Hawaii Public Utilities Commission permits utilities to recover rate case expenses amortized over a period of years. There are no specific statute or regulatory provisions that are directly applicable. The PSC employs a range of terminology, sometimes treating it as synonymous with "regulatory commission expense,"[109] sometimes as "rate case amortization,"[110] and sometimes lumping it in with regulatory expenses.[111]

Recent contested precedent on this topic is sparse. Most recent orders by the Hawaii PUC that addressed the issue were resolved via settlement that represented a compromise between the utility and consumer advocates in terms of the recoverable level of rate case expense and its amortization period.[112] When called to resolve disputes, the Hawaii PSC has scrutinized rate case expenses and affirmatively disallowed many items as unjustified.[113] The PSC has articulated that "function of the allowance of rate case expense, like the allowance of any other expense item, is not to guarantee the dollar-for-dollar actual recovery of the expense, but to establish a representative allowance for a normal and necessary utility function."[114] Conversely, because the Hawaii PSC seeks to set rate case expense at a reasonably representative estimate, it will not make adjustments to account for past over-recovery.[115] Like most jurisdictions that have addressed the proposal, the Hawaii PSC has rejected the argument that rate case expense should

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case expenses noting that the company witness stated that the costs were "prudently incurred to support the proposals and requests in this rate case").

107. *See, e.g.*, Atmos Energy Corp., 2008 Ga. PUC LEXIS 115, at *63-64 (Sep. 17, 2008) (adopting the company's recommendation to set the amortization period at 3 years based on the company's prior two intervals between base rate proceedings); Atmos Energy Corp., Docket No. 30442, 2010 Ga. PUC LEXIS 81, at *24 (Mar. 29, 2010) (adopting the government's recommendation for a 36-month amortization period based on the past 15 years of ratemaking frequency, despite recent significant variations between such proceedings, because "it would be poor ratemaking policy to base a decision only upon the most recent history").

108. Atlanta Gas Light Co., Docket No. 31647, 2010 Ga. PUC LEXIS 290, at *23 (Oct. 27, 2010).

109. Hawaii Elec. Co., Order No. 34453, 2017 Haw. PUC LEXIS 164, at *20 (Mar. 14, 2017).

110. Laie Water Co., Docket No. 2016-0229, 2017 Haw. PUC LEXIS 137, at *30 (Feb. 27, 2017).

111. Hawaii-American Water Co., Order No. 38424, 2022 Haw. PUC LEXIS 209, at *34 (June 16, 2022); Hawaii Water Serv. Co., Order No. 34822, 2017 Haw. PUC LEXIS 513, at *21 (Sep. 15, 2017).

112. *See, e.g.*, Lanai Water Co., Docket No. 2022-0233, 2023 Haw. PUC LEXIS 270, at *24-25 (May 18, 2023).

113. Hawaii Elec. Light Co., Order No. 10993, 1991 Haw. PUC LEXIS 11, at *66-71 (Mar. 6, 1991) (allowing rate case expense of $141,000 to be recovered when utility requested $580,000).

114. Hawaii Elec. Light. Co., Order No. 13762, 1995 Haw. PUC LEXIS 3, at *31 (Feb. 10, 1995) (quoting E. Honolulu Cmty. Servs., Inc., Docket No. 7064, Decision and Order No. 12679).

115. Maui Elec. Co., Order No. 13429, 1994 Haw. PUC LEXIS 9, at *35-36 (Aug. 5, 1994).

be shared evenly with shareholders.[116] The amortization period selected by the Hawaii PSC is intended to reflect the intervals between rate cases.[117]

IDAHO

The Idaho Public Utilities Commission permits utilities to recover their rate case expenses amortized over a period of several years. As with most jurisdictions, this practice is not governed by a specific statutory provision. According to the Idaho PUC, it has "consistently found that prudent and reasonable costs for a [regulated utility] to file and litigate a rate case before us are an expense properly recoverable in rates."[118] The level of recoverable expense has been set based on the rate case at issue,[119] rather than a historic average, although estimates have also been incorporated.[120] The recoverable amount of expenses has not frequently been the focus of dispute, but when it has been, the PUC has disallowed specific items.[121] Like other jurisdictions, the Idaho PUC has rejected "requiring [utilities] to split [recoverable] rate case expense between customers and shareholders."[122]

For the method of recovery, the Idaho PUC has described rate case expense as among those items that should "be recovered through rates rather than through the surcharge" because they are "recurring expenses necessary for the operations of . . . " utilities.[123] Like most jurisdictions, the Idaho PUC has prohibited utilities from earning a return on rate case expense.[124] The Idaho PUC sets the amortization period with a goal of matching the time the rates will be in effect—that is until the next rate case is filed.[125] In one recent case, the Idaho PUC

116. Hawaii Elec. Light Co., 1991 Haw. PUC LEXIS 11, at *71 (citing various decisions).

117. Hawaii Elec. Light Co., 1995 Haw. PUC LEXIS 3, at *31; Maui Elec. Co., 1994 Haw. PUC LEXIS 9, at *35-36; *see also* Laie Water Co., Order No. 34428, 2017 Haw. PUC LEXIS 137, at *31 (Feb. 27, 2017) ("The four-year amortization period, in turn, is based on the estimated four-year interval between the subject 2017 test year rate case and [the utility's] next rate case.") (adopting settlement).

118. Diamond Bar Ests. Water Co., No. DIA-W-07-01, 2007 Ida. PUC LEXIS 198, at *10 (Oct. 19, 2007).

119. Diamond Bar Ests. Water Co., No. DIA-W-15-01, 2016 Ida. PUC LEXIS 100, at *24 (Aug. 29, 2016); Boise Water Corp., No. BOI-W-90-1, 1990 Ida. PUC LEXIS 182, at *19 (Nov. 1, 1990).

120. Diamond Bar Ests. Water Co., 2007 Ida. PUC LEXIS 198, at *7; United Water Idaho Inc., No. UWI-W-97-6, 1998 Ida. PUC LEXIS 178, at *45 (June 1, 1998).

121. Diamond Bar Ests. Water Co., 2016 Ida. PUC LEXIS 100, at *25 (reducing recoverable rate case expense by $200 already recovered in prior rates).

122. United Water Idaho Inc., 1998 Ida. PUC LEXIS 178, at *46.

123. Capitol Water Corp., No. CAP-W-06-01, 2006 Ida. PUC LEXIS 206, at *12 (Dec. 12, 2006).

124. Diamond Bar Ests. Water Co., 2007 Ida. PUC LEXIS 198, at *8-10 ("The Commission has not in the past allowed a return to be paid for rate case expenses . . . We have consistently found that prudent and reasonable costs for a Company to file and litigate a rate case before us are an expense properly recoverable in rates. However, this is not an item that is included in rate base to earn a return. As we have ordered in the past with numerous utilities, including this Company, the proper recovery of this expense item is to amortize over a number of years. We find that the rate case expense should be removed from rate base and recovered through an amortization of the expense for five years.").

125. Diamond Bar Ests. Water Co., 2016 Ida. PUC LEXIS 100, at *24-25 (setting the amortization period at years reflecting "the average of the years between rate cases . . . . "); United Water Idaho Inc., 1998 Ida. PUC LEXIS 178, at *46 ("We find that a three year amortization for rate case expense provides a more responsible matching of costs to the time period in which they are incurred.") (also applying a five-year amortization period for other deferred regulatory expenses); Boise Water Corp., No. BOI-W-90-1, 1990 Ida. PUC LEXIS 182, at *20 (Nov. 1, 1990) ("Rate case expense should be amortized over three years. This period represents the average of

articulated that several factors, including "the frequency of rate case filings, the contested issues, the amounts in controversy, the proportional differences in recommendations from the [utility], [PUC] Staff, and [the PUC's] review of the record and evidence presented on the issue," were considered in reaching an amortization period designed to "provide the [utility] with timely recovery of the expenses incurred to process this case."[126]

ILLINOIS

Illinois's utility regulator, the Illinois Commerce Commission (ICC), allows utilities to recover reasonable, prudently incurred rate case expense from their ratepayers amortized over a period of several years under a statutory framework. By statute, the ICC is required to "specifically assess the justness and reasonableness of any amount expended by a public utility to compensate attorneys or technical experts to prepare and litigate a general rate case filing" and to "expressly address[]" that issue in its final order.[127] Illinois case law also articulates that expenses incurred to "prepare and present" a rate case are "ordinary and reasonable cost[s] of doing business."[128] The ICC is therefore generally required to include rate case expenses when setting rates "sufficient to provide for recovery of expenses."[129]

The ICC has further promulgated regulations that enumerate some of the factors it considers.[130] Relatively unique among these considerations is "the relevance of the work products to the justness and reasonableness of the proposed

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the Company's and the Staff's positions and is a reasonable time period given that Boise Water's last rate case was four years ago. If the Company files a rate case before the three-year amortization is complete, we are confident that appropriate accounting measures will be taken to recover the unamortized balance.").

126. Veolia Water Idaho Inc., No. VEO-W-22-02, 2023 Ida. PUC LEXIS 32, at *38 (Apr. 28, 2023).

127. 220 ILL. COMP. STAT. § 5/9-229(a) (2024). In 2024 a bill was introduced to amend this section to prohibit this recovery entirely. H.B. 5061, 103rd Gen. Assemb. (Ill. 2024); S.B. 2885, 103rd Gen. Assemb. (Ill. 2024). Another would have prevented meals and travel from being recovered. H.B. 2172, 103rd Gen. Assemb. (Ill. 2023).

128. Central Ill. Pub. Serv. Co. v. Illinois Com. Comm'n, 183 Ill. App. 3d 421, 432 (1993) (citing Du Page Util. Co. v. Illinois Com. Comm'n, 267 N.E.2d 662, 668 (Ill. 1971)).

129. *Id*. at 433; *see also* People *ex rel*. Madigan v. Illinois Com. Comm'n, 2015 IL 116005, 25 N.E.3d 587 (2015).

130. ILL. ADMIN. CODE tit. 83, § 288.110(b) (2025) (identifying the following without limitation: "1) The fulfillment of the required support for compensation costs as required in Section 288.110; 2) Identification of the type of service involved as either professional or support staff; 3) Novelty, complexity, or difficulty of the issues; 4) Nature, extent, and reasonableness of work performed that was considered at the time the work was performed, including, without limitation, the amount of support required for pleadings, discovery, briefing, and hearings, and the relevance of the work products to the justness and reasonableness of the proposed utility rates; 5) Requisite skill required to perform services efficiently and accurately; 6) Professional credentials, including, without limitation, education, training, experience, achievements, and reputation, in the applicable professional discipline; 7) The reasons why multiple outside counsel, outside technical experts, utility affiliate counsel, or utility affiliate technical experts addressed the same issues; 8) Relevant evidence regarding the market rates concerning fees charged for comparable services, including, as applicable, fees charged in other rate cases in Illinois or fees charged in other jurisdictions for rate cases; 9) Hourly rates applicable to outside counsel and outside technical experts representing or retained by utilities and outside counsel or outside technical experts representing or retained by other entities that regularly appear in Commission proceedings; and 10) The reasonableness of the amount of time taken to perform a task.").

utility rates."[131] The regulations also spell out the required support a utility must provide, which includes detailed descriptions of the work performed and cost control measures, as well as invoices or other documentation, and justification for the amortization period.[132] Consistent with this rigorous review, the ICC has cautioned utilities about discrepancies in their requested level—even when that issue is not disputed by the parties.[133] The ICC and Illinois courts have held that "failure to provide such information warrants disallowance of the requested rate case expense."[134] In fact, the ICC recently reduced one utility's rate case expense by more than $1.4 million where it failed to substantiate its request, the total expense and individual expert rates were higher than those of other utilities, and some costs might have been duplicative.[135] In addition, while it is not an enumerated factor in its regulations, the ICC has also considered the quantum of the rate case expense relative to the overall increase, finding "it unreasonable for rate case expense to represent 18.7%" of the overall request.[136]

The ICC allows recovery of these expenses via amortization over several years.[137] The ICC does not permit a utility to earn a return on its rate case expense by including the unamortized portion in rate base.[138] The ICC sets the amortization period for the recovery of rate case expense by estimating "the time rates approved in this proceeding will be in effect given the timeframe between [utility] rate cases."[139]

INDIANA

The Indiana Utility Regulatory Commission (IURC) allows utilities to recover their prudent and reasonable rate case expenses amortized over several years. IURC recognizes that "rate case expense is a cost of doing business," but emphasizes that "these expenditures must be prudent and reasonable given the

131. *Id*. at (b)(4).

132. *Id*. at (a)(2).

133. Northern Ill. Gas Co., 2023 Ill. PUC LEXIS 747, at *189 (Nov. 16, 2023) (utilities' "rate case expense of $5,363,900 is uncontested and therefore adopted by the Commission. While the two-time entries amounting to $562.50 are nominal, the Commission strongly encourages Nicor Gas to continue to scrutinize its legal bills for accuracy."); Utility Servs. of Ill., Inc., 2021 Ill. PUC LEXIS 735, at *66 (Dec. 1, 2021) (that it is "possible for a public utility's additional expenses resulting from the disclosure and remedy of a mistake in a rate case filing to be deemed unrecoverable if the Commission finds those costs are not just and reasonable.").

134. North Shore Gas Co., 2023 Ill. PUC LEXIS 786, at *303 (Nov. 16, 2023); *see also* Commonwealth Edison Co. v. Illinois Com. Comm'n, 2014 IL App 130302, ¶ 1, 16 N.E.3d 713, 716 (2014) ("the Commission properly concluded that it could not determine whether the amounts expended for attorney fees were just and reasonable, as there was no evidence as to specific amounts in fees, what each amount was for, the amount of time that was expended, the rates charged, or the reasonableness of those rates.").

135. North Shore Gas Co., 2023 Ill. PUC LEXIS 786, at *302.

136. *Id*.

137. *See, e.g.*, Illinois-Amercian Water Co., 2022 Ill. PUC LEXIS 764, at *86-87 (Dec. 15, 2022).

138. Utility Servs. of Ill., Inc. 2018 Ill. PUC LEXIS 1497, at *32 (Sep. 24, 2018) ("It is a long-standing Commission practice that a utility can recover its rate case costs as an expense, but that the unamortized rate case expense should not be included in rate base. In other words, the Company will recover the cost, but its investors will not be able to earn a return on it. Rate base should include investments in the utility that result in an asset that is used and useful, which rate case expense is clearly not."); *see also* Cent. Ill. Pub. Serv. Co. v. Ill. Com. Comm'n, 243 Ill. App. 3d 421, 434 (1993).

139. Illinois-American Water Co., 2022 Ill. PUC LEXIS 764, at *84-86.

complexity of the issues presented."[140] The IURC is relatively conservative in determining the overall level allowed to be recovered. For instance, the IURC has significantly reduced recoverable rate case expenses (even when actually incurred) as "neither prudent nor reasonable" when it found those costs were not justified by the complexity of the case and were incurred by a relatively small utility.[141] The IURC has rejected proposals to split the cost of rate case expenses between ratepayers and shareholders.[142] It has also declined to require utilities to competitively bid their rate case work.[143] The IURC selects the amortization period for rate case to "reflect[] the anticipated life of the rates being set . . . ."[144]

IOWA

The Iowa Utilities Board (IUB) permits utilities to recover approved rate case expenses on a dollar-for-dollar basis governed by specific statute and regulation. Specifically, the statute directs utilities, within a reasonable time of filing an application, to file "a report outlining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision," and to provide its actual expenses as part of closing its case.[145] It also directs the IUB to "allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just."[146] IUB regulations provide more specific guidance and require specific data to be provided.[147] Notably, the regulations generally limit recoverable rate case expenses to those "incurred in the time period from the date the initial application is filed through the filing of the utility's briefs" but also include those incurred preparing the filing and notifying ratepayers.[148] The regulations also state that approved rate case expenses should include "only reasonable, nonrecurring, incremental expenses not covered by test year expenses. . . . "[149] Procedurally, rate case expenses are recovered in a separate proceeding.[150]

Applying this regulatory framework, the IUB has disallowed many costs, giving less deference to utility arguments than many regulators. For instance, in one recent case the IUB rejected arguments regarding the novelty and complexity

140. Switzerland Cnty. Nat. Gas Co., 2019 Ind. PUC LEXIS 90, at *56 (Apr. 17, 2019).

141. Water Serv. Co. of Ind., 2013 Ind. PUC LEXIS 104, at *73-74 (Mar. 27, 2013); Switzerland Cnty. Nat. Gas Co., 2019 Ind. PUC LEXIS 90, at *60-63.

142. Switzerland Cnty. Nat. Gas Co., 2019 Ind. PUC LEXIS 90, at *57 (Ind. Util. Regul. Comm'n Apr. 17, 2019) (citing Kokomo Gas & Fuel Co., 1987 Ind. PUC LEXIS 179 (July 29, 1987); Community Nat. Gas Co., 2017 Ind. PUC LEXIS 71, at *65-66 (Mar 22, 2017)).

143. Community Nat. Gas Co., 2017 Ind. PUC LEXIS 71, at *66-67.

144. Water Serv. Co. of Ind., 2013 Ind. PUC LEXIS 104, at *77; Indiana-American Water Co., 2024 IND. PUC LEXIS 38, at *201 (Feb. 14, 2024).

145. IOWA CODE § 476.6(5) (2025).

146. *Id*.

147. IOWA ADMIN. CODE r. 199-26.7(2) (2025).

148. *Id*. at r. 199-26.7(1).

149. *Id*. at r. 199-26.7(3).

150. *Id*. at r. 199-26.7(8); Iowa-American Water Co., Docket No. RPU-2020-0001, 2023 Iowa PUC LEXIS 139, at *8 (Apr. 27, 2023) (utility "may file a request for recovery of subsequent proceeding expenses in its non-recurring expense rider, which will be considered by the Utilities Board at that time.").

of a case, finding that "those issues were created by [the utility] due to the way [it] prepared its initial filing" and raised novel arguments.[151] The IUB reasoned that "customers should not be required to bear the resulting costs."[152] For a special category of small utility proceedings, the IUB regulations also establish a rebuttable presumption that rate case expenses in excess of $150,000 are unreasonable.[153]

In terms of the method of recovery, the IUB regulations provide that authorized rate case expenses may be recovered "through base rates, by means of a rider, or otherwise" and that the "applicable recovery period will be determined in the rate proceeding."[154] The IUB "has typically amortized rate case expense over a three-year period," but remains open to shorter periods where a three-year period risks "shift[ing] more of the rate case expense obligation to future customers."[155] While styled as an "amortization," the use of a "rider" (which is "subject to a true-up or reconciliation") appears more properly characterized as a surcharge.[156] The IUB described the implementation of such a rider as "allow[ing] dollar-for-dollar recovery of rate case expense without risking over-recovery from ratepayers or under-recovery by" the utility.[157]

KANSAS

Kansas's Corporation Commission (the KCC) permits utilities to recover prudent rate case expenses through an amortization over several years. Kansas does not have a specific statute governing this issue, but the Kansas Court of Appeals has articulated that the general mandate for just and reasonable rates covers this issue.[158] Notably, the KCC has endorsed the use of a lodestar-type analysis in determining a recoverable level of rate case expense.[159]

The Kansas Court of appeals has articulated that the KCC is tasked with "deciding if rate case expenses were prudently incurred and preventing imprudent costs from being passed on to the ratepayer."[160] The KCC also expressed that "[i]n

151. Interstate Power and Light Co., Docket No. RPU-2019-0002, 2021 Iowa PUC LEXIS 266, at *14 (Aug. 10, 2021).

152. *Id*.

153. IOWA ADMIN. CODE r. 199-26.11(8) (2025).

154. *Id*. at r. 199-26.7(7) ("Recovery through a rider will end once the expense is fully recovered.").

155. Iowa-American Water Co., Docket No. RPU-2013-0002, 2014 Iowa PUC LEXIS 74, at *15-16 (Feb. 28, 2014); *see also* Liberty Utils. Corp., Docket No. RPU-2016-0003, 2017 Iowa PUC LEXIS 240, at *19 (Apr. 28, 2017) (noting that the parties agreed to a seven-year amortization period); *but see* Iowa-American Water Co., Docket No. RPU-2016-0002, 2017 Iowa PUC LEXIS 125, at *68-69 (Iowa Utils. Bd. Feb. 27, 2017) (IUB indicating it "does not believe that a potential ['immediate'] rate case provides justification to reduce the amortization period for rate case expense in this proceeding" and adopting standard three-year amortization period.).

156. Iowa-American Water Co., 2017 Iowa PUC LEXIS 125, at *72.

157. *Id*.

158. Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n of State, 47 Kan. App. 2d 1112, 1125 (2012); Home Tel. Co. v. State Corp. Comm'n, 31 Kan. App. 2d 1002, 1014 (2003) (affirming 6-year amortization period)

159. *See* Kansas City Power & Light Co., Docket No. 10-KCPE-415-RTS, 2012 Kan. PUC LEXIS 89, at *89-90 (Jan. 18, 2012).

160. Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n, 47 Kan. App. 2d 1112, 1125 (2012).

general, public utilities are entitled to recover prudently incurred rate case expenses, . . . recovery is not automatic as the Commission must determine if the utility exercised proper management and discretion in incurring those expenses."[161]

The KCC addressed the issue of prudency extensively in an "Order on Rate Case Expense" from 2012.[162] The analysis is firmly rooted in the standard ratemaking framework that "long-standing policy" supports the inclusion of "fair and reasonable rate case expenses that are prudently incurred by a company in a rate case in costs to be borne by ratepayers."[163] The KCC also articulated three competing interests it must consider in addressing the issue: "(1) The utility's investors vs. the ratepayers; (2) the present ratepayers vs. the future ratepayers; and (3) the public interest."[164] The analysis also understood that recovery of rate case expense is a form of fee shifting, saying, "the custom and practice of recovering legal expenses in utility cases differs markedly from the general practices of civil and criminal litigation" and that if the KCC applied the "American Rule," then the utility "would be responsible for paying its own expenses and costs, [and] not recover any rate case expense from ratepayers."[165] The chair of the Commission wrote a concurrence that took the comparison further and proposed an alternative approach of presuming rate case expenses to be reasonable where they fell within a "zone of reasonableness" pegged at the relative share of the entire value of the case and be presumed unreasonable otherwise.[166] In its 2012 Order, the KCC significantly reduced rates, quite notably by developing a lodestar analysis for attorney work similar to that used in a civil fee recovery dispute.[167] On appeal, this order was affirmed in all respects.[168] In a more recent order from 2020, the KCC largely approved a utility's requests for recovery of rate case expense, except that the utility was not permitted to recover expenses related to expert testimony on the state regulatory environments. The KCC found this testimony was duplicative and unnecessary as the regulatory environment was within the agency's area of expertise.[169]

161. Moundridge Tel. Co., Docket No. 15-MRGT-097-AUD, 2015 Kan. PUC LEXIS 1244, at *30 (Apr. 27, 2015) (citing LaHarpe Tel. Co., Docket No. 12-LHPT-875-AUD, 2013 Kan. PUC LEXIS 1726, at *16-18 (June 26, 2013)).

162. *See* Kansas City Power & Light Co., 2012 Kan. PUC LEXIS 89.

163. *Id*. at *21-22 (citing Westar Energy, Inc., Docket No. 05-WSEE-981-RTS, 2006 Kan. PUC LEXIS 169, at *92-93 (Feb. 13, 2006) and Driscoll v. Edison Light & Power Co., 307 U.S. 104, 120-21 (1939)).

164. Kansas City Power & Light Co., 2012 Kan. PUC LEXIS 89, at *24 (citing Kansas Gas & Elec. Co. v. Kansas Corp. Comm'n, 239 Kan. 483, 488-89, 500-01 (1986), *vacated in part*, 48 U.S. 1044 (1987)).

165. *Id*. at *38-40.

166. *Id*. at *144-77.

167. *Id*. at *56-95.

168. Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n, 47 Kan. App. 2d 1112, 1135 (2012) (appeal initiated by consumer group challenging the recoverable level as too high).

169. Atmos Energy Corp., Docket No. 19-ATMG-525-RTS, 2020 Kan. PUC LEXIS 1727, at *31 (Feb. 24, 2020).

As articulated by the Court of Appeals, "[r]ate case expenses are typically amortized for a period reflecting the frequency of rate case filings."[170] A three-year amortization period appears typical.[171]

KENTUCKY

The Kentucky Public Service Commission permits utilities to recover their reasonable rate case expenses in their cost of service amortized over a period of years, typically three. The Kentucky PSC has identified a "longstanding principle that rate case expenses are appropriately included in utility rates."[172] In their applications, utilities bear the burden of proof in establishing that these expenses are just and reasonable.[173] The PSC has conducted relatively detailed analyses in finding specific rate case expenses unreasonable, such as meals and snacks not associated with travel or witness coaching.[174] The Kentucky PSC also requires significant substantiation of these costs and does not allow a utility to recover rate case expenses where it has redacted its receipts or claimed attorney-client privilege.[175] It has also reduced the recoverable expense by the amount estimated for a hearing not ultimately held.[176] Conversely, the Kentucky PSC appears to allow utilities to increase their requested level of rate case expense "to account for the difference in estimated rate case expense and the amount . . . actually incurred."[177]

Rather than match the amortization period with the frequency of rate filings, the Kentucky PSC "generally has permitted the amortization of a utility's actual rate case expenses over a 3-year period."[178] Its rationale is that utilities are allowed "to apply for rate adjustments without limitation or restriction," and initiating a new application before the amortization is complete does not incur any

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170. Home Tel. Co. v. State Corp. Comm'n, 31 Kan. App. 2d 1002, 1014 (2003); *see also* Gas Serv. Co. v. State Corp. Com., 4 Kan. App. 2d 623, 637 (1980).

171. Atmos Energy Corp., 2020 Kan. PUC LEXIS 1727, at *34 ("In Atmos's most recent rate case, the Commission ordered it to amortize its rate case expense over three years. Atmos has not provided sufficient justification to change course. Therefore, the Commission finds Atmos should amortize its rate case expense over three years.").

172. *See* Delta Nat. Gas Co., No. 99-176, 1999 Ky. PUC LEXIS 419, at *29 (Dec. 27, 1999) (citing W. Ohio Gas Co. v. Public Utils. Comm'n, 294 U.S. 63, 74 (1935)).

173. *See* Kentucky Power Co., No. 2020-00174, 2021 Ky. PUC LEXIS 21, at *26 (Jan. 13, 2021).

174. *Id*. at *26-27.

175. *See* Louisville Gas & Elec. Co., No. 2003-00433, 2004 Ky. PUC LEXIS 525, at *63-64 (June 30, 2004) (disallowing $18,929 in expenses because "when a utility seeks to recover an expenditure in its rates, the Commission is obligated to review the nature of that expenditure to verify that it is just and reasonable. In this instance, we are unable to determine from the evidence of record the nature of certain legal services performed and whether those services were related to this rate case.").

176. *See, e.g.*, Kenergy Corp., No. 2023-00276, 2024 Ky. PUC LEXIS 506, at *20 (July 31, 2024).

177. *See, e.g.*, Estill Cnty.Water Dist. No. 1, No. 2023-00371, 2024 Ky. PUC LEXIS 606, at *18 (Aug. 30, 2024).

178. Delta Nat. Gas Co., No. 2004-00067, 2004 Ky. PUC LEXIS 855, at *30 (Nov. 10, 2004) (approving of a 3-year amortization period even where the government showed that the average time between ratemaking proceedings for the utility in question was 4.5 years); *see also* Louisville Gas & Elec. Co., 2004 Ky. PUC LEXIS 525, at *63 (setting the amortization period to three years); Union Light, Heat, & Power Co., No. 91-370, 1992 Ky. PUC LEXIS 1558, a *50-51 (May 5, 1992) (amortizing actual rate case expenses over three-years).

consequences.[179] The topic of rate case expense was also briefly discussed in a recent white paper published by the Kentucky Legislative Research Commission on the topic of alternative ratemaking methods.[180]

LOUISIANA

While it has very little disputed precedent on the issue, the Louisiana Public Service Commission permits utilities to recover all their prudently incurred rate case expense over a period of several years.[181] This appears to be calculated as the actual amount incurred, including updated numbers following the close of the relevant time period.[182] Applicants for new rate changes bear the burden of proof in justifying the costs and amortization periods.[183] However, the Louisiana PSC appears to apply a strong deference to utilities.[184] The Louisiana PSC appears to set amortization periods to match the length of Formula Rate Plans (FRPs), which govern how long a new rate is to stay in effect.[185]

MAINE

The Maine Public Utilities Commission permits utilities to recover their reasonable and prudently incurred rate case expenses on a normalized test period basis via a specific formula. There is no specific statute covering this practice, but the Maine PUC has long-standing regulations for the recovery of such costs.[186] These regulations, which were revised in 2022,[187] define "Rate Case Expenses" as "those Regulatory Proceeding Expenses incurred in connection with a general

179. *See* Delta Nat. Gas Co., No. 99-176, 1999 Ky. PUC LEXIS 419, at *29 (Dec. 27, 1999) (citing KY. REV. STAT. ANN. § 278.180 (West 1986)).

180. KAYLA CARROWAY ET AL., LEGIS. RSCH. COMM'N, COSTS, BENEFITS, AND METHODS OF IMPLEMENTING ALTERNATIVE RATE MECHANISMS FOR UTILITY RATEMAKING, RSCH. MEM. NO. 531, at 13 (2022) ("Another common criticism of traditional ratemaking is the time, expense, and regulatory burden involved in a rate case determination for regulated entities, the regulating agency, and the ratepayers who ultimately bear the costs."). The paper discussed how utilities use this burden as an argument for simplified procedures whereas public interest groups and regulators found that even if fully litigated rate cases are costly, they are worth the public involvement and resulting lower rates.

181. Magnolia Water Util. Operating Co., Order No. U-35822, 2021 La. PUC LEXIS 319, at *15-16 (Oct. 20, 2021) (approving settlement and noting that "[p]rudently-incurred rate case expenses for [docket] will be amortized over the three-year term of the [Formula Rate Plan (FRP)]. With the filing of its Test Year 2022 Annual FRP Filing, [utility] shall provide the total amount of [docket] rate case expenses for which it is seeking recovery, a complete accounting of same and supporting documentation. Those expenses will be reviewed for prudence in the Test Year 2022 Annual FRP Filing.").

182. *Id*.

183. *See id*. at *37.

184. Community Utils. of La., Inc., Order No. U-34742, 2018 La. PUC LEXIS 222, at *138 (Oct. 26, 2018) (finding applicant satisfied burden of proof on issue of amortization period even though neither party "vigorously argued" it).

185. *See id*. at *136-38.

186. *See* 65-407-850 ME. CODE R. §§ 1-4 (LexisNexis 2022). These regulations were made pursuant to the Maine PUC's general rulemaking authority.

187. *See* Amendments to Regul. Proc. Expenses (Chapter 850), Docket No. 2022-00072, 2022 Me. PUC LEXIS 121 (Aug. 3, 2022).

increase in rates."[188] The regulations require utilities to "maintain records containing a detailed description and accounting of all Regulatory Proceeding Expenses of which [they] seek[] recovery."[189] They also require that any utility seeking recovery of rate case expenses to file such records and, when those expenses are incurred during the test period, to include "all actual and estimated expenses which are relied on for purposes of making an adjustment to the test year."[190]

The regulations, buttressed by precedent, dictate that "[n]o public utility shall recover from its ratepayers any Regulatory Proceeding Expense unless such expense has been found by the Commission to have been reasonable and prudently incurred."[191] The regulations identify the following non-exclusive list of factors the PSC might consider:

> 1) the customary fee for similar services, including the fees rendered in the relevant market to companies of similar size in matters of similar importance to the client; 2) the amount of money at issue; 3) the extent to which the attorney's or expert's services contributed to the presentation of the case; 4) whether the utility used a negotiations or bidding process, or otherwise considered information concerning the availability, experience, quality and cost of outside attorney and expert services when hiring outside attorneys and experts; and 5) the experience and ability of the attorney or expert.[192]

A previous version of this regulation limited recovery "of expenses for issues decided against the utility" unless "the utility demonstrates that raising the issue served the public interest."[193] Notably, the Maine Supreme Court considered this to simply be "little more than a restatement of the principle that a utility must demonstrate the justness and reasonableness of its expenses."[194]

The Supreme Court of Maine has articulated that "allowance of rate case expenses depends, as does the allowability of any other operating expenses, upon whether the expenses were prudently incurred," which "is tested with regard to both its purpose and amount."[195] It has also articulated the rule that "a public utility may not 'force rate increases upon its customers solely as a result of

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188. 65-407-850 ME. CODE R. § 1.B (LexisNexis 2022) (referencing ME. REV. STAT. tit. 35-A, § 307 for definition of general increase in rates). "Regulatory Proceeding Expenses" are defined more broadly as "any expense, fee or charge paid directly or indirectly by any public utility to any person, firm, corporation, or association other than its own employees, for legal, accounting, financial or other expert or specialized services in association with any proceeding before the Maine Public Utilities Commission or in any proceeding before the Maine Supreme Judicial Court arising out of a Commission proceeding. For purposes of this rule, regulatory proceeding expenses shall not include copying, telephone, mail, courier, or other such incidental costs . . . . " *Id*. § 1.A.

189. *Id*. § 2.A.

190. 65-407-850 ME. CODE R. § 2.B.1 (LexisNexis 2022).

191. *Id*. § 3.A.

192. *Id*. § 3.B.

193. Millinocket Water Co. v. Maine Pub. Utils. Com., 515 A.2d 749, 754 (Me. 1986) (citing 65-407-850 ME. CODE R. § 3.B (LexisNexis 2022)).

194. Millinocket Water Co. v. Maine Pub. Utils. Com., 515 A.2d 749, 754 (Me. 1986) (citing New England Tel. & Tel. Co. v. Public Util. Comm'n, 448 A.2d 272 (Me. 1982)).

195. *Id*. at 753-54 (citing Maine Water Co. v. Public Utils. Comm'n, 482 A.2d 443, 453 (Me. 1984)).

expenses incurred in abortive or frivolous rate cases.'"[196] The PSC also expressed an awareness of the perverse incentives and ratemaking principles that caution against full recovery of all test period rate case expenses.[197] This normalization approach is intended, in part, to avoid the time and effort required to litigate the prudence of specific expense items.[198] Perhaps because of meeting this goal, the Maine PSC does not appear to have recent precedent on specific rate case expenses items.

The regulations state the policy that the Maine PSC "will set regulatory proceeding expenses on a normalized test year basis."[199] The regulations spell out a clear formula for recovery of Regulatory Proceeding Expense (including rate case expenses) expressed as "RR-RPE = (ARPE--RCE) / 5 + NRCE."[200] The current versions of the regulation, as of 2022, sets the amortization period for rate case expenses as ten years in all cases.[201] Prior to that adoption, however, the Maine PSC did not set normalization periods based on the frequency of rate filings, noting that "[u]tilities and their management are in control of when to make regulatory filings and what costs to incur with each proceeding."[202] In its 2022 Amendments, the Maine PSC also added a waiver provision to these regulations.[203] There does not yet appear to be any precedent applying or considering requests under this provision.

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196. Maine Water Co. v. Public Utils. Com., 482 A.2d 443, 453 (Me. 1984) (quoting Stratton Water Co. v. Maine Pub. Utils. Comm'n, 397 A.2d 188, 192 (Me. 1979) (quoting Carolina Water Co., 32 P.U.R.3d 462, 470 (N.C.U.C. 1960))).

197. *See* Amendments to Regul. Proc. Expenses (Chapter 850), Docket No. 2022-00072, 2022 Me. PUC LEXIS 121, at *5-6 (Aug. 3, 2022) ("The Commission disagrees that rate case expenses should be determined based on the actual expenses in the current, pending rate case. This approach is inconsistent with traditional ratemaking methodology and would guarantee dollar for dollar recovery, potentially rewarding overspending and inefficient use of outside counsel and consultants. The approach would also lock into rates the costs associated with a single rate case, even though those costs may not reflect normal rate case expenses.").

198. *Id*. at *4-5 (changing approach from normalization "would result in litigating the same issues in many, if not all, rate cases without providing any meaningful guidance to utilities, other parties and the public as to what standards govern the recovery of these costs. Further, given the lumpiness and unpredictability of these costs, a typical test year adjusted by known and measurable changes does not serve as an adequate or fair method for estimating the costs that should be included in future rates."); *id*. at *5-6 ("Instead, the Commission concludes that a normalization method be used for all regulatory proceeding expenses . . . This approach simplifies the rule, which promotes predictability and should limit litigation. In the event there is an extreme or unusual situation that is not adequately addressed by the rule's provision, a waiver request can be made.").

199. 65-407-850 ME. CODE R. § 3.A. (LexisNexis 2022).

200. *Id*. § 3.C. ("Where: RR-RPE = Revenue Requirement Regulatory Proceeding Expenses; ARPE = Annual Regulatory Proceeding Expenses for the previous five years; RCE = Rate Case Expenses for the previous five years; NRCE = Normalized Rate Case Expenses.").

201. *Id*.

202. Versant Power, Docket No. 2020-00316, 2021 Me. PUC LEXIS 159, at *103 (Oct. 28, 2021) ("Therefore, just because management has decided that it should "file" a proceeding every two years, even when at least one of those filings is withdrawn, is not sufficient reason to use that period in the normalization calculation . . . .").

203. 65-407-850 ME. CODE R. § 4 (LexisNexis 2022); Amendments to Regula, Proc. Expenses (Chapter 850), Docket No. 2022-00072, 2022 Me. PUC LEXIS 121, at *11 (Aug. 3, 2022).

MARYLAND

The Maryland Public Service Commission allows Maryland utilities to recover their actual rate case expenses amortized over a period of years. This practice is not governed by specific statutes or regulations. While the Maryland PSC has "emphasized the importance of ensuring that ratepayer funds are expended only as necessary to facilitate efficient and fair rate case proceedings,"[204] it does not appear inclined to reduce the amount of recoverable rate case expenses on prudence grounds.[205] For instance, it has declined to adopt an hourly cap on outside counsel rates.[206] Rather, the PSC's general policy is one of "allowing recovery of actual rate case expenses," including known and measurable outside legal fees.[207] The Maryland PSC has disallowed rate case expenses that were not adequately supported with documentation.[208] It has also expressed a policy that rate case expenses may not "result in the Company's total revenue requirement exceeding the amount requested initially."[209] Subject to this limitation, the PSC allows utilities to supplement their rate case expenses through the end of the evidentiary hearing.[210] It has declined to adopt a normalized level of rate case expense.[211]

The Maryland PSC amortizes these actual costs over a period of several years. It has articulated that the purpose of this "amortization period is to distribute the expense incurred with the frequency of rate application filings."[212] Three years appears to be typical but not universal.[213] In response to a curious finding of one of its Hearing Officers, the Maryland PSC has clarified that rate case expenses are

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204. Potomac Elec. Power Co., No. 9443, 2017 Md. PSC LEXIS 33, at *71 (Oct. 20, 2017).

205. Delmarva Power & Light Co., No. 9192, 2009 Md. PSC LEXIS 61, at *47-48 (Dec. 30, 2009) ("Because OPC did not offer evidence or testimony demonstrating that the Company's outside legal expenses were excessive, we have no basis in this record on which to make such an adjustment (especially since we find that the Company's outside counsel represented it ably). Our decision not to adjust outside counsel expenses in this case should not be read as foreclosing the possibility in another case, on the right record.").

206. Potomac Edison Co., No. 9490, 2019 Md. PSC LEXIS 18, at *40 (Mar. 22, 2019).

207. *Id*.; Baltimore Gas & Elec. Co., No. 9326, 2013 Md. PSC LEXIS 46, at *66 (Dec. 13, 2013).

208. Potomac Elec. Power Co., No. 9336, 2014 Md. PSC LEXIS 22, at *78-80 (July 2, 2014).

209. *Id*. at *77-78 ("Although individual items may rise above the Company's estimate for those items, we find it a good policy to not allow the total amount of rate case expenses to exceed the total amount the Company estimated it would expend when it initiated the rate case proceedings.").

210. Potomac Elec. Power Co., No. 9443, 2017 Md. PSC LEXIS 33, at *72 (Oct. 20, 2017) ("Although [the utility] argues that some expert witness bills may be submitted to it outside the end date of the evidentiary hearings, we find that adhering to the principle of allowing recovery only of known and measurable and prudently incurred costs outweighs the risk that some bills may not be submitted in time.").

211. Baltimore Gas & Elec. Co., No. 8278, 1990 Md. PSC LEXIS 171, at *72 (Dec. 17, 1990).

212. County Comm'rs of Allegany Cnty., No. 7716, 1984 Md. PSC LEXIS 25, at *8 (Sep. 25, 1984); *see also* Potomac Elec. Power Co., No. 9092, 2007 Md. PSC LEXIS 13, at *96 (July 19, 2007) ("The Commission believes a longer period than the three-year amortization of rate case expense proposed by the Company is appropriate, however. A five-year amortization period shall be used, as this time frame more reasonably reflects the probable lapse of time before the next rate case filing.").

213. Baltimore Gas & Elec. Co., No. 9326, 2013 Md. PSC LEXIS 46, at *66 (Dec. 13, 2013); County Comm'rs of Allegany Cnty., 1984 Md. PSC LEXIS 25, at *8; *see also* Potomac Edison Co., No. 9490, 2019 Md. PSC LEXIS 18, at *40 (Mar. 22, 2019) (three-year period not in dispute).

to be borne by all ratepayers as part of the cost of service and not only those challenging the utility's rate increase.[214]

MASSACHUSETTS

The Massachusetts Department of Public Utilities (DPU) allows utilities to recover their reasonable, appropriate, and prudently incurred rate case expenses over a period of years (which the DPU refers to as "normalization" but operates as amortization). This is not governed by specific statutes or regulations. The DPU sets the level of allowable rate case expense based on two considerations. First, the rate case expense must have "actually been incurred and, thus, is considered known and measurable," and second, the expenses "must be reasonable, appropriate, and prudently incurred."[215] The DPU frequently expresses that the "overall level of rate case expense among utilities has been, and remains, a matter of concern" and that rate case expense "like any other expenditure, is an area in which companies must seek to contain costs."[216]

Massachusetts also scrutinizes the procurement of outside legal services and mandates that utilities "must engage in a competitive bidding process" to recover these costs.[217] While such work need not always go to the lowest bidder, the DPU requires utilities to "provide an adequate justification and showing, with contemporaneous documentation, that their choice of outside services is both reasonable and cost effective."[218] The DPU has "declined to link recovery of these expenses to particular outcomes . . . unless shown to be frivolous or in bad faith."[219] The DPU may disallow recovery of rate case expenses "where such expenses are disproportionate to the relief being sought."[220] While the DPU requires costs be known and measurable, it has deferred to the utilities' numbers,

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214. County Comm'rs of Allegany Cnty., 1984 Md. PSC LEXIS 25, at *8.

215. East Northfield Water Co., Docket No. D.P.U. 19-57, 2020 Mass. PUC LEXIS 99, at *47-48 (Mar. 31, 2020) (citing various decisions); Massachusetts Elec. Co., Docket No. D.P.U. 18-150, 2019 Mass. PUC LEXIS 264, at *290-91 (Sep. 30, 2019); NSTAR Elec. Co., Docket No. D.P.U. 17-05, 2017 Mass. PUC LEXIS 371, at *386-87 (Nov. 30, 2017).

216. East Northfield Water Co., 2020 Mass. PUC LEXIS 99, at *47-48 (citing various decisions); Massachusetts Elec. Co., 2019 Mass. PUC LEXIS 264, at *290-91; NSTAR Elec. Co., 2017 Mass. PUC LEXIS 371, at *386-87.

217. East Northfield Water Co., 2020 Mass. PUC LEXIS 99, at *48-49 (citing various decisions) (noting an exception for small water utilities); Massachusetts Elec. Co., 2019 Mass. PUC LEXIS 264, at *291-92; NSTAR Elec. Co., 2017 Mass. PUC LEXIS 371 at *388-90 ("The [DPU] has consistently emphasized the importance of competitive bidding for outside services in a petitioner's overall strategy to contain rate case expense. . . In seeking recovery of rate case expenses, companies must provide an adequate justification and showing, with contemporaneous documentation, that their choice of outside services is both reasonable and cost-effective.").

218. Massachusetts Elec. Co., 2019 Mass. PUC LEXIS 264, at *293; NSTAR Elec. Co., 2017 Mass. PUC LEXIS 371, at *389-90.

219. NSTAR Elec. Co., 2017 Mass. PUC LEXIS 371, at *400-401 (reasoning that doing so "would constitute an unwarranted intrusion into management affairs" and "would have the undesirable effect of chilling management's exercise of its responsibility to vigorously pursue legal rights and remedies in accordance with management's own good faith judgment.").

220. East Northfield Water Co., 2020 Mass. PUC LEXIS 99, at *47-48 (citing various decisions); Massachusetts Elec. Co., 2019 Mass. PUC LEXIS264, at *290-291; NSTAR Elec. Co., 2017 Mass. PUC LEXIS 371, at *386-87.

even when less documentation was provided than the DPU would have preferred.[221] The DPU permits utilities to recover *future* rate case expense work when the amount is a sum certain, e.g., the work is secured on a fixed-fee basis.[222]

The DPU uses some confusing terminology in describing the method of rate case expense recovery. According to the DPU, "the proper method to calculate a rate case expense adjustment is to determine the rate case expense, normalize the expense over an appropriate period, and then compare it to the test year level of rate case expense to determine the adjustment."[223] According to the DPU, this "normalization" is used "so that a representative amount [of rate case expense] is included in the cost of service."[224] As used by the DPU, the "normalization period" is the denominator applied to the allowed level of recoverable rate case expense.[225] However, at FERC and other states described in this appendix, this is how amortization of rate case expenses is done.[226] In contrast, *normalization* refers to the averaging of prior experience to reach a representative level to be included in rates.[227] Despite the DPU's professed "long-standing requirement that rate case expense be normalized rather than amortized," it is not clear how this changes the actual recovery level.[228] The DPU has articulated that although "parties often use these terms interchangeably," the DPU uses the term "normalization" for its practice because "[a]mortization implies that the utility is guaranteed a dollar-for-dollar recovery of the costs, while normalization is intended to only show a representative level of expenses in rates."[229]

Whether it is called a normalization or amortization period, the DPU, like other regulators, sets this recovery period to match the frequency of rate case filings. Specifically, the practice is to "tak[e] the average of the intervals between the filing dates of a company's last four rate cases, including the present case, rounded to the nearest whole number."[230] The DPU deviates from this formula based on the facts of the case when the period is unreasonable or "if the company

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221. East Northfield Water Co., 2020 Mass. PUC LEXIS 99, at *56 ("In what has become a recurring theme in this case, the Department notes that the letter documenting legal fees related to the compliance filing was provided with the Company's reply brief and after the close of the record. In future filings, the Company shall file documentary support for any proposed fixed fee arrangement for compliance work prior to the close of the discovery period so that the Department and all parties will have an adequate opportunity to investigate such proposals. Failure [to] comply with this directive will result in disallowance of such costs.").

222. *Id*.; NSTAR Elec. Co., 2017 Mass. PUC LEXIS 371, at *407-08.

223. East Northfield Water Co., 2020 Mass. PUC LEXIS 99, at *56-57.

224. *Id*. at *57.

225. *See, e.g.*, Massachusetts Elec. Co., 2019 Mass. PUC LEXIS 264, at *299-300; East Northfield Water Co., 2020 Mass. PUC LEXIS 99, at *59 ("the Department allowed the Company to recover a total rate case expense of $157,648. Normalizing this amount over five years results in an annual rate case expense of $31,530.").

226. *See* Part II.B.2.a. of the main article.

227. *See* Part II.B.2.b. of the main article. *See also* Alaska, Delaware, West Virginia herein.

228. Massachusetts Elec. Co., 2019 Mass. PUC LEXIS 264, at *299. *Compare id*. at *290 ("Amortizing the Company's proposed rate case expense of $2,790,731 over five years produces an annual expense of $558,146"), *with id*. at *299-300 ("Based on a five-year normalization period, the annual level of rate case expense to be included in the Company's cost of service is $558,146 ($2,790,731 divided by five years)").

229. Fitchburg Gas & Elec. Co., Docket No. D.T.E. 99-118, 2001 Mass. PUC LEXIS 92, at *56 n.6 (Oct. 18, 2001).

230. East Northfield Water Co., 2020 Mass. PUC LEXIS 99, at *57

has an inadequate rate case filing history."[231] In addition, when the calculation results in a period greater than five years, the period is instead set at five years.[232]

MICHIGAN

The Michigan Public Service Commission allows utilities to recover their forecasted rate case expenses amortized over a period of several years. There are no statutes or regulations directly bearing on this issue and relatively little analysis in the precedent. Michigan's PSC has, however, rejected the recurring proposal to split these expenses evenly between ratepayers and shareholders.[233] It has also rejected setting the expense level based on the previous rate case plus an inflationary adjustment.[234] The Michigan PSC appears deferential to utility estimates of their rate case expense.[235] The PSC has, however, lowered the recoverable level of rate case expenses after finding that "witness training" expenses were not shown to be needed.[236] While the terminology has been somewhat inconsistent, as a practical matter, the Michigan PSC has allowed utilities to recover their rate case expenses, without a return, amortized over a period of years.[237] It appears that the Michigan PSC sets the amortization period to match the expected time between rate cases.[238] It has, however, represented that utilities would be able to "recover any unamortized balance if it files another rate case" sooner.[239]

MINNESOTA

The Minnesota Public Utilities Commission permits utilities to recover their forecasted rate case expenses amortized over a period of years, subject to future crediting if the expense item is over-recovered. This practice is not governed by specific statutory or regulatory provisions, and while the issue is frequently addressed, the PUC has not articulated many specific standards. In setting the allowable level of recoverable rate case expense, the Minnesota PUC appears relatively deferential. For instance, it has affirmed the holdings of a presiding judge that "one cannot conclude that the [utility's] expenditure of resources was excessive," even though the utility "was heavily staffed throughout the

231. *Id*. at *56-57.

232. Massachusetts Elec. Co., 2019 Mass. PUC LEXIS 264, at *298.

233. Consumers Energy Co., No. U-16794, 2012 Mich. PSC LEXIS 156, at *155-56 (June 7, 2012) (rate case expense was not tracked separately, and proposal represented a reduction to overall expense levels based on estimate prepared by the attorney general).

234. Indiana Mich. Power Co., No. U-21461, 2024 Mich. PSC LEXIS 117, at *170 (July 2, 2024).

235. *Id*. at *169-70 (accepting utility's expectation that it will incur approximately 74% more in rate case expenses).

236. *Id*. at *170.

237. Indiana Mich. Power Co., No. U-18370, 2018 Mich. PSC LEXIS 97, at *46-48 (Apr. 12, 2018) (accepting administrative law judge finding that was unchallenged that allowed utility to recover full costs over three years as an adjustment to working capital).

238. Indiana Mich. Power Co., 2024 Mich. PSC LEXIS 117, at *170-71 (adopting four-year period where previous rate case was four years ago).

239. *Id*. at *171.

hearing."[240] However, in one instance, the Minnesota PUC did suspect that the requested level of rate case expenses would "likely [] be lower than initially projected" for a settled case and ordered the utility to make a compliance filing.[241] The Minnesota PUC has rejected arguments to split rate case expenses evenly between shareholders and ratepayers.[242]

The Minnesota PUC uses an amortization method to recover rate case expenses and has rejected the use of a normalized approach taking average experience as representative.[243] Like many regulators, the PUC "tries to set the cost-recovery (or, amortization) period—which determines the percentage of total rate case costs built into rates on an annual basis—to coincide with the time period between rate cases."[244] Historic averages have been used to set this interval.[245] However, as a check, the PUC also requires that "any over-recovery of the amount [] be tracked for refund in a future rate case."[246] The PUC has articulated that this measure is taken "because rate case intervals are always uncertain" and because the measure "both protects ratepayers from over-collection and eliminates any need to consider the rate-case-interval estimate accepted in this case as a factor in determining the timing of the next rate case."[247]

The Minnesota PUC has ordered these refunds to include an interest calculated at the rate of the utilities' rate of return.[248] There is conflicting precedent as to whether this true-up is reciprocal. In a recent order, where the matter was not disputed by any party, the PUC permitted the utility to "true-up any over-recovered *or under-recovered* rate case expenses in its next rate case."[249]

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240. Northern States Power Co., Docket No. E-002/GR-10-971, 2012 MN OAH LEXIS 306, at *146-48 (Feb. 22, 2012), *aff'd* Northern States Power Co., Docket No. E-002/GR-10-971, 2012 Minn. PUC LEXIS 132 (May 14, 2012).

241. Northern States Power Co., Docket No. E-002/GR-15-826, 2017 Minn. PUC LEXIS 153, at *85, 162 (June 12, 2017). Note that this filing, on September. 8, 2017, actually reported a significantly higher level of actual rate case expense. Compliance Filing of Northern States Power Company at 2, Northern States Power Co., Docket No. E002/GR-15-826, (Minn. Pub. Utils. Comm'n filed Sep. 8, 2017), https://efiling.web.commerce.state.mn.us/documents/%7BB0D9625E-0000-CB1A-8195-BE76AFBFCEA6%7D/download?contentSequence=0&rowIndex=791.

242. Minnesota Power, Docket No. E-015/GR-09-1151, 2010 Minn. PUC LEXIS 444, at *83-84 (Nov. 2, 2010) (*aff'g* Minnesota Power, Docket No. E015/GR-09-1151, 2010 MN OAH LEXIS 134, at *138 (Aug. 17, 2010).

243. Minnesota Energy Res. Corp., Docket No. G-011/GR-17-563, 2018 Minn. PUC LEXIS 372, at *36 (Dec. 26, 2018.)

244. CenterPoint, Docket No. G-008/GR-13-316, 2014 Minn. PUC LEXIS 299, at *62 (June 9, 2014) ("It is important for these two time periods to match as closely as possible, to ensure that the utility recovers its authorized rate case costs without over-recovering them.").

245. Great Plans Nat. Gas Co., Docket No. G-004/GR-15-879, 2016 Minn. PUC LEXIS 254, at *27 (Sep. 6, 2016) ("Though the historic average does not control the Company's future rate case timing decisions, it provides a basis for a reasonable estimate.").

246. *Id*. at *27; Great Plains Nat. Gas Co., Docket No. G-004/GR-19-511, 2020 Minn. PUC LEXIS 386, at *23-24 (Oct. 26, 2020) (rejecting argument that this treatment amounted to "single-issue ratemaking"); Minnesota Energy. Res. Corp, 2018 Minn. PUC LEXIS 372, at *37.

247. Minnesota Power, 2010 Minn. PUC LEXIS 444, at *85.

248. CenterPoint, 2014 Minn. PUC LEXIS 299, at *60-61.

249. Otter Tail Power Co., Docket No. E-017/GR-20-719, 2022 Minn. PUC LEXIS 36, at *143 (Feb. 1, 2022) (*aff'g* Otter Tail Power Co., Docket No. E-017/GR-20-719, 2021 MN OAH LEXIS 152, at *47-48 (Sep. 20, 2021) (describing that this was the result of a compromise between the parties)).

However, when the parties disputed the issue, the PUC considered and rejected the utility's "arguments concerning the asymmetry of the tracker—it will protect ratepayers from over-collection, but does not provide an opportunity for the Company to increase the amount of its recovery."[250] It has also affirmed holdings of a presiding judge's reasoning that no true-up in the utility's favor is warranted because "utilities largely control the timing of their rate cases."[251]

MISSISSIPPI

In Mississippi the issue of rate case expense recovery is governed by the state Public Service Commission's Rules of Practice and Procedure, although the agency has very little contested precedent on the topic. Mississippi statute also directs the PSC to "reduce the costs of the rate-making process" where possible.[252] Besides two orders approving stipulations,[253] the only substantive discussion from the Mississippi PSC is from 1956.[254] Relying on Pennsylvania judicial precedent, the PSC found that it "cannot recognize the propriety of such an expenditure for rate-making purposes in this proceeding," because the utility's rate case was unsuccessful.[255]

Uniquely, the Mississippi PSC has a provision in its Rules of Procedure on this topic. Specifically, Rule 21 contains the following provision:

> Attorneys fees, costs and expenses associated with any adversarial proceeding, excluding periodic formulary rate plan evaluations, in which the public utility, ultimately, (i) is ordered or agrees to make a refund to ratepayers or (ii) is found to have or admits to having acted illegally or committed any wrongdoing associated with a regulated activity, excluding ordinary negligence. Attorneys' fees, costs and expenses associated with parts (i) and (ii) of this paragraph will be considered allowable operating expenses upon a showing by the public utility

250. CenterPoint, 2014 Minn. PUC LEXIS 299, at *68 ("The [utility] has had an opportunity in this case to fully litigate its rate case expenses and have them reviewed and approved for rate recovery. The tracking mechanism addresses uncertainty related to the amortization period for the rate case expense, and not uncertainty about the amount of the expense to be collected. For this reason, the Commission believes the tracker and refund provisions to be appropriate for the circumstances.").

251. Minnesota Power, Docket No. E015/GR-09-1151, 2010 MN OAH LEXIS 134, at *135-36 (Aug. 17, 2010), *aff'd* Minn. Power, 2010 Minn. PUC LEXIS 444.

252. MISS. CODE ANN. § 77-3-2(1)(h) (1972).

253. Entergy Miss., Inc., Docket No. 2014-UN-132, 2014 Miss. PUC LEXIS 259, at *18-19 (Dec. 11, 2014) (providing for amortization as regulatory assets at carrying cost of average debt); Town of Sallis, Docket No. 03-UN-007, 2003 Miss. PUC LEXIS 276, at *8 (Apr. 23, 2003) (apparently including rate case expenses as part of expenditures).

254. *See* Missesota Pub. Serv. Comm'n v. Southern Bell Tel. & Tel. Co., Docket No. U-17, 1956 Miss. PUC LEXIS 1 (Dec. 20, 1956).

255. *Id*. at *92 (citing Scranton-Spring Brook Water Serv. Co. v. Pennsylvania Pub. Serv. Comm'n, 105 Pa. Super. 203, 227-28, 160 A. 230, 239 (1935) ("Whether such an allowance should be made or not will depend largely on the final outcome of the litigation. If the company's schedule of rates, as filed by it, is substantially sustained, allowance should be made for the reasonable expense--not necessarily the actual outlay—to which it was put in order to uphold it. On the other hand, if the schedule filed is decided to have been substantially greater than the just, fair, and reasonable rates it was entitled to charge, there is no reason why the public should be asked to bear the expenses of the litigation brought on by its filing a schedule of rates found to have been greatly excessive.")).

> that such expenses were prudent, in the public interest and result in just and reasonable rates.[256]

There does not appear to be precedent resolving disputes under this rule. However, in promulgating it, the PSC elaborated a good deal. Specifically, it stated:

> The basic reasoning is intuitive and is compelled by a fundamental sense of fairness. For example and in simple terms, if a utility extracts money from consumers but is ordered, ultimately, to refund a portion of that money, then the consumers cannot fully recover the sums improperly extracted if that recovery is diluted by the expense incurred by the utility in opposing the proceedings that led to the refund. Likewise, consumers should not be required to bear the defense costs of a utility where it is ultimately found that the utility followed a course of action that the utility knew or should have known would harm consumers.
>
> Burdening the ratepayers with such expenses is against the public interest and fails to promote just and reasonable rates. In situations subject to the Rule, it is difficult to conceive that the associated actions of a utility could ever be considered prudent.[257]

The rationale is in line with the reasoning of the 1956 PSC decision as well as the ratemaking considerations expressed in the main article. Unfortunately, there does not appear to be any precedent applying this provision.

MISSOURI

The Missouri Public Service Commission allows utilities to recover a share of their rate case expenses relative to the utilities' success on the merits via an amortization over a period of several years. There is no statutory or regulatory provision governing this issue. Importantly, the Missouri PSC understands rate case expense to be a unique cost item insofar as:

> 1) the rate case process is adversarial in nature, with the utility on one side and its customers on the other; 2) rate case expense produces some direct benefits to shareholders that are not shared with customers, such as seeking a higher return on equity; 3) requiring all rate case expense to be paid by ratepayers provides the utility with an inequitable financial advantage over other case participants; and 4) full reimbursement of all rate case expense does nothing to encourage reasonable levels of cost containment.[258]

Beginning in 1986, the PSC has found that sharing of costs (in that case, evenly) between ratepayers and shareholders was reasonable.[259] In a more recent case, the Missouri PSC has taken a more nuanced approach.[260] First, it allocated 100% of the utility's depreciation study to ratepayers on the grounds that it was required by Commission regulations.[261] Next, it employed a formula wherein the utility could "receive rate recovery of its rate case expenses in proportion to the

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256. MISS. PUB. SERV. COMM'N, PUB. UTIL. RULES OF PRACTICE AND PROCEDURE, R. 21 § 103(3)(e) (2019).

257. Proposal of Miss. Pub. Serv. Comm'n to Possibly Amend Certain Rules of Prac. & Proc., Docket No. 2011-AD-19, 2011 Miss. PUC LEXIS 97, at *3-4 (May 5, 2011).

258. Kansas City Power & Light Co., 2015 Mo. PSC LEXIS 789, at *133-34 (Sep. 2, 2015).

259. Arkansas Power & Light Co., No. ER-85-265, 1986 Mo. PSC LEXIS 30, at *28 (May 4, 1986).

260. *See* Kansas City Power & Light Co., 2015 Mo. PSC LEXIS 789.

261. *Id.* at *139.

amount of revenue requirement it is granted as a result of this [order], compared to the amount of its revenue requirement rate increase originally requested."[262] Expressed as a formula, a utility's recoverable rate case expense would equal:

$$\frac{Required\ RCE\ +\ (Discretionary\ RCE\ \times \frac{Increase\ Granted}{Increase\ Requested})}{Amortization\ Period}$$

Note however, that the Missouri PSC has employed different amortization periods to the required expenses based on the required intervals. In employing this formula, the PSC acknowledged the disparate resources and incentives at play, finding that allowing full recovery incentivizes unreasonable spending levels.[263] The PSC reasoned that while rate case expenses were an operational expense, "[a]warding a utility all of its incurred rate case expenses could provide that utility with a significant financial advantage over other participants in the rate case process, who may be constrained by budgetary and other financial restrictions."[264]

The Missouri PSC found that traditional item-by-item prudence reviews would not provide sufficient incentives to control costs.[265] Instead it determined that tying the award of rate case expenses to the merits of the case provided proper incentives while also "directly [tying] a utility's recovery of rate case expense to both the reasonableness of its issue positions and the dollar value sought from customers in a rate case."[266] This order was affirmed by the Missouri Court of Appeals, including against the allegation that the PSC announced a new per se policy.[267]

Later, in a 2018 order addressing two utilities' rates, the PSC again employed reduced recoverable rate case expense formulaically except that, instead of employing a formula tied to success, it allocated the costs evenly between shareholders and ratepayers (i.e. allowed 50% to be recovered in rates) on the grounds that "issues controlled by the company amounted to about half of the contested issues at hearing."[268] As a practical matter, this 50% figure is very close

262. *Id*.

263. *Id*. at *126-128 ("While [the utility] is able to recoup the costs of its legal counsel and expenses through utility service rates, [the Office of People's Counsel], the entity representing ratepayers, operates within a tight annual budget, and interveners pay their own legal expenses.").

264. Kansas City Power & Light Co., 2015 Mo. PSC LEXIS 789, at *126-128 ("Such a practice does not encourage reasonable levels of cost containment in the utility's rate case expense decisions.").

265. *Id*. at *127.

266. *Id*. at *128.

267. Kansas City Power & Light Co. v. Missorui Pub. Serv. Comm'n, 509 S.W.3d 757, 777 (Mo. Ct. App. 2016) ("the PSC clearly established that the formula was proper in this case due to the unique circumstances of this rate case and it was not announcing a new policy of general applicability to all utilities. Accordingly, we find that the PSC did not engage in improper rulemaking due to their specific findings, supported by the record, that KCPL's litigation strategy, which in large part inured to the benefit of shareholders rather than ratepayers, necessitates the use of this formula in this specific case to justly and reasonably allocate rate case expenses between KCPL's ratepayers and shareholders.").

268. Laclede Gas Co., Docket Nos. GR-2017-0215 & GR-2017-0216, slip op. at 53 (Mo. Pub. Serv. Comm'n Mar. 7, 2018), https://efis.psc.mo.gov/Document/Display/134183; *id.* at 53-54 ("This sharing

to the 53.5 and 46.5% allocations derived using the equation from the 2015 order.[269] This case was appealed to the state Supreme Court, which affirmed the PSC.[270] In a more recent decision, the PSC allowed a small water utility to recover 100% of its ($38,191) rate case expenses, as it found the expenses were required and noted that the utility did not hire experts or consultants who would provide benefits to the shareholders.[271]

The Missouri PSC amortizes actual (allowable) rate case expenses rather than using historic averages.[272] It employs an amortization period for these expenses intended to be "roughly equal to the amount of time between rate cases for" the regulated utility.[273] However, it has taken a more granular approach at times, assigning longer amortization periods for costs incurred less frequently.[274]

MONTANA

The Montana Public Service Commission permits utilities to recover a prudent level of rate case expense amortized over a period of years. There is no specific statutory or regulatory provision governing this issue. In contrast to some jurisdictions, the Montana PSC has expressed that its goal is "dollar-for-dollar" recovery of all utility expenses, which "generally includes expenses incurred by the utility in prosecuting rate review cases before" it.[275] However, it emphasizes that recovery is "generally limited to only those [expenses] which are prudently incurred" including for rate case expense.[276] To that end, the Montana PSC reduces the amounts requested, even if they reflect actually incurred costs

mechanism is supported by the evidence showing approximately half of the litigated issues in these cases are driven primarily by Spire Missouri, . . . the company witness admitted that the company 'padded' its revenue requirement beyond what it expected to receive by pursuing strong positions on issues it did not expect to win, which is clearly to the benefit of the shareholders over the ratepayers.").

269. *Id*., slip op. at 48 (citing Kansas City Power & Light Co., 2015 Mo. PSC LEXIS 789).

270. Spire Mo., Inc. v. Public Serv. Comm'n, 618 S.W.3d 225, 234 (Mo. 2021) ("Nothing in the PSC's authorizing statutes or this Court's precedents requires the PSC to conduct an item-by-item analysis when the issue is the degree to which a utility's case expenses should be included in calculating "just and reasonable" rates rather rejecting a particular expense as imprudent.").

271. Raytown Water Co., 2024 Mo. PSC LEXIS 14, at *84 (Jan. 18, 2024).

272. *Id*. at *81-82 ("A normalization that included this case would not allow recovery of the current rate case actual costs").

273. Laclede Gas Co., Docket Nos. GR-2017-0215 & GR-2017-0216, at 55 (Mo. Pub. Serv. Comm'n Mar. 7, 2018), https://efis.psc.mo.gov/Document/Display/134183.

274. Kansas City Power & Light Co., 2015 Mo. PSC LEXIS 789, at *139 (amortizing over five years, the required interval for the depreciation studies that could be fully recovered from ratepayers).

275. North Star Planned Unit Dev. LLC, Order No. 7105f, 2020 Mont. PUC LEXIS 85, at *69-70 (Aug. 11, 2020).

276. *Id*. at *70 (citing CHARLES F. PHILLIPS, JR., THE REGULATION OF PUBLIC UTILITIES, 243-44, 261-62 (3d ed. 1988)).

relatively freely.[277] Requested rate case expenses are based on estimates,[278] and the PSC does not consider evidence after the close of the record.[279] Like many jurisdictions, the Montana PSC implements this recovery through amortization, holding that "the ideal amortization period for rate case costs should match the time interval between rate applications for the utility because that period allows a utility to recover the allowed amount."[280] In determining this interval, the PSC looks to historic averages.[281]

NEBRASKA

There is little recent precedent from Nebraska on the issue of rate case expense recovery, but the state's PSC allows utilities to recover their forecasted rate case expense amortized over several years. There is no specific statutory or regulatory provision governing this issue. In general, the PSC has been deferential to the utility estimates, including endorsing recovery of "some allowance for possible appeals."[282] However, it does not allow recovery of prior expenses from previous rate cases.[283] The Nebraska PSC does not employ a surcharge method of recovery, as they are authorized only "when specifically allowed under statute" and "including costs in rates encourages the Company to find efficiencies and economies when operating its business, policy goals the Commission promotes."[284] Note, however, the Nebraska PSC previously did employ a surcharge method in orders that were affirmed by the state Supreme Court against

277. *Id.* at *73-74 (record shows "that by freely changing positions throughout the course of the proceeding [the utility] incurred legal and consulting fees that could have been avoided with prudent planning" and that because "incurred additional regulatory expense which, as indicated above, could have been avoided with prudent planning," recoverable expenses would be limited to $30,000); Midvale Water Serv., Order No. 5785a, 1995 Mont. PUC LEXIS 25, at *9 (Mar. 14, 1995) (utility requested $9,022, but PSC limited to $3,600 which it considered "[a] generous rate case expense for a utility as small"); *id*. ("the Commission cannot allow recovery in rates for on-the-job training at levels higher than counsel and accountant, combined."); Mountain Water Co., Order No. 5449a, 1990 Mont. PUC LEXIS 12, at *23 (Apr. 3, 1990) ("Since neither party's estimate is clearly correct the Commission is placed in the position of having to make a subjective determination regarding the appropriate expense allowance. The Commission finds that a reasonable expense recovery for this item of expense is $75,000.").

278. North Star Planned Unit Dev. LLC, 2020 Mont. PUC LEXIS 85, at *72.

279. Energy W. Mont., Order No. 7132c, 2011 Mont. PUC LEXIS 72, at *39 (Nov. 17, 2011)

280. North Star Planned Unit Dev. LLC, 2020 Mont. PUC LEXIS 85, at *76.

281. Aquanet, Inc., Order No. 7056f, 2012 Mont. PUC LEXIS 67, at *22 (Oct. 25, 2012); North Star Planned Unit Dev. LLC, 2020 Mont. PUC LEXIS 85, at *78 (using historic data for contested proceedings even when regulations mandated more frequent filings that might or might not be contested).

282. SourceGas Distrib. LLC, 2012 Neb. PUC LEXIS 145, at *44 (May 22, 2012) (accepting utility's $800,450 estimate and noting that "[w]hether an appeal will be taken is not solely within the company's control but is also within the discretion of the Public Advocate."); Black Hills Energy, Omaha, 2010 Neb. PUC LEXIS 263, at *60 (Aug.17, 2010) (accepting utility's unchallenged $750,000 estimate of rate case expenses).

283. Black Hills Energy, Omaha, 2010 Neb. PUC LEXIS 263, at *58-59. Note however, that utilities may recover for previous assessments of Commission and intervenor expenses per a specific statutory provision. *See* SourceGas Distrib. LLC, 2012 Neb. PUC LEXIS 145, at *26 (discussing NEB. REV. STAT. § 66-1841(6)-(b) (2026)).

284. SourceGas Distrib. LLC, 2012 Neb. PUC LEXIS 145, at *42-43.

challenges to the recovery period.[285] The Nebraska PSC strives to set the time period for amortization "[c]onsistent[ly] with the history of rate filings for utilities."[286]

NEVADA

Nevada's Public Utilities Commission permits utilities to recover their rate case expenses through the use of a regulatory asset that does not earn a return. There are no statutes or regulations directly governing this issue for energy utilities.[287] One complicating factor for the recovery of rate case expenses is that the Nevada legislature has imposed a higher burden of proof for utilities before they can recover costs based on expected future changes in circumstance.[288] This limits the ability of utilities to recover projected rate case expenses in future rates.[289] However, this does not present an issue when such costs are "recorded in a regulatory asset for recovery in the next rate case," as the Nevada PUC permits.[290] While not entirely consistent on this point, the Nevada PUC has more recently explicitly denied utilities permission to assess carrying costs on their rate case expense on the basis that they should not earn a return.[291] The period of amortization is intended to match the frequency of rate filings, often every three years.[292]

NEW HAMPSHIRE

The New Hampshire Public Utilities Commission permits utilities to recover their prudently incurred rate case expenses through a surcharge. While no statute governs this practice, in 2013 the New Hampshire PUC adopted relatively specific regulations governing the recovery of rate case expenses.[293] Even before these regulations, the NH PUC "has historically viewed prudently incurred rate case expenses as a legitimate cost of service and thus appropriate for recovery through rates."[294] Now, these regulations govern both the level of rate expense that is recoverable and the means of recovery.

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285. K N Energy, Inc. v. Scottsbluff, 233 Neb. 644, 667, 447 N.W.2d 227, 242 (1989) ("The statute does not provide any specific method for utilities to collect rate case expense, except to allow for its collection. § 19-4617(1)(b). It is reasonable that the surcharge be amortized to reflect the actual cost of the rate case expense.").

286. SourceGas Distrib. LLC, 2012 Neb. PUC LEXIS 145, at *43-44 ("It is true if the Company initiates a general rate case in less than three years from this current proceeding, it will not recover the entire amount of the cost it estimates for this rate case proceeding; however, a two year amortization period would be more likely to cause the Company to over-recover from ratepayers.").

287. Note that certain regulations govern water and sewer utilities. *See* NEV. ADMIN. CODE § 704.583 (2025).

288. NEV. REV. STAT. ANN. § 704.110(4) (West 2025).

289. Southwest Gas Corp., Docket No. 09-04003, 2009 Nev. PUC LEXIS 237, at *66 (Nov. 3, 2009).

290. Nevada Power Co., Docket No. 11-06006, 2011 Nev. PUC LEXIS 233, at *270-71 (Dec. 23, 2011).

291. Sierra Pac. Power Co., Docket No. 22-06014, 2023 Nev. PUC LEXIS 17, at *202-03 (Feb. 13, 2023). *But see id*. at *203-04 (acknowledging inconsistent treatment).

292. Spring Creek Utils. Co., Docket No. 08-06036, 2009 Nev. PUC LEXIS 26, at *61 (Mar. 19, 2009).

293. N.H. CODE ADMIN. R. ANN. PUC §§ 1900.01-8.01 (2024).

294. Lakes Region Water Co., Order No. 24,708, 2006 N.H. PUC LEXIS 144, at *6 (Dec. 8, 2006)

In setting the level of recoverable expenses, New Hampshire regulations prohibit recovery of any rate case expense unless it is found by the PUC to conform with the regulations and be "just and reasonable and in the public interest."[295] The New Hampshire PUC has articulated that it will separately scrutinize recovery of rate case expense in rate cases resolved by settlement.[296] These expenses must be "actual, known, and measurable" and "associated with a full rate case proceeding" and must fit certain enumerated categories, such as legal fees, expert fees, and travel expenses.[297] Certain categories of expense are explicitly not recoverable, including lobbying, tasks normally handled in-house, and the cost of interest on the expenses.[298] The regulations also identify factors the PUC shall consider in determining whether rate case expenses should be recoverable, including the complexity of the case, the market cost for the work, the necessity of the work performed, and whether the requested rate case itself was just and reasonable.[299]

The regulations also govern the procedures for requesting and documenting rate case expenses and require that larger utilities expecting to incur more than $10,000 of the same, undertake a competitive bidding process.[300] The regulations require that a utility recovering rate case expenses provide all supporting documentation within 30 days of the order setting their rates.[301] The regulations provide that rate case expenses shall be recovered through a surcharge.[302]

NEW JERSEY

The New Jersey Board of Public Utilities (BPU) permits utilities to recover half of their rate case expenses amortized over a period of years. There is no specific regulatory or statutory provision governing this practice in New Jersey. However, the BPU "first began sharing rate case expense between shareholders and ratepayers in the early 1980's."[303] The rationale for this treatment is that "some portion of that expense is a cost of maintaining the stockholders

295. N.H. CODE ADMIN. R. ANN. PUC § 1904.01 (2024).

296. Liberty Utils. Corp., Order No. 26,505, 2021 N.H. PUC LEXIS 56, at *17-18 (July 30, 2021) ("We emphasize that the Commission's approval of rate case expenses is based on the criteria identified in Puc Ch. 1900, and contingent on our independent finding that the expenses to be recovered are just and reasonable and in the public interest. *See* Puc 1901.01(b). Our approval of the Settlement Agreement is not a finding that Liberty has met its burden to prove that its rate case expenses have met this standard.").

297. N.H. CODE ADMIN. R. ANN. PUC § 1904.02(a)(1) (2024) (citing N.H. CODE ADMIN. R. ANN. PUC §§ 1903.04, 1906 (2024)).

298. N.H. CODE ADMIN. R. ANN. PUC § 1907.01 (2024).

299. N.H. CODE ADMIN. R. ANN. PUC § 1904.02(b) (2024).

300. N.H. CODE ADMIN. R. ANN. PUC § 1905 (2024). *See also* N.H. CODE ADMIN. R. ANN. PUC § 1905.04(c) (2024) (requiring utilities that choose a service provider other than the lowest bidder to justify that choice by "clear and convincing justification" for that choice).

301. N.H. CODE ADMIN. R. ANN. PUC § 1905.02 (2024).

302. N.H. CODE ADMIN. R. ANN. PUC § 1908.01 (2024).

303. Suez Water Arlington Hills Inc., Docket No. WR16060510, 2017 N.J. PUC LEXIS 253, at *24 (Nov. 13, 2017) (citing South Jersey Gas Co., Docket No. 818-754 (Nov. 24, 1982)). *See also id*. at *95 ("It is without question that the [BPU's] long-established policy is that rate-case expenses are to be shared 50/50 between the company and its ratepayers.")

investment."[304] Perhaps as a result of this simplified approach, there does not appear to be precedent disallowing specific rate case expense items.

New Jersey utilities can recover these expenses by amortizing recoverable costs, with the New Jersey Supreme Court endorsing amortization periods meant to align with cyclical rate filings.[305] However, the New Jersey DPU has set the amortization period significantly shorter when the interval between recent rate cases appears "unusually long."[306]

NEW MEXICO

New Mexico's Public Regulation Commission (PRC) permits utilities to recover prudent rate case expenses amortized over a period of years. New Mexico statute mandates that "[i]n any commission rate proceeding in which the utility seeks rates to recover adjusted test-year litigation expenses [i.e., rate case expenses] there shall be no presumption that the litigation expenses are prudent."[307] This statute is understood to impose "a 'heightened burden' of demonstrating the reasonableness of its requested litigation expenses."[308] In addition, New Mexico PRC regulations impose reporting requirements for utilities to separately identify rate case expenses in their FERC USofA accounts.[309]

Cutting against this heightened statutory burden, New Mexico's Supreme Court has ruled that the PRC was wrong to deny recovery of *any* rate case expense, even where the utility failed to meet its burden, if the record established the utility had incurred some prudent rate case expenses.[310] Perhaps driven by this precedent, the New Mexico PRC has been relatively deferential as to the level of recoverable rate case expenses. For instance, the PRC recently approved PNM's request to recover more than three and a half million dollars in rate case expenses, despite

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304. *Id*. at *96 (quoting South Jersey Gas Co., Docket No. 818-754 (Nov. 24, 1982)).

305. New Jersey Bell Tel. Co. v. Department of Pub. Utils., 12 N.J. 568, 598, (1953) ("Upon further proceedings, *i.e*., new proceedings instituted under the statute for changes in the Company's rates, consideration of rate case expense items should be made upon appropriate evidence, both as to reasonableness and as to probable time of recurrence. Amortization of this factor seems to be somewhat comparable to normalization of cyclic expenses, although the 'cycle' in this event is not so readily ascertainable as in the case of some categories of expense."); *see also In re* New Jersey Am. Water Co., 169 N.J. 181 (2001) (repudiating the portion of 12 N.J. 568 that applied this same standard to a utility's charitable donations).

306. Jersey Cent. Power & Light Co., Docket No. ER12111052, 2015 N.J. PUC LEXIS 65, at *310 (Mar. 26, 2015) (approving four-year amortization period when last base rate case was ten years prior).

307. N.M. STAT. ANN. § 62-13-3(B) (2024).

308. El Paso Elec. Co., No. 20-00104-UT, 2021 N.M. PUC LEXIS 39 (Apr. 6, 2021) (quoting *In re* PNM Gas Servs., 129 N.M. 1, 26 (N.M. 2000)).

309. N.M. CODE R. § 17.9.530.14 (2001); N.M. CODE R. § 17.10.630.13 (2001); N.M. CODE R. § 17.12.730.12 (2001); *see also* El Paso Elec. Co., 2021 N.M. PUC LEXIS 39.

310. *In re* PNM Gas Servs., 129 N.M. 1, 26-27 (N.M. 2000) ("When confronted with a questionable estimate of rate case expenses on one hand and irrefutable evidence that a utility has prudently incurred substantial, if unquantified, rate case expenses on the other, the Commission cannot simply deny recovery altogether; the Commission instead must determine the amount of reasonable and prudent rate case expenses incurred by the utility."); *id*. at 26 ("we agree with the Commission that PNMGS, by presenting only a budget-based estimate with no itemization of costs or evidence of reasonableness, failed to carry its burden of proving that its requested rate case expense of $925,845 was reasonable and prudent.").

objections from the attorney general as to the use of multiple law firms and their billing rates.[311]

To recover costs, the New Mexico PRC allows utilities to amortize the recoverable level of rate case expense over a number of years, which it aims to set "over a period approximating the time between rate filings."[312] The PRC previously permitted utilities to earn a return on this expense item.[313] However, it has reversed this policy on the basis that the primary beneficiaries of rate case expenses are the shareholders and such recovery allows utilities to over-recover their costs.[314]

NEW YORK

The New York Public Service Commission allows utilities to recover a reasonable level of rate case expenses utilities amortized over a period of several years. There is no statutory or regulatory provision governing this issue. For water utilities, the New York PSC frequently uses benchmarking based on historic averages to determine a reasonable level of recoverable expense.[315] This approach has frequently been affirmed by the courts, which have held the PSC "necessarily is empowered to disallow such excessive expenses in order to carry out the [statute's] general mandate of assuring safe and adequate service at just and reasonable rates."[316] The New York PSC has exercised relative diligence in scrutinizing requests to recover rate case expenses.[317] It has also raised concerns as to the quantum of the rate case expense relative to the overall revenue requirement.[318] The New York PSC amortizes this expense over a period of time of several years that is somewhat aligned to (but not strictly tied to) the frequency

311. Public Serv. Co. of N.M., Docket No. 22-00270-UT, 2024 N.M. PUC LEXIS 1, at *491 (Jan. 3, 2024); *but see* El Paso Elec. Co., 2021 N.M. PUC LEXIS 39 (disallowing rate case expenses that were not properly categorized or justified and noting that if "double disallowance" results in no recovery it was the utility's "fault because it did not provide sufficient information to meet its burden of proof.").

312. El Paso Elec. Co., 2021 N.M. PUC LEXIS 39 ("In this manner, the utility recovers its regulatory expenses and ratepayers do not pay the entire expense every year.").

313. Public Serv. Co. of N.M., No. 15-00261-UT, 2016 N.M. PUC LEXIS 74, at *99-100 (Sep. 28, 2016) (declining to change policy despite arguments by attorney general).

314. El Paso Elec. Co., 2021 N.M. PUC LEXIS 39 ("excluding the unamortized balance of rate case expenses from rate base accomplishes some sharing of rate case expenses between shareholders and ratepayers."); *but see* Public Serv. Co. of N.M., 2024 N.M. PUC LEXIS 1, at *491 (permitting water utility rate case expense to "be included in rate base and earn a return on investment.").

315. *E.g.*, Windemere Highlands, Inc., No. 23-W-0599, 2024 N.Y. PUC LEXIS 336, at *20, n.20 (July 22, 2024); Bristol Water-Works Corp., No. 17-W-0010, 2018 N.Y. PUC LEXIS 353, at *74 (July 16, 2018).

316. Hurley Water Co. v. New York State Pub. Serv. Comm'n., 505 N.Y.S.2d 228, 230 (N.Y. App. Div. 1986); *see also* Emerald Green Lake Louise Marie Water Co. v. Public Serv. Comm'n of N.Y., 172 N.Y.S.3d 498, 500-01 (App. Div. 2022); Rolling Meadows Water Corp. v Public Serv. Comm'n of N.Y., 115 N.Y.S.3d 470, 471 (App. Dev. 2019); Crescent Ests. Water Co. v Public Serv. Comm'n of N.Y., 555 N.Y.S.2d 928, 930 (App. Dev. 1990).

317. *See, e.g.*, Village of Freeport, No. 19-E-0538, 2020 N.Y. PUC LEXIS 571, at *16-18 (June 15, 2020) (reviewing $282,734 in invoices and finding that only $74,811 was recoverable as rate case expenses); Penn Yan Mun. Utils. Bd., No. 23-E-0728, 2024 N.Y. PUC LEXIS 287, at *12 (June 21, 2024) (reducing a $5,000 estimate by $500 following the conclusion of the hearing for an annual impact of $167).

318. Bristol Water-Works Corp., 2018 N.Y. PUC LEXIS 353, at *69-74 (company's rate case expense exceeded its revenues and represented the majority of the requested rate increase).

of rate filings.[319] In addition, though it does not elaborate on why, the New York PSC includes the unamortized balance of rate case expense in a utility's rate base, allowing it to earn a return on it.[320]

NORTH CAROLINA

The North Carolina Utilities Commission (NCUC) appears to allow utilities to recover their actual level of rate case expense amortized over a period of years. There are no statutes or regulations directly governing this practice. Many recent orders have been settled by stipulation or settlement, limiting the insight they can provide. The NCUC has previously held "that rate case expenses should be borne by the stockholders rather than the ratepayers where proposed rates have not been justified and there is no merit for a request for a rate increase."[321] There does not appear to be recent precedent applying this standard or otherwise reducing the level of recoverable rate case expenses. The NCUC appears to allow utilities to update their requested level of rate case expenses to recover their total level of expenses, rather than rely entirely on forecasts.[322] The NCUC has selected the amortization period with a goal of matching the interval until the next rate case proceeding.[323] Furthermore, the NCUC appears to endorse the policy of not

319. *See, e.g.*, Municipal Comm'n of Boonville, No. 24-E-0244, 2024 N.Y. PUC LEXIS 454, at *16 (Sep. 20, 2024) ("Given that Boonville last filed a rate case five years ago, the Commission finds a three-year amortization period to be shorter than necessary. Accordingly, the Commission developed a forecast of rate case expense using a five-year amortization period."); Village of Churchville., No. 23-E-0159, 2023 N.Y. PUC LEXIS 405, at *21 (Sep. 14, 2023) ("Given that the Village last filed a rate case over a decade ago, the Commission finds a three-year amortization period to be shorter than necessary. Accordingly, the Commission authorizes a five-year amortization of rate case expenses, which allows ample time for Churchville to recover the expense of this rate case and mitigate customer impacts."); AuSable Valley Tel. Co., No. 89-C-008, 1990 N.Y. PUC LEXIS 8, at *19 (Jan. 11, 1990) ("The factors affecting a telephone company's revenue requirement, and changes to it, are complex, and it is difficult to project when another rate case might be filed. Based on all the information available, the Judge's adoption of a three-year amortization is reasonable.").

320. *See, e.g.*, Municipal Comm'n of Boonville, 2024 N.Y. PUC LEXIS 454, at *16 ("Additionally, the Commission makes a corresponding adjustment to reflect the unamortized balance of rate case expense in the forecast of the rate base to allow Boonville to receive a return on the amounts that are not recovered in the Rate Year."). *See also* Hurley Water Co., No. 28820, 1985 N.Y. PUC LEXIS 668, at *11 (Mar. 21, 1985) (stating that as the policy).

321. Carolina Water Co., Docket No. W-S4, 1960 N.C. PUC LEXIS 5, at *17-18 (Feb. 24, 1960) ("To hold otherwise would be to make it possible for a utility to force rate increases upon its customers solely as a result of expenses incurred in abortive or frivolous rate cases. When a company applies for a rate increase and it is approved by this commission, we expect to allow the amortization of its reasonable expenses incurred for that purpose during the test period; but when the increases are not justified, the stockholders should expect to bear these expenses.").

322. Pluris, LLC, Docket No. W-1282, 2012 N.C. PUC LEXIS 2207, at *10 (Dec. 10, 2012).

323. Public Serv. Co. of N.C., Docket No. G-5, 1994 N.C. PUC LEXIS 15, at *78 (Oct. 07, 1994) ("Recent experience is the best guide for determining the estimated time between rate cases."); North Carolina Nat. Gas Corp., Docket No. G-21, 1991 N.C. PUC LEXIS 10, at *106-07 (Dec. 6, 1991) ("The Commission concludes that rate case expenses should be amortized over three years based on NCNG's anticipated next general rate case filing. Although the time when NCNG will apply for another general rate increase is not known, the Commission is not persuaded that the three-year period anticipated by NCNG is unrealistic or unreasonable.").

allowing utilities to earn a return on rate case expense by including the unamortized balance in rate base or recovering carrying costs.[324]

NORTH DAKOTA

The North Dakota Public Service Commission appears to allow utilities to recover their rate case expenses amortized over a period of several years. There are no statutes or regulations governing this practice in North Dakota, and there is a dearth of recent precedent resolving disputed proceedings on the merits.[325] North Dakota PSC decisions recognize an ability to recover rate case expenses but articulate that utilities may not recover the unamortized balance of prior rate case expenses in later proceedings.[326] The agency has also articulated a policy of setting the amortization period to match the historic interval between rate cases.[327]

OHIO

The Public Utilities Commission of Ohio (PUCO) permits utilities to recover their actual rate case expenses amortized over a period of time, often five years. There is no specific statutory provision applicable to this practice. However, PUCO regulations provide standard filing requirements that require rate increase applicants to disclose information about their rate case expenses, including the reason outside counsel was utilized, the relative cost of outside and in-house counsel, hourly rates and estimate of hours, explanations of cost control measures, and a final update within 10 days of the close of the record.[328]

The Supreme Court of Ohio has ruled on this issue several times, most recently articulating that the recoverability of rate case expenses turns on "whether [they] are ordinary and necessary expenses in obtaining rate relief as provided by law."[329] It has therefore reversed PUCO decisions that "deny recovery of the expenses incurred to obtain timely rate relief."[330] The PUCO has articulated that

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324. Old N. State Water Co., Docket No. W-1300, 2022 N.C. PUC LEXIS 653, at *42 (June 13, 2022) ("The Commission also concludes that it is appropriate that total rate case expense for the current proceeding be excluded from rate base and not earn a return, and be amortized over three years resulting in an annual rate case expense of $67,623. The Commission also concludes that it is reasonable that the Company be able to request any unamortized rate case expense balance in computing rate case expense in its next rate case proceeding.") (issued in the context of approving a settlement).

325. For an example of recent approved settlement, *see, e.g.*, Northern States Power Co., No. PU-21-381, 2022 N.D. PUC LEXIS 61, at *16 (Oct. 27, 2022).

326. Northern States Power Co., No. PU-400-92-399, 1993 N.D. PUC LEXIS 13, at *7-8 (Apr. 7, 1993); Northern States Power Co., No. PU-400-92-399, 1992 N.D. PUC LEXIS 19, at *48-50 (Dec. 15, 1992).

327. Montana-Dakota Utils. Co., No. PU-399-02-183, 2002 N.D. PUC LEXIS 45, at *46 (Dec. 18, 2002); Northern States Power Co., 1992 N.D. PUC LEXIS 19, at *50.

328. OHIO ADMIN. CODE 4901-7-1, App. Schedule C-8 (2022). *See also* Ohio Am. Water Co., No. 09-391-WS-AIR, 2010 Ohio PUC LEXIS 479, at *65 (May 5, 2010) (faulting company of not complying with requirements).

329. Columbus S. Power Co. v. Public Utils. Comm'n, 67 Ohio St. 3d 535, 547 (1993) ("On this basis, we have upheld the PUCO's inclusion of this expense on many occasions and have generally deferred to its discretion in quantifying the level of the expense when unclear on the record."); *see e.g.* Cincinnati v. Public Utils. Comm'n, 153 Ohio St. 56 (1950); Cleveland v. Public Utils. Comm'n, 63 Ohio St. 2d 62 (1980); Canton v. Public Utils. Comm'n, 63 Ohio St. 2d 76 (1980).

330. Columbus S. Power Co. v. Public Utils. Comm'n, 67 Ohio St. 3d at 547.

when "determining the reasonableness of a rate case expense, the Commission must consider the size of the company and a comparison of the rate case expense relative to the required revenue increase."[331] The PUCO has occasionally reduced the level of rate case expense a utility has requested.[332] It has also declined to accept a utility's update that did not comply with its regulations.[333] The PUCO has "repeatedly refused to adopt the [] argument that rate case expense should be disallowed since it provides no direct and primary benefit to ratepayers."[334] It has also rejected the argument that utilities should recover only half of their rate case expenses, i.e., "share" those expenses between ratepayers and shareholders.[335]

The PUCO utilizes amortization to allow utilities to recover their rate case expenses and in setting the amortization period. It considers "the number of years for which the newly established rates are likely to remain in effect" based on historical experience.[336] The PUCO does not permit utilities to include unamortized expense in their rate base or earn a return on it.[337]

OKLAHOMA

The Oklahoma Corporation Commission (OCC) permits utilities to recover their prudent, non-duplicative rate case expenses amortized over a period of years. There are no statutes or regulations specifically governing this practice. The Supreme Court of Oklahoma, however, has held that the OCC must allow a utility to recover rate case expenses when it "has reasonably and fairly employed necessary outside help in connection with . . . [the] case."[338] The OCC has exercised relatively strong scrutiny over utilities' rate case expenses—with a unique focus on the value of the testimony to the OCC itself. For instance, in a 2018 order the OCC found "that rate case expense costs should be scrutinized more

331. Water & Sewer LLC, No. 11-4509-ST-AIR, 2012 Ohio PUC LEXIS 749, at *52 (Aug. 15, 2012).

332. *Id*. ("taken into consideration with the unique size of the applicant, the Commission finds that the rate case expense of $15,000 is more reasonable than the requested $27,059 and, therefore, should be adopted."); Cleveland Elec. Illuminating Co., No. 86-2025-EL-AIR, 1987 Ohio PUC LEXIS 28, at *176 (Dec. 16, 1987) ("Given the Commission's continuing concern over the magnitude of the rate case expense incurred by CEI, we believe it is proper to reduce includable rate case expense by $53,000 from that provided in CEI's updated expense in light of the company's past over-estimations of rate case expense.").

333. Cobra Pipeline Co., No. 18-1549-PL-AEM, 2019 Ohio PUC LEXIS 1051, at *61 (Sep. 11, 2019); Ohio Am. Water Co., 2010 Ohio PUC LEXIS 479, at *65.

334. Cleveland Elec. Illuminating Co., 1987 Ohio PUC LEXIS 28, at *175.

335. Ohio Am. Water Co., 2010 Ohio PUC LEXIS 479, at *67 (finding such a policy "would be contrary to the reasonableness standard prescribed by the Commission and upheld by the Ohio Supreme Court.").

336. Cobra Pipeline Co., 2019 Ohio PUC LEXIS 1051, at *60 (also noting a "longstanding Commission practice of amortizing rate case expenses over a five year period unless a different period is warranted by the applicant's actual rate case history" (citing Columbia Gas of Ohio, Inc., No. 71-461-GA-AIR, et al. (Dec. 28, 1973)); Ohio Am. Water Co., 2010 Ohio PUC LEXIS 479, at *67 (adopting two year period based on average interval of 25.25 months). *See also* Ohio Edison Co. v. Public Utils. Comm'n, 173 Ohio St. 478, 495, 184 N.E.2d 70, 82 (1962) (affirming five-year amortization period).

337. Ohio Edison Co., No. 89-1001-EL-AIR, 1990 Ohio PUC LEXIS 912, at *74 (Aug. 16, 1990) ("Reasonable rate case expense is usually amortized over a period of time; however, no working capital is authorized."); *see also* Suburban Nat. Gas Co., No. 18-1205-GA-AIR, 2019 Ohio PUC LEXIS 1122, at *11 n.2 (Sep. 26, 2019) (clarifying a stipulation that characterized rate case expense as part of rate base).

338. Lone Star Gas Co. v. Corporation Comm'n of Okla., 648 P.2d 36, 41 (Okla. 1982) (quoting Carey v. Corporation Comm'n, 33 P.2d 788, 794 (Okla. 1934)).

closely than they have been in the past."[339] In doing so, it ruled that costs related to "an unnecessary witness that contributed nothing of substance to these proceedings, [shall] not be paid by customers but by shareholders."[340] The OCC has also rejected other cost items as unnecessary, such as witness training.[341] The OCC permits utilities to update their estimated rate case expenses throughout the proceeding and record rate case expenses incurred following the close of the record for consideration in their next rate case.[342] The OCC employs an amortization method of recovery for rate case expense and sets those periods to align with the frequency of rate filings.[343]

OREGON

Oregon is another jurisdiction with very little substantive precedent on the specific issue of rate case expense recoverability. Oregon also has no statutes or regulations that are directly applicable. The practice, however, is that utilities regulated by the Oregon Public Utility Commission can recover their actual expenses incurred, amortized over a period of time. In one decision from 1977, the Oregon Court of Appeal remanded (on procedural grounds) a PUC order disallowing recovery of some of a utility's rate case expenses.[344] Nearly every recent decision has been resolved via stipulation or settlement.[345]

PENNSYLVANIA

The Pennsylvania Public Utility Commission permits utilities to recover all their reasonable and prudently incurred current rate case expenses "normalized" (but essentially amortized) over a period of several years. There is no statute directly governing this issue; however, Pennsylvania regulations require utilities seeking rate increases to supply "detailed calculations of amortization of rate case expense" in their application.[346] Notably, Pennsylvania has a relatively robust body of state and federal judicial precedent on this issue.[347] In fact, the United States Supreme Court case of *Driscoll v. Edison Light & Power Co.*—discussed

339. Public Serv. Co. of Okla., No. PUD 201700151, 2018 Okla. PUC LEXIS 41, at *71 (Jan. 31, 2018) ("Moreover, utilities should understand that not all rate case costs should be borne by ratepayers. Necessary and reasonable costs to process a rate case should be borne by ratepayers. Ratepayers should not be burdened with unreasonably inflated legal costs and expert witness fees, especially when the testimony of some expert witnesses may appear to be duplicative and/or unnecessary testimony.").

340. *Id*. at *73.

341. Oklahoma Gas & Elec. Co., No. PUD 201500273, 2017 Okla. PUC LEXIS 491, at *161-62 (Feb. 2, 2017).

342. *Id*. at *162.

343. Public Serv. Co. of Okla., 2018 Okla. PUC LEXIS 41, at *73.

344. Cascade Nat. Gas Corp. v. Davis, 28 Or. App. 621, 629 (1977).

345. *See, e.g.*, Cascade Nat. Gas Corp., Order No. 21-001, 2021 Ore. PUC LEXIS 1, at *14-15 (Jan. 6, 2021) (noting that the PUC's Staff was opposed to recovery of prior expenses); Northwest Nat. Gas Co., Order No. 20-364, 2020 Ore. PUC LEXIS 548, at *7 (Oct. 16, 2020); *but see* Crooked River Ranch Water Co., Order No. 07-527, 2007 Ore. PUC LEXIS 430, at *37 (Nov. 29, 2007) (finding in favor of PUC staff's recommendation with no elaboration).

346. 52 PA. CODE § 53.53 (2025) ("including supporting data for outside services rendered.").

347. *See* RATE CASE EXPENSE, 40 P.L.E. PUB. UTILS. § 64 (2025).

in more details in Part II.A. of the main article—involved an appeal from an order of the Pennsylvania PUC.[348]

The Pennsylvania PUC has long articulated the policy that rate case expenses should only reflect a reasonable future level for the utility, not a dollar-for-dollar recovery.[349] In addition, the Pennsylvania PUC briefly implemented a policy of splitting rate case expenses "50-50" between ratepayers and shareholders.[350] The Pennsylvania Commonwealth Court overruled this policy, holding (somewhat in tension with the overall policy) that recovery of rate case expenses can be disallowed only when evidence in the record shows that they "were unreasonable, imprudently incurred or excessive in amount."[351] The PUC has articulated that the recoverability of costs for rate case testimony does not turn on the success of the utility's claims but on the good faith behind them.[352] Recent PUC orders have rarely disallowed rate case expenses on the grounds they were unreasonable, but the courts have affirmed them when the utility "failed to demonstrate that its expenses were reasonable and prudently incurred, and [the] reduction of [] rate case expense . . . [was] supported by an examination of the record."[353] However, the Pennsylvania PUC has denied recovery of updated expenses that were introduced "too late" in the evidentiary record.[354]

The Pennsylvania PUC firmly states that its policy is to "allow for a *normalized* amount for current rate case expense" and this does "not amortize current rate case expense."[355] However, in practice, this appear to operate in much the same way as how amortization of a current expense is described by other

348. Driscoll v. Edison Light & Power Co., 307 U.S. 104, 107-08 (1939).

349. Pennsylvania Pub. Util. Comm'n v. Philadelphia Gas Works, Docket No. R-2023-3037933 et al., 2023 PA. PUC LEXIS 298, at *45 (Nov. 9, 2023) ("the Commission described its policy regarding rate case expense in *Pa. PUC v PECO* as follows: 'Current rate case expense is not to be viewed as an expense to be recovered, but merely as a guide in determining a reasonable expense allowance for the future. If a particular utility should decide to expend more or less than its allowance, for whatever reason it may choose, that is a management decision for it to make. Our decision in this and every case is to determine the reasonable annual expense allowance to be charged to ratepayers.'") (quoting Pennsylvania Pub. Utils. Comm'n v. Philadelphia Elec. Co., Docket No. R-811719 et al., 1982 Pa. PUC LEXIS 83, at *57-58 (June 25, 1982)).

350. *See* Butler Twp. Water Co. v. Pennsylvania Pub. Util. Comm'n, 473 A.2d 219, 221 (Pa. Commw. Ct. 1984).

351. *Id*. at 221. Interestingly it appears that the PUC "abandoned" this policy simultaneously with the appeal in *Butler*. *Id*.

352. Pennsylvania Pub. Util. Comm'n v. Western Pa. Water Co., Docket No. R-870825 et al., 1988 Pa. PUC LEXIS 422, at *30 (July 1, 1988) ("The fact that the claim in support of which this study was offered was not a successful claim does not mean that the cost of this study is not a proper ratemaking expense. As stated by the ALJ, the test is not the success or failure of the issue, but one of the reasonableness and good faith with which the study was undertaken."); *see also* Pennsylvania Pub. Util. Comm'n, Docket No. R-922493 et al., 1993 Pa. PUC LEXIS 149, at *55 (July 14, 1993).

353. Popowsky v. Pennsylvania Pub. Util. Comm'n, 674 A.2d 1149, 1154 (Pa. Commw. Ct. 1996).

354. Pennsylvania Pub. Util Comm'n v. City of Lancaster, Docket No. R-2010-2179103 et al., 2011 Pa. PUC LEXIS 1685, at *57 (July 14, 2011); *but see* Pennsylvania Pub. Util. Comm'n v. City of Lancaster, Docket No. R-00049862, 2005 Pa. PUC LEXIS 44, at *70 (Aug. 26, 2005) ("Since the Recommended Decision was issued, however, the City has provided the necessary invoices and the OCA then withdrew its proposed adjustment to this claim in its Reply Exceptions. Accordingly, the additional $20,000 requested by the City is approved, for a total approved claim of $255,000 for current rate case expense.").

355. Pennsylvania Pub. Util. Comm'n v. Philadelphia Elec. Co., Docket No. R-811719 et al., 1982 Pa. PUC LEXIS 83, at *58 (June 25, 1982).

jurisdictions.[356] The PUC sets these "normalization" periods based on the historic intervals between rate cases, rather than the utility's predication of its next case.[357]

PUERTO RICO

The Puerto Rico Energy Bureau has identified that the standards for recoverability of rate case expenses is an open question, which does not appear to be resolved. There is no statute, regulation, or even precedent directly on point. However, in its 2017 order setting PREPA's[358] rates, the territory's Energy Bureau (then called the Energy Commission or CEPR) did opine on this topic. Specifically, the CEPR had found some witness testimony so unhelpful that it required PREPA to "propose to the Commission guidelines for judging the usefulness of testimony before PREPA incurs the costs to prepare and submit it."[359] CEPR directed that these guidelines "include procedures by which PREPA and the Commission can ensure that costs incurred by PREPA and charged to ratepayers are costs that help the Commission serve ratepayers" and cautioned that "until PREPA wants to find a source of litigation funds other than its customers, it must show that the value of its submissions will accrue to the customers."[360] No standard appears to have materialized in any subsequent order. Separately, there are unpublished district court opinions directing Puerto Rico's milk price regulator, the Milk Industry Regulatory Office (ORIL), to allow regulated businesses to recover their expenses for "any professional services rendered relating to presenting the administrative case" to the regulator.[361]

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356. *See, e.g.*, Pennsylvania Pub. Util. Comm'n v. City of Lancaster, 2011 Pa. PUC LEXIS 1685, at *57 ("We find that the total allowable rate case expense allowance in this proceeding should be . . . $535,926 as of January 31, 2011, normalized over a period of forty-seven months. The result is a total annual rate case expense allowance of $136,832 ($535,926/47 × 12 = 136,832)."). The Pennsylvania PUC appears to distinguish between normalization and amortization as terms of art by attributing to amortization an ability to include previous, unrecovered expenses, which the PUC does not permit. *See* Pennsylvania Pub. Util. Comm'n v. Philadelphia Gas Works, Docket No. R-2023-3037933 et al., 2023 PA. PUC LEXIS 298, at *45 (Nov. 9, 2023) ("the rate case expense should be normalized and PGW cannot recover the remainder of its 2020 rate case expenses in this proceeding.").

357. Pennsylvania Pub. Util Comm'n v. Columbia Water Co., Docket No. R-2023-3040258, 2024 PA. PUC LEXIS 23, at *20-21 (Jan. 18, 2024) ("the Company's reasoning for its intent to file a base rate case in the next three years is not persuasive to justify deviation from the Commission's traditional practice of relying on historical filing frequency in setting a normalization period."); Pennsylvania Pub. Util. Comm'n v. Philadelphia Gas Works, 2023 PA. PUC LEXIS 298, at *45 ("the normalization period should reflect the company's historical rate case frequency, not the Company's future intention for filing a rate case."); Pennsylvania Pub. Util. Comm'n v. City of Lancaster, 2011 Pa. PUC LEXIS 1685, at *57.

358. The Puerto Rico Electric Power Authority, whose assets are now operated by LUMA Energy, LLC. *See In re* Financial Oversight & Mgmt. Bd., 7 F.4th 31, 34-35 (1st Cir. 2021) (describing the privatization process).

359. Puerto Rico Elec. Power Auth., No. CEPR-AP-2015-0001, at P 121 (P.R. Energy Bureau Jan. 10, 2017), https://energia.pr.gov/wp-content/uploads/sites/7/2017/01/Final-Resolution-and-Order.pdf, *aff'd* Final Resolution (P.R. Energy Bureau Mar. 8, 2017), https://energia.pr.gov/wp-content/uploads/sites/7/2017/03/8-marzo-2017-Final-Resolution-PREPAs-Reconsideration-CEPR-AP-2015-0001.pdf.

360. *Id*.

361. Vaqueria Tres Monjitas, Inc. v. Fabre Laboy, Civil No. 04-1840, 2010 WL 11618129, at *11 (D.P.R. 2010), *opinion clarified on denial of reconsideration sub nom*., Vaqueria Tres Monjitas, Inc. v. Rivera Aquino, Civil No. 04-1840, 2011 WL 13289967 (D.P.R. 2011). *See also* Vaqueria Tres Monjitas, Inc. v. Fabre LaBoy, Civil No. 04-1840, 2007 WL 9717624, at *3 (D.P.R. 2007).

RHODE ISLAND

The Rhode Island Public Utilities Commission permits utilities to recover their current rate case expenses amortized over a period of years. There is no statute or regulation directly applicable, but there is some state Supreme Court precedent. In a 1976 decision, Rhode Island's Supreme Court remanded a PUC order that allowed the utility less than half its requested rate case expense, holding that even if the utility did not meet *its* burden, the PUC still had to establish an evidentiary basis for its allowed level.[362] On remand, the PUC stuck to its original finding supported by evidence, which was not challenged through further appeal.[363] Parties are typically allowed to update their requested rate case expenses with more recent information,[364] though this has been disallowed when done too late for effective examination by other parties.[365]

The Rhode Island PUC has expressed "deep[] concern[] with what appears to be never-ending increases to rate case expense."[366] It has also articulated that it "can not permit the pass through of unreasonable, unsubstantiated rate case expenses to the ratepayer."[367] One interesting expression of this concern is that the PUC has reduced recoverable rate case expenses significantly when the utility's starting position was unreasonably high relative to its final position.[368]

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362. Bristol Cty. Water Co. v. Public Utils. Comm'n, 363 A.2d 444, 451 (R.I. 1976) ("The commission's findings must be fairly and substantially supported by legal evidence and sufficiently specific to enable this court to ascertain if the facts upon which they are premised afford a reasonable basis for the result reached. If it is found that it is impossible to verify the entirety of the company's proposal, then the commission would be justified in allowing only so much of it as is supportable by legal evidence. In the instant case, the commission only executed the first half of this two-stage decisional process. Its conclusion that $8,500 was a sufficient amount to cover rate case expense to the service company finds no apparent support in the record. This issue is therefore remanded to the commission for supplemental or additional decision.") (internal citations omitted).

363. Bristol Cty. Water Co. v. Harsch, 386 A.2d 1103, 1106 (R.I. 1978) (noting that the company did not raise this issue but describing the actions on remand on that issue in affirming the remand decision on other points challenged).

364. A&R Marine Corp., Docket No. 4586, 2017 R.I. PUC LEXIS 20, at *22 (June 2, 2017) ("As is typical practice for the PUC, the parties were asked to update the rate case expense prior to the Commission's decision.").

365. Block Island Power Co., Docket No. 3900, 2008 R.I. PUC LEXIS 28, at *49-50 (Nov. 24, 2008) (updated two days before the Commission open meeting); *but see id*. at *61-62 (Bray, Comm'r dissenting) ("I believe that the $34,000 additional expense presented by the Company prior to the Open Meeting for this docket is a legitimate rate case expense that should have been allowed in rates.").

366. Narragansett Elec. Co., Order No. 13899, 1992 R.I. PUC LEXIS 15, at *41 (Apr. 10, 1992).

367. Blackstone Valley Elec. Co., No. 2016, 1992 WL 501574 (Mar. 16, 1992) ("We do not wish that the Company sacrifice it standards but they must put a value tag on any service which they intend to pass along to the ratepayers. They must make every effort to get the appropriate level of service at the lowest cost. It is apparent from the record that not only was the same level of service available at a lower cost but the same individual were available at a lower cost.") (allowing recovery of $494,425 when the utility requested $691,000 but clarifying that doing so "is in no way intended to endorse this rate or these costs as being in our view truly reasonable.").

368. City of Newport, Docket No. 2985, 2000 R.I. PUC LEXIS 12, at *37-38 (June 19, 2000) ("Ultimately, the utility's requested cost of service increase was less than half of that contained in the original filing. . . The Commission believes that Newport Water could have presented a revenue increase request more in line with its final position; this would have reduced the cost, time, and effort of all the parties. Also, a timely filed COS study and rate design that more closely adhered to this Commission's directive in Docket No. 2049 would have produced a better end result, and a more appropriate rate design for this utility. . . Because all of this contributed to the excessive costs of the rate case, the Commission cannot authorize collection from the utility's ratepayers

In terms of the method of recovery, the Rhode Island PUC sets the amortization period to "match[] the expected interval between rate cases."[369] The PUC does not permit utilities to recover their previously incurred rate case expenses, stating that to do so "would constitute retroactive ratemaking."[370] The Rhode Island PUC has also long understood that rate case expenses benefit both shareholders and ratepayers and that both should bear those costs.[371] The Rhode Island PUC therefore has attempted to share these costs between shareholders and ratepayers as a matter of policy. However, rather than reduce the amount of recoverable expenses, for instance by halving the recoverable amount, the PUC has articulated that costs are shared by disallowing rate base treatment (unless "unusual circumstances" justify it).[372] That is, under the PUC's rationale the costs are split insofar as "ratepayers to pay the actual, prudently incurred rate case expenses over a period of time, while stockholders pay the carrying costs on the unamortized balance."[373] The state Supreme Court has affirmed this policy and rationale.[374]

SOUTH CAROLINA

The South Carolina Public Service Commission permits utilities to recover their current (and prior) rate case expenses amortized over a period of years. There are no statutes or regulations governing this practice. In one interesting case, the South Carolina Supreme Court remanded to the PSC for second time after the PSC disallowed, on remand, recovery of costs associated with specific invoices that permitted in the agency's original order.[375] The court found the agency "employed a retaliatory standard of scrutiny."[376] Since then, the PSC has disallowed rate case expenses in at least one proceeding, where it found that "[r]atepayers should not bear the burden of expenses from proceedings that are duplicitous[377] in nature to the Company's current rate case before this Commission."[378]

The South Carolina PSC sets the amortization period to match the rate case filing intervals.[379] Somewhat uniquely, the South Carolina PSC has an established

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of the full level of rate case expense incurred by Newport Water . . . Thus, the Commission will disallow recovery of 33.3% of the $273,376 rate case expense incurred by Newport Water in this filing.").

369. Providence Gas Co. v. Malachowski, 656 A.2d 949, 952 (R.I. 1995). *See also* Narragansett Elec. Co., Docket No. 4065, 2010 R.I. PUC LEXIS 12, at *171-72 (Apr. 29, 2010) ("The Commission believes that a five year amortization period is appropriate and is supported by the time interval between the two prior cases.").

370. Block Island Power Co., 2008 R.I. PUC LEXIS 28, at *49.

371. *Malachowski*, 656 A.2d at 953.

372. *Id*. at 950.

373. *Id*. (quoting Block Island Power Co., Order No. 13769, Docket No. 1998, at 20 (1991)); *see also* United Water R.I., Docket No. 4434, 2014 R.I. PUC LEXIS 22, at *17, 21 (Sep. 2, 2014).

374. *Malachowski*, 656 A.2d at 953.

375. Daufuskie Island Util. Co. v. South Carolina Off. of Regul. Staff, 427 S.C. 458, 463 (2019).

376. *Id*. at 463.

377. This appears to be meant to say "duplicative" in the context of the order.

378. Blue Granite Water Co., Order No. 2020-306, 2020 S.C. PUC LEXIS 232, at *134 (Apr. 9, 2020).

379. Daufuskie Island Util. Co., Order No. 2018-68, 2018 S.C. PUC LEXIS 35, at *58 (Jan. 31, 2018) ("We agree with the Company that a three (3) year amortization period provides a more reasonable recovery period. [The uility] has been filing Applications for rate relief at approximately three-year intervals."); *see also* Porter v.

policy of allowing utilities to recover the unamortized balance of rate case expense in subsequent rate cases.[380] This practice was affirmed by South Carolina's Supreme Court against arguments it violated the rule against retroactive ratemaking.[381] The court reasoned—somewhat tortuously—that the unamortized portion of rate case expense fell within the rule's exception for "extraordinary" costs because it was expected that the amount would have been recovered during the amortization period.[382] The PSC does not permit utilities to include unamortized rate case expense in their rate base or otherwise earn a return, reasoning that prohibiting such recovery "presents a reasonable sharing of costs between shareholders and customers."[383]

SOUTH DAKOTA

While there is very little precedent on the matter, the South Dakota Public Utilities Commission appears to permit utilities to recover rate case expenses amortized over a period of several years. There are no statutory or regulatory provisions and extremely little recent precedent from the state's PUC. In a 1977 order, the PUC allowed the recovery of a utility's rate case expenses amounting to $50,000 over a three-year amortization period.[384] In another order, it disallowed a utility to recover out-of-state expenses from South Dakota ratepayers.[385] Furthermore, in 1978, the Supreme Court affirmed the amortization of rate case expenses over a three-year period set by a consortium of cities.[386] Recent decisions addressing this issue are consistent with this approach but appear to have been resolved via settlement.[387]

TENNESSEE

The Tennessee Public Utility Commission permits utilities to recover their current rate case expenses amortized over a period of years. There is no statute or regulation governing this practice.[388] However, in one appellate ruling, the court

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South Carolina PSC, 328 S.C. 222, 231, 493 S.E.2d 92, 97 (1997) ("Ideally the amortization period matches the expected interval between rate cases.").

380. *See id*.

381. *Porter*, 328 S.C. 222.

382. *Id*. at 231-32 ("Accordingly, the remaining unamortized rate-case expense, previously approved but unrecovered, is unanticipated and non-recurring and qualifies as an extraordinary expense.").

383. Daufuskie Island Util. Co., Order No. 2022-854, 2022 S.C. PUC LEXIS 225, at *58-59 (Dec. 21, 2022).

384. Montana-Dakota Utils. Co., Docket No. F-3159, 1977 S.D. PUC LEXIS 7, at *72-73 (Aug. 1, 1977).

385. Iowa Pub. Serv. Co., Docket No. F-3063, 1977 S.D. PUC LEXIS 8, at *84-85 (July 29, 1977).

386. Northwestern Pub. Serv. Co. v. Chamberlain, 265 N.W.2d 867, 880-81 (S.D. 1978).

387. Black Hills Power, Inc., Docket No. EL14-026, 2015 S.D. PUC LEXIS 38, at *16 (Feb. 10, 2015) (noting that "ratepayers will not incur the added rate case expense required to prepare revised rates and tariff sheets."). *See also* Amended Settlement Stipulation at 6-8, Black Hills Power, Inc., Docket No. EL14-026 (S.D. Pub. Serv. Comm'n filed Feb. 10, 2015), https://puc.sd.gov/commission/dockets/electric/2014/EL14-026/amendedstipulation.pdf (amortizing expenses over three years, allowing for a tracker for excess rate case expense, and rate basing half the recoverable level of rate case expenses).

388. *See, e.g.*, Consumer Advoc. & Prot. Div. v. Tennessee Regul. Auth., No. M2011-00028-COA-R12-CV, 2012 Tenn. App. LEXIS 355, at *50 n.30 (Tenn. Ct. App. 2012) ("There is no statute or regulation that explicitly permits the TRA to include litigation expenses as an operating expense of the utility in a rate case.

found the Tennessee PUC's authority to award litigation expenses to utilities to be "plenary" and could manifest outside the context of a rate case.[389] The PUC has rejected the argument that rate case expenses should be disallowed when no increase was warranted but rather found they may be recovered when the application was made "in good faith."[390]

The Tennessee PUC (then called the Regulatory Authority or TRA) briefly implemented the policy of reducing recoverable rate case expenses by half as a method to share costs between shareholders and ratepayers.[391] On appeal, the PUC defended this practice, arguing that "in light of the [utility's] history and pattern of filing unsubstantiated rate cases, particularly evident in this case, the inordinate costs involved here are unreasonable."[392] However, because those arguments were not contained in the order itself, the court found the one-half disallowance was arbitrary.[393] In apparent respect of that holding, the PUC has since expressed more deference to utility claims. For instance, in a 2019 order the PUC expressed "its concern regarding the high level of rate case expenses, acknowledging the benefit that both ratepayers and stockholders receive from the rate increases that generally follow the completion of rate cases."[394] However, because "the documentation and evidentiary record [was] not sufficiently detailed to determine a reasonable apportionment of rate case expense between ratepayers and shareholders," the PUC awarded the total request, expressing fear "that exclusion of a percentage or specific amount of rate case expense would be unsupported and potentially arbitrary."[395]

The Tennessee PUC aims for rate case expenses "to be amortized over the period between Rate Cases."[396] However, it appears in at least one instance the agency has permitted the issue of rate case expenses to be deferred to a later time, resulting in recovery through a surcharge.[397]

TEXAS

Both of Texas's energy regulators—the Texas Public Utility Commission (which regulates electric and non-energy utilities) and the Railroad Commission

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Rather, the practice of allowing Rate Case Expenses to be recovered by the utility has become the accepted 'policy and custom' of the TRA.") (citing Tennessee Am. Water Co. v. Tennessee Regul. Auth., 2011 Tenn. App. LEXIS 51, at *26 (Tenn. Ct. App. 2011)).

389. *Id*. at *63.

390. Chattanooga Gas Co., Docket No. 04-00034, 2004 Tenn. PUC LEXIS 323, at *29 (Oct. 20, 2004).

391. Tennessee Am. Water Co., Docket No. 08-00039, 2009 Tenn. PUC LEXIS 14, at *48-49 (Jan. 13, 2009) (rejecting application of the "American Rule" but finding it "appropriate for the shareholders to bear some of the expense of the Company's rate case.").

392. Tennessee Am. Water Co. v. Tennessee Regul. Auth., No. M2009-00553-COA-R12-CV, 2011 Tenn. App. LEXIS 51, at *75 (Tenn. Ct. App. 2011).

393. *Id*. at *76.

394. Chattanooga Gas Co., Docket No. 18-00017, 2019 Tenn. PUC LEXIS 5, at *53 (Jan. 15, 2019).

395. *Id*. at *53-54.

396. B&W Pipeline, LLC, Docket No. 15-00042, 2016 Tenn. PUC LEXIS 39, at *34 (Mar. 10, 2016).

397. Superior Wastewater Sys., LLC, Docket No. 22-00087, 2023 Tenn. PUC LEXIS 64, at *2-3 (Sep. 26, 2023); *see also* Tennessee Am. Water Co., Docket No. 10-00189, 2012 Tenn. PUC LEXIS 76, at *38 (Apr. 27, 2012) (describing that the expenses at issue in *Tennessee Am. Water Co*., 2011 Tenn. App. LEXIS 51 were recovered through a surcharge).

of Texas (RRC) (which regulates oil and natural gas)—permit utilities under their jurisdiction to recover their reasonable, relevant, and necessary rate case expenses through a surcharge. Texas statute articulates that electric utilities *may* be allowed to recover "reasonable costs of participating in a proceeding under this title not to exceed the amount approved by the regulatory authority."[398] The equivalent statutory provision regarding gas utilities is silent on this issue.[399] However, for both industries the PUC[400] and the RRC[401] have promulgated regulations governing the recovery of rate case expenses.

Both sets of regulations mandate that the utility "shall have the burden to prove the reasonableness of such rate-case expenses by a preponderance of the evidence."[402] They also require the requesting utility to "detail and itemize" the rate case expenses in their application.[403] Likewise, both sets of regulations articulate similar criteria the PUC and RRC should employ in determining the reasonableness of rate case expenses. In addition to those factors required to be detailed and itemized in the application, the RRC regs require the agency to consider the need for the testimony as well of the merits of the application itself.[404] The PUC regulations enumerate even more granular issues for which the agency must make a finding, including whether "the utility's . . . proposal on an issue in the rate case had no reasonable basis in law, policy, or fact and was not warranted by any reasonable argument for the extension, modification, or reversal of

398. TEX. UTIL. CODE ANN. § 36.061(b)(2) (West 2013).

399. TEX. UTIL. CODE ANN § 104.057 (West 1997). Note that TEX. UTIL. CODE ANN § 103.022 deals with recovery of rate case expenses by municipalities conducting or participating in rate cases, which is a distinct issue.

400. 16 TEX. ADMIN. CODE § 25.245 (2014) (PUC of Tex. regulations for electric service providers). *See also* 16 TEX. ADMIN. CODE § 24.44 (2018) (PUC of Tex. regulations for water and sewer service providers).

401. 16 TEX. ADMIN. CODE § 7.5530 (2002) (R.R. Comm'n of Tex. regulations for gas service providers).

402. 16 TEX. ADMIN. CODE § 25.245(b) (2014); 16 TEX. ADMIN. CODE § 7.5530(a) (2002) (not hyphenating "rate case"). *See also* 16 TEX. ADMIN. CODE § 24.44(b) (2019).

403. 16 TEX. ADMIN. CODE § 7.5530(a)(1)-(6) (2002) (including but not limited to showing "(1) the amount of work done; (2) the time and labor required to accomplish the work; (3) the nature, extent, and difficulty of the work done; (4) the originality of the work; (5) the charges by others for work of the same or similar nature; and (6) any other factors taken into account in setting the amount of the compensation."); 16 TEX. ADMIN. CODE § 25.245(b)(1)-(6) (2014) (including but not limited to showing "(1) the nature, extent, and difficulty of the work done by the attorney or other professional in the rate case; (2) the time and labor required and expended by the attorney or other professional; (3) the fees or other consideration paid to the attorney or other professional for the services rendered; (4) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials; (5) the nature and scope of the rate case, including: (A) the size of the utility and number and type of consumers served; (B) the amount of money or value of property or interest at stake; (C) the novelty or complexity of the issues addressed; (D) the amount and complexity of discovery; (E) the occurrence and length of a hearing; and (6) the specific issue or issues in the rate case and the amount of rate-case expenses reasonably associated with each issue."). *See also* 16 TEX. ADMIN. CODE § 24.44(b) (2019).

404. 16 TEX. ADMIN. CODE § 7.5530(b)(2002) ("whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted.").

commission precedent."[405] Other situations include excessive attorneys' fees, hours, or incidentals; or duplicative services or testimony.[406]

The regulations for electric utilities also spell out clear mathematical methods for calculating allowed or disallowed rate-case expenses.[407] In addition to mandating allowance for recovery rate-case expenses shown to have been "actually and reasonably incurred" and disallowance of rate-case expenses "shown to have been not reasonably incurred,"[408] the regulations provide two interesting and compelling formulae the commission may use to calculate disallowances. In this first formula, the *disallowance* is calculated as: "the ratio of: (i) the amount of the increase in revenue requirement requested by the utility that was denied, to (ii) the total amount of the increase in revenue requirement requested in a proceeding by the utility."[409] In this equation, the recoverable level of rate case expense would be calculated as:

$$Actual\ RCE - (Actual\ RCE\ \times \frac{Increase\ Denied}{Increase\ Requested})$$

This can be algebraically simplified as calculating the *allowed* rate case expense as follows below, which in practice appears to operate identically to the Missouri formula described above to calculate recoverable "discretionary" rate case expenses where the recoverable rate case expense can be expressed as:

$$Actual\ RCE \times \frac{Increase\ Granted}{Increase\ Requested}$$

In the second mathematical approach, the disallowance of rate case expense is calculated as the ratio of "(i) the amount of the increase in revenue requirement requested by the utility in the rate case related to the issue(s) not reasonably supported by evidence of certainty and specificity to (ii) the total amount of the increase in revenue requirement requested in a proceeding by the utility."[410] The regulations also make clear that "any other appropriate methodology" may also be used to calculate a disallowance.[411]

While the RRC's regulations do not provide equivalent formulae, they do require the agency to consider "whether the request for a rate change was warranted" and "the amount of the increase sought as well as the amount of any increase granted," as well as all other relevant factors.[412] In fact, the RRC has

405. 16 TEX. ADMIN. CODE § 25.245(c)(4) (2014).

406. *Id*. § 25.245(c)(1)-(3) (2014).

407. *Id*. § 25.245(d) (2014).

408. *Id*. § 25.245(d)(1) (2014) ("A disallowance may be based on cost estimates in lieu of actual costs if reasonably accurate and supported by the evidence.").

409. 16 TEX. ADMIN. CODE § 25.245(d)(2)(A) (2014) (showing this disallowance is connected to the utilities requirements of section (c)(5)).

410. 16 TEX. ADMIN. CODE § 25.245(d)(3)(A) (2014).

411. *Id*. § 25.245(d)(2)-(3) (2014).

412. *Id*. § 7.5530(b) (2014).

previously employed an across-the-board percentage disallowance of rate case in an order affirmed by the Court of Appeals.[413] However, the RRC based this percentage on several methods, including the fraction of issues that were raised that it considered unnecessary and the share of testimony and briefing dedicated to those issues.[414] Both the PUC and RRC are relatively confident in reducing or disallowing case expenses compared with regulators in other states and their decisions to do so are generally affirmed by Texas courts.[415] For instance, the RRC has required that rate case expenses be "independently required," for the rate proceeding, rather than a longer-term cost from the utility's service.[416] The Texas courts also defer to an agency's allowance of rate case expenses in response to challenges they permitted too high a level to be recovered in rates.[417]

Until 2019, the Texas PUC also implemented a unique "51% Rule" and a "Settlement Offer Rule" in the context of water utilities.[418] Under the first rule, a utility was not permitted to recover "any rate-case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate."[419] Under the second rule, a utility was not permitted to recover

> any rate-case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal

413. *See* Railroad Comm'n of Tex. v. Gulf Coast Coal. of Cities, No. 03-14-00302-CV, 2016 Tex. App. LEXIS 5732, at *28-30 (Tex. Ct. App. 2016) (citing Amarillo v. Railroad Comm'n of Tex., 894 S.W.2d 491, 496 (Tex. Ct. App. 1995)).

414. *Id*. at *24-25.

415. Entergy Tex., Inc. v. PUC of Tex., No. 03-14-00706-CV, 2016 Tex. App. LEXIS 2983, at *23 (Tex. Ct. App. 2016) ("Regarding the evidence presented about the reasonableness and necessity of a rate-case expense, the Commission is the sole judge of the weight of the evidence and the credibility of the witnesses. As long as there is a reasonable basis in the record—including in the PFD—for the Commission's determination on the evidence pertaining to a requested rate-case expense, the determination is supported by substantial evidence and is not arbitrary.") (citing Port Neches v. Railroad Comm'n of Tex., 212 S.W.3d 565, 578, 580-81 (Tex. Ct. App. 2006)). *See also* North Aus. Mun. Util., Docket No. 42857, 2015 Tex. PUC LEXIS 3267, at *26 (Oct. 14, 2015) (PUC denying all recovery of rate case expense to city that did not meet its burden); CenterPoint Energy Entex, Docket No. 9364, 2005 Railroad Commn Tex. LEXIS 384, at *174 (Apr. 15, 2005) (disallowing portion of expenses equal to expenditures of party with duplicative position); TXU Gas Distrib., Docket No. 9145-9147, 2000 Railroad Commn Tex. LEXIS 436, at *46 (Oct. 10, 2000) (disallowing expenses related to resisting discovery).

416. *Port Neches*, 212 S.W.3d at 581-82 (Tex. Ct. App. 2006) (citing TEX. UTIL. CODE ANN. § 104.055(b) (West 1997)).

417. Pioneer Nat. Res. USA, Inc. v. PUC, 303 S.W.3d 363, 376-78 (Tex. Ct. App. 2009).

418. Order Adopting Amendments to 16 TAC 24.44 for Consideration at The October 11, 2019 Open Meeting, Rulemaking to Amend 24.44 Rate-Case Expenses Pursuant to Tex. Water Code §13.187 & §13.1871, Project No. 48526, slip op. at 6 (Tex. Pub. Util. Comm'n Oct. 14, 2019), https://interchange.puc.texas.gov/Documents/48937_25_1037611.PDF.

419. Proposal For Publication of Amendment To 16 TAC § 24.44 Approved at The June 27, 2019 Open Meeting, Rulemaking to Amend 24.44 Rate-Case Expenses Pursuant to Tex. Water Code §13.187 & §13.1871, Project No. 48526, slip op. at 8 (Tex. Pub. Util. Comm'n June 27, 2019), https://interchange.puc.texas.gov/Documents/48937_15_1023704.PDF.

> to the revenue that would have been generated by the rate contained in the written settlement offer.[420]

Texas's PUC and RRC both employ a surcharge mechanism for rate case expense recovery.[421] Neither agency allows for inclusion of unamortized rate case expense in rate base.[422] RRC regulations also cover the allocation of rate case expense among affected ratepayers, allowing the burden to be borne more heavily in the municipalities that challenged the increase.[423] The PUC has previously applied a standard that expenses from prior rate cases could not be recovered in the present one absent prior authorization; however, the Texas Court of Appeals overturned this decision, finding the PUC had applied a new standard to the utility and failed to justify its position.[424] It is unclear what position either the RRC or PUC take on this issue following that decision. As a practical matter, however, both the RRC and PUC handle rate case expense issues in severed dockets.[425] Neither the RRC nor the PUC appear to set the target recovery period for these

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420. *Id*. at 7.

421. *See, e.g.*, Natgas, Inc., Docket No. 10899, 2020 Railroad Commn Tex. LEXIS 49, at *9 (Apr. 21, 2020).

422. Oncor Elec. Delivery Co., Docket No. 53601, 2023 Tex. PUC LEXIS 3573, at *58 (June 30, 2023); Reliant Energy., Docket No. 22355, 2001 Tex. PUC LEXIS 112, at *227 (Oct. 4, 2001) ("[utility] should not earn a return on the outstanding balance of its rate case expenses."); Arkansas Nat. Gas Co., Docket No. 9620, 2006 Railroad Commn Tex. LEXIS 823, at *13 (Feb. 9, 2006) ("Normally, no amount related to rate case expenses is included in rate base. Rate case expenses are typically recovered only through a surcharge, which is no longer charged once rate case expenses have been recovered.") (hearing officer's order that was not appealed); *but see* Severed Rate Case Expenses from Docket No. 9762, Docket No. 9787, 2009 Railroad Commn Tex. LEXIS 588, at *60 (Sep. 16, 2009); Rate Case Expenses Severed from Gas Utils. Docket No. 10083, Docket No. 10102, 2012 Railroad Commn Tex. LEXIS 676, at *42 (May 31, 2012) (allowing utility to "apply an interest carrying charge on the un-recovered monthly rate case expense balance at a rate of .12%, which is the 2012 [PUC] interest rate for customer deposits."). *See also* Rulemaking to Amend § 24.44 Rate-Case Expenses Pursuant to Tex. Water Code § 13.187 and § 13.1871, 2019 Tex. PUC LEXIS 2618, at *7 (Oct. 14, 2019) (discussing argument by utilities that the carrying costs associated with rate case expenses are sufficient incentive to discipline spending).

423. 16 TEX. ADMIN. CODE § 7.5530(e) (2002) ("The utility's required regulatory expenses shall be allocated uniformly to all customers affected by the proposed rate change. The utility's litigation expenses and estimated expenses, to the extent there are any, shall be allocated to affected customers in the municipalities or coalitions of municipalities participating in the appellate proceeding and affected customers subject to the original jurisdiction of the Commission."); *see also* 16 TEX. ADMIN. CODE § 7.5530(d)(1)-(3) (2002) (defining "required regulatory expenses," "litigation expenses," and "estimated expenses"). *See* Rate Case Expenses Severed from Gas Utils. Docket Nos. 9791, Docket No. 9811, 2010 Railroad Commn Tex. LEXIS 595, at *28 (June 1, 2010) ("There is also an equity issue of whether or not it is sound policy to reduce the cost of litigation to the party litigant by allocating a portion of costs to non-litigants. We recommend that the Commission not allocate rate case expenses incurred in GUD Nos. 9791 and 9811 to customers located within the GCCC cities that did not participate in GUD No. 9791."), *final order* Rate Case Expenses Severed from Gas Utils. Docket No. 10038, 10047, 10052, 10058, 10070 and 10071, Docket No. 10051, 2012 Railroad Commn Tex. LEXIS 664, at *25 (May 2012).

424. Oncor Elec. Delivery Co. LLC v. Public Util. Comm'n of Tex., 406 S.W.3d 253, 269 (Tex. Ct. App. 2013).

425. Windermere Oaks Water Supply Corp., Docket No. 50788, 2024 Tex. PUC LEXIS 827, at *24-25 (Mar. 28, 2024) ("Implementation of the rate-case expense surcharge will be overseen in Docket No. 56272, . . . the Commission severs all issues related to rate-case expenses incurred by [utility] in this appeal after January 31, 2023 into a new docket."); Texas Gas Serv. Co., Docket No. 10928, 2020 Railroad Commn Tex. LEXIS 72, at *3 (Aug. 4, 2020) (recounting reverence of rate case expense issue).

surcharges in line with the frequency of rate filings. Rather, the focus appears to be on ratepayer impact.[426]

UTAH

There does not appear to be any statutory, regulatory, or contested decisional authority governing the recoverability of rate case expenses by utilities in Utah. As a practical matter, it appears that some recent rates authorized by Utah's Public Service Commission do incorporate recovery of rate case expenses, although those applications were not resolved on the merits.[427]

VERMONT

Recent decisions by the Vermont Public Utilities Commission (formerly the Public Service Board) allow recovery of rate case expenses through normalization of a historic average level. There are no Vermont statutes or regulations that directly govern this item. In more recent decisions, the Vermont PUC has articulated that it "typically views rate case and regulatory expense as a recurring cost, and in calculating the appropriate level of costs to be included in rates for service, uses a rolling average of historic expense over three to five years, or a reasonable period of time."[428] Under this approach "rate case expenses are normalized and rates levelized over a longer period of time."[429] Of note, older decisions of the Vermont PUC and courts indicate the agency used to follow the approach of amortizing current rate case expenses.[430]

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426. Windermere Oaks Water Supply Corp., Docket No. 50788, 2024 Tex. PUC LEXIS 957, at *24 (Mar. 20, 2024) (ALJ "recommend Windermere be allowed to recover the amount through a surcharge to be assessed over a 42-month period. The Commission agrees with the [ALJ] on the amount of the surcharge but determines the surcharge should be assessed over 45 months to reduce the impact on [utility's] ratepayers."); Rate Case Expenses Severed from Gas Utils., 2012 Railroad Commn Tex. LEXIS 676, at *33.

427. *See* Community Water Co., Docket No. 17-098-01, 2018 Utah PUC LEXIS 27, at *2 (14, 2018) (adopting the rates contained in PSC staff's proposal that was not formally settled but agreed to at hearing as "sufficient to demonstrate that a change in rates is necessary"); Utah Dep't. of Com. Exhibit No. 2.0 DIR at 10-1, Community Water Co., Utah Pub. Serv. Comm'n Docket No. 17-098-01 (Feb. 13, 2018) (Redacted Direct Testimony of Gary Smith recommending a confidential level of rate case expenses be amortized over three years), https://pscdocs.utah.gov/water/17docs/1709801/300021RedacDirTestSmithDPU2-13-2018.pdf.

428. Citizens Commc'ns Co., Docket No. 6596, 2002 Vt. PUC LEXIS 275, at *156 (July 15, 2002); Citizens Utils. Co., Docket Nos. 5841 & 5859, 1997 Vt. PUC LEXIS 6, at *138 (June 16, 1997) ("Costs of regulatory proceedings are undoubtedly recurring, just as are costs of storm damage. Unprecedented levels of regulatory costs, like unprecedented costs from storm damage, are extraordinary yet recoverable (unless, of course, there is some other basis for [disallowance]). The extraordinary level of costs militates for recovery over a period of time, or for recovery of a running average, but not for disallowance.").

429. Shoreham Tel. Co., Docket No. 6914, 2004 Vt. PUC LEXIS 192, at *150 (Nov. 4, 2004) ("Otherwise, rates would fluctuate widely from year to year depending on the nature of individual proceedings before the Board.").

430. Henry G. Hastings v. Village of Stowe, Docket No. 3037, 1965 Vt. PUC LEXIS 4, at *15-16 (Jan. 28, 1965); Green Mountain Power Corp., Docket No. 3501, 1972 Vt. PUC LEXIS 2, at *15-16 (Apr. 12, 1972); Central Vt. Pub. Serv. Corp., Docket No. 5132, 1987 Vt. PUC LEXIS 16, at *59-65 (Jan. 2, 1987); Stowe Elec. Dep't, 134 Vt. 559, 563 (1976) ("Traditionally, rate case expenses have been recovered over a three-year period"); *In re* Burlington Elec. Light Dep't, 135 Vt. 114, 119 (1977) (affirming decision setting one year amortization period).

VIRGINIA

Virginia's energy regulator, the State Corporation Commission (SCC), permits utilities to recover a normalized historic average level of rate case expenses along with other regulatory expenses. There are no statutes or regulations directly addressing this issue. Unlike many other jurisdictions, however, the Virginia SCC has endorsed the idea that rate case expenses should not be treated as a regulatory asset because they are not "non-recurring, unusual or beyond the control of the company."[431] While many recent decisions have been resolved by stipulation,[432] when settling this issue on the merits the SCC has rejected requests for separate treatment.[433] The Virginia Supreme Court has upheld the SCC's discretion on this issue and held that the agency is "not required to impose upon the ratepayers whatever a utility might choose to spend for legal and accounting assistance in connection with a rate case."[434]

At times, the Virginia SCC appears to have looked to current rate case expenses in order to establish a reasonable level to be amortized over a period of years.[435] When engaged in this approach, the SCC has articulated that "a public utility's rate case expense must bear some reasonable relationship to the utility and to the utility's rate request" and that "ratepayers cannot be the guarantors of whatever [utilities] might choose to spend for rate case expense."[436]

WASHINGTON

The Washington Utilities and Transportation Commission (UTC) permits utilities to recover their reasonable and necessary rate case expenses amortized over several years. There does not appear to be any statutory or regulatory provisions governing this practice nor judicial precedent. The UTC, however, has articulated its policy that "rate case legal expenses are properly recoverable, and it is reasonable to amortize expenses from the present case" over a several-year

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431. Aqua Va., Inc., No. PUE-2014-00045, 2016 Va. PUC LEXIS 23, at *25 (Jan. 7, 2016); *see also id.* at *32 ("Staff Recommendations A-G hereby are adopted."); Virginia-American Water Co., No. PUE-2015-00097, 2017 Va. PUC LEXIS 334, at *15 (May 24, 2017) (allowing the utility to update the average data with more recent expenses).

432. *See, e.g.*, Aqua Va. Inc., 2016 Va. PUC LEXIS 23, at *26 ("the Company withdrew its request for regulatory asset treatment of rate case costs, . . . "); Virginia Nat. Gas, Inc., No. PUE-2016-00143, 2017 Va. PUC LEXIS 946, at *14 (Dec. 21, 2017).

433. Massanutten Pub. Serv. Corp., No. PUR-2017-00069, 2018 Va. PUC LEXIS 918, at *1 (Dec. 21, 2018) (this practice does "not preclude the Commission from reflecting a reasonable amount of normalized regulatory expense in the Company's annual revenue requirement for purpose of the instant proceeding. Based on the specific, unique circumstances attendant to the Company and the facts of this case, we find that it is reasonable to include a level of regulatory expense, normalized over five years, that reflects: (i) five years of regulatory costs (2013-2017); and (ii) the legal costs of the Potomac Riverkeeper Suit. This results in a normalized level of regulatory expense of $277,079, which we find reasonable for purposes of this specific rate proceeding.").

434. Lake of Woods Util. Co. v. State Corp. Comm'n, 286 S.E.2d 201, 206 (Va. 1982).

435. Virginia *ex. rel*. Desmond v. United Water Va., Inc., No. PUE970544, 1998 Va. PUC LEXIS 234, at *50 (Sep. 30, 1998) ("[I]t is the time and expense involved in preparing and presenting a rate case that determines what level of expenses is appropriate. . . ."); Virginia *ex rel*. Strock v. B&J Enters., L.C., No. PUE-2001-00716, 2003 Va. PUC LEXIS 265, at *14 (June 27, 2003).

436. Virginia *ex rel*. Strock v. B&J Enters., L.C., 2003 Va. PUC LEXIS 265, at *19-20 (citing Lake of the Woods Util. Co. v. State Corp. Comm'n, 286 S.E.2d 201, 206 (1982)).

period.[437] The UTC has rejected the argument that the costs themselves should be "shared" by reducing the recoverable amount by 50%.[438] The UTC still "may limit recovery of excessive legal or expert witness fees when the evidence establishes that certain expenses are unreasonable or unnecessary."[439] The UTC has articulated two disjunctive criteria for disallowance: first "[e]xpenses found to be 'exorbitant and imprudent'" should be entirely disallowed, and, second, expenses that are found to be "extraordinary and excessive, although not imprudent, may be disallowed in part."[440] The UTC has disallowed recovery of rate case expense where the utility has not met its burden to show them to be reasonable or necessary.[441]

The Washington UTC has explained that the amortization periods for recovering rate case expenses "vary depending on the time between rates cases, consideration of the magnitude of the cost claimed, and the effect of including such costs in rates."[442] With this approach the UTC does not necessarily aim for the amortization period to match the historic or expected rate case filing intervals.[443] Unlike several jurisdictions, however, it does permit utilities to recover unamortized expenses from prior rate cases.[444] However, it also conversely requires a utility to reduce its rates if the costs are amortized before its next rate case.[445]

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437. Washington Utils. & Transp. Comm'n v. Puget Sound Pilots, Order No. 08, 2023 Wash. UTC LEXIS 209, at *117 (Aug. 10, 2023); Washington Utils. & Transp. Comm'n v. Bremerton-Kitsap Airporter, Inc., Docket No. TC-001846, 2002 Wash. UTC LEXIS 276, at *20 (Aug. 2, 2002); Washington Utils. & Transp. Comm'n v. Continental Tel. Co. of Nw., Inc., 1977 Wash. UTC LEXIS 4, at *23 (May 6, 1977). *But see* Washington Utils. & Transp. Comm'n v. Puget Sound Energy, Inc., Order No. 08, 2012 Wash. UTC LEXIS 423, at *117 (May 7, 2012) (acknowledging prior rate case expense level established via settlement based on normalized level as reasonable).

438. Washington Utils. & Transp. Comm'n v. Puget Sound Energy, Inc., Docket No. UE-031471, 2005 Wash. UTC LEXIS 77, at *118-19 (Feb. 18, 2005).

439. Washington Utils. & Transp. Comm'n v. Puget Sound Pilots, Order No. 09, 2020 Wash. UTC LEXIS 627, at *141 (Nov. 25, 2020).

440. Washington Utils. & Transp. Comm'n v. Waste Control, Inc., Order No. 13, 2015 Wash. UTC LEXIS 672, at *49 n.79 (citing cases) (affirming numerous disallowances and adjustments).

441. Washington Utils. & Transp. Comm'n v. Puget Sound Pilots, 2023 WASH. UTC LEXIS 209 at *121 (utility "is not entitled to recover increasing legal costs without providing any justification or evidence supporting their reasonableness.").

442. Washington Utils. & Transp. Comm'n v. Waste Control, Inc., 2015 Wash. UTC LEXIS 672, at *58.

443. *Id*. at 58-59 (adopting the "longer" five-year amortization period proposed even when "it seem[ed] unlikely that [the utility] will file another general rate case within the next five years."); Washington Utils. & Transp. Comm'n v. Bremerton-Kitsap Airporter, Inc., 2002 Wash. UTC LEXIS 276 at *20.

444. Washington Utils. & Transp. Comm'n v. Puget Sound Pilots, 2023 Wash. UTC LEXIS 209, at *118-19.

445. Waste Control, Inc., Order No. 01, 2018 Wash. UTC LEXIS 223, at *3 (Sep. 27, 2018) ("We find that granting the Company an additional year to recover its prior unamortized rate case costs, which allows the Company to recover costs associated with the instant filing, is reasonable. To ensure rate case costs are not over recovered, we require the Company to file tariff revisions, effective November 1, 2021, to remove those costs from rates.").

WEST VIRGINIA

The Public Service Commission of West Virginia permits utilities to recover a normalized level of rate case expenses. There are no statutory or regulatory provisions governing this practice. However, the PSC's policy limiting recovery of actual rate case expenses has been affirmed by the state's Supreme Court.[446] The PSC's policy is "designed to provide a normalized level for the estimated future cost to litigate rate proceedings and not to capture past expenses."[447] Therefore, "actual rate case expenditures are not binding on [the PSC's] determination of recoverable expense," but rather "the level of rate case expense included for rate recovery should be a representative average or normalized amount of expected future rate case costs."[448]

WISCONSIN

The Wisconsin Public Service Commission does not provide clear guidance as to the recovery of rate case expenses. There is a statutory provision that prevents utilities from recovering "costs in a proceeding before the commission which exceed 4 times the total amount assessed to the utility" for the Commission's investigation expenses "unless the object of the expenditure has been ordered by the commission."[449] However, there does not appear to be any judicial or regulatory precedent applying this standard.[450] Moreover, even though the statute directs the PSC to implement rules for the utility to recover such costs, they do not appear to have been promulgated.[451] Some decisions of the Wisconsin

446. Jefferson Utils., Inc. v. PSC, 227 W. Va. 589 (2011). *See also* Wheeling v. Natural Gas Co., 115 W. Va. 149, 173 (1934) ("the commission, although not the manager of public utilities, has the power to scrutinize carefully extravagant expenditures in a rate case.").

447. Bluefield Gas Co., No. 12-0427-G-42T, 2013 W. Va. PUC LEXIS 215, at *41 (Jan. 30, 2013); *see also* Jefferson Utils., Inc., No. 10-0974-W-PC, 2011 W. Va. PUC LEXIS 340, at *22-23 (Feb. 18, 2011) ("our averaging mechanism is not based on allowing recovery of past rate case expenses that are so recent that the utility has not had an opportunity to fully recover them."), *aff'd*, Jefferson Utils., Inc. v. PSC, 227 W. Va. 589 (2011).

448. Megan Oil & Gas Co., No. 11-0532-G-42T, 2011 W. Va. PUC LEXIS 2571, at *24-25 (Oct. 27, 2011) (citing Jefferson Utils., Inc., No. 10-0974-W-PC et al., 2011 W. Va. PUC LEXIS 340 (Feb. 18, 2011); West Va.-Am. Water Co., No. 10-0920-W-42T, 2011 W. Va. PUC LEXIS 901 (Apr. 18, 2011); Monongahela Power Co., No. 06-0960-E-42T et al., 2007 W. Va. PUC LEXIS 1611 (May 22, 2007); Virginia-American Water Co., No. 08-0900-W-42T, 2009 W. VA. PUC LEXIS 614 (Mar. 25, 2009)). *See also id*. at *25 ("The Commission practice for determining a representative average or normalized amount for rate case expense is to use an average of costs over some period of time. This is a normalization approach and should not be confused as a deferral or an amortization approach which the Commission does not authorize.").

449. WIS. STAT. § 196.03(4) (2025).

450. Several decisions from the 1980s summarily conclude they do not violate this limit without analysis. *See* Wisconsin Fuel & Light Co., Docket No. 6640-GR-100, 1986 Wisc. PUC LEXIS 23, at *27-28 (Oct. 7, 1986); Wisconsin Nat. Gas Co., Docket No. 6670-GR-10, 1983 Wisc. PUC LEXIS 26, at *25 (Sep. 8, 1983); Wisconsin Fuel & Light Co., Docket No. 6640-GR-10, 1983 Wisc. PUC LEXIS 24, at *14 (Sep. 23, 1983); Wisconsin Nat. Gas Co., Docket No. 6670-GR-9, 1982 Wisc. PUC LEXIS 26, at *30 (Oct. 28, 1982); Wisconsin Nat. Gas Co., Docket No. 6670-GR-7, 1981 Wisc. PUC LEXIS 32, at *26 (Sep. 29, 1981).

451. WIS. STAT. § 196.03(4) (2025) ("The commission, by rule, shall establish procedures whereby a public utility may recover its expenditures under this subsection.").

PSC have endorsed an amortization of current rate case expenses.[452] However, some recent decisions have endorsed normalization based on a historic average.[453] And in the context of water utilities, the Wisconsin PSC has filing instructions for rate increases that specify "[r]ate case expenses are included in Regulatory Commission Expense and must be normalized over an appropriate time period."[454]

WYOMING

The Wyoming Public Service Commission permits utilities to recover their current rate case expenses amortized over a period several years. There is no statute or regulation directly governing this practice. However, the Wyoming PSC has allowed utilities to recover these costs through amortization.[455] The PSC appears to generally defer to the utilities' estimate of rate case expenses.[456] In one proceeding, however, the agency faulted the utility for providing insufficient data to support its request and cautioned that such costs would be recoverable only if the agency "can be certain of the particularity of the expense" and that recovery would be denied where it was "unable to determine accurately what the expense pertains to."[457] The PSC allows utilities to update their requested rate case expense level throughout the course of the proceeding.[458]

The Wyoming PSC amortizes recoverable rate case expenses and appears to set the amortization period to align with the expected interval until the next case.[459] On at least one occasion, the PSC has directed the utility to employ a "rider" surcharge mechanism.[460] It has also cautioned that "[i]f a utility recovers

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452. Madison Gas & Elec. Co., Docket No. 3270-UR-106, 1993 Wisc. PUC LEXIS 18, at *5-6 (June 24, 1993); General Tel. Co. of Wis., Docket No. 2-U-5149, 1960 Wisc. PUC LEXIS 12, at *13 (Aug. 16, 1960).

453. Northern States Power Co., Docket No. 4220-UR-121, 2015 Wisc. PUC LEXIS 537, at *45 (Dec. 23, 2015) (reducing recoverable Regulatory Commission Expense to "more consistent with 3-year average historic spending" and account for over-budgeting).

454. Wisconsin Pub. Serv. Comm'n, Application to Increase Water Rates at "Instructions" Tab, Cell D, Row 150, available for request at https://apps.psc.wi.gov/RATES/ratecase/water.aspx; *see also, e.g.*, Application of Biron Municipal Water Utility at "Instructions" Tab, Cell D, Row 150, Docket No. 510-WR-102 (Wisc. Pub. Serv. Comm'n filed Oct. 29, 2025), https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=566207 (completed form submitted by applicant).

455. *See, e.g.*, SourceGas Distrib. LLC, Docket No. 30022-148-GR-10, 2010 Wyo. PUC LEXIS 486, at *99-100 (Dec. 23, 2010); Vista W. Water Co., Docket No. 80007-29-WR-08, 2009 Wyo. PUC LEXIS 454, at *61 (Oct. 16, 2009).

456. SourceGas Distrib. LLC, 2010 Wyo. PUC LEXIS 486, at *98 ("Regarding the rate case expense, the Commission accepts the Company's revised estimate of $417,751 for this case"); Vista W. Water Co., 2009 Wyo. PUC LEXIS 454, at *61.

457. Pinedale Nat. Gas, Inc., Docket No. 30016-41-GR-06, 2008 Wyo. PUC LEXIS 381, at *114-15 (Oct. 2, 2008).

458. Vista W. Water Co., Docket No. 80007-42-WR-17, 2019 Wyo. PUC LEXIS 31, at *29 (Jan. 18, 2019) ("As to rate case expense, the estimated amount of $85,000 is reasonable given the expensive and time-consuming nature of this proceeding."); *see also* Pinedale Nat. Gas, Inc., 2008 Wyo. PUC LEXIS 381, at *113 (the Wyoming PSC "typically includes expenses incurred through hearing").

459. SourceGas Distrib. LLC, 2010 Wyo. PUC LEXIS 486, at *99-100 ("Three years seems a more likely period for any significant sea change in the economy to become manifest, or for any threats of costly pipeline regulation to be realized. Thus, three years is an appropriate period over which to amortize this expense.").

460. Nordic Ranches Water, LLC, Docket No. 80024-6-WR-18, 2019 Wyo. PUC LEXIS 672, at *27-28 (Dec. 12, 2019).

uncollected rate case expense from its last rate case in a new rate case, . . . any over-collected amount is subject to refund in the next rate case."[461]

461. Montana-Dakota Utils. Co., Docket No. 30013-351-GR-19, 2020 Wyo. PUC LEXIS 259, at *25 (Mar. 17, 2020).