



Recommendation 78-1

Reduction of Delay in Ratemaking Cases

(Adopted June 8-9, 1978)

The time regulatory agencies take to make decisions is widely criticized. Rate cases—that is, cases in which an agency must consider whether to approve a proposed schedule of charges for particular services—aptly illustrate the need to explore ways of making sound decisions more quickly. Because rate cases differ in kind and complexity, as well as in their immediate and future consequences, subjecting the decision process to unvarying time limits would be unwise. Nevertheless, steps that will reduce delays without jeopardizing the agencies' ability to bring relevant considerations to bear on the decision of each case are urgently needed.

Delay in the ratemaking process occurs chiefly at two points: (1) developing the underlying data, a task shared by the proposer of rates, the agency staff, and other participants in the proceedings, and (2) writing and issuing opinions to support the agency's decision when finally made.

The present recommendation urges utilizing rulemaking procedures to achieve a single resolution of issues that would otherwise arise in many separate cases. In this respect the recommendation builds upon the Conference's previous conclusion (Recommendation 73-6) that licensing agencies should adopt generic procedures to resolve "environmental issues common to more than one application and appropriate for across-the board treatment." If this were done in ratemaking matters, both of the main areas of delay noted above could be narrowed.

The present recommendation also reaffirms the Conference's earlier judgment (Recommendation 72-4) that "[s]ettlement of rate proceedings by agreement among the parties * * * is appropriate and desirable if the agency * * * is in a position to determine that the disposition is in the public interest." Implicit in the 1972 recommendation was the recognition, here explicitly stressed, that the interests of unrepresented groups must be considered before a settlement is approved. Increased emphasis upon settlement of cases should reduce the need for formal decisions and opinions.



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The recommendation calls on ratemaking agencies to collect data systematically rather than episodically as cases arise. Computer-based data collection and processing programs have the potential to improve both the speed and quality of rate determinations in some agencies. These techniques should be emulated whenever the mass or complexity of statistical material limits the prompt resolution of issues.

The purpose of this recommendation is to improve ratemaking proceedings for the benefit of those regulated as well as for the benefit of the users of regulated services, by adding to the efficiency of ratemaking agencies. It is not intended that adoption of this recommendation in any way expand the scope of regulation, have any adverse competitive impact, or add unduly to the costs of producing information.

Recommendation

A. Use of Rulemaking for Generic Issues

1. An agency charged with responsibility for setting or approving rates should identify policy issues that may arise repetitively and that may be appropriate for a generalized determination instead of individualized judgment. Examples might be deciding the proper treatment of tax credits, the proper use of automatic adjustment clauses, the cost of equity capital, the desirability of differential rates for residential and business customers, and the propriety of "lifeline" rates for poor or low volume users. Ratemaking agencies should, as to issues of that type, commence proceedings that will eventuate in rules adopted and published in accord with the requirements of the Administrative Procedure Act. The determinations reflected in the published rules should be binding in subsequent individual cases, but the agency should by rule provide that parties may seek different treatment upon a compelling showing that application of the general rule is not appropriate.

2. A ratemaking agency must of course reexamine its generic determinations when pertinent technological or economic circumstances change or when freshly available information indicates the need for further thought. Reexamination should ordinarily take place in another rulemaking proceeding. Where, however, the agency acts to reexamine in whole or in part a rule embodying a generic conclusion, individual rate proceedings that involve an issue then under restudy should ordinarily go forward to a decision without awaiting the conclusion of the new rulemaking proceeding; the parties should be permitted to litigate the issue in the



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individual case unless completion of the rulemaking proceeding is imminent and decision of the individual case would therefore need to be only briefly postponed.

B. Systematic Collection of Data

1. An agency charged with responsibility for setting or approving rates should design means of accumulating on a continuing, periodic basis the kind of data that must now be submitted in support of rate change requests. These include, for example, general cost information, capital needs projections, data on actual receipts and estimates of growth of demand. The information should be obtained through restructuring of existing reporting formats in order to avoid increasing the regulated firm's paperwork burden. Agencies should assure that the information sought is likely to be of direct and focused relevance to forthcoming rate proceedings, and that the agency expects to make prompt use of the data. Accumulated information should be accessible to the public, to the extent permitted by law.

2. To assure efficient use of the information received the agencies must employ more sophisticated data processing techniques than are now in general use. The models adopted by the Commerce Department's Experimental Technology Incentives Program ("Regulatory Analysis Model") and the Federal Energy Regulatory Commission ("Regulatory Information System") constitute helpful examples.

C. Settlement of Rate Cases

Agencies charged with ratemaking responsibility should encourage the parties to controverted rate cases to settle them by agreement. Negotiated settlements must, however, take account of public interests other than those of the immediate disputants. Procedures to assure this may vary with circumstances and the agency. Authority to approve or disapprove settlements must be retained as a safeguard against unwise or improper settlements.

Citations:

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