

Rate Cases

1. What is a rate case?

One of the key functions of the Michigan Public Service Commission (Commission) is to set rates charged by regulated electric and natural gas utility companies such as DTE Energy, SEMCO, and Consumers Energy, among others. This is done through a “rate case,” which is a **legal proceeding conducted by the Commission to determine the amounts to charge customers through rates**, based on a utility’s costs to serve its customers. To initiate a rate case, a regulated utility files an application with the Commission seeking authority to change its rates, based on an alleged deficiency in the revenues needed to adequately compensate the utility for costs it reasonably and prudently incurs to serve its customers. The rate case also determines how different classes of customers (e.g. residential, commercial and industrial) would be affected by the potential rate change.

2. Do utilities have to file a rate case to increase base rates charged to customers?

Yes. Pursuant to MCL [460.6a\(1\)](#), an electric, gas, or steam utility must receive **approval from the Commission** to increase its rates and charges.

3. What's included in a rate case application?

In general, a utility must provide the rationale for its request to change rates charged to customers. This must be supported by **factual evidence** provided through **expert witness testimony and exhibits**. Utilities are also expected to adhere to rate case filing requirements set by the Commission to ensure utilities provide certain accounting, financial, and technical information to facilitate review by the Commission and parties to the case. The Commission can reject an application if it is found to be incomplete and not conforming to the filing requirements. The Commission approved updated rate case filing requirements applicable to rate regulated on July 31, 2017 in Case No. [U-18238](#).

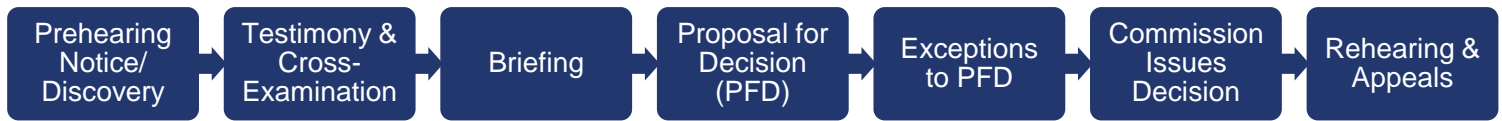
4. What standards does the Commission use to review rate case applications?

The Commission is required by law to set rates that are **just and reasonable** and has flexibility in the methods it uses to exercise this function. Based on longstanding legal precedent, the Commission is required to **balance the interests** of the utility and ratepayers, taking into consideration the revenue utilities need to cover the reasonable and prudent costs incurred to provide utility service, including a reasonable return for investors, and sets rates that are intended to recover these costs. The utility has **the burden to prove** that the amounts it is seeking to recover in rates are **needed, reasonable, and prudent**. If the utility fails to meet this burden of proof on any item in a rate case, such as costs related to tree trimming, employee pensions, or a new capital investment, the Commission excludes those amounts from being recovered in rates. Such adjustments or “disallowances” are fairly common.

5. Who is allowed to participate in a rate case?

Parties who may be affected by the utility’s proposed rate change are allowed to file a **petition to intervene**. An administrative law judge (ALJ) determines if the petitioning intervenor meets the legal requirements to participate in the case. Typical intervenors include individuals, businesses, organizations, and government agencies representing a **wide spectrum of interests**, such as environmental considerations, residential, commercial, or industrial ratepayers, or consumer advocates. Intervenors are represented by attorneys and typically file expert witness testimony or present other evidence to be considered by the Commission.

6. What is the process for a rate case?



A rate case is conducted as a **contested case hearing** under the Michigan Administrative Procedures Act, and notice is required to be given to the public of a proposed rate increase. The practice and procedures during rate case hearings are governed by [Part 4](#) of the Michigan Administrative Hearing rules. Similar to how a judge functions in court, the ALJ is an attorney that presides over rate case proceedings – setting the schedule in a case, hearing motions from parties to the case, and overseeing cross-examination of witnesses. Intervenors in the case are able to submit testimony and exhibits, cross examine witnesses, and file legal briefs on issues in the case. The ALJ reviews the evidentiary record and makes findings in the form of a proposal for decision, or PFD.

7. What is the Commission's role in a rate case?

The Commission is made up of three commissioners appointed by the Governor with the advice and consent of the Michigan Senate. The Commissioners review the PFD, evidence submitted on the record (e.g., testimony, exhibits), and additional arguments by the parties regarding their response to the PFD known as “exceptions,” and ultimately **decide whether to approve, modify, or reject the utility’s request for a rate change**. The Commission can accept, modify, or deny each of the recommendations in the PFD based on its review of the case. The Commission’s decision comes in the form of a legally binding document known as an order.

8. What is the Commission staff’s role in a rate case?

The Commission has **professional staff** that are **technical experts** with specialized training in auditing, financial analysis, engineering and other fields. Like intervenors, the Commission staff serves as a party in rate case proceedings, analyzes the testimony and exhibits put forth by the utility and intervenors, and makes recommendations to the Commission through testimony and other evidence. Oftentimes, the staff and other intervenors recommend reductions to the utility’s rate case request on the basis that costs were not reasonable or not adequately supported by the utility. **The Commission staff’s role is to provide recommendations and analysis that the Staff believes, in its professional judgment, serve the public interest.**

9. Is there a statutory deadline for rate case completion?

Yes, the Commission must make a final decision in a rate case within **ten months** of the original filing date of the application.

10. How often can a regulated utility file a rate case?

A utility can file a rate case no more than **once every 12 months**. In order to help with case management, the Commission has discretion to prohibit large electric utilities from filing rate cases within 21 days of each other.

11. What is rate base and what is included in it? How is “rate base” different from “base rates”?

A utility’s **“rate base” is the book value of all its assets** (property, equipment, etc.) that are considered **used and useful**. The “book value” represents the utility’s cost for capital investments less depreciation. **“Base rates”** is the technical term for the rates set by the Commission in rate cases. Base rates include the utilities’ **return of and on** the rate base, as well as operations and maintenance expense.

In addition to the charges for base rates, utility bills include fuel and purchased power expenses. These charges are known as power supply cost recovery (for electricity) and gas cost recovery (for natural gas) factors. The Commission reviews these expenses to ensure they are reasonable, and only actual, verified costs are ultimately charged to customers. No profit or return on investment is recovered by the utility for such expenses. [Act 304](#) of 1982 put in place separate processes before the Commission to review and approve these expenses on an annual basis, and these expenses are typically not reviewed in a rate case.

12. What is a test year?

A “test year” is a period of 12 consecutive months used to establish representative levels of revenues, sales, expenses, rate base, and cost of capital in the rate-setting process. A utility may use a historical test year, based on actual revenue and expenses adjusted for known and measurable changes, or a projected test year, in which the utility forecasts its expected revenue and expenses. The costs and revenues for a test year are used by the utility for its proposed revenue requirement request in a rate case application.

13. Can utilities self-implement a rate increase?

Under Public Act 286 of 2008, regulated utilities were given the ability to self-implement a rate increase in an amount up to their full rate request within 180 days of filing an application for a rate increase. Public Act 341 of 2016 removed this provision from the law, and **self-implementation of rate increases is no longer allowed**.

14. Does the Commission ever reject a rate increase request?

In the five-year period from 2013-2017, Michigan utilities requested total rate increases of \$1.53 billion. The Commission approved increases of \$857 million, or approximately **56% of the requested amount**. This includes amounts approved through uncontested settlements agreed to by the parties in a case. While it is uncommon for the Commission to reject a rate case application outright, there have been instances in which a utility has withdrawn its rate case request prior to a final decision by the Commission (e.g., the utility no longer believes it can justify the proposed rate increase due to changing conditions in revenues or costs).

15. Can I participate in a rate case without intervening?

Persons or groups who wish to provide input in a rate case without being formal intervenors may do so by **submitting comments** to the MPSC or making **statements at public meetings**. Such participation does not require the assistance of legal counsel, but is generally limited to making position statements on the issues. Although statements become part of the record that the Commission reviews in making its decision, those who make statements do not ordinarily have the right to submit evidence, cross-examine witnesses, or appeal MPSC decisions in court.

16. What recourse does an intervenor have if they do not agree with the Commission decision?

After the Commission issues a final order on a utility’s rate case application, all intervening parties have the **right to request a rehearing** from the Commission. This is a request to have the Commission reconsider either parts or all of its final order. This must occur no later than **30 days after the final order was issued**. Intervening parties also have the **right to appeal** the decision to the Michigan Court of Appeals. This also must occur no later than **30 days after the final order was issued**.

For more information, visit:

www.michigan.gov/mpsc

[Rate Case Filing Requirements](#) – Case No. [U-18238](#)

March 29, 2018

DISCLAIMER: This document was prepared to aid the public’s understanding of certain matters before the Commission and is not intended to modify, supplement, or be a substitute for the Commission’s orders. The Commission’s orders are the official action of the Commission.