

**A CONSUMER'S GUIDE TO INTERVENING IN
STATE PUBLIC UTILITY PROCEEDINGS**

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INTRODUCTION

A. Overview.

The well-being of low-income households can be profoundly affected by the decisions that their Public Utility Commission (PUC) makes regarding rate hikes requests, billing and termination regulations, utility-funded energy efficiency and payment assistance programs and how utilities are structured. Commissions can set rates higher or lower, within a band of reasonableness; order companies to implement low-income payment assistance programs; prohibit terminations to low-income households during the winter or during extreme temperatures; and require companies to invest in cost-effective energy efficiency programs. Yet, in some states, these proceedings rarely include effective, direct participation of low-income ratepayers or the community-based organizations that deliver fuel assistance and weatherization services to low-income households.

Clearly, participation before PUCs requires time and financial resources, and a working knowledge of the legal rules and political dynamics that drive PUC decision-making. However, the potential benefits of involvement before the PUC cannot be overstated. Through effective participation, advocates can win enhanced energy and economic security for low-income households through more affordable utility service, more efficient energy usage, and regulatory protections against harsh service termination or credit and collection policies. Considering the range of services regulated by the PUC (electricity, natural gas, local phone service and in some cases water) low-income advocates need to be familiar with commission proceedings to identify when and how they should become involved.

Community-based organizations that deliver the Low Income Home Energy Assistance Program (LIHEAP) and Weatherization Assistance Program (WAP) are especially well-situated to credibly advocate for state level utility programs and policies that benefit low-income ratepayers. These organizations understand the energy and utility needs of the poor, as well as the practical aspects of program design and delivery. They employ staff who work directly with low-income people, year in and year out, and who can be convincing speakers at public hearings. They have the ability to mobilize large numbers of low-income consumers to support policies that help the poor.

The purpose of this manual is to enhance the abilities of these organizations, their members, clients and others to effectively advocate before regulators for reliable and affordable utility service for low-income customers. It is intended to serve as a practical guide for how to get involved in those utility proceedings with a focus on issues of particular importance to low-income ratepayers. These issues include the following:

- **adoption of affordable rate structures**
- **implementation of payment assistance and arrearage management programs**
- **implementation of energy efficiency programs and services, and**

- **adoption of effective regulatory consumer protections regarding termination, restoration of service, late payment fees, security deposits, and establishment of workable payment plans for low-income customers experiencing payment troubles.**

These issues are of vital importance to low-income households. Access to affordable utility service is a necessity of life. Without electricity and gas, families cannot cook their meals, or warm or cool their homes, and health and safety may be threatened. Households at or below the federally-determined poverty level must often spend over 20% of annual income for residential energy, whereas households at the median income level spend about 3%. Each year, over 1 million low-income households suffer loss of heat because of inability to pay utility or fuel bills or for a needed heating system repair. For the low-income elderly, high energy costs coupled with particular susceptibility to weather-related illnesses can create a life-threatening challenge, especially during periods of extreme heat or cold. Consumers also face health and safety risks if they lose their telephone or water service. These are all basic, vital necessities in the modern world.

Despite the importance of these issues and the disproportionate financial burden that falls on the poor to retain access to basic utility service, proceedings regarding the rates, rules and regulations that govern the delivery of service are usually dominated by utility companies, their lawyers and consultants. While Attorneys General or state Ratepayer Advocates¹ are charged with representing the public in these proceedings, these entities often must pay attention to the broad needs of all classes of ratepayers rather than the particular interests of low-income utility customers. (To choose one notable example, Ratepayer Advocates often do not support and sometimes actively oppose low-income discount rates or energy efficiency programs, arguing that these programs can raise rates for customers who are not low-income). Absent direct participation of low-income individuals and advocates, PUCs make important decisions without having heard the unique needs of the poor.

Many low-income advocates and direct service agencies view PUC proceeding as important, but they may also view them as forums where complex rules and a firmly established core of “insiders” prohibit their participation. As this manual describes, participation requires time and other resources. However, it is possible to participate on a number of different levels and achieve outcomes that can profoundly benefit low-income households for years to come. Viewed from another perspective, when PUCs make decisions without hearing from low-income consumers or their advocates, those decisions will almost certainly increase the hardship these households face.

This Manual contains additional information on the nature of utility regulation and the changing structure of the utility industry. In addition, the reader will find in-depth discussion of what you need to participate in PUC proceedings, the people involved in the proceedings, the PUC process and types of proceedings that are conducted, and

¹ There is further discussion of ratepayer advocates in I.B. The National Association of State Utility Consumer Advocates has a website that provides a directory of state ratepayer advocates. See www.nasuca.org.

how advocates can work outside of a proceeding to obtain desired results. There are also appendices that provide state PUC contact information, and samples of petitions to intervene and information requests.

B. Nature of Utility Regulation

Each state and the District of Columbia has a regulatory utility commission. These commissions go by various names in different states (see sidebox). For the purposes of this manual, we will refer to the state commissions that have regulatory authority over electric and natural gas and other utilities as “Public Utilities Commissions,” “Commissions” or “PUCs.” Each state has a PUC, in most cases consisting of commissioners who are appointed by the state’s governor. However, as indicated in Appendix D, several states elect their commissioners. While each state’s commission structure and operation is governed by each state’s laws and is therefore somewhat unique, there is relative uniformity in many PUC processes, as this manual explains. Each PUC has a set of commissioners at the top, who oversee technical and legal staff; each operates according to rules governing practice and decision-making; and each conducts proceedings where information is presented and decisions are rendered following fairly similar procedures.

**Some Common Names
for Utility
Commissions:**

- Public Utility Commission
- Public Service Commission
- Corporation Commission
- Regulatory Commission
- Commerce Commission

See App. D for more information on your

As the utility industry was developing around the turn of the 20th century, most regulators and elected officials discerned efficiencies from the monopoly delivery of utility service. It was widely agreed that having one company operating a set of gas or electric lines and related facilities in any geographic area would result in lower prices than if several companies tried to build duplicate, competing systems. At the same time, many policymakers saw a great need to protect the public against the risks of that monopolies pose: higher prices and lower service quality. Starting around 1910, states created PUCs for the purpose of protecting the public from the abuses of monopoly while providing utility companies with a fair return on their investments.

Specific PUC decisions are often based on the “standards of review” (decisional rules) and precedents unique to each state. More broadly, however, Commissions make decisions within a broad set of rules set by legislators that are fairly similar state to state. Legislators set PUC operating budgets, determine the structure of the commission, and sometimes set funding levels for programs to provide low-income energy efficiency and bill payment assistance. Thus, there is always a legislative role in PUC decision-making and regulation. As discussed later in this manual, consumers who wish to intervene in utility proceedings should also pay close heed to the potential impact and influence of state legislatures on utility issues that affect low-income households.

There is also the overlay of federal agencies, laws and regulations that may come into play when dealing with some utility issues. However, the focus on this manual is on

how to intervene in a state commission proceeding, where most of the low-income consumer utility services and protections are regulated.

C. Changing Structure of the Utility Industry.

The structure of the electric and natural gas utility industries are today fundamentally different than they were ten years ago. Deregulation or “restructuring” of these industries has placed new emphasis on the theory that market forces and competition can more efficiently and effectively provide low prices and consumer benefit than traditional regulation of monopoly production and delivery of energy services. However, experience with utility restructuring to date has been that of increasing price volatility and general price increases. Utility restructuring puts consumers at risk because regulators simply assume that competition will inherently protect the interests of consumers. Nothing could be further from the truth, especially when it comes to the interests of low-income consumers. Indeed, for utilities focused on the bottom line, programs and policies that have protected low-income consumers have ended up on the chopping block (e.g., loss of local customer service centers, reduced willingness to work out payment plans, pressure to remove the prohibitions on unregulated utilities ability to disconnect service). The implementation of “competition” has also elevated the need for low-income advocates to be vigilant about redlining.

Low-income customers have not been well-insulated from the adverse impacts of restructuring, despite efforts in many states to adopt new affordability programs and demand greater investment in low-income energy efficiency. The structure of the industry has undergone irreversible change, but the programs and policies needed to adequately protect low-income ratepayers have lagged behind. The need for increased advocacy before PUCs to protect low-income households has never been greater.

I. WHAT YOU NEED TO PARTICIPATE IN UTILITY PROCEEDINGS

A. Framework for Decisionmaking: Determining when to Participate

Each year, hundreds of matters come before PUCs. Among these, how can advocates facing very real time and financial constraints determine when best to get involved? While there is no clearcut answer to this question, and an organization’s particular goals and circumstances will ultimately dictate whether resources should be devoted to PUC proceedings, the purpose of this section is to provide a set of evaluative criteria to aid in decisionmaking regarding when to get involved, and, in some cases, how to maximize effectiveness once the determination to get involved has been made. Section B., below, deals with the types of resources that are necessary to participate effectively. The evaluative criteria discussed here pertain primarily to the types of benefits that may be gained through successful participation, and the likelihood that a successful outcome may be achieved. They are intended to help advocates decide when to get involved, and

- **Potential for Benefits to Low-income Clients**

Perhaps the primary question to ask in determining when to get involved for the PUC is, “What is at stake for low-income household’s?” Does the proceeding in question offer the potential for more affordable rates, more efficient use of energy resources, or meaningful regulatory consumer protection? What is the magnitude of the benefits that may be gained through successful participation in this proceeding? In order to determine the potential for low-income customer benefits, advocates must become familiar with the types of proceedings that come before public utility commissions (See Section II, below.). Utility rate cases, fuel charge or cost of fuel proceedings are examples of cases that have direct bearing on the cost of utility service. Rate cases are also forums where advocates may raise issues regarding payment assistance and energy efficiency programs.

From a more defensive perspective, there are times when advocates may need to determine the potential for a proceeding to result in the loss of previous payment assistance for energy efficiency gains, or a deterioration of consumer protections. Participation in PUC proceedings is often necessary to preserve previous gains.

- **Likelihood of Success**

Advocates operating with limited resources must make realistic assessments regarding whether their participation in PUC proceeding will result in the achievement of organizational goals. Such an assessment must entail taking stock of available financial, time, and human resources, as well as the political context in which a proceeding will take place.

- **Organization-Building Capacity**

Advocates should assess the extent to which participation in a PUC proceeding will achieve organizational goals such as expansion of membership base, building advocacy capacity within the organization, enhancing organizational visibility, or building ties with existing or prospective allies.

- **Precedential Value**

There are times when a limited victory in a PUC proceeding with a very narrow scope may serve to set a precedent in future proceedings where greater benefits are at stake. For example, winning a low income energy efficiency program in a proceeding pertaining to a single electric utility may ultimately result in similar programs being ordered for each of the regulated electric utility companies and a particular state.

- **Geographic Value**

Some PUC proceedings pertain to a single utility company that operates within a defined service territory. Other proceedings have bearing on policies and programs that are implemented across service territory lines and may therefore carry a potential for greater low-income benefits.

- **Longevity**

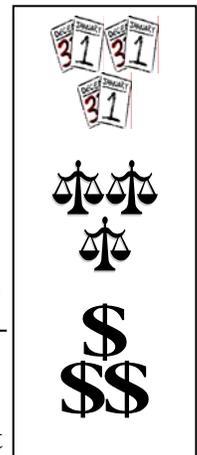
Finally, advocates may wish to assess the extent to which potential low-income benefits gained through a successful PUC intervention will last. For example, a one-time success in lowering a quarterly fuel charge may have less lasting value than obtaining a PUC determination regarding the ways in which a company procures wholesale electricity or natural gas and passes the costs for those resources on to consumers.

B. Examples of How Consumers Can Participate

<u>Symbol key</u>			
	Legal Resources		Time
			Money
			Experts
3 = substantial resources		2 = moderate resources	
1 = minimal resources			

There are a number of types of proceedings in which low-income consumers and advocates may want to participate in some capacity: as a full party (often called “an **intervenor**”); by speaking at public hearings; by filing written comments; or other means. This section will briefly provide examples of how consumers most often participate in utility proceedings and the resources needed to have an impact on the proceeding.²

Adjudicatory proceedings : Frequently, consumers want to intervene in rate hike cases, which are considered “**adjudicatory proceedings**.” This means that the commission formally “adjudicates” (decides) the case based upon the testimony of witnesses who are sworn under oath and who are subject to cross-examination by other parties, as well as upon written documents formally accepted as evidence in the case. Rate hike cases address a very broad range of issues: how much the company will collect in overall revenues; how the rate increase is “allocated” to (divided up among) the residential, commercial and industrial classes of customers; how much profit the company is allowed to make. Most commissions will allow consumers who become “intervenor” to raise a host of program and policy issues. For example, low-income intervenors can propose that a company offer a low-income discount; or change the way it operates an existing energy efficiency program; or conduct better outreach towards those who may be eligible for fuel assistance payments and discount rates.



Commissions conduct adjudicatory proceedings not only in rate hike cases, but in most cases involving mergers; approvals of new power plants; issuance of bonds; miscellaneous cases involving the cost of gas or fuel; new fees or charges for specific services; or a specific utility

² Section II discusses at greater length the types of proceedings that most utility commissions use to collect information and decide cases or issues.

company's safety and maintenance operations. The resources needed to intervene in adjudicatory proceedings are discussed in section B.

Rulemaking proceedings: Commissions also reach many of their important decisions in “**rulemaking**” proceedings.” Rulemaking proceedings generally address rules, policies, practices, or procedures that apply to an entire regulated industry (e.g., the gas, electric or local telephone industries). For example, most commissions adopted their rules governing the initiation of new service, deposits, payment plans and terminations in rulemaking proceedings. Commissions also may adopt accounting or rules that apply to a class of companies in a rulemaking proceeding. Many states have restructured their electric and gas industries.³ Commissions in those states have adopted new rules governing a range of restructuring issues in rulemaking proceedings. These proceedings usually require less resources than intervening in rate cases. (Rulemaking proceedings are discussed more fully in section II).



Informal proceedings: Commissions also take all kinds of actions outside of formal adjudicatory or rulemaking proceedings. For example, a competitive electric supplier might write a letter to the commission seeking approval to change the practices used to switch customers from the local distribution company to a competitive supplier. The commission might then provide an answer without conducting any formal proceeding. Or low-income consumers might request a meeting with the commission to discuss whether the commission's staff should require companies to offer longer payment plans to low-income customers, and the commission might agree to do so. These examples highlight the importance of keeping track of what types of decisions the commission is making through highly informal practices, as well as the importance of making sure you are one of the parties or groups whose views are being heard as the commission informally establishes new policies.



B. Formally participating as an intervenor

The adjudicatory proceedings are the most resource intensive form of commission participation, so this section spells out what it takes to “intervene”. In order to intervene effectively in an adjudicatory proceeding, intervenors need:

- **Time**
- **Money**
- **Legal resources**
- **Expertise**

Time:

³ According to the Energy and Information Administration, “Status of State Electric Industry Restructuring Activity – as of February 2003,” states that restructured are Arizona, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Virginia and the District of Columbia. States that have delayed restructuring are Arkansas, Montana, Nevada, New Mexico and Oklahoma. California has partially reversed its electric restructuring.

Adjudicatory hearings can consume huge amounts of time. The cases often take several months, sometimes more than a year, from start to finish. This does not mean that consumers will be spending a lot of time on a case or proceeding each and every week from beginning to end. In fact, there may be stretches of time when consumers simply wait for the next step in the process: the commencement of hearings, or the release of some interim decision. But consumer intervenors must be prepared to monitor and stay involved in a case that, in some instances, will go on for years.

The actual number of hours intervenors will need to commit to a case will vary, depending on the nature of the case (e.g., a full-blown rate case versus an investigation of a company's energy efficiency programs, discount rates, or construction plans), but it is unusual to spend less than 50 hours on any one adjudicatory proceeding (although less rare in rulemaking proceedings), and not rare to spend 100 to 200 hours on an adjudicatory proceeding. Again, this time will usually be spread over several months. However, there are certain portions of a case where consumer intervenors may need to spend 20 or more hours per work in order to accomplish their goals.

At the outset of a case, intervenors need to spend time reviewing the company's filing; gathering information to support their own case; lining up resources (legal assistance, expert witnesses, etc.) and developing a strategy. In most cases, there will then be a "discovery" phase that can be very time-consuming: writing questions about the company's case and reviewing the answers the company provides. The amount of time needed to participate in hearings will depend quite heavily on the number of witnesses and number of hearing days scheduled as well as on the range of issues of interest to the consumer intervenors. For example, it is possible that a commission will hold 10 or 20 days of hearings in a rate case, but that a consumer group will only attend a small handful of those hearings because the bulk of the hearing days involve issues of little interest. At the back end of the case, intervenors file "briefs" – written arguments that attempt to convince the commission to rule a particular way on each issue in the case. Writing a brief generally takes several days of work, sometimes a full week or more.

Money:

Utility companies tend to spend hundreds of thousands of dollars on their hearings before commissions, mostly on lawyers fees, expert witness fees, and production of documents. Consumers will rarely have significant money to devote to a utility proceeding, but it is important to plan in advance for any expenditures that will have to be incurred.

At a minimum, consumer intervenors will have to cover out-of-pocket copying and postage costs. These can range from quite minimal to hundreds of dollars and more. For example, if there are many parties in the case (in some cases, there are dozens of intervenors), simply serving each party with a copy of everything the consumer group files (the initial petition to intervene, "discovery,"⁴ written testimony and briefs) can quickly become expensive. Some commissions may require you to deliver some documents by messenger service or overnight delivery, further increasing out-of-pocket expenses.

⁴ "Discovery" refers to written requests sent to the company or other parties in the case seeking information you need to prepare your own case.

Consumer intervenors may also need to pay various people who help present their case. For example, consumers may decide to retain a lawyer to represent them.⁵ (See the discussion of “Legal resources” immediately below). Consumer intervenors may need the services of administrative staff to help with all of the copying, filing and organizing of documents and may want to hire one or more expert witnesses. (See the discussion of “Expertise” below). Any of these costs (legal, administrative, expert) can vary quite significantly, and it is not possible to provide even a broad range of estimates as to what a particular case might cost. However, if a consumer group plans to retain a lawyer or expert witnesses, the group should plan on spending several thousand dollars in almost any type of proceeding (unless those services can be obtained free or at greatly reduced rates, as discussed in “Legal resources” and “Expertise,” below).

Consumer intervenors should always explore ways of getting the resources needed without spending money, or at least limiting those costs. Many states have an “Office of Consumer Counsel,” “Consumer Advocate,” “Ratepayer Advocate” (or other similar name) that intervenes in most utility proceedings. (In some states, the Office of the Attorney General fulfills this role). A consumer group may be able to convince the Consumer Counsel to pursue its issues, maybe even to sponsor an expert witness who will address its concerns. For example, a consumer group may be aware that a particular company is engaging in unfair or overly aggressive collection tactics, or that a telephone company is targeting certain high-pressure and deceptive sales practices towards minority communities. By meeting with the Consumer Counsel and sharing this information, the consumer group may find that it has an ally, one who already has lawyers on staff and a budget to sponsor expert witnesses. If this option is not available, a consumer group can still consider working with other consumer groups or intervenors who have a similar interest and who may be able to share in the costs of the intervention.⁶

Many of the consumers or consumer groups that participate in utility cases do so without spending much money. By collaborating with other parties, picking issues carefully, and limiting their involvement only to the most essential portions of a case, many consumer groups have had a very useful impact in hearings involving a range of issues. The lack of money should not hold consumers back from intervening in a utility case that will have a significant impact on them.

⁵ In every state, an individual will be allowed to represent himself or herself in a utility proceeding. However, in some states an organization that appears in a utility case, even a non-profit organization or consumer group, must be represented by an attorney because the commission has determined that non-lawyers are not allowed to represent the interests of groups or organizations. You can check with the legal staff of the commission to find out the commission’s policies on who may “**appear**” (represent another party) in cases.

⁶ It is very rare for a party to be able to recover the costs of either its attorneys or expert witnesses in a utility proceeding. One state commission, the California Public Utilities Commission (“CPUC”), has extensive rules that allow for certain categories of intervenors, including non-profit consumer groups, to recover their costs. The commission frequently awards attorneys fees and costs to parties that substantially contribute to a final decision. Consumers participating in a California proceeding should carefully review the applicable rules and file a Notice of Intent to Seek Intervenor Compensation. Go to www.cpuc.ca.gov, then click “Laws, Rules, Procedures,” then “Rules of Practice and Procedures” to locate the CPUC’s rules.

Legal resources:

Before deciding to intervene in a case, it is important for consumer intervenors to decide whether they will get a lawyer to represent them. The obvious drawback is that lawyers are expensive. Therefore, consumers should start by thinking about ways that to get a lawyer's help without paying expensive legal fees. As mentioned in the discussion of "Money," above, consumer groups should find out whether there is an Office of Consumer Counsel (or similar entity) in their state, and whether the Consumer Counsel is willing to raise issues of concern to the consumer group. (However, the Consumer Counsel will not literally represent the group and will not be bound by any suggestions the group may make). Consumer intervenors can also review prior cases the commission has heard to see if there are other parties who have similar interests. It is quite common in utility cases for consumer groups to band together, given the overwhelming resources that a company can bring to bear in any proceeding. Many states have groups that have intervened a number of times in utility cases. By joining forces, a consumer group that is new to the process will be able to draw on the experience of people who are familiar with the commission's rules and who have already learned the ropes of intervening in a proceeding.

If a consumer group has enough money to hire a lawyer, the group should be cautious about who it hires. Try to find a lawyer who is familiar with the commission's rules of practice and who has represented consumers before— this will tend to save money and get the group more effective representation. If possible, speak to more than one lawyer to get different estimates about how much a case might cost, but don't expect a lawyer to guarantee you a set price. They almost always bill by the hour. Also ask the lawyer questions about how he or she would conduct the case. Ask questions about witnesses the lawyer thinks will be necessary; how long he or she expects the case to take (both elapsed time, from start to finish, and number of billable hours); and some notion of the chances of success on the issues the consumer group wants to raise.

Expertise:

Utility cases can raise some very technical and rarified issues. Even when a consumer intervenor is addressing less technical issues (for example, urging the commission to adopt low-income discount rates), there may still be a need to get expert advice or to have an expert witness testify. Just as with lawyers, consumer groups may be able to get expert help from the Office of Consumer Counsel or from some other party that has similar interests. For example, a consumer group might convince the Consumer Counsel that a particular company is running its low-income energy efficiency programs quite poorly, both wasting ratepayers' money and not meeting the needs of low-income customers. The Consumer Counsel might decide that this issue is important enough to put on a witness who will propose a better program design for the company's energy efficiency programs. Or, more likely, the Consumer Counsel may direct his or her staff to file extensive discovery requests about the operation of the energy efficiency program and then cross-examine the company's witnesses on this issue. Again, the Consumer Counsel will not literally be representing the consumer group, but the group may gain a great deal of useful information for its own case and for writing its brief.

Sometimes, consumer intervenors have sufficient resources to employ expert witnesses. As with employing a lawyer, consumer intervenors should be very careful about how you go about choosing an expert. Like lawyers, they can be very expensive. Unlike lawyers, they are not obliged to aggressively represent their client's interests. A good and honest expert will form his or her own views of the issues after reviewing the company's filing and at least some (if not most) of the discovery responses. It is entirely possible that the expert will say some things in his or her testimony that the consumer group does not entirely agree with! Therefore, it is very important to read prior testimony the witness has filed on similar issues, if possible, and crucial to speak to the expert at some length before deciding to use him or her as a witness.

There are some ways to get expert assistance either for free or very inexpensively. Sometimes, professors or other staff associated with universities or non-profit organizations are very interested in the same issues as the consumer group and interested in getting their views before the commission. There might be someone who is very knowledgeable about low-income rates, for example, and who would be willing to testify for free or at a greatly reduced price.

There are other witnesses or experts who may be available. Low-income consumers most often address issues around discount rates; low-income energy efficiency programs; terminations and payment plans; and customer service issues. In many states, consumer intervenors should be able to find people who work in the fuel assistance or weatherization programs or at community action programs (or similar agencies) who can provide very helpful testimony about the burdens low-income households face in paying their energy bills; about the benefits of low-income energy efficiency programs; or about company credit and collection practices. Most of these people, if they are willing to testify, will do so for free because they consider it part of their jobs. A number of medical and public health researchers and professionals have been studying the connection between high home energy expenditures and increased malnutrition and other health problems. This type of research can be helpful when advocating for discount rates and utility-sponsored low-income energy efficiency programs. Most of these professionals are willing to testify for free, if they have the time to do so.

Even if consumer intervenors do not plan to or have the ability to put on an expert witness, they may need some form of expert advice to help you analyze understand the company's filing.⁷ Just as with expert witnesses, consumer groups should consider ways to get expert advice without spending too much of their scarce resources. There are many people around who can help analyze and respond to a utility company's filing: the Office of Consumer Counsel or Attorney General; other intervenors who are interested in similar issues; national, regional or state groups that work on low-income energy issues;⁸ academics; legal services offices; and others. Inventing the wheel

⁷ The initial filing that a company makes in a general rate case usually fills up a ream box and includes very technical accounting and operational data. For those not experienced in reviewing a rate case filing, this can at first appear overwhelming. In fact, the issues that low-income consumers care most about are not that technical and usually require reviewing and understanding a small fraction of the company's case. Don't be deterred by the mere size of the company's filing!

⁸ See section IV, "Resources."

from scratch can be a slow and tedious process. Copying an existing wheel design is usually a lot easier.

II. THE WONDERFUL WORLD OF UTILITY PROCEEDINGS: THE PROCESS

A. Introduction

If you play football, it's always good to know which goal post is yours, or you might score a touchdown for the other side. And if you plan to intervene in a utility proceeding, it's just as important to get familiar with the decision-making process, from the initial filing through to the final decision, or you might miss opportunities to score your own points.

The 3-Step Game Plan

1. **Get Familiar with Key Players**
2. **Be Alert for Settlement Opportunities**
3. **Do Your Homework!**

Get familiar with the key players: One step that sometimes gets overlooked is learning something about the people involved. For example, find out how many commissioners there are; what their names are; and which ones are most likely to support your issues.⁹ You should consider trying to set up a meeting with one or more commissioners to discuss your issues and concerns, although preferably not while a particular case that addresses those issues is pending before the commission.¹⁰ Find out which staff are assigned to the case, and the roles that they play (e.g., assigned “hearing officer” or “administrative law judge;” rate analyst; consumer or complaint

division staff; etc.). The commission's rules may allow you to speak more freely with staff about the case, especially staff who are considered intervenors or who do not play any role in the final decision. You should also consider making yourself known to one or more people in the commission's docket or filing office, as these people can often save you time and help you avoid mistakes by explaining some of the procedural rules that are second nature to them: how many copies to file and who to serve; deadlines; etc.

Be alert for settlement opportunities: You also need to be alert to the possibility that two or more parties are engaged in settlement discussions. Just like most court cases settle before an actual trial, many utility cases settle. It's even more common that parties reach a settlement on some of the issues raised, even if some issues go to hearings. **Make sure to be at the table if you hear that there are settlement discussions.** You won't necessarily be able to force your way into settlement discussions if other parties don't want you there, but they also will have a hard time getting a settlement that addresses your issues approved if you are not one of the parties who signs off. Many of the low-income discount rates and energy efficiency programs around the country were either initially adopted or later modified by settlements between the local utility company and

⁹ See Appendix D for a current list of commissioners in all fifty states.

¹⁰ Note that in most states there are absolute prohibitions or strict limitations on “ex parte” contacts, meaning contacts by just one of the parties to a case with any of the commissioners regarding the pending case. Check the commission's rules carefully before holding any meetings about a pending case.

low-income intervenors. In fact, low-income groups often have better success negotiating these issues directly with companies than getting favorable decisions out of their commissions.

Do Your Homework! Before getting involved in any case, make sure you have a good grasp of the following (unless you are already experienced in utility cases):

- **What type of proceeding is this?** Are you getting into an “adjudicatory” proceeding; rulemaking case; informal proceeding; etc. (See “Types of Proceedings,” section B., immediately below.)
- **What is the “Standard of Review”?** Does the party filing the case (often, but not always, the utility company) have to convince the Commission that its request is “reasonable,” or “in the public interest,” or the “least cost approach”? The standard of review may determine, for example, how strictly the commission scrutinizes the company’s case and also the weight of the opposing arguments you will have to muster to convince the commission to adopt your view.
- **What laws, regulations and prior case decisions govern your case?** Usually, there are a relatively small number of laws the legislature has passed and regulations that the commission has adopted that apply to your case. For example, if you are intervening in a cost of gas adjustment (“CGA”) case, find out if your legislature has passed a statute that directly addresses CGAs, or if the commission has regulations governing how a company is supposed to calculate the CGA. If you are advocating for a change to a company’s low-income energy efficiency program, find out whether the company must offer these programs as a result of a state law (and then find out the particulars of that law), or whether the company adopted the energy efficiency programs as part of a settlement in its prior rate case (in which case read the prior rate case decision).

It’s also well worth the time to read the commission’s most recent decisions involving the company you’re up against, especially if any earlier cases addressed similar issues.

If you haven’t hired a lawyer who is already familiar with utility law in your state, the easiest way to find out which laws and regulations apply is to ask the types of people and agencies mentioned in the discussion of legal and expert resources (section I. B.): meet with someone from the Office of Consumer Counsel or Attorney General’s office; or find a friendly commission staff lawyer; or seek out an experienced intervenor group that might be willing to get you up to speed.

If you want to do your homework exceptionally well, you should consider looking at laws, regulations or utility commission decisions of other states. Sometimes, a nearby state will offer exactly the model you want your state to adopt, and you’ll have an easier time convincing your commission if you can point to an existing

precedent.¹¹ It's also worth considering whether there are any federal laws that apply, either ones that help your case or hurt it. This is particularly true in telephone cases, since Congress has passed a number of laws that apply and that often preempt state laws.

- **What issues are you going to address?** Identify your issues at the earliest possible date. Rate cases can be time-consuming and overwhelming - expect this! But also expect to win something for all of your effort. The best way to come away with a success is to define a concise and short list of your issues at the earliest possible date. And be specific - defining your goal as “beating back the rate hike” is much less likely to help you organize your efforts than deciding to “get the commission to exclude the company’s advertising costs from rates” or “get the commission to adopt lower percentage increase for residential (versus commercial) customers.” Defining your issues early on will provide benefits throughout the case – you’ll spend a shorter amount of time writing more focused discovery that gets you the information you need; you’ll line up the expert witnesses you need at an early date so they have adequate time to prepare; your cross-examination will be focused on exactly what you need to cover; and your brief will come across to the commission as targeted and forceful.¹² **Once a case starts, it can move so quickly that you won’t have the luxury of being able to develop your strategy on the fly - make sure you do so at the beginning of the case!**
- **How will you deal with all of the paper?** Utility cases burn through trees faster than a summer forest fire. Initial filings often fill up a ream box or two, and discovery can fill an entire filing cabinet drawer. While some commissions are moving to electronic filing, this can create its own problems: there’s no easy electronic-equivalent of literally flipping through hundreds of pages of documents and using the incredible ability that humans have to spot the needle in the haystack. From day one, set up a filing system (both paper and electronic) that will allow you to find precisely the documents you need, recognizing that you often won’t know which documents are most important until you begin preparing for hearings and cross-examination.

B. Types of proceedings

Commissioners handle a variety of types of proceedings. It helps to be familiar with each. While each state has its own set of rules governing utility proceedings, there are enough similarities to offer suggestions and guidance that should be helpful most of the time.¹³

¹¹ For a fifty-state summary of utility regulations governing billing, terminations and basic terms of service, see the National Consumer Law Center’s treatise “Access to Utility Service,” described more fully in section IV. B.

¹² These procedural steps are discussed in IV.D.

¹³ The National Association of Regulatory Utility Commissioners (“NARUC”) has a useful web site that links to the home page of each state utility regulatory commission that

- **Adjudicatory proceedings:** These are the cases that commissions formally “adjudicate” (decide) after hearing witnesses, accepting evidence, and reading briefs. The steps in an adjudicatory hearing are described in IV D. Bear in mind that in most states to participate in an adjudicatory proceeding you will have to file a “petition to intervene” and have the commission accept or approve your petition.¹⁴ Adjudicatory hearings are run somewhat like formal civil cases in court. You will therefore need to become familiar with and follow the commission’s adjudicatory hearing rules.

Commissions generally (but not always) hold adjudicatory hearings when they review rate hike requests; approve the construction of new power plants; review merger proposals; and review a specific company’s operations.

- **Rulemaking proceedings:** Commissions conduct rulemaking proceedings when they adopt rules that apply generally to an entire industry or class of companies; or that are not specific to a particular company. Common examples of rules adopted this way include: commission rules of practice and procedure; rules governing terminations, payment plans, and resolution of customer disputes; rules governing utility accounting practices; rules governing gas safety; rules governing service quality; etc.

Rulemaking often begins by the commission issuing a “Notice of Proposed Rulemaking” or “Order Instituting Rulemaking” or some other form of general notice to the public. This initial notice will specify the subject matter of the proceeding and will usually invite any interested member of the public to offer written comments. Anyone can file written comments, and there is no need to file a petition to intervene.¹⁵ Sometimes the commission will hold public hearings at which anyone can testify, but sometimes the commission will only allow written comments. Other times, the commission will hold informal sessions at which interested parties and staff exchange ideas about what is good or bad about the proposed rules (e.g., low-income consumers support a proposal to adopt low-income discounts; companies argue this would be too expensive); or the best ways to implement policies the commission has made clear it will adopt (e.g., consumers and companies suggest better ways of conducting outreach to people eligible for existing low-income discounts); or technical issues (e.g., the ability of companies to identify customers eligible for discounts).

maintains a web site. See www.naruc.org/resources/state.shtml Many (but not all) of those web sites include links to the rules of practice of that commission, and some allow on-line, electronic access to documents filed in cases before the Commission. Always review the commission’s rules before getting involved in a utility case or proceeding.

¹⁴ Sample documents relating to petitioning to intervene or otherwise enter a case are included as Appendices A and B.

¹⁵ See Appendix B for the type of notice parties need to file in California rulemaking proceedings.

The good news about rulemaking proceedings is that you won't have to file a petition or follow the formal rules of procedure that apply in adjudicatory cases. It's also less likely, although still possible, that you'll need expert witnesses or a lawyer to represent you. In general, rulemaking proceedings tend to take less of your time and cost less. But rulemaking proceedings sometimes go on for years without a final conclusion. It is also a little less likely that you will know that the commission has opened a rulemaking because the adjudicatory cases (especially rate hike cases) tend to get the most publicity. If you or your group think that you want to get involved in rulemaking proceedings, speak to the chief of the docket office, "Executive Secretary" or chief administrative officer for the commission. Most commissions maintain mailing lists of people who are interested in receiving notices of newly-filed cases and rulemaking proceedings. It's very easy to get yourself on such a list, and it won't take much time to monitor the notices you'll receive.

- **"Generic" proceedings:** Generic proceedings can be a hybrid of adjudicatory and rulemaking proceedings, and may go by other names in your state. (Some states, however, might not have anything like what is described here). In generic proceedings, the commission may use adjudicatory-type proceedings (that is, allow for discovery and cross-examination of witnesses, filing of written briefs, etc.), but address broad issues that affect an entire industry (gas, electric or telephone) and issue a decision that has long-term effect (as opposed to rate cases, where many of the issues are decided anew in each case).
- **Informal proceedings:** Commissions do all kinds of things that affect consumers and utilities without employing any of the procedures just described. For example, the commission's general counsel may clarify some issue or policy in response to a letter from a company, from legislators or from consumers. Unless someone learns of this letter ruling and questions it, the general counsel's letter may become the commission's *de facto* policy on that issue. Similarly, consumer division staff constantly set informal policies about when utilities may actually terminate service (for example, informally letting companies know that staff will not tolerate terminations for arrearages of less than \$100, or requiring longer payment plans for low-income customers) and other issues. It is very important to understand the extent to which policies that matter to you or your group are being set informally, for two reasons. First, to the extent policies are set informally, the public tends to have little or no involvement. Utility companies are always speaking to and making requests of the commissioners and their staff, and informal policies therefore tend to reflect the utility companies' view of the world. It's important to bring some light into the back rooms of your utility commission. Second (and somewhat contradictory to the first point), it's often easier for consumers to have a successful impact on informal policymaking than in adjudicatory proceedings, because the informal proceedings require less in terms of lawyers, experts, time and money.

Consumers should always look at opportunities to advance their goals through informal proceedings.¹⁶

C. Procedural rules

Almost every commission has formal, written rules of practice and procedure.¹⁷ These rules will address: the format of petitions to intervene and deadlines for filing; the manner in which copies of filings must be served on the commission itself and other parties; the format of written documents that are filed in cases; the conduct of hearings; etc. In some states, the rules will also address the extent to which parties may have “**ex parte**” contact with commissioners (meaning: one party speaking to or communicating in writing to commissioners, outside the presence of other parties); the format for of any motions that are filed; the type of discovery that will be allowed (e.g., written requests that must be answered; inspection of physical premises; depositions; etc.); procedures governing oral arguments; and the process by which the commission reaches and issues its decisions.

Procedural rules vary greatly from state to state. If you are not familiar with your commission’s rules, get a copy and read the rules carefully.¹⁸ If you cannot easily locate a copy, ask the commission staff for advice.

D. Chronology of an adjudicatory proceeding

Initial filing and petitions to intervene: An adjudicatory case begins with some party, usually the utility company, filing an initial “petition” or “application.”¹⁹ **Make sure you get a copy of this initial filing at the earliest possible date.** Usually, you can get a copy by calling the company’s attorneys (who might be in-house staff attorneys, or an outside private firm). Call the commission’s staff if you are having any difficulty obtaining a copy. Review the initial filing carefully to determine which issues of interest to you will be raised during the case.

The commission then orders the issuance of public notice of the filing, usually through newspaper ads and by sending notice to a mailing list the commission maintains of those interested in getting notices of cases filed. This initial notice may include: (1) the date(s) of any public hearings in the case; (2) a deadline for filing petitions to intervene, and brief explanation of what is

¹⁶ One important caveat, however, is that policies adopted informally can easily be undone. If you win a change in policy informally, this victory can be reversed due to a change in commissioners, in staff, or other reasons. If you win a victory in an adjudicatory case, that victory is far more likely to be long-lasting.

¹⁷ Some states may have rules of practice that apply generally to state agencies, not just to the commission.

¹⁸ Copies of commission rules are sometimes available on the commission’s web page or elsewhere via the Internet.

¹⁹ This section addresses the chronology of an adjudicatory proceeding both because adjudicatory proceedings are more consistent state-to-state than rulemaking proceedings and because there are more formal steps in adjudicatory proceedings.

required to do so; (3) a summary of the issues raised by the initial filing; (4) contact information for the commission and the party making the filing. Some states have less information than this; some have more. **It is very important to learn when petitions to intervene are due and to make sure you file on time.** Many states are strict about this deadline, although some states do not even require a formal petition to intervene if you show up at the initial “pre-hearing conference” (described below) and no one objects to the intervention.

In order to file a successful petition to intervene (in states that require a formal petition), you will need to clearly state the interest that you or your group has in the proceeding, including a brief description of how you or your group will be affected. Each state has developed its own standards about how much, or how little, you must include in your petition. **Review your commission’s intervention rules very carefully and, if possible, speak to lawyers or commission staff about whether your commission freely grants interventions or whether they require petitions to meet all of the formal requirements of the rules and prior decisions.**

In some states, commissions allow (or require) parties to seek “full party” (or “full intervenor”) status versus “limited” status. Always ask to be granted “full” status. Parties with “limited” status may be prohibited from filing discovery or cross-examining witnesses or otherwise be limited in what they are allowed to do in the case.

“Procedural” or “prehearing” or “scheduling” conferences: Many commissions schedule a “procedural” or “prehearing” conference not too long after the initial filing is made. Many different things can happen at this early conference. The commission may set the schedule for discovery, future evidentiary hearings and the filing of written briefs. It may rule on petitions to intervene. It may address preliminary motions that have been filed, for example, motions to define the scope of issues that can be raised. It is very helpful to attend this conference. It is your first chance to get a good sense of which parties intend to play an active role in the case. It is also your first chance to let the hearing officer and other parties know, in person, that you will be in the case and actively pursuing your issues. Also keep in mind that many cases are resolved through settlement, not through formal hearings. By attending the pre-hearing conference, you are more likely to be seen as an active party who should be included in any settlement talks.

Discovery: Parties in an adjudicatory case have the right to conduct “discovery” – that is, to “discover” information that other parties may know or possess. Discovery in utility cases most commonly takes the form of “information requests” or “interrogatories.” These are written questions that one party writes and serves upon another party. The other party must then provide a written response, or produce documents that respond to the question.

In some jurisdictions, parties to a case may also conduct “depositions,” although these are not done very frequently and may not be allowed in some states. Where depositions are allowed, you can ask another party (e.g., the utility company) to produce a witness who must answer questions you ask. A stenographer is present and records the questions and answers. The party requesting the deposition usually must pay the cost of having a stenographer present.

Discovery rules vary from state to state. Sometimes, there are no written discovery rules, just accepted practice as to how discovery may be conducted. Often, the hearing officer, administrative law judge or commissioner assigned to the case will set discovery rules at the pre-

hearing conference, including the date by which discovery requests may be filed and the number of days a party is allowed to respond to discovery. Because utility cases raise very technical and complicated factual issues, discovery is often quite voluminous. Parties often battle over whether the requested information can be produced in the time allowed, or whether it would cost too much to produce an answer. Consumer intervenors who are not experienced with the discovery process should keep in mind that you can always file a motion with the hearing officer requesting that a party be ordered to provide an answer (a motion to compel). You can also seek the assistance of the hearing officer to resolve other discovery disputes: if the company objects that it would cost too much to answer certain questions; or claims that the requested information is privileged; etc.

Most commissions set rolling deadlines for answers to discovery, meaning that the answering party must provide an answer within a specified number of days from when the requests are made. **Under a rolling discovery deadline, it is in your interest to ask you questions at the earliest possible date.** This may allow you to file follow-up questions. For example, assume a case is filed on May 1; hearings begin on June 10; and the rolling discovery deadline is 10 days. If you get your first set of information requests out by May 10, you should expect answers by May 20. If some of those answers are not very clear, you could send out follow-up questions by May 25²⁰ and expect answers to your second set by early June, enough time to review those answers and prepare for hearings.

Testimony: Most utility cases have an “evidentiary” phase²¹: hearings days when witnesses take the stand, testify and introduce written or graphic exhibits. However, these witnesses submit their testimony in writing, well in advance of the actual hearings. For example, when a company makes an initial filing in a rate case, it will include all of the accounting data that supports its rate hike request as well as the written testimony of the witnesses who will testify in support of the rate case. Intervenors who plan to offer testimony also must put this testimony in writing, although it is submitted several weeks or even a few months after the company’s filing.

Written testimony is submitted in advance of the evidentiary hearings. This allows you to conduct discovery of the company’s witnesses. This also means that the company and any other party in the case can conduct discovery of any witnesses you plan to offer. If you plan to put on any witnesses, it is important that the witness understands this obligation to answer any discovery.

Parties are free to put on expert or non-expert witnesses. Unlike many court trials, where many of the witnesses are not experts and simply testify about things they saw, heard, or experienced, most utility case witnesses are experts – in accounting issues, or plant operations, rate design, etc. While you may think that some witnesses you want to offer are not sufficiently “expert” to testify, there are many people who can help your case and who would be allowed to testify, even if they are not experienced “expert” witnesses.²² For example, you may be pushing the utility to modify or expand an existing energy efficiency program. The director of you local

²⁰ If you think that the company has withheld information it has, or if the company simply refuses to answer on time, you should file a motion to compel answers.

²¹ One major difference between utility cases and regular civil cases in court is that commissions also hold “public” hearings at which any member of the public can testify.

²² See discussion of “Expertise” under section I, above.

weatherization program may be able to testify to the benefits that customers will gain by reducing energy consumption, and the favorable cost-benefit ratio of the specific measures you are proposing, even if the director has never been a witness before and doesn't have a lot of advanced degrees. Or you may be in a case arguing that the company is not following the commission's rules (or what you consider to be fair practices) regarding deposits, payment plans, and collections. You may be able to find a local organizer or advocate who routinely works with customers and has documented the company's aggressive credit and collection practices through notes to his or her case file. Using witnesses like these will both help your case and avoid the cost of using traditional "expert" witnesses, most of whom charge very high fees.

Any witness you put on will be obliged to answer any discovery requests relating to his or her testimony, and to take the witness stand. Any party to the case will then be allowed to cross-examine your witness. If you plan to put on a witness, it is important to choose someone you think will come across as honest, open and credible when cross-examined. Avoid witnesses who you think will be defensive or combative on cross-examination.

All of the evidentiary hearings are transcribed by a court stenographer. If you put on a witness, you should make sure to get a copy of that day's transcript.

Briefs: At the end of the evidentiary hearings, parties will be allowed some number of days (in rare cases) or weeks (more commonly) to write their briefs. A brief is nothing more than a written argument that summarizes the relevant portions of the evidence in the case and urges the commission to take certain positions on the issues presented, based on the relevant law (including statutes, regulations, and prior commission decisions). "Briefs" are by no means always brief: they can be dozens of pages long, sometimes more than 100 pages. But compared to an evidentiary record that often includes hundreds of pages of hearing transcripts and thousands of pages of documentary evidence, your "brief" in fact serves as a summary of all of the information in the record that supports the arguments you make.

Commissions usually have some rules governing the format of briefs, and you should review those rules carefully. These rules are usually less detailed than the rules governing briefs filed in court, but it is still important to follow the rules. In addition, the hearing officer or administrative law judge may impose additional rules that will apply to the format and timing of briefs in your case. Sometimes, commissions require all parties to file their initial briefs on the same day, and allow parties then to submit reply briefs a short time later. Other times, the commission will require one party (say, the company) to file its brief first; require all other parties to file their reply briefs; and then allow the first party (the company) to file a reply to the other parties. There are advantages and disadvantages to each approach, and the practice varies not only from state to state, but from case to case within any state. Just make sure you are aware of and comply with the briefing schedule. The commission may "strike" (refuse to accept) a brief that is filed even one day late.

It is very helpful to have a general idea of what you would like to say in your brief even before you start discovery! Your goal when getting into a case is to obtain a favorable ruling from the commission on one or more issues: e.g., adopting discount rates for low-income customers; or changing the company's rules around deposits; etc. To do so, you will need to write

a brief that convinces the commission that your position is supported by the facts in the case and by the relevant law. But that means you will need to have a good idea of what facts you'd like to be in the record as the record is being developed. Once you start writing your brief, the record in the case will be closed and you won't be able to add in any new facts. You should always have a clear vision as to what facts will help you write a convincing brief — while you're writing discovery; when you're thinking about witnesses you'd like to put on the stand; as you're cross-examining the company's witnesses.

The decision: Some time after briefs are filed, the commission will issue a decision. In some states, you simply do nothing and wait until the final decision comes out. In other states, the hearing officer or administrative law judge issues a proposed decision, and parties then have an opportunity to file written comments on the draft before the full commission rules. In yet other states, a single commissioner who is assigned to the case writes a draft decision which the parties can comment on at an open meeting of the full commission before a final decision is released. There are yet other variations, but the key point is to determine whether your state allows you the opportunity to comment, in writing or in person, on a draft decision before the final one is released. This is an important opportunity to make your case one more time. Make sure you avail yourself of this opportunity.

Court appeals: Utility commission decisions can be appealed to court. The decision itself (or an attachment to the decision) may explain, in highly simplified terms, how to file an appeal — naming the court in which it must be filed and the deadline for doing so (often 30 days or less from the time of the decision). Appeals by consumers are difficult to win because courts begin by assuming the commission ruled properly, unless convinced to the contrary. It is very hard to pursue a successful appeal without the assistance of a lawyer. If you are thinking about filing an appeal, contact a knowledgeable attorney immediately after receiving the decision that you wish to appeal.

III. THINKING OUTSIDE THE BOX – AND OUTSIDE THE “PROCEEDING”

Utility companies have many advantages over consumer groups in proceedings before utility commissions. They can spend large amounts of money on lawyers and experts. They have easy access to most of the relevant information, as their employees and consultants usually prepare the initial filing that starts a case. Utility commissioners frequently meet and communicate with company executives, at conferences, in hearings, and at face-to-face meetings arranged by those executives or their lawyers. Many utility commissioners have similar educational training and backgrounds as company executives; relatively fewer commissioners have a background as consumer advocates or working on consumer issues.

In order to overcome these inherent disadvantages, consumers need to think outside of the box and outside of the confines of the hearing room itself. Consumer groups will have to play to their potential strengths: being aligned with the interests of consumers; being able to mobilize community support; and being able to shine some light on the often overlooked process by which utility commissions make their decisions. The most useful tools for breaking out of the box are community organizing, using the media, and generating support among legislators and other policymakers outside of the commission.

A. Community Organizing

Utility companies like their proceedings to occur as quickly and quietly as possible. Whether filing for a rate increase, approval of a merger, or authority to issue bonds, the companies prefer not to have intervenors in their cases and to minimize the amount of discovery, hearing days and public attention to the case.

Consumer groups can change the dynamic in utility proceedings by organizing their own members and the general public. Most proceedings before commissions require a truly “public hearing”: one that is duly noticed in newspapers and other means; held in an accessible public meeting space; and fully open for lay people (non-lawyers) to make statements. But many public hearings see few, if any, members of the public speak. A consumer group that can mobilize even ten people to testify at a public hearing will have some impact on the case. The utility company will know that the public is watching what is going on. More importantly, the commission will be far more likely to pay attention to the issues that lawyers or other advocates for consumers raise in formal, evidentiary hearings if there is a large turnout by consumers themselves at the initial public hearing.²³

Community organizing is extremely important when consumers are seeking rules or programs that benefit them, and not only when they are opposing utility proposals. A good example of the importance of community organizing in such proceedings is the initial adoption of basic billing and termination rules by the Massachusetts Department of Public Utilities in the early 1970s. Legal services programs, working with their low-income clients, offered:

testimony about the experiences of low-income customer with their utility services. This came largely from attorneys in legal services offices knowledgeable in the problems of the poor. Some of the testimony was illustrated by affidavits of the customers involved, and there was some direct testimony by customers.²⁴

²³ This is particularly true of issues like customer service — handling of customer phone calls, disclosing basic information to consumers, willingness to make payment plans, billing and termination practices, etc. In these areas, consumers are the “experts” on how the company is doing. See, for example, Revised Draft Decision of Comm. Wood, In Re: Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Carriers, CAPUC Docket 00-02-004 (Mar. 2, 2004) (available at http://www.cpuc.ca.gov/PUBLISHED/COMMENT_DECISION/34459.htm), at 4 (referencing the “20 public participation hearings” the 300 people who made public statements; and the 2000 people who submitted mail or e-mail comments); at 148 ff. (basing the “great need for the [consumer protection] rules we adopt today” on the benefits to the public, as evidenced in the public participation hearings).

²⁴ *Cambridge Electric Light Co. v. Department of Public Utilities*, 295 N.E.2d 876, 879 (1973). This decision describes the crucial role that low-income consumers and their legal services advocates played in adoption of these rules. In overruling a challenge by the utility companies to adoption of the pro-consumer rules, the court relied heavily on the record developed by low-income consumers and their advocates about the essential nature of utility

The Department adopted the billing and termination rules in response to the presentations made by low-income customers and advocates.

Community organizing plays to the strength of consumer groups. Utility companies simply cannot mobilize public support in favor of their rate hikes and other proceedings before state commissions. Instead, they rely on their lawyers and the experts that their money can buy to win their cases. Consumer groups have the ability to remind commissions that their primary obligation is to carry out the “legislature's intent to protect ratepayers from overreaching by public utilities.”²⁵ They have the ability to make sure the voices of real consumers are heard in the hallways of power, which will lead to more commission decisions that reflect the interests of consumers rather than utility companies.

B. Media

Working with the media is the logical corollary of community organizing. The media have the ability to amplify the voices of consumers to a much wider audience and with much greater effect. Low-income consumers can effectively use the media, for example, by publicizing increases in utility prices and the number of people who are facing termination.²⁶ This type of media coverage can be critical, for example, if consumers are petitioning for the adoption of rules limiting terminations during winter months or allowing for more generous payment plans.

Getting media attention can be difficult. A few points that may help:

- Don't overlook smaller newspapers and radio stations. These sources are often looking for news, where the biggest newspaper or radio station in the state will generally be inundated with groups looking to get their story covered.
- Put a human face on the story. The local newspaper may think that a story about hearings before your utility commission on termination rules is not very interesting, but it may be very interested in covering the story of families living without heat because they've been terminated. The story might then also mention the hearings before the commission. Similarly, the local radio station might not think much of a story about a new low-income energy efficiency program a local group is proposing — but it may cover the story if the group highlights individual families who have benefitted from weatherization, or if the group ties the need for energy efficiency programs to how many people are being terminated due to high bills.
- Look for allies who the media pays attention to. The Attorney General, Office of Ratepayer Advocate, or other well-recognized organizations might be willing to

service and the harshness of the companies' previously unregulated deposit and collection practices.

²⁵ *Fitchburg Gas & Electric Light Co. v. Dept' of Telecommunications & Energy*, 801 N.E.2d 200, 228 (2004).

²⁶ See, for example, Todd Grady, “Heating bills squeeze budgets - Area utility costs are second highest in 10 years,” (Rochester, N.Y.) *Democrat & Chronicle* (Feb. 26, 2004).

help draw the media’s attention to your issues to the extent your interests overlap. In some states, for example, the Attorney General’s office may routinely appear on a consumer program on a TV or radio station. Particularly during the winter, the AG’s office might be willing to talk about high bills, payment plans, termination rules and other issues that bring attention to issues you are advocating.

C. The Legislature

Ultimately, the legislature is the source of both a utility commission’s general authority to regulate utility companies²⁷ and of specific rights granted to consumers.²⁸ Consumer groups should always consider the extent to which the legislature can help in any efforts to promote the interests of consumers.

First, the primary business of legislatures is to adopt laws. Consumer groups should be alert to opportunities to advocate for the adoption of pro-consumer laws, particularly in any state that is about to adopt or revise restructuring laws. In many of the states that currently have restructuring laws, low-income consumer groups were at the table as bills were being negotiated, seeking “systems benefit charges” or other mechanisms that fund low-income energy efficiency programs, discount rates, or other consumer benefits. Many of those states adopted time-limited rate caps that will soon be expiring, which may once again create an opportunity for consumers to be at the table as legislatures wrestle with what to do once the rate caps expire. Quite apart from restructuring, legislatures are an important route for consumers to obtain any number of beneficial programs and policies, from rules governing payment plans to mandated discount rates and affordability programs.

Second, legislatures can often play a useful oversight role, whether through formal oversight hearings or less formal contacts between key legislative committees and utility commissions. For example, if key legislators let commissioners know that they are very concerned about the high level of residential arrearages and the numbers of people being terminated, the commission will be more likely to respond favorably to consumer petitions for better termination rules or utility investments in low-income energy efficiency programs. Consumer groups should consider having once-a-year or more frequent meetings with key legislators to brief them on the issues that the consumer groups consider important.²⁹

IV. RESOURCES

A. Sample pleadings

²⁷ See, for example, Cal. Pub. Util. Code §§ 201 *et seq.*

²⁸ See, for example, Mass. Gen. Laws ch. 164, § 124A (protecting low-income, seriously ill customers from termination).

²⁹ It is just as important for consumer groups to consider the helpful role that the state Attorney General or Consumer (or Ratepayer) Advocate can play, although most commissions are more responsive to legislators than to other executive branch agencies.

Consumer groups will rarely have to start from scratch when filing many of the routine papers in a utility proceeding.

1. Petition to Intervene

There will almost always be a “Petition to Intervene” previously filed by another consumer group or other intervenor that can serve as a good model or starting point. Appendix A contains a sample petition (styled as a “Motion”) and supporting memorandum filed by the Utility Workers Union of America (“UWUA”) in a Cincinnati Gas & Electric (“CG&E”) case. CG&E vigorously opposed this intervention, which companies sometimes do, but the motion was ultimately granted.³⁰ Attachment B is a sample request of the National Consumer Law Center to be placed on the service list in a California rulemaking proceeding regarding the adoption of a telecommunications consumers Bill of Rights. In some proceedings and in some jurisdictions, parties that file before a set deadline do not need to file a formal petition to intervene but instead have the right to intervene by filing a notice that sets forth the interest of the intervenor and other required facts. Attachment B is an example of such a notice.

2. Discovery

Almost every adjudicatory proceeding before a commission allows parties “discovery” rights. Discovery varies quite widely, depending on the subject matter of the proceeding and the interest of the intervenor filing the discovery requests. Therefore, it is harder to find sample discovery from a prior case that will match the needs of an intervenor in the current case, although discovery from one rate case to the next case involving the same company is often similar. Attachment C is sample discovery filed by low-income intervenors in a KeySpan rate case, seeking to build a record regarding arrearages and terminations, and the need for the company’s proposed “OnTrack” arrearage forgiveness program.

3. Other pleadings

Once a consumer group gets beyond the initial stages of filing a petition to intervene and discovery, it becomes increasingly hard to find good samples. Expert testimony is usually quite specific to a particular case, although it may be helpful to find testimony in other cases on similar topics.³¹ Briefs are also quite specific to a particular case. However, for any consumer group that has not intervened previously, it would be useful to review one or more briefs from prior cases to get a feel for the format and scope of these documents.

B. Useful treatises and handbooks

³⁰ CG&E’s opposition and UWUA’s reply are available upon request from the National Consumer Law Center.

³¹ The National Consumer Law Center is currently building a database of sample testimony available to low-income advocates. For more information, contact NCLC’s energy unit.

The National Consumer Law Center publishes “Access to Utility Service: Regulated, De-Regulated and Unregulated Utilities, Deliverable Fuels, and Telecommunications.” This 650 page treatise (with 500⁺ page supplement) addresses a broad range of low-income energy and utility topics, including restructuring, telephone service, metering issues, issues around utility payments, and various energy assistance programs.³²

A book that is specific to Massachusetts but still may prove useful in other states is “The Right to Light (and Heat) Handbook” by Charlie Harak, available from Massachusetts Continuing Legal Education at 800 966-6253 (product #19938701720; price \$6). This 100⁺ page handbook provides an overview of customer rights and remedies and how to intervene in commission proceedings. It is written to be used directly by consumers or advocates with little experience in utility issues.

The California Public Utilities Commission publishes a very useful “Guide to Public Participation” available at <http://www.cpuc.ca.gov/static/aboutcpuc/divisions/cpinfo/public+advisor/08-04-03+guide.htm>. This Guide is very readable, reviews the various types of commission proceedings and explains how to intervene. While it is specific to California, it provides a useful roadmap of what questions to ask when getting involved in utility cases in other states.

The National Consumer Law Center also maintains a list serve for those interested in low-income energy issues. Contact the Center’s energy unit at 617 5420-8010 for more information.

C. Groups That Intervene in Utility Proceedings

There is no need for a consumer group to reinvent the wheel of how to get more involved in utility proceedings, as there are many groups that are very experienced in doing so. It is best to find a group in your own state that has done so, but experienced groups in almost any area of the country can be helpful. Here are just a few of the consumer groups that have a great deal of experience in utility intervention:

National Consumer Law Center
11 Beacon Street
Boston, MA 02114
617 542-8010
www.nclc.org
Contact: Charlie Harak, John Howat or Olivia Wein

Public Utility Law Project
90 State St., Ste. 601
Albany, NY
518 449-3375
www.pulp.tc

³² For more information, contact NCLC’s publications unit at 617 542-9595 or www.nclc.org/publications. The 2004 price for “Access” is \$90.

Contact: Charlie Brennan
The Utility Reform Network
711 Van Ness Ave., Suite 350
San Francisco, CA 94102
415 929-8876
www.turn.org

Contact: Bob Finkelstein

Texas Legal Services Center
815 Brazos St. Suite 1100
Austin, TX 78701
512 477-6000
www.tlsc.org

Contact: Randy Chapman

Pennsylvania Utility Law Project
118 Locust St.
Harrisburg, PA 17101-1414
717 232-2719
www.palegalservices.org/Specialty/utility_law_project.htm

Contact: Harry Geller

Ohio Partners for Affordable Energy Legislative Liaison Ohio Association of Community Action
Agencies 337 S. Main St., 4th Floor, Suite 5 PO Box 1793 Findlay, OH 45839-1793 419 425-
8860 Contact: Dave Rinebolt

APPENDIX A
SAMPLE PETITION (MOTION) TO INTERVENE

.....
BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the
Cincinnati Gas & Electric Company
for an Increase in Its Gas Rates

CASE NO. 01-1228-GA-AIR

In the Matter of the Application of the
Cincinnati Gas & Electric Company
for Approval of an Alternative Rate Plan
for Its Gas Distribution Service

CASE NO. 01-1478-GA-ALT

**MOTION TO INTERVENE, UTILITY WORKERS UNION OF AMERICA
AND IUU, LOCAL 600 OF THE UWUA**

In accordance with the Commission's Administrative Provisions, OAC 4901-1-1, the Utility Workers Union of America ("UWUA") and IUU, Local 600 of the UWUA move that they be allowed to intervene as a full parties in the three applications of Cincinnati Gas & Electric Company cited above. UWUA and Local 600 are separately filing a Memorandum in Support of this motion.

Respectfully Submitted,

Charles Harak, Esq.
18 Tremont Street, 4th floor
Boston, MA 02108-2336
617 742-5554 (ph)
617 523-8010 (fax)
charak@nclc.org

DATED: August 29, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the
Cincinnati Gas & Electric Company
for an Increase in Its Gas Rates

CASE NO. 01-1228-GA-AIR

In the Matter of the Application of the
Cincinnati Gas & Electric Company
for Approval of an Alternative Rate Plan
for Its Gas Distribution Service

CASE NO. 01-1478-GA-ALT

**MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE, UTILITY WORKERS UNION OF AMERICA
AND IUU, LOCAL 600 OF THE UWUA**

In accordance with Ohio R.C. §4903.221 and the Commission’s Administrative Provisions, OAC 4901-1-1, the Utility Workers Union of America (“UWUA”) and IUU, Local 600 of the UWUA (“Local 600”) file this memorandum in support of their motion to intervene.

I. PARTIES

UWUA is a national union that represents 50,000 workers employed by gas, electric and water companies across the United States. It maintains business offices at 815 16th Street NW in Washington, D.C. and at 220 Forbes Road in Braintree, Massachusetts. UWUA has intervened in a number of utility regulatory proceedings in Ohio, Massachusetts, New York, California, and other states.

Local 600 is based in Cincinnati and represents approximately 700 workers employed by Cincinnati Gas & Electric Company (“CGE”) in the areas of customer service, meter reading, billing, facilities maintenance, and gas engineering. Many members of Local 600 are also customers of CGE.

II. **INTEREST OF UWUA AND LOCAL 600**

UWUA and Local 600 have a real and substantial interest in the present proceeding. No other party can adequately represent their interests. OAC 4901-1-11(A)(2).

On behalf of its members who are customers, Local 600 is concerned that CGE has proposed an alternative rate plan that would allow it to collect funds from ratepayers, on a current basis, to pay for the replacement of cast iron and steel pipe mains. CGE's proposal will raise rates for all customers and should not be approved.

UWUA and Local 600 are also concerned that CGE, while proposing to raise its rates, is planning to relocate the handling of a significant portion of customer calls out of the state of Ohio. UWUA and Local 600 believe that this relocation will cause a decline in the quality of service that customers expect as well as result in a loss of jobs for Local 600 members. CGE should not be allowed to raise its rates if customer service will decline.

Cinergy One, an unregulated affiliate of Cinergy Corp (CGE's parent), has entered into an arrangement with MakeTheMove (MTM) under which Cinergy (through its distribution company subsidiaries such as CGE) will transfer to MTM calls from customers who are moving. MTM will then assist the customer with transferring cable, telephone and other services to the new address. UWUA and Local 600 believe that the arrangement with MTM has the potential to result in a cross-subsidization of MTM by distribution company customers and also to interfere with CGE's responsiveness to customers.

Finally, UWUA and Local 600 are concerned that CGE has recently closed one district office in Loveland, Ohio and is considering the closure of other offices as well, to the detriment of customers who rely on access to the company through those offices.

No other party can represent these interests. The intervention of UWUA and Local 600 will contribute to a just and expeditious resolution of the issues before the Commission, through the information and arguments that these parties will present to the Commission. UWUA and Local 600 will abide by any schedule set in these cases, and

their intervention therefore will not unduly delay the proceeding or unduly prejudice any party.

III. CONCLUSION

UWUA and Local 600 ask that their motion to intervene be granted.

Respectfully Submitted,

Charles Harak, Esq.
18 Tremont Street, 4th floor
Boston, MA 02108-2336
617 742-5554 (ph)
617 523-8010 (fax)
charak@nclc.org

DATED: August 29, 2001

APPENDIX B

**SAMPLE NOTICE OF APPEARANCE IN JURISDICTION NOT REQUIRING
FORMAL “PETITION TO INTERVENE”**

.....

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission’s
Own Motion to Establish Consumer Rights and
Consumer Protection Rules Applicable to All Rulemaking, #00-02-004
Telecommunications Carriers

**REQUEST OF NATIONAL CONSUMER LAW CENTER
TO BE PLACED ON SERVICE LIST**

In accordance with the Order Instituting Investigation (“OII”) in this docket (Feb. 4, 2000), the National Consumer Law Center (“NCLC”) requests that it be placed on the service list for this docket and be allowed to participate in all future proceedings in this docket. In connection with this request, NCLC states:

1. The National Consumer Law Center is a non-profit organization established in 1969. Its central mission is to protect low-income consumers from injustices in the marketplace. In carrying out its work, NCLC has participated in adjudicatory and rulemaking proceedings involving electric, gas and telecommunications companies before regulatory commissions across the United States. NCLC seeks to participate in this docket on behalf of low-income consumers.

2. In its February 4, 2000 OII, the Commission established that parties may be added to the service list by “submitting a written request to the Commission’s Process Office, [with a] copy to the assigned ALJ,” and including identifying information. OII, at 12.
3. NCLC hereby requests that it be allowed to appear in this case, that it be added to the service list in this case (under “Appearance”), and that all papers be served upon its staff attorney, Charles Harak, whose full address and other identifying information appear below.
4. NCLC will serve a copy of this Request on all parties listed on the service list, as updated through July 20, 2001.
5. NCLC will fully comply with all schedules and deadlines that apply to other parties in this docket.

WHEREFORE, NCLC asks that its request be granted.

Respectfully submitted,

Charles Harak
National Consumer Law Center
18 Tremont Street, Suite 400
Boston, MA 02108-2336
617 523-8010 (voice)
617 523-7398 (facsimile)
Charak@nclc.org

July 26, 2001

APPENDIX C
SAMPLE DISCOVERY REGARDING ARREARAGES AND TERMINATIONS

.....
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RE: BOSTON GAS COMPANY
PERFORMANCE BASED RATE PLAN DTE 03-40

SECOND SET OF INFORMATION REQUESTS OF
MASSACHUSETTS COMMUNITY ACTION PROGRAM DIRECTORS
ASSOCIATION

Please send one copy of the responses to these information requests to:

Charles Harak
National Consumer Law Center
11 Summer Street, 10th floor
Boston, MA 02110

Jerrold Oppenheim
57 Middle Street
Gloucester, MA 01930

MASSCAP 2-1: [FOLLOW-UP TO AG 2-1]

(a) Please explain whatever factors may have caused “total residential billing 30 to 59 days arrears” to decline from \$58.5 million in 1999 to the range of \$7 million to \$7.7 million in 2000 and 2001.

(b) Please explain why “system conversion” prevents the Company from being able to calculate the 2002 arrears (30 to 59 days and 60+ days, AG 2-1, parts C and D). If this information is available for the portion of 2002 prior to the conversion (e.g., for the first six months of 2002), please provide the requested information for that period (e.g., the six-month period) and for the same portion (e.g., the first six months) of the years 1999, 2000 and 2001.

(c) Is the increase in residential billing from \$402 million (2000) to \$546 million (2001), and the subsequent decline to \$398 million (2002) attributable (i) primarily to changes in the number of degree days; (ii) primarily to changes in the cost of gas adjustment or (iii) a combination of changes in degree days and the CGA? If other factors are involved, please explain.

(d) Please provide the information requested by the Attorney General in AG 2-1, parts C and D, for any and all months of 2003 for which the data is now available. If no

information is available, please explain why not, including whether it will become available at a later date (specify when).

(e) For each of the years 1999 to 2002, and for portions of 2003 for which information may be available, provide the number of residential accounts that were in arrears (i) between 30 and 59 days and (ii) 60 days or more. To the extent the data is available monthly (or, failing that, quarterly), provide this information monthly (or quarterly).

(f) Please provide the information requested in the preceding section, (e), for only those residential accounts coded as receiving fuel assistance or as “financial hardship” and for customers on the company’s low-income discount rates (heating and non-heating).

(g) Please provide the information requested in AG 2-1, sections A, B, C, D, E, H, I, J and K only for those residential accounts coded as receiving fuel assistance or as “financial hardship” and for those customers on the company’s low-income discount rates.

(h) Please restate the answer to AG 2-1(E) so that the data for all four years are comparable: either include bad debt related to gas costs for the years 2001 and 2002, or exclude gas costs for the years 1999 and 2000.

(i) Please provide the information requested in the preceding section, (h), only for those residential accounts coded as receiving fuel assistance or as “financial hardship” and for those customers on the company’s low-income discount rates.

(j) [See AG 2-1(G)]

(i) Does the company impose late charges on any residential accounts? If yes, please provide a reference to the appropriate portion of the Terms and Conditions, tariffs, or other source where these charges are listed.

(ii) Please explain the term “forfeited discounts,” and whether residential customers ever forfeit any discounts.

(k) When the answer to AG2-1(H) is finally provided, please also state the number of such customers whose accounts were coded as receiving fuel assistance or as “financial hardship” accounts and the number of such customers on the company’s low-income discount rates.

MASSCAP 2-2

(a) Does the Company code the accounts of residential customers that it knows are receiving fuel assistance payments?

(b) Does it provide a separate code (that is, separate than the code for fuel assistance) for the accounts of customers who have submitted a “financial hardship” form or asserted

“financial hardship” status, but who are not receiving fuel assistance payments on their gas bills?

(c) To the extent that the Company’s practices regarding the coding policies described in the preceding paragraphs (i) and (ii) have changed since 1999, please describe those changes.

MASSCAP 2-3

(a) Please provide the number of residential customers coded as receiving fuel assistance, for each of the years 1999 to 2003, inclusive. If the Company separately codes residential accounts as “financial hardship” (apart from those households coded as “fuel assistance”), please provide the number of these accounts as well, for the period 1999 to 2003.

(b) Please provide the number of customers on the company’s low-income discount rates (heating and non-heating separately) as of year-end (or date closest to year-end) 1999, 2000, 2001 and 2002, and for the most recent date in 2003 for which data is available.

MASSCAP 2-4

(a) Please provide the (i) number of warrants the Company obtained from courts, for the purposes of entering property to terminate residential service of Massachusetts customers, for each year 1999 to 2002, and for 2003 to date; (ii) the number of such warrants actually executed (i.e., premises physically entered under authority of a warrant), for the same time periods.

(b) Please provide the (i) number of warrants the Company obtained from courts, for the purposes of entering property to read residential meters in Massachusetts, for each year 1999 to 2002, and for 2003 to date; (ii) the number of such warrants actually executed (i.e., premises physically entered under authority of a warrant), for the same time periods.

MASSCAP 2-5

Please provide the number of liens on residential property obtained from courts, for the purposes of obtaining or securing payment from Massachusetts residential customers, for each year 1999 to 2002, and for 2003 to date.

MASSCAP 2-6

(a) Please provide the number of residential accounts referred for collection, for each year 1999 to 2002 and 2003 to date.

(b) If available, provide the number of such accounts, by year, that were coded as receiving fuel assistance or as “financial hardship” accounts, and that were receiving service under one of the low-income discount rates (heating or non-heating).

(c) Does the Company have an internal group or set of employees (including at any Keyspan affiliate) who perform collections work? If so, please name and/or describe the affiliate or group or employees and the types or nature of accounts that are referred to them.

MASSCAP 2-7

(a) How many days must amounts due be in arrears before an account is charged to “bad debt”?

Please specify whether the number of days is calculated from the date a bill for service is first mailed, or from some other date (e.g., initial due date).

(b) If there are other criteria employed for determining “bad debt” other than the number of days overdue, please describe those criteria.

MASSCAP 2-8

For each month or quarter (if not available monthly), please provide the (i) number of new residential payment plans entered; (ii) the total number of plans in force; and (iii) the dollar amounts protected through payment plans, all for the period January 1, 1999 to the most recent date available.

MASSCAP 2-9 [Mr. Bodanza, JFB-1, pp. 13-15]

Please provide any evaluations of the New York On Track program completed by Keyspan, any Keyspan affiliate, or any outside contractor. Whether or not considered an “evaluation,” include any internal reports prepared by Keyspan or any Keyspan affiliate on the operation of On Track, including any quarterly, annual or other periodic reports. Also include any cost-benefit analysis of On Track and any reports on the On Track Program filed with the New York Public Service Commission.

MASSCAP 2-10

(a) When did Keyspan (or one of its affiliates) institute the New York On Track program?

(b) How many people have been enrolled, per year, for each year since the start of the program?

(c) How many employees, and of what job categories, are assigned to the New York On Track program?

(d) Please provide the average arrears of customers entering the New York On Track program, for each year (or shorter reporting period) since the program began, and the average arrears of those same customers at some milestone after the customers joined the program (e.g., at one year or 18 months after joining).

(e) For the same years or reporting periods provided in response to the preceding paragraph, (d), provide the average arrears of customers coded as receiving fuel assistance payments but who did not participate in On Track (with “average arrears” meaning the total amount of dollars in arrears for those customers, as of a particular date during the year or reporting period, divided by the number of customers coded as receiving fuel assistance).

(f) For the same years or reporting periods provided in response to the preceding paragraph, (d), provide the average arrears of all residential customers (with “average arrears” meaning the total amount of dollars in arrears for those customers, as of a particular date during the year or reporting period, divided by the number of residential customers).

MASSCAP 2-11

Did Keyspan (or any of its affiliates) obtain the approval of the New York Public Service Commission regarding its operation of the On Track program? If yes, include a copy of the relevant decision or order. [If the decision is a lengthy general rate hike decision, the Company may provide the portion or portions of the decision that mention or discuss On Track].

MASSCAP 2-12

Please describe the operation of the proposed Massachusetts On Track program including:

- (a) the title and location of the person or persons who will be in charge of the program;
- (b) the titles and locations of other personnel who will be involved in operating the program;
- (c) the criteria for accepting customers into the program;
- (d) the number of customers that will be accepted into the program, both in the initial year and in subsequent years;
- (e) any assumptions or projections the company has made regarding changes in the bill-paying behavior of customers who will be accepted into the On Track program.

MASSCAP 2-13

(a) Please describe the “education” component of the On Track program (JFB-1, p. 13, l. 21), including a description of any written or audio-visual materials provided to customers and any in-person educational sessions, in connection with the existing New York program and, if relevant, any different features of the educational component of the proposed Massachusetts program.

(b) Please describe the “counseling” component of the On Track program (JFB-1, p. 13, l. 21), including a description of who provides the counseling and the type of counseling offered (financial/budget, other), in connection with the existing New York program and, if relevant, any different features of the educational component of the proposed Massachusetts program.

(c) Please describe the “advocacy” component of the On Track program (JFB-1, p. 13, l. 21), including a description of who provides the advocacy and the type of advocacy offered (financial/budget, other), in connection with the existing New York program and, if relevant, any different features of the educational component of the proposed Massachusetts program.

MASSCAP 2-14 [See JFB-1, p. 14, l. 5]

(a) Will customers eligible for fuel assistance be excluded from the proposed Massachusetts On Track program, under the proviso that anyone “eligible for any public assistance that would cover utility arrears” is not eligible for On Track”?

(b) Does the answer to (a) depend on whether public assistance would cover the entire amount of the utility arrears, rather than being large enough to cover only a fraction of the arrears?

MASSCAP 2-15 [See JFB-1, p. 14, l. 8]

Please provide copies of any training materials or guidelines used in the New York On Track program to help determine the amounts of payments that should be sought under “an affordable payment plan.”

MASSCAP 2-16

How many social workers does the Company (or any Keyspan affiliate) propose to assign to the Massachusetts On Track program, and where will they be based?

MASSCAP 2-17

Please provide the timing of the New York On Track program’s arrearage forgiveness component:

(a) How frequently, or at what points during the program, are the \$100 credits offered to customers?

(b) What happens to customers who fall behind on their payments under any payment plan established? Specifically, what rules or policies are followed to determine if the customer will be terminated from the program (if that ever occurs) or allowed to negotiate a new

payment plan, or otherwise allowed to continue in the program despite missing one or more payments?

(c) Does the Company propose any different policies or rules regarding the timing and amount of credits to be offered in the Massachusetts program, or any different policies regarding customers who fall behind on their payments?

MASSCAP 2-18 [See JFB-1, p. 15, l. 11 - 13]

To the extent not provided in response to MASSCAP 2-10, please provide:

(a) the evaluations, studies or reports that show “participants paid about \$190 a year more toward their energy bills;” and

(b) the data or reports showing the comparison between “customer termination actions and contacts concerning payment” before and after entering the On Track program.

DATED: May 30, 2003

APPENDIX D
LIST OF STATE UTILITY COMMISSIONS
.....