

# Managing the Modern Utility Rate Case



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Federal Energy Regulatory  
Commission

**A (FEDERAL) REGULATOR'S VIEW OF THE  
MOST PRESSING RATE CASE ISSUES**

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**Las Vegas, Nevada**



# What a difference a year makes..

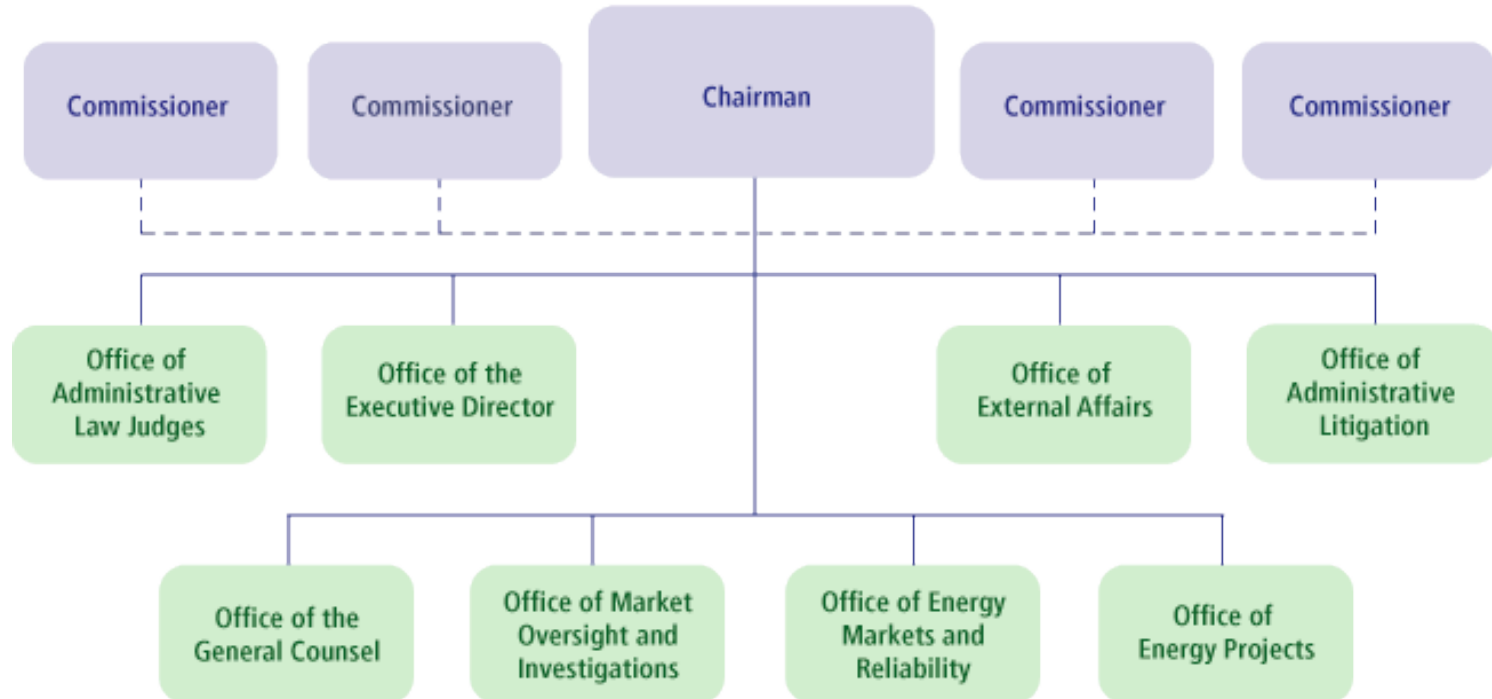
- Managing the Modern Utility Rate Case
  - Regulator's Perspective
- Federal Energy Regulatory Commission
  - Office Structure and Roles at FERC
  - Structure of Office of Administrative Litigation
- Pressing Rate Case Issues
  - Types of cases in hearing at FERC
  - Number and distribution of cases in OAL
- Energy Policy Act of 2005
  - Provisions Potentially Affecting Rate Cases



# Organization of FERC

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## Federal Energy Regulatory Commission





## Role of OAL and other Offices at FERC

- *Office of Markets, Tariffs, and Rates* renamed
- ***Office of Energy Markets and Reliability***  
Natural Gas, Electric, and Oil Rates and Terms and Conditions of Service and Division of Reliability
- *Office of Energy Projects*  
Natural Gas Pipeline Construction and Abandonment  
Hydroelectric Projects (licensing, safety, compliance)  
Environmental Reviews Natural Gas and Hydro Projects
- *Office of General Counsel*



## Role of OAL and other Offices at FERC

- *Office of Market Oversight and Investigation*
  - Market Oversight and Assessment
  - Investigations and Enforcement
- *Office of Administrative Law Judges*
  - Trial Judges
  - Settlement Judges
- *Office of Administrative Litigation*



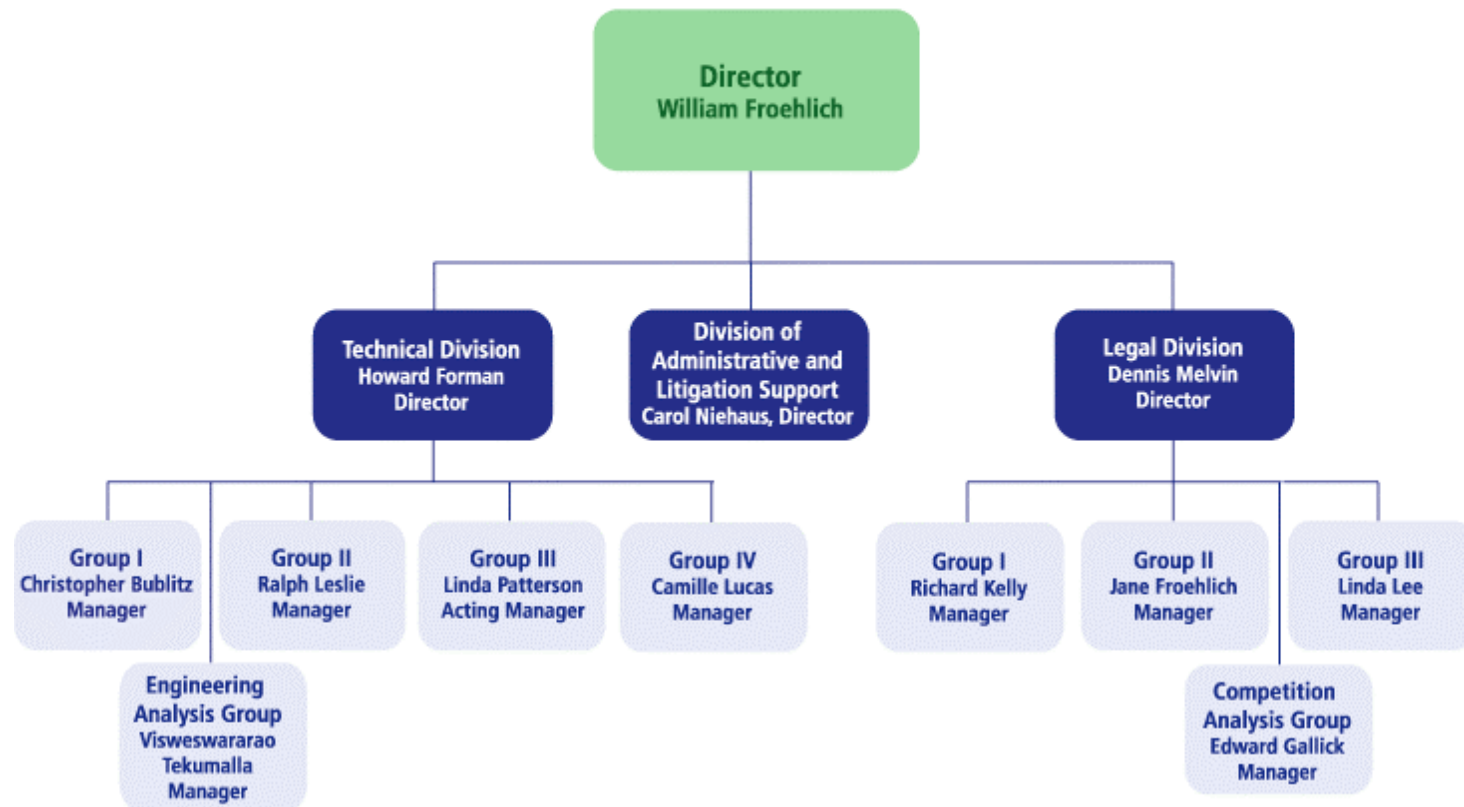
## Recent Organizational Changes at FERC

- New Chairman: Joseph T. Kelliher (R. 6/30/07)
- Two Commissioners:
  - Nora Mead Brownell (R. 6/30/06)
  - Suedeen G. Kelly (D. 6/30/09)
- Two Commissioner vacancies
- New Director of OMOI: Susan J. Court
- New Director of OEMR: Shelton M. Cannon
- New General Counsel: John Moot
- Principal Deputy General Counsel: Cynthia Marlette



# Organization of OAL

## Office of Administrative Litigation (OAL)



# OAL: A Separate Office



- Separation of functions
  - Trial Staff as an independent advocate
  - Not a decisional role, clear to the parties
- Separate trial resources
  - All necessary disciplines in single trial office
  - No conflict between trial and advisory duties

# OAL's Relationship to FERC



- Separation of functions
  - Once a case is set for hearing, trial staff cannot advise the Commission or any member of the advisory staff on the merits of the case
  - Trial staff, like other parties to case, may only state its views “on the record”
- On generic policy and rulemakings
  - Trial staff may perform advisory functions relating to non-docketed policy development
  - Trial staff may participate in an advisory role before a case is set for hearing



# In Cases Set for Hearing:

- Trial staff may:
  - Assign technical and legal experts to a case team which will analyze the applicable law and gather relevant data
  - Begin gathering facts through data requests
  - Conduct a field audit of company books and records
  - Convene an informal settlement conference

# At the Informal Settlement Conference...



- Trial staff may:
  - Facilitate a dialogue among the competing interests
  - Evaluate the strengths and weaknesses of the parties' positions
  - Advise the parties of Commission policy and applicable Commission standards
  - Assume the role of the “Honest Broker”

# Trial Staff's "Secret Weapon"



## Trial staff prepares "TOP SHEETS"

- Top sheets are an early and objective evaluation of the company's filed case
- They are based on the parties' filings. The interventions and preliminary discovery
- They contain a definitive opening settlement offer consistent with Commission precedent
- They are served on all parties, but are not filed with the ALJ or the Commission

# At the Hearing...



- Trial Staff participates in the hearing by:
  - Conducting discovery
  - Presenting Staff testimony and exhibits
  - Cross examining company and intervenor witnesses
  - Preparing legal briefs and pleadings

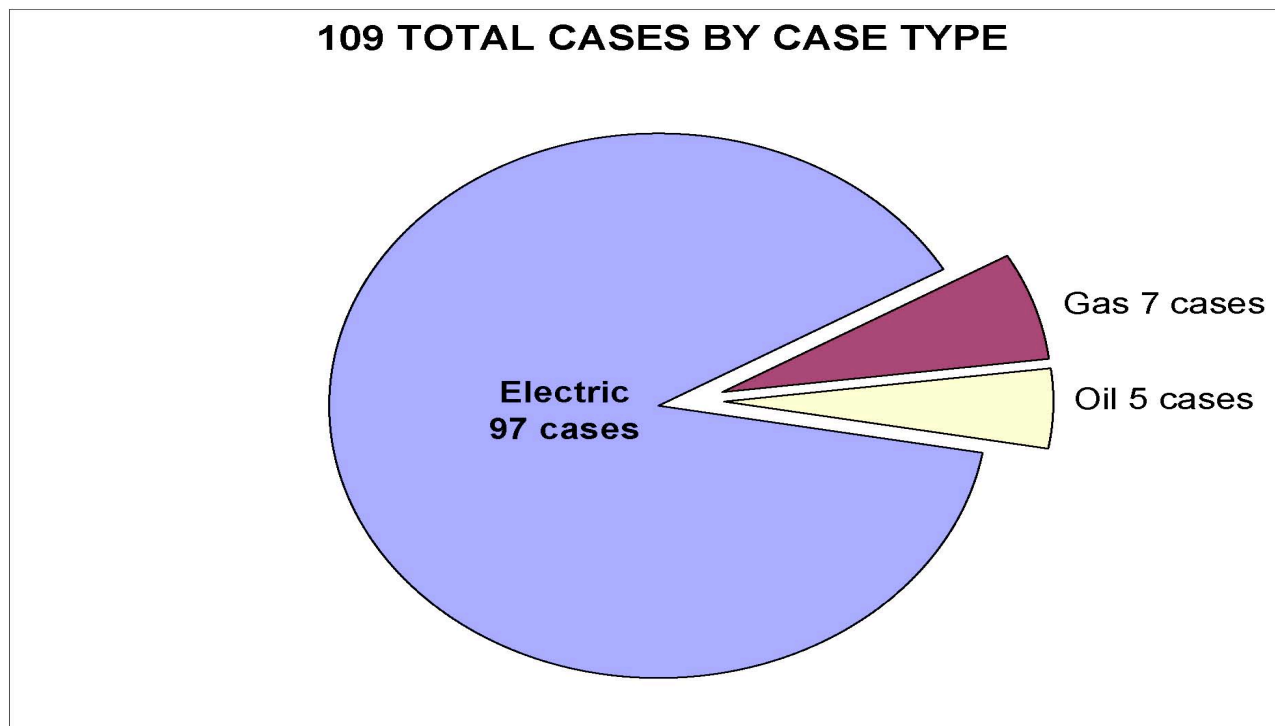


# What You Have to Do

- You have a right to be heard, not necessarily a right to a formal hearing
- Commission decides whether to set an application or a complaint for a formal “on the record” trial-type hearing
- Matters set for hearing usually involve “contested issues of material fact” or “factually intensive disputed issues not easily decided by a paper hearing” (especially where the protests are intense)!



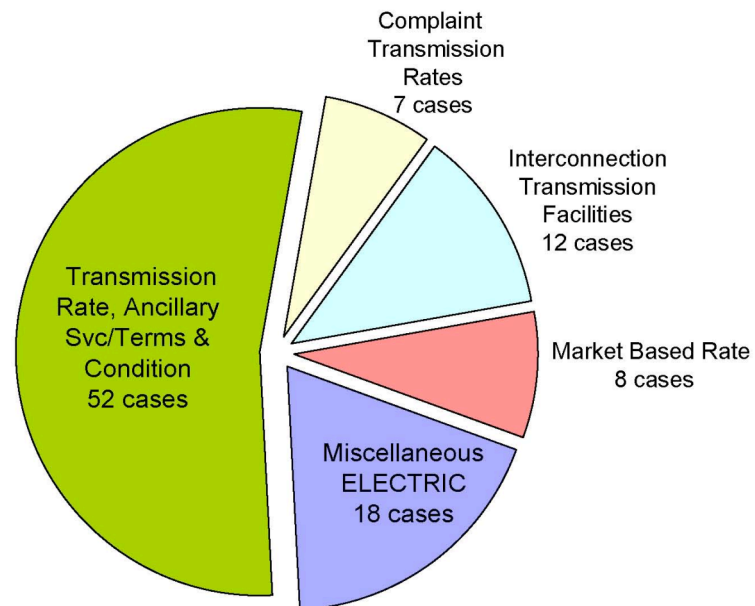
# OAL's Current Caseload



# OAL Caseload

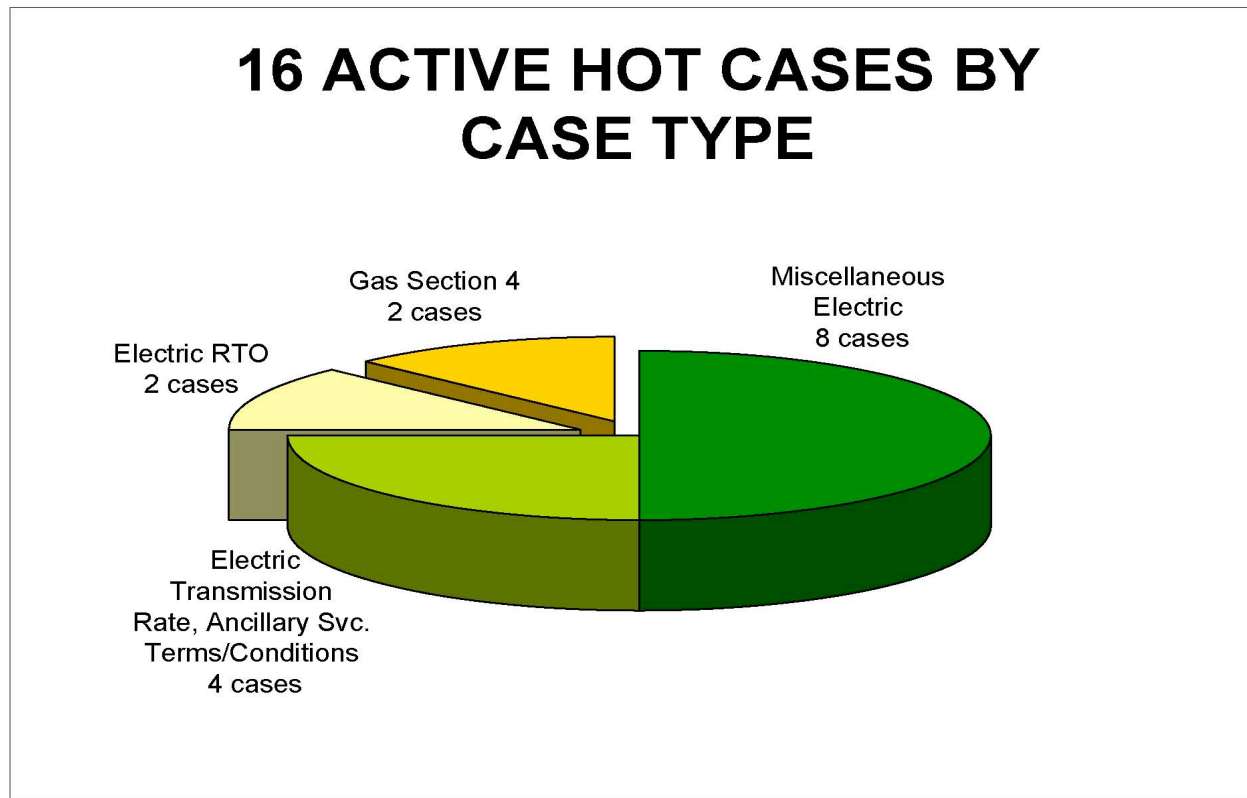


## 97 ELECTRIC CASES BY CASE TYPE





# Emerging Rate Case Issues





# Significant Cases in OAL

- Complaints set for hearing
- Establishing cost based rates
  - Electric utility, gas pipeline and oil pipeline rate cases
  - Reliability Must Run (RMR) cases
  - Reactive power cases
- Interconnection cases
  - System to system cases
  - Generator cases
- Allocation of network upgrade cost cases
- Contract interpretation cases
- Market power / Competition cases
- Affiliate abuse / Undue preference cases



## August 8, 2005 – EPAct of 2005

- Amends FPA, PURPA, PUHCA, NGA and NGPA
- Imposes deadlines on FERC:
  - 8 mandatory rulemaking requirements
  - 9 mandatory reports, studies or MOUs (some in conjunction with other agencies)
  - 7 discretionary rulemaking or generic action areas
  - 6 required consultations with other agencies (who have lead) on rulemakings or reports
- Mandatory action deadlines for FERC range from 60 days to 18 months after enactment

# EPAct 2005 - Possible Rate Case Issues



- Transmission Infrastructure Modernization -
  - Section 1223: FERC to encourage deployment of advanced transmission technologies
- Transmission Operations Improvements -
  - Section 1231: What are “rates comparable” to those it (unregulated transmitting utility) charges itself?
  - Section 1233: Issues involving roll-over rights and FTR disputes
- Transmission Rate Reform -
  - Section 1241: Higher return on equity to attract new investment
  - Section 1242: Allocation of costs related to transmission upgrades

# EPAct 2005 - Possible Rate Case Issues



- Repeal of PUHCA -
  - Section 1275: Service allocation questions, such as expenses incurred by service companies and charged to the operating companies
- Market Transparency, Enforcement and Consumer Protection -
  - Section 1290: Gives FERC authority to provide relief for contracts entered into in the Western Interconnection prior to June 20, 2001 with a wholesale seller that FERC has found to have manipulated the market

# Thank You!



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