PARTICIPATING IN A NYS PUBLIC SERVICE COMMISSION PROCEEDING

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PARTICIPATING IN A NYS PUBLIC SERVICE COMMISSION PROCEEDING

- Common Types of Proceedings at the PSC
  - Cable Mergers or Franchise Renewals
  - Consumer Complaints
  - "Generic" or Policy Proceedings
  - Investigations
  - Major Rate Cases
  - "Other" – Contractor Damaged, CPCN, Emergency, Entry Orders, Non-Standard, Powerplant siting, Property Disposals, "Prudence" Proceedings, Stock Transfers, Transmission Lines, etc.
  - Submetering

PARTICIPATING IN A NYS PUBLIC SERVICE COMMISSION PROCEEDING

- How are Proceedings Begun?
  - Appeal of Consumer Complaints
  - Commission Action
  - Company Filing (e.g., ratecases, rate/fuel/RDM adjustments, property disposals, etc.)
  - Legislative Action (federal or state)
  - Petitions (most commonly used way to begin a proceeding)

PARTICIPATING IN A NYS PUBLIC SERVICE COMMISSION PROCEEDING

- Why get involved in utility rate cases?
  - Occur every 2-3 years, so many chances to get involved
  - They are cumulative; every unchallenged increase lifts the co increase begins
  - Transparency: a chance to see inside the black box
  - The PSC, DPS, Company and media rarely hear from or thin of consumers & ratepayer stories are powerful when heard
  - It reinforces community strength as actors, rather than as m increases and policy
  - Bill impact!

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- **Timing of a Major Rate Case (What the Statute Says)**
  - Under state law, a rate case is an 11 month long litigated proceeding, and a "rate plan" – the result of the litigation over the Company's, DPS Staff's and Intervenors' cases – is 1 year long.
- **Months 1-4:** DPS Staff is responsible for analyzing the utility rate filing and representing the public interest.
  - The DPS team includes lawyers, accountants, engineers, economists, financial analysts and consumer service specialists who audit and investigate the company's proposals.
  - The team typically develops a counter-proposal to the rate filing, and occasionally opposes it.
  - Other interested groups can also file testimony and challenge the utility rate filing.
  - An Administrative Law Judge (ALJ) is assigned to preside over the case, to hear all the evidence and provide recommendations to the PSC.

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- **Timing of a Major Rate Case (What the Statute Says) – Part II**
- **Months 5-7:** Direct testimony is filed by staff and other interested groups; rebuttal testimony is filed by the utility company, and usually by intervenors; then evidentiary hearings with cross-examination of all expert witnesses are conducted.
- **Months 7-9:** Initial and reply briefs are filed with the ALJs;
  - ALJs may issue a recommended decision (RD);
  - public statement hearings are held in affected service territories.
- **Months 9-11:** Additional briefs may be filed with the PSC.
  - Commission deliberations are held in open and public meetings;
  - a written order is issued resolving all outstanding issues and matters necessary to determine the utility company's revenue requirements and the amounts to charge customers.

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- **Timing of a Major Rate Case (What actually goes down despite the Statute)**
  - This is usually what happens in rate cases, as opposed to the full litigation and fully public and transparent process set forth in the law
  - Within month 1-5, the Company notifies the parties that it wishes to negotiate a settlement of the issues (a "Joint Proposal") and submit it to the Administrative Law Judges for review
  - At this point, the Company may present a full confidential draft of a Joint Proposal, against which DPS and other parties negotiate in confidence
  - Or, the Company may confidentially negotiate its original proposed rate filing and arrive at a written document after substantial or complete negotiations

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- **Timing of a Major Rate Case (What actually goes down …) – Part II**
  - In either case, the settlement negotiations are completely confidential until an agreed upon Joint Proposal is issued
  - The JP will have at least two parties in agreement, which are usually the Company and DPS
  - The Company and DPS will then try to convince some of the intervening parties to support the JP, which creates an opening to negotiate changes in the utility's behavior
  - Next, there will be party briefs supporting and/or opposing the JP,
  - Then there will be hearings on the JP, where the Company and DPS will defend the JP
  - DPS will then hold public statement hearings (sometimes they come earlier in the process)
  - And, 1-3 months later, there will be a RD from ALJs for the Commission

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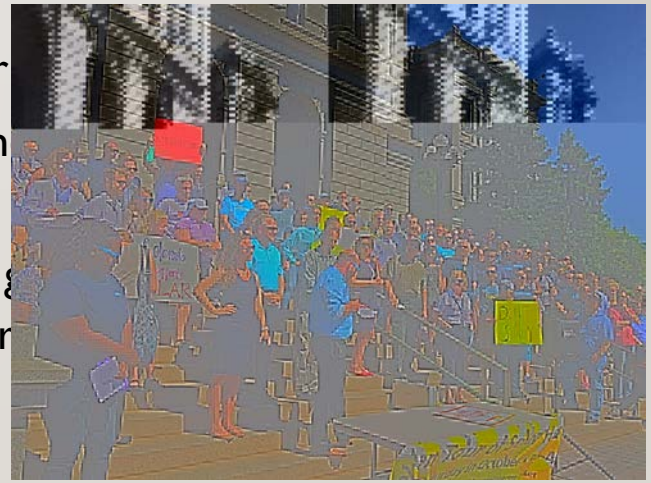
- **How much work does it take to be a party/intervenor?**
  - Party "lite": read Company, DPS & selected party filings and discovery responses; file a brief during evidentiary process or supporting/opposing JP; organize advocates/ratepayers for public statement process (or only some of the above)
  - Party "not-so-lite": all the above and file discovery requests and/or
  - Party: all the above and sponsor one or more expert witnesses, an cross-examination
  - Non-Party: None of the above, but work the press, turn out large g hearings, turn out large numbers of public comments, get legislator good for parties to do too)



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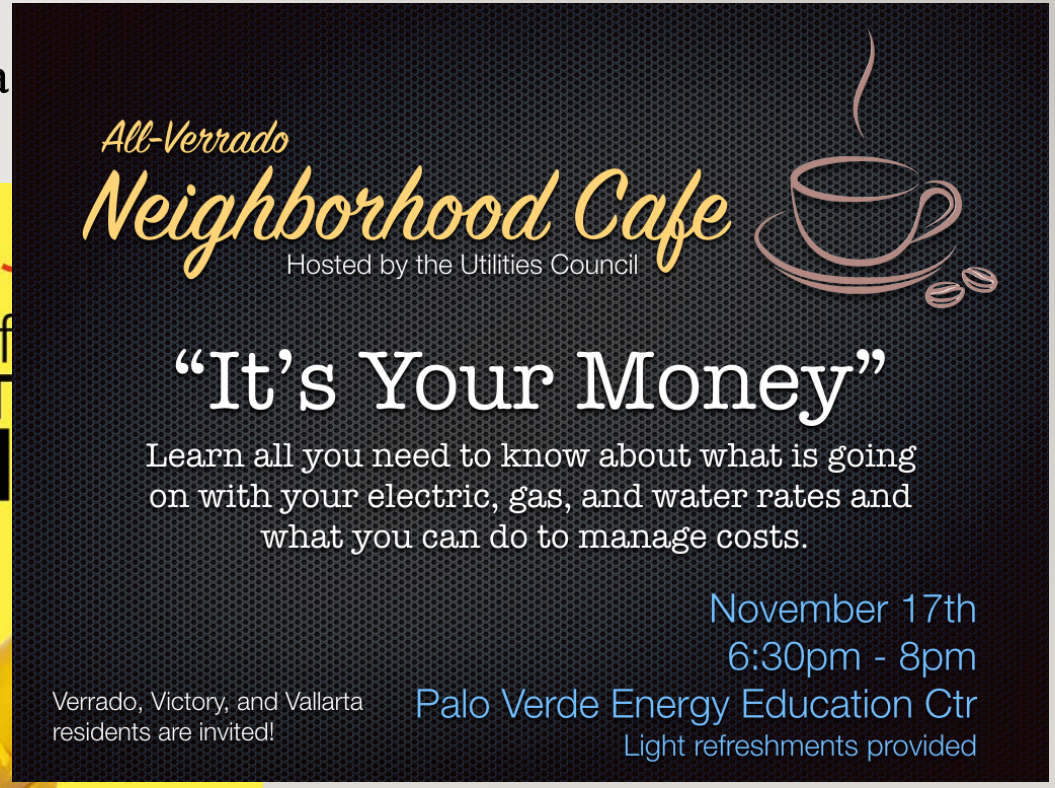
- Some conclusions and examples about becoming a
  - You can choose to go all Erin Brockovich about it!
  - You can choose to play an outside game
  - You can educate yourself and your commun
- The 2016 Suez Water Case provides some g
  - PULP intervened and partnered with Rockla Scenic Hudson, Sierra Club, the Rockland C intervenors, Stony Point Environmental Acti
  - We shared our strategies and worked toget



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- 2016 Suez Water case – PSC Case 16-W-0130 http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=16-W-0130&submit=Search
  - Public comments were filed at each "inflection point" in the case; total of 379
  - 37 parties; 25 were ratepayers, advocate groups or local groups
  - Between PULP (2 experts), Rockland County (1 expert), Rockland Water Task Force (2 experts), individual ratepayers (2 experts) – 7 experts were sponsored
    - Note: experts can focus on accounting/economics, policy, professional experience, etc.

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- 2016 Suez Water case – PSC Case 16-W-0130 – Timing of the Case & Party Action
  - George, an intervenor, posted two comments and nothing else in the case record, but wrote a series of Op Eds, went on TV and radio more than once, and organized; he also picked some conservation issues in the case and became very knowledgeable on them
  - Harriet, a legislator, became very knowledgeable about all the case's materials and submitted expert testimony in writing and was cross-examined for 4 hours, performing splendidly
  - Rockland Water Coalition, a non-party, organized over 300 public comments for the record, and turned out hundreds of seniors and other residents for the public statement hearings

PARTICIPATING IN A NYS PUBLIC SERVICE COMMISSION PROCEEDING

- "Generic Policy" Cases before the PSC
  - Why get involved?
    - Generic cases set statewide policy concerning one or more important utility policy issues such as, for example, affordability, which was addressed in Case 14-M-0565, the Affordability Case
    - Occur very rarely, so you may only get one chance at affecting a major policy or policies
    - Transparency of what goes into making statewide policy that affects you
    - The PSC, DPS, Company and advocates rarely hear from ratepayer on policies that affect them
    - Well organized community/ratepayer groups may influence a policy to benefit them
    - Bill impact! Or, … ?

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- Timing of a "Generic" Policy Case before the PSC; example of Case 14-M-0565
  - Case begins with a Commission Order
  - Months 1-2: Notice of availability of Comments and/or Collaborative/Technical Conference
  - Months 3-5: Staff issues a White Paper that may address initial party comments
  - Months 6-8: Technical Conference & second round of comments/reply comments
  - Months 9-10: Public statement hearings
  - Months 11-16: DPS Staff drafting recommended Order; PSC Order
  - Months 17-25: Petitions for rehearing/clarification; initial implementation & party comments
  - Month 25: Amended Order & beginning of clarified implementation via rate cases
- Generic cases have no limit to duration, nor a requirement of timing or elements

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- How much work does it take to intervene in a generic policy proceeding?
  - This is a policy hearing, so one can become a full party without worrying about cross-examination or submitting direct testimony; instead, one submits formal comments
  - Parties need not become experts on the policy, sometimes it is enough to share personal experience that relates to the issues at hand
  - Like with rate cases, one can choose not to become a party, but instead to rally public opinion and comments, and appearances in public statement hearings, from the outside
  - So, it is possible to contribute without a great deal of effort, and since the proceedings take place over a potentially long period of time, it need not interfere with other activities

PARTICIPATING IN A NYS PUBLIC SERVICE COMMISSION PROCEEDING

- Some conclusions about intervening/becoming a party in generic cases
  - It is always worth doing because getting your voice and/or your community's voice heard is very important; much better than letting a room full of lawyers discuss your concerns w/o you
  - The level of effort can vary widely, but the less "courtlike" proceeding is easier for beginners
- The Low-Income Affordability case (14-M-0565) is a good case study
  - AGREE, a small nonprofit, created a large coalition and participated strongly in the proceeding
  - PULP provided technical support to most of the smaller intervenors and worked to bring consumer advocates and larger intervenors onto as many joint positions as possible

PARTICIPATING IN A NYS PUBLIC SERVICE COMMISSION PROCEEDING

- Some overall conclusions about participating in NYS PSC proceedings
  - We only covered two types of the many proceedings one can get involved in at the PSC, but the model that getting involved helps protect your and your community's interests is true for many of the PSC's cases
  - True, there is a threshold to cross to become a party – you need to be able to say why you want to be party, and what you can add to the record – but once you are in, you can adjust your level of involvement to keep from overburdening yourself or your group, while still making powerful contributions for your community
  - And remember, PULP's job is to help; and while we may not be able to act as your counsel, we can give you technical tips and good advice, and we will be at your side like we have been for thirty-five years

OH, NOOOO! NOT
ANOTHER RISE

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