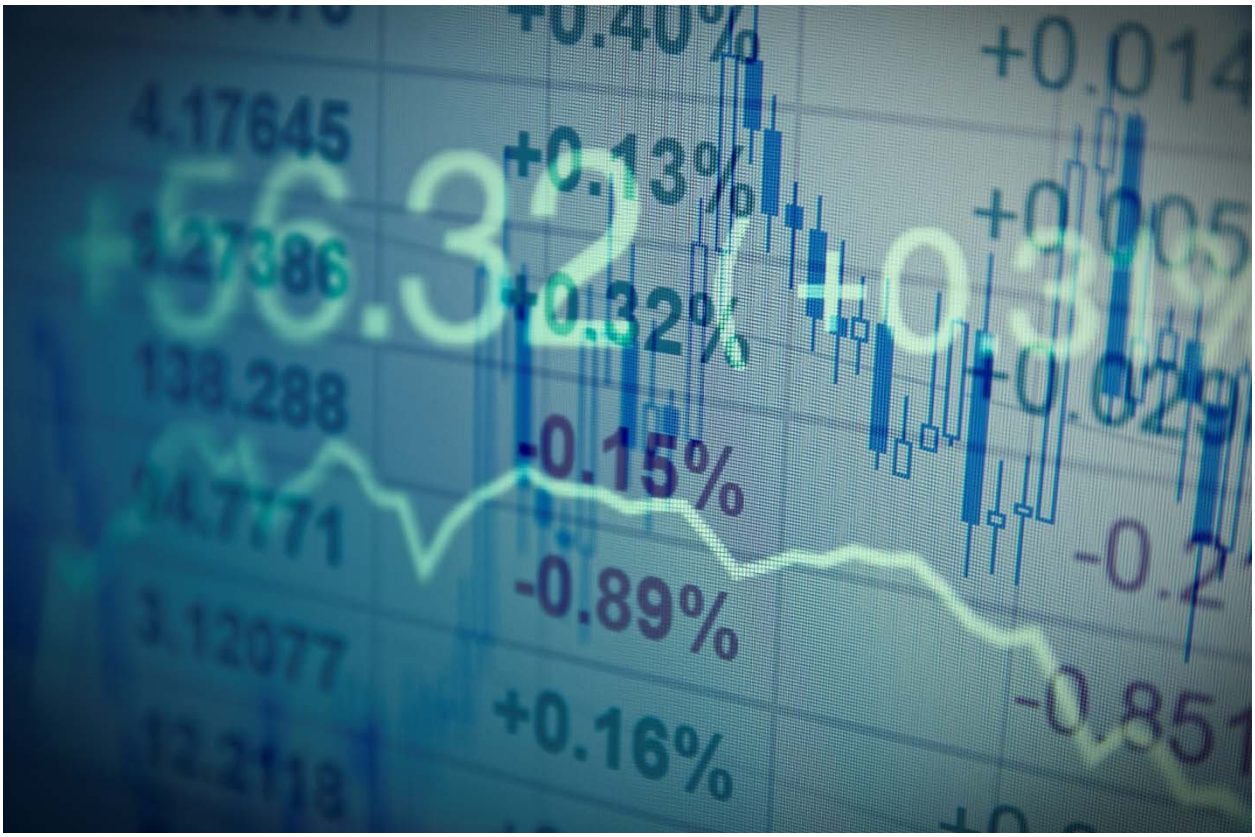
OFFICE OF INSPECTOR GENERAL
UNITED STATES POSTAL SERVICE

WHITE PAPER

CPI Study Update

August 10, 2015



July 13, 2015

The Honorable Thomas R. Carper
Ranking Member, Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

ATTN: John Kane

Dear Senator Carper:

This letter is in response to your request for an update of our 2013 paper "Revisiting the CPI-Only Price Cap Formula." That report, conducted in collaboration with Christensen Associates, examined the existing price cap and determined that it is not mathematically tenable nor financially sustainable, under the current conditions of declining mail volume and growing delivery points. The OIG thus suggested adjusting the existing price cap, through a simple formula, to account for those changing conditions. The financial simulation analysis showed that the adjusted CPI cap would put the Postal Service on a more sustainable financial footing while still maintaining the incentive for the Postal Service to be efficient. The adjusted CPI would also maintain the goal of moderate and predictable price changes.

Pursuant to your request, we updated the 2013 study with the latest available data (Appendix A) and researched how price caps are regulated in other industries (Appendix B). The updated analysis confirmed the earlier conclusion that the adjusted price cap is more financially sustainable. For example, under the adjusted price cap, the Postal Service would have earned a positive net income in 2013 and 2014. This scenario assumes that the exigency price increase is in place.

A key aspect of the proposed adjusted cap is that it automatically adjusts the price cap in response to indicators of financial need such as the decline in mail volume and the growth in delivery points. This means that the cap allows for greater increases in years when the revenue weighted volume* has dropped significantly, than in years it declined a small amount. In addition, the adjusted cap will result in price increases that are less than CPI in years when revenue weighted volume has grown. For example, in 2016, our analysis predicts that the allowed price increase using our adjusted cap methodology would be 1.02

* The volume used is weighted to account for changes in the mix of mail pieces between high-revenue and low-revenue pieces.

percent, .05 percentage points below CPI. The decline reflects that in 2016 it is estimated that revenue-weighted volume will grow slightly. In contrast, in 2015, a year where revenue weighted volume is expected to decline, our analysis predicts the adjusted cap would allow for a 2.99 percent increase, 1.3 percentage points above CPI.

Finally, the research of other industries found that in most cases, the goals of price regulation were only broadly defined in legislation and the specific mechanics of the price cap were left up to the regulator to determine.

Please find attached the detailed analysis and research. We recognize the attached reports are technical, given the nature of the topic. If you or your staff has further questions related to this, please do not hesitate to contact me at 703-248-4651 and we would be more than happy to brief you or your staff on our findings.

Sincerely,

Mohammad Adra
Assistant Inspector General
For the Risk Analysis Research Center

CHRISTENSEN ASSOCIATES

ATTACHMENT A

UPDATE TO THE COUNTERFACTUAL ANALYSIS OF THE CPI-BASED PRICE CAP AND A SENSITIVITY ANALYSIS OF THE HYBRID CAP

Christensen Associates

July 2015

Update to the Counterfactual Analysis of the CPI-Based Price Cap and a Sensitivity Analysis of the Hybrid Cap

Christensen Associates

July 2015

The United States Postal Service Office of Inspector General (OIG) asked us to update the counterfactual analysis of the Postal Service price cap formula, which was included in Appendix B of the OIG report "Revisiting the CPI-Only Price Cap Formula."[1] Specifically we analyzed a counterfactual scenario in which the Postal Service operated under a CPI-based hybrid cap instead of a CPI-based price cap. The original analysis was for the period 2008 (the first year in which rates were set by the price cap) through 2010. Our updated analysis extends the analysis through 2014. The OIG also requested an update of Figure 6 of that report, and asked us to conduct a sensitivity analysis of the hybrid cap, showing how the allowed rate increases would vary under different mail volume growth scenarios and under different assumptions concerning the share of total Postal Service costs that are institutional (i.e. not attributable to mail volume or services). We provide an update of Figure 6 and the sensitivity analysis in the second part of this report. We are also providing an Excel workbook that allows the user to enter different mail volume growth assumptions and different institutional cost share assumptions to see what the resulting hybrid rate increases would be.

The CPI-based hybrid cap allows rates for market dominant mail to increase according to the following formula:

Change in the Hybrid Cap

= Change in CPI

- (Institutional Cost Share) X (Revenue Weighted Volume Change[2] - Change in Delivery Points)

In the counterfactual analysis we compute the allowed hybrid cap increase in each year by starting with the CPI increase, as measured by the Postal Regulatory Commission. We then calculate the share of institutional costs from the previous year's Cost and Revenue Analysis, which is submitted by the Postal Service to the Postal Regulatory Commission. Next, we calculate the change in revenue weighted mail volume in the previous year using the Postal Service Revenue, Pieces, and Weight Report, which is also submitted to the Postal Regulatory Commission. Finally, we calculate the change in the total number of delivery points (city delivery, rural delivery, and highway contract delivery) in the previous year from Postal Service data that we use to measure Total Factor Productivity (TFP). The delivery point data is provided to the Postal Regulatory Commission as part of the background material supporting the TFP measure.

Once the allowed increase in the hybrid cap is determined, we use the difference between the allowed hybrid cap increase and the allowed rate change under the CPI-based price cap to determine the incremental change in revenue and the incremental change in operating expenses.[3] To determine the

[1] United States Postal Service Office of Inspector General Report Number RARC-WP-13-007, April 12,2013.

[2] Volume adjusted for the fact that different types of mail generate different revenues (for example, First-Class Mail generates greater revenues per piece than Standard Mail).

[3] In most years the allowed change in the CPI-based price cap equals the change in the CPI, but we note that in 2010 the Postal Service was not required to reduce rates even though the CPI decreased 0.4% in that year.

impact on revenue and operating expenses, we must first determine the impact of the increase in rates allowed under the hybrid cap on the number of mail pieces for the different market dominant products.[4] To do this we use the price elasticity estimates for these products that the Postal Service submitted to the Postal Regulatory Commission in 2015. Once the new rates and new mail volumes for these products are determined, we can compute the counterfactual revenue. To compute counterfactual operating expenses we multiply the change in mail volume for each product by the attributable cost per piece for that product, as reported in the Cost and Revenue Analysis.

In Table 1, we show the results of our counterfactual analysis, assuming that the Postal Service was also allowed the 2013 exigent rate increase. This table shows the actual net income for each year, the rate increase under the CPI-based price cap formula, actual mail volume for each year, counterfactual net income, the hybrid rate increase, and counterfactual mail volume. Because differences between the CPI-based price cap and the hybrid cap cumulate over time, the impact of the hybrid cap is greatest in the latter years. In 2008 the hybrid cap reduces the Postal Service net loss by approximately $500 million. In 2013 and 2014 the Postal Service net loss is eliminated with net income of $700 million and $600 million in those years. Because of the higher rates allowed under the hybrid cap, total mail volume is reduced by approximately 1.6 billion pieces in 2008, and by 2014 the total mail volume is reduced by approximately 8.8 billion pieces.

In Table 2, we show the same hybrid cap results but assume that the Postal Service is not allowed an exigent rate increase. The financial results through 2013 are the same as in Table 1, but in 2014 the counterfactual net income is -$1.3 billion.

In updating Figure 6 of the OIG report, we calculate what the allowed rate increases would have been in 2015 under a hybrid cap. We also project the allowed 2016 rate increase under the hybrid cap, using information that is currently available.

If the hybrid cap had been applied in 2015, the allowed rate increase would have been based on information available in the FY 2014 Cost and Revenue Analysis report and the FY 2014 Revenue Pieces, and Weight Report, in addition to the CPI increase calculated by the Postal Regulatory Commission. This information showed an institutional cost share of .466, a revenue weighted volume growth of -2.0%, and a CPI increase of 1.69%. Our TFP data base showed delivery point growth of 0.8%. Applying these data to the hybrid cap formula would have produced a hybrid cap increase of 2.99% for 2015.

For 2016, we rely on the FY 2014 Cost and Revenue Analysis for the institutional cost share, the April year-to-date Revenue, Pieces, and Weight Report for revenue weighted mail volume, and our TFP database for delivery point growth. Using these data sources, the projected institutional cost share is .466, projected revenue weighted mail volume growth is 0.9%, and projected delivery point growth is 0.8%. Using the most recently available CPI increase published on the Postal Regulatory Commission web site, we project a CPI increase of 1.07%. Applying these data to the hybrid cap formula produces a hybrid cap increase of 1.02% for 2016.

The following update of Figure 6 illustrates these hybrid cap increases.

Consequently in 2010 the relevant difference is between the increase in the hybrid cap and zero instead of the difference between the hybrid cap change and the change in the CPI.

[4] In the counterfactual analysis we assume that the prices and volumes for competitive mail are unchanged.

Figure 6 Application of Hybrid Cap Formula to Calculate Rate Changes for 2015 and 2016

	Change in CPI	–	Share Institutional Costs	x	Revenue Weighted Volume	–	Change in Number of Del. Points	=	Change in Hybrid Cap
2015	1.69%		0.466		-2.00%		0.80%		2.99%
2016	1.07%		0.466		0.90%		0.80%		1.02%

Table 3 shows a sensitivity analysis of the hybrid cap under a variety of mail volume growth scenarios and different assumptions regarding the institutional cost share. In this sensitivity analysis we assume that delivery points grow 1.0% per year and the CPI increases 2.0% per year. We allow the institutional cost share to range from 30% to 70%. We allow revenue weighted mail volume growth to range from −3.0% per year to 1.0% per year. As one can see from the table, the hybrid rate increases are the largest when the institutional cost share is largest and the decline in mail volume the greatest.

Table 1
Counterfactual Analysis of Hybrid Cap
Exigent Rate Increase Allowed

Net Income by Year (billions of dollars)	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Actual Net Income							
Revenue	74.9	68.1	67.1	65.7	65.2	67.3	67.8
Expenses	77.7	71.8	75.4	70.6	81.0	72.1	73.2
Income from Operations	-2.8	-3.7	-8.4	-4.9	-15.7	-4.8	-5.3
Net Income	-2.8	-3.8	-8.5	-5.1	-15.9	-5.0	-5.5
Net Income Under a Hybrid Cap							
Revenue	75.3	69.3	70.1	69.4	69.2	71.8	72.7
Expenses	77.6	71.5	75.1	69.6	79.8	70.9	71.9
Income from Operations	-2.3	-2.1	-4.9	-0.1	-10.6	0.9	0.8
Net Income	-2.3	-2.2	-5.1	-0.3	-10.8	0.7	0.6
CPI-based Rate Increase	2.9%	3.8%	0.0%	1.7%	2.4%	2.6%	1.7%
Hybrid Rate Increase	3.8%	6.1%	4.9%	4.1%	3.8%	4.4%	2.6%
Additional Rate Increase over CPI Price Cap	0.9%	2.3%	4.9%	2.4%	1.3%	1.9%	0.9%
Exigent Rate Increase							4.3%
Mail Volume (in millions)							
Actual Mail Volume	203,137	177,519	170,940	168,322	159,855	158,302	155,375
Mail Volume Under Hybrid Cap	201,526	174,872	165,306	161,485	152,509	149,671	146,532

Table 2
Counterfactual Analysis of Hybrid Cap
No Exigent Rate Increase

Net Income by Year (billions of dollars)	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Actual Net Income							
Revenue	74.9	68.1	67.1	65.7	65.2	67.3	67.8
Expenses	77.7	71.8	75.4	70.6	81.0	72.1	73.2
Income from Operations	-2.8	-3.7	-8.4	-4.9	-15.7	-4.8	-5.3
Net Income	-2.8	-3.8	-8.5	-5.1	-15.9	-5.0	-5.5
Net Income Under a Hybrid Cap							
Revenue	75.3	69.3	70.1	69.4	69.2	71.8	71.2
Expenses	77.6	71.5	75.1	69.6	79.8	70.9	72.3
Income from Operations	-2.3	-2.1	-4.9	-0.1	-10.6	0.9	-1.1
Net Income	-2.3	-2.2	-5.1	-0.3	-10.8	0.7	-1.3
CPI-based Rate Increase	2.9%	3.8%	0.0%	1.7%	2.4%	2.6%	1.7%
Hybrid Rate Increase	3.8%	6.1%	4.9%	4.1%	3.8%	4.4%	2.6%
Additional Rate Increase over CPI Price Cap	0.9%	2.3%	4.9%	2.4%	1.3%	1.9%	0.9%
Mail Volume (in millions)							
Actual Mail Volume	203,137	177,519	170,940	168,322	159,855	158,302	155,375
Mail Volume Under Hybrid Cap	201,526	174,872	165,306	161,485	152,509	149,671	148,987

Table 3
Allowed Rate Increases Under the Hybrid Cap
Under Various Institutional Cost Mail Volume Growth Assumptions

		Institutional Cost Share								
		30%	35%	40%	45%	50%	55%	60%	65%	70%
Revenue Weighted Volume Growth	-3.0%	3.2%	3.4%	3.6%	3.8%	4.0%	4.2%	4.4%	4.6%	4.8%
	-2.5%	3.1%	3.2%	3.4%	3.6%	3.8%	3.9%	4.1%	4.3%	4.5%
	-2.0%	2.9%	3.1%	3.2%	3.4%	3.5%	3.7%	3.8%	4.0%	4.1%
	-1.5%	2.8%	2.9%	3.0%	3.1%	3.3%	3.4%	3.5%	3.6%	3.8%
	-1.0%	2.6%	2.7%	2.8%	2.9%	3.0%	3.1%	3.2%	3.3%	3.4%
	-0.5%	2.5%	2.5%	2.6%	2.7%	2.8%	2.8%	2.9%	3.0%	3.1%
	0.0%	2.3%	2.4%	2.4%	2.5%	2.5%	2.6%	2.6%	2.7%	2.7%
	0.5%	2.2%	2.2%	2.2%	2.2%	2.3%	2.3%	2.3%	2.3%	2.4%
	1.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%

Delivery Point Growth	1%
CPI Growth	2%

CHRISTENSEN ASSOCIATES

ATTACHMENT B

EXAMPLES OF AUTHORITY TO IMPLEMENT AND DESIGN INCENTIVE REGULATION PLANS FROM OTHER U.S. INDUSTRIES

Christensen Associates

July 2015

Examples of Authority to Implement and Design Incentive Regulation Plans from Other U.S. Industries

Christensen Associates

July 2015

Below are examples of legislation and regulation pertaining to the establishment of price cap plans and other forms of incentive regulation in the U.S. telecommunications and energy (i.e., electric and gas utilities) industries. Table 1 provides an overview of statutory and/or regulatory authority to implement and design incentive regulation plans in these industries. After some general observations, we provide specific examples from these industries.

Table 1

Summary of Authority to Implement and Design Incentive Regulation Plans

Telecommunications			**Energy**	
Federal – interstate communications	• FCC established price cap plans based on its interpretation of its broad statutory authority provided by Communications Act of 1934. • The Act does not mandate or suggest any type of incentive regulation. • Details of plans were established through the FCC's notice and comment procedures.		Federal – interstate transmission of electricity, natural gas, and oil	• Rates must be "just and reasonable." • Energy Policy Act of 2005 directed Commission to establish incentive-based (including performance-based) rate treatments for the interstate transmission. • The Act provides policy requirements that must be met, but does not mandate specific methods. • Under the Act, rates must still be just and reasonable and not unduly discriminatory or preferential. • FERC sought public comment before issuing its final rule.
State – intrastate communications	• Law typically does not mandate incentive regulation but, unlike the Communications Act, often mentions it as an option that can be considered. • Plan details largely established by the state regulator through the regulatory process under broad state statutory powers. • Notable exception is Wisconsin, where plan details specified in law.		State – intrastate utility	• Plan details largely established by the state regulator under broad state statutory powers. • Maine's unique legislation authorizes any reasonable rate-adjustment mechanisms to promote efficiency in electric utility operation and least-cost planning, listing four permissible, albeit not exclusive, rate adjustment mechanisms.

General Observations

- The following are illustrative examples of the role of legislation and the role of the regulator in establishing price cap/incentive regulation plans; this is not meant to be an exhaustive survey.
- "Pure" price cap plans of the GDPPI-X or CPI-X form[1] are/were most prevalent in the telecommunications industry. Electricity and natural gas generally have other forms of incentive regulation, generically termed "performance based regulation" (PBR).
- Our experience and the examples cited support the conclusion that the details of plans are typically determined by the regulator through the regulatory process under the broad powers provided to the regulator by statute.
    - While the regulator is typically/often free to determine the details of the plan, in some states (e.g., Maine) legislation specifies certain types of incentive regulation that are acceptable (and that other, unspecified types of plans, could be), thus preempting questions about the legality of these types of plans.
- Oversight/enforcement/audit is typically accomplished through:
    - continual monitoring of data provided to the regulator by the company (often data already provided and audited by the regulator),
    - annual filings by the company,
    - periodic comprehensive plan reviews (e.g., after 3 or 4 years of plan operation), and
    - the regulator's complaint process where parties can bring issues of concern to the regulator for investigation.
- Among other things, periodic comprehensive reviews are a time when a plan can be modified/adjusted

Telecommunications

<u>FCC Price Cap Plan for AT&T</u>

- Details of the Federal Communications Commission's (FCC's) original price cap plan for AT&T in 1989 (and subsequent plan for the local exchange carriers) were established by the FCC under its powers granted by the Communications Act of 1934.[2]
- The FCC issued a Notice of Proposed Rule Making (NPRM) in 1987 in CC Docket 87-313 that went through a few comment cycles that culminated in a Report and Order in 1989 that detailed and implemented the AT&T price cap plan.
    - The FCC went through a similar process to implement its price cap plan for local exchange carriers a few years later.
- Citing 47 U.S.C. Sections 151, 154 (i)-(j), 201(a)-(b), 204, 205, 213, 214, 218, and 220, the NPRM generally states the FCC's powers and obligations under the Communications Act of 1934:

    > Section 1 of the Communications Act mandates that this Commission shall regulate interstate telecommunications services "so as to make available … to all the people of

[1] Both of these represent price caps that consist of a price index and a productivity factor.

[2] Historically, AT&T had been essentially a monopoly provider of interstate communication services. In 1984, the Bell Operating Companies were divested from AT&T thereby opening access to the local exchange carriers' networks. The price cap plan was designed to regulate AT&T's rates in this more competitive environment.

the United States … efficient, Nation-wide … communications service, with adequate facilities at reasonable charges …" Within this mandate we find our responsibilities:

> (1) to protect universal service; (2) to foster technological advancement in the public communications network. (3) to protect ratepayers against a carrier's exercise of market power; and (4) to promote efficient provision of interstate services at reasonable rates. Title II makes the last obligation even more explicit by declaring unlawful "any unjust or unreasonable charge, practice, classification, or regulation" for interstate common carrier services. In order to meet these responsibilities, we currently rely upon a mix of tools, including competition, market rules, and the powers given us by Titles I and II of the Act. (NPRM, paragraph 4)

- Citing 47 U.S.C. Sections 151, 201(b), and 202 (a), the FCC cites in the NPRM:

  > [W]e are under no legal obligation to continue to use cost-of-service regulation, particularly if another method of regulation will lead to just and reasonable rates at a lower cost to society. (NPRM, paragraph 2)

- This is reiterated in paragraph 23 of the NPRM:

  > [N]either the Communications Act nor its legislative history erects any bar to our replacing cost-of-service regulation with a method of regulation through which we can better meet our obligation to protect customers of dominant carriers against unreasonable rates. (NPRM, paragraph 23)

- The FCC's 1989 Report and Order implementing the AT&T price cap plan outlined the monitoring and comprehensive review of the AT&T price cap plan and noted that the ongoing monitoring could largely be accomplished with data AT&T already filed with the FCC:

  > In embarking on a modified regulatory approach for AT&T, we run the risk that the regulatory controls we have carefully crafted will produce unintended and unexpected results. … The price cap formula we find reasonable today may become less so over time and may no longer help ensure that rates are just, reasonable, and nondiscriminatory. We therefore find that continual monitoring of AT&T's performance under price caps, and a comprehensive review of our regulatory structure, are both necessary and desirable. (Report and Order, paragraph 557)
  >
  > During the initial four years of price cap regulation, we will monitor AT&T's performance, with particular attention to its prices, earnings, quality of service, and technological progressiveness. We find that information collections presently in place or planned will be sufficient to the task. … Our complaint process can also provide us with important information on AT&T's performance. (Report and Order, paragraph 559)
  >
  > In addition to monitoring price cap regulation through the collection of data, our review of tariffs, and complaints, we will review AT&T's performance in a comprehensive manner at the end of the third year from the inaugural date of price cap regulation. … Should it become apparent to us before this review that the price cap program is not achieving its goals, we will initiate an earlier review. (Report and Order, paragraph 560)

> We wish to emphasize the seriousness of our resolve in undertaking these ongoing monitoring and review efforts. If it should be demonstrated to us that price caps are in fact resulting in unjust and unreasonable rates, we stand ready to take prompt remedial action. (Report and Order, paragraph 562)

Illinois Bell Price Cap Plan

- Details of the 1994 Illinois Bell price cap plan were established by the Illinois Commerce Commission (ICC) in ICC Docket No. 92-0448 under its powers granted by Illinois Public Utilities Act (the Act).
- Section 13-506.1(a) of the Act allows the ICC to:

  > [I]mplement alternative forms of regulation in order to establish just and reasonable rates for noncompetitive telecommunications services including, but not limited to price regulation, earnings sharing, rate moratoria, or a network modernization plan. The Commission is authorized to adopt different forms of regulation to fit the particular characteristics of different telecommunication carriers and their service areas.
- Section 13-506.1(a) of the Act mandates that the ICC consider the following in determining the appropriateness of any alternative form of regulation:

  > (1) reduce regulatory delay and costs over time;
  > (2) encourage innovation in services;
  > (3) promote efficiency;
  > (4) facilitate the broad dissemination of technical improvements to all classes of ratepayers;
  > (5) enhance economic development of the State; and
  > (6) provide for fair, just, and reasonable rates.
- Section 13-506.1(b) of the Act states that a telecommunications carrier may to petition the ICC for an alternative form of regulation and the details of the plan for review, or that the ICC may initiate consideration of a plan:

  > A telecommunications carrier … may petition the Commission to regulate the rates or charges of its noncompetitive services under an alternative form of regulation. The telecommunications carrier shall submit with its petition its plan for an alternative form of regulation. The Commission shall review and may modify or reject the carrier's proposed plan. The Commission also may initiate consideration of alternative forms of regulation for a telecommunications carrier on its own motion.
- Section 13-506.1(b) of the Act also provides guidelines to the ICC for plan approval:

  > The Commission may approve the plan or modified plan and authorize its implementation only if it finds, after notice and hearing, that the plan or modified plan at a minimum:
  > (1) is in the public interest;
  > (2) will produce fair, just and reasonable rates for telecommunications services;
  > (3) responds to changes in technology and the structure of the telecommunications industry that are, in fact, occurring;
  > (4) constitutes a more appropriate form of regulation based on the Commission's overall consideration of the policy goals set forth in Section 13-103 and this Section;

(5) specifically identifies how ratepayers will benefit from any efficiency gains, cost savings arising out of the regulatory change, and improvements in productivity due to technological change;
(6) will maintain the quality and availability of telecommunications services; and
(7) will not unduly or unreasonably prejudice or disadvantage any particular customer class, including telecommunications carriers.

- Section 13-506.1(c) of the Act places some restrictions on the rates produced by any plan approved:

  An alternative regulation plan approved under this Section shall provide, as a condition of Commission approval of the plan, that for the first 3 years of the plan is in effect, basic residence service rates shall be no higher than those rates in effect 180 days before the filing of the plan. … Nothing in this subsection (c) shall preclude the Commission from approving an alternative regulation plan that results in rate reductions …

- Sections 13-506.1(d) and (e) of the Act provides for oversight, monitoring, and rescinding of an approved plan:

  (d) Any alternative form of regulation granted for a multi-year period under this Section shall provide for annual or more frequent reporting to the Commission to document that the requirements of the plan are being properly implemented.
  (e) Upon petition by the telecommunications carrier or any other person or upon its own motion, the Commission may rescind its approval of an alternative form of regulation if, after notice and hearing, it finds that the conditions set forth in subsection (b) of this Section can no longer be satisfied. Any person may file a complaint alleging that the rates charged by a telecommunications carrier under an alternative form of regulation are unfair, unjust, unreasonable, unduly discriminatory, or are otherwise not consistent with the requirements of this Article; …

<u>Wisconsin Price Regulation Statute</u>

- One of the few examples in which there is more specificity of the price cap formula in state statutes is found in Wisconsin where, among other plan elements, the price cap formula, with GDP price index and the value of the productivity offset, is specified in the state's public utility statute. Some of the major features are outlined here.
  - It is our speculation that this statutory approach was the result of company lobbyists' efforts to circumvent uncertainty in the regulatory process in establishing a price cap plan.
- In Chapter 196 of Wisconsin Statutes, Regulation of Public Utilities, Section 196.196(1) outlines the requirements of price regulation of basic local exchange services with Section 196.196(1)(c)1. specifying the initial price cap formula, including a penalty mechanism for "inadequate service" or "insufficient investment," and an incentive mechanism to "encourage infrastructure investment":

  A price-regulated telecommunications utility may not increase its rates …, except for basic message telecommunications service, for a period of 3 years after electing to become price regulated. Following the initial 3-year period …, and at any time for basic message telecommunications service, a price-regulated telecommunications utility may

> increase its rates … to the extent that the change in the revenue weighted price indexes does not exceed 2 percentage points less than the most recent annual change in the gross domestic price index, as published by the federal government. The commission shall, by rule, create a penalty mechanism for up to a one percentage point increase in the percentage offset for inadequate service provided by or insufficient investment made by a price-regulated telecommunications utility. The commission shall, by rule, create an incentive mechanism for up to a one percentage point decrease in the percentage offset to encourage infrastructure investment by the price-regulated telecommunications utility.

- Section 196.196(1)(c)1 further specifies a percentage offset of 3 percentage points and penalty and incentive mechanisms of up to 2 percentage points for telecommunications utilities with "more than 500,000 access lines in use in this state …" This was specifically directed at Ameritech Wisconsin, the largest provider in the state.
- Section 196.196(1)(c)1 also specifies when and by how much the percentage offset (i.e., the X factor) can be adjusted.
- Section 196.196(5) specifies investment commitments by price-regulated firms. For example, 196.196(5)(b)5 specifies the commitment for Ameritech Wisconsin:

> For a telecommunications utility with more than 500,000 access lines in use in this state …, a level of planned investment in an amount of not less than $700,000,000 within the first 5 years of the plan.

Energy

Federal Energy Regulatory Commission

- The Federal Energy Regulatory Commission (FERC) is an independent federal agency contained within the Department of Energy that has jurisdiction over the regulation of interstate transmission of electricity, natural gas, and oil. What is now the FERC was originally established as the Federal Power Commission (FPC) by the 1920 Federal Water Power Act, with the purpose of regulating the development of hydroelectric projects. The role and jurisdiction of the FPC/FERC has subsequently been expanded and altered numerous times. Following are discussions of examples where the FPC/FERC's jurisdiction with respect to rates has been expanded, altered, or clarified.
- In 1935, the FPC's jurisdiction was expanded to included regulation of interstate electricity transmission and sales under the Public Utility Act of 1935, which, among other things, amended the Federal Water Power Act, and renamed it the Federal Power Act. The Act required that all rates, rules and regulations subject to the jurisdiction of the FPC be "just and reasonable" and outlawed undue preferences or advantages, and unreasonable differences in rates. (74th Congress Sess. I Ch. 687, Section 205(a), August 26, 1935. 16 U.S.C. § 824d(a)-(b).)
- In 1938, the FPC's jurisdiction as extended again to include regulation of interstate natural gas transmission and sales under the Natural Gas Act of 1938. The Act required that all rates, rules and regulations subject to the jurisdiction of the FPC be "just and reasonable" and outlawed undue preferences or advantages, and unreasonable differences in rates. (75th Congress Sess. III Ch. 556, Section 4(a), June 21, 1938. 15 U.S.C. § 717c(a)-(b).)

- In 1943, the Supreme Court ruled on a rate order issued by the FPC to a company engaged in the interstate transmission and sale of natural gas. The Court interpreted the Commission's power to set the type of rate under 15 U.S.C. § 717 broadly, explaining:

> We [have held] that the Commission [is] not bound to the use of any single formula or combination of formulae in determining rates…. *Under the statutory standard of "just and reasonable" it is the result reached not the method employed which is controlling*. It is not theory but the impact of a rate order which counts. If the total effect of a rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. (*Federal Power Commission v. Hope Natural Gas Co.* 320 U.S. at 602 (1944) (internal citations omitted) (emphasis added).

- In 1977, the Congress enacted the Department of Energy Organization Act, which among other things, established the Department of Energy, and established within it the FERC. The Act transferred to and vested in the FERC various functions of the FPC, including jurisdiction over the regulation of interstate transmission and sales of natural gas and electricity under the Natural Gas Act and Federal Power Act. (Department of Energy Organization Act, Pub. L. No. 95-91 § 402(a)(1), 402(a)(1)(B)-(C)).
- In 2005, Congress enacted the Energy Policy Act of 2005, which amended the Federal Power Act to include "Transmission Infrastructure Investment," which requires FERC to establish, "…by rule, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion." (Energy Policy Act of 2005, Pub. L. No. 109-58 § 1241, (2005). 16 U.S.C § 824s.) The Act imposed four specific requirements for the rule, stipulated the rule must provide incentives for electric or transmitting utilities joining a Transmission Organization, and that any rates approved under the rule must be "just and reasonable" under 16 U.S.C. §824d-e.
- FERC sought public comment on its rule via issuance of a Notice of Proposed Rulemaking in November 2005. FERC issued its final rule pursuant to the Act in July 2006. (Promoting Transmission Investment through Pricing Reform, Order No. 679, 71 FR 43294 (July 31, 2006), 43926.) FERC stated that it "…does not grant outright any incentives to any public utility, but rather identifies specific incentives that the Commission will allow when justified in the context…" of individual orders or rate filings under section 205 of the Federal Power Act. The ruling explained that some of the incentives the rule adopts "…reflect departures from what the Commission has permitted in the past and *a much greater flexibility with respect to the nature and timing of rate recovery for needed transmission infrastructure*" and that the analysis FERC undertook in creating the rule was based on two fundamental precepts: "the need to balance investor and consumer interests and *the recognition that there is no single formula for doing so."(*Promoting Transmission Investment through Pricing Reform, Order No. 679, 71 FR 43294 (July 31, 2006), 43925, 43927 (emphasis added).) FERC codified the ruling as an amendment to part 35 of Title 18 of the Code of Federal Regulations. (18 C.F.R. §35.35.)

Maine

- The Maine Public Utilities Commission (ME PUC) directive in setting rates is codified in the Maine statutes. Under the statute, rates must be "just and reasonable" (35-A M.R.S. §301)
- In 1991, the Maine Legislature enacted legislation granting the ME PUC the power to authorize "any reasonable rate-adjustment mechanisms to promote efficiency in electric utility operation and least-cost planning." (P.L. 1991, c. 413 creating subchapter VII of Chapter 30 of Title 35-A.) The legislation goes on to list four permissible, albeit not exclusive, rate adjustment mechanisms. The four mechanisms include:
  - Decoupling of utility profits from utility sales through revenue reconciliation;
  - Reconciliation of actual revenues or costs with projected revenues or costs, either on a total or per customer basis;
  - Adjustment of revenues based on reconciled, indexed or forecasted costs; and
  - Positive or negative financial incentives for efficient operations.

  This legislation is codified at Maine Revised Statutes Title 35-A, Part 3, Chapter 31, Subchapter 7, §3195 (35-A M.R.S. §3195) and has been amended four times since 1991.
- "Maine's statutes specifically authorize alternative regulation, so the PUC can order implementation of price cap regulation even without agreement by the utility. This differs from most other states, where price caps have usually been the result of regulatory negotiation. In some states, utilities have an explicit choice between rate-base regulation and price cap regulation." ("*Regulatory updates: Maine Public Utilities Commission,"* News and Commentary, Maine Policy Review (1994), Vol. 4, No. 1).
- In a lengthy, two-phase proceeding under Docket No. 92-345, the ME PUC adopted a stipulated Alternative Rate Plan (ARP) for Central Maine Power Company (CMP). In Phase I, the ME PUC rejected CMP's proposed rate as unjust and unreasonable and ordered the company to file rates at a substantially smaller level increase. In reaching its decision, the ME PUC made a specific finding the CMP's performance in the area of management efficiency and cost cutting had been inadequate. As part of Phase I, the ME PUC considered the implementation of an ARP. The ME PUC determined that the record, as it existed, was insufficient to adopt a new regulatory ARP and asked for CMP and the parties to the proceedings to provide additional information relating to ARPs. (D. 92-345, Order, December 14, 1993, pp. 125-143). In Phase II, the ME PUC adopted a stipulated ARP signed by multiple parties involved in the second phase of the case.
- In the December 1993 Phase I Order, the ME PUC provides an overview analysis of "Price-Cap/Stability Plans." The order indicates that ME PUC's belief that "a key benefit to price caps is the strong incentive to be cost effective…Price-cap plans appear to have the potential to work well in a mixed competition/regulation environment." (D. 92-345, Order, December 14, 1993, p. 130). The Commission found that multi-year price-cap plans were likely to provide a number of potential benefits:
  - Electricity prices continue to be regulated in a comprehensible and predictable way;
  - Rate predictability and stability are more likely;
  - Regulatory administration costs can be reduced;
  - Risks can be shifted to shareholders and away from ratepayers; and
  - Stronger incentives for cost minimization are created because exceptional cost management can lead to enhanced profit for shareholders. (D. 92-345, Order, December 14, 1993, p. 130)

- In Phase I, the ME PUC directed CMP, the Advocate Staff, and any other willing party to develop a specific price-cap plan for CMP. The Commission provided the parties with guidance regarding the design of a plan which should contain three components: a price cap, profit sharing, and pricing flexibility (with a marginal cost floor to prevent pricing below cost to discourage competition). The plan duration should be five years with an abbreviated annual review and a detailed review at the end of the fourth year to investigate the performance and identify possible changes.
- Finally, in the December 1993 Order, the ME PUC provided a list of issues that should be addressed by any plan and "discourage[d] the parties from deviating from the basic framework and parameters" set forth in the order. The eleven categories of issues/questions raised by the ME PUC were ((D. 92-345, Order, December 14, 1993, pp. 135-143):
    - Selection of a price index (what economy-wide index should be used in a price-cap formula?)
    - Creation of a profit-sharing component (what should be the precise design of a profit-sharing mechanism? What should be the design of the bands and sharing rations? How should return on equity be measured? How should "irregular profits be treated?) The Commission proposed that such an adjustment be made at the annual review (and went on to specify how such an adjustment might be accomplished).
    - Productivity offset (How should it be determined? What should it reflect? Is productivity already captured in the economy-wide index?) The Commission noted "the parties may wish to explore the extent to which future sales growth can be expected to match cost increases." In addition, the Commission also stated "a 'stretch factor' to the productivity offset should be given serious consideration during negotiations in order to minimize risks to consumers, as well as to place more pressure on CMP to improve its cost efficiency.
    - Scope of annual review. (The annual review should be restricted to determining the mandated costs that can be passed through to customers, verifying the profit-sharing and price-cap adjustments, and evaluating CMP's quality of service performance during the previous year. Any resetting or other activities affecting the operation of the RSP should be done at four-year performance review.)
    - Customer satisfaction and reliability incentives (The development of explicit incentives to more intensively monitor certain CMP activities should be given consideration).
    - Definition of mandated costs
    - Treatment of fuel and purchased-power costs (What should be the appropriate treatment given current legal constraints of these costs under a Rate Stability Plan?)
    - Effect on demand-side management (DSM) activities (Is there a need for the Commission to develop stronger incentives to promote MCP's energy conservation activities to compensate for the added incentive of an ARP to promote sales?)
    - Termination option (Under what extreme circumstances would return to traditional rate of return regulation be warranted?)
    - Pricing flexibility (What Commission oversight of rate charges, if any, would be required? How can pricing flexibility be reconciled with rate design proceedings? Should the utility be allowed the authority to lower rates on a case-by-case basis?)
    - Electric Lifeline Program (ELP) Under the Rate Stability Plan

- In the Phase II Detailed Opinion and Subsidiary Findings dated January 10, 1995, the ME PUC reviewed the stipulation point by point and found each point to be reasonable. The ME PUC also tested the flexibility and robustness of the stipulated ARP based on quantitative and qualitative analysis using key financial assumptions, alternative rates of inflation, and various cost and load assumptions. In addition, the Opinion contains a discussion of MA PUC's legal authority to adopt an ARP. The MA PUC found that section 3195 explicitly articulates the Commission's authority to adopt rate adjustment mechanisms such as the ones contained in the stipulated ARP…[W]e find that the record in this case provides substantial evidence that the rates anticipated under the stipulated ARP are just and reasonable, that the stipulated ARP provides substantial safeguards in the event that foreseen or unforeseen circumstances jeopardize the justness and reasonableness of rates during the term of the ARP and that risks are shifted from CMP's customers to the Company. We further find that the stipulated ARP is not inconsistent with any other provision in Title 35-A… [D. 92-345 (II), Detailed Opinion and Summary of Findings, January 10, 1995.]
- In Maine rate proceedings, the interests of Maine utility consumers are represented by the Maine Office of the Public Advocate—established under Title 35-a M.R.S. Chapter 17. Per 35-A M.R.S. § 1702, the Public Advocate may review, investigate and make appropriate recommendations to the commission with regard to, among other things, the reasonableness of rates and services. The Public Advocate may petition the commission to initiate proceedings to review and investigate rate or service issues.
- Customer service and reliability standards are built into the CMP price cap formula to maintain and incentivize service quality.
- The CMP ARP includes limited annual reviews as well as a mid-period and final review.

<u>Massachusetts</u>

- The Massachusetts Department of Public Utilities (MA DPU) was established by the Massachusetts legislature in 1919. Since that time, its goal has been "to ensure that the public utility companies it regulates provide safe, reliable, and least-cost service to Massachusetts consumers." (D.P.U. 94-158, Opinion, p. 3.) Under the MA constitution, a regulated utility must be given an opportunity to earn a fair return on amounts prudently invested. See Art. X of the Constitution of the Commonwealth of Massachusetts.
- In September 1994, the Massachusetts Department of Public Utilities (MA DPU) initiated Docket 94-158—an investigation into the theory and implementation of performance-based regulation (PBR) that could be applied to public utility gas and electric companies providing service in the state. (In a prior proceeding, D.P.U. 93-167A, Colonial Gas and North Attleboro Gas Company had recommended that MA DPU explore alternative regulatory mechanisms. D.P.U. 94-158, P. 5 *citing* D.P.U 93-167-A at p. 20.)
- As part of that docket, the MA DPU issued an Order summarizing its policy regarding incentive regulation. MA DPU provided an overview of its legal authority to implement incentive regulation. The MA DPU indicated that future incentive regulation proposals would be reviewed in a manner consistent with the Order.
- Per the Order, MA DPU jurisdiction for regulating gas and electric service within the state derives from MA G.L. c. 164. Its authority to approve an incentive proposal rests on its jurisdiction to adopt incentive regulation generally under G.L. c. 164. Under G.L. c. 164, §76, MA

DPU has broad general supervisory powers over all gas and electric companies in the state and under §§93 and 94 it has authority over rates. Under §94, MA DPU has the authority to investigate the propriety of any proposed rate, price or charge—based on a proposed rate change, a complaint, or upon its own motion.

- The Opinion describes its powers under G.L. c. 164, §94 as follows:

> the [MA DPU] is responsible for ensuring the 'propriety' of proposed rates. In practice, the [MA DPU] has interpreted this to mean rates that are 'just and reasonable.' Section 94 also requires that rates are not unjustly discriminatory or unduly preferential.
>
> The statute does not prescribe a particular method by which the [MA DPU] must fulfill its statutory mandate of setting just and reasonable rates; nothing in G.L. c. 164 indicates that the legislature intended to limit the [MA DPU] to a specific regulatory scheme, such as [Cost of Service/Rate of Return]. (*D.P.U. 94-158, Opinion, p. 35.)*

- The Order notes that the Massachusetts Supreme Judicial Court has held that MA DPU has broad authority to regulate rates under G.L. c. 164, §94. There are some MA state statutes that impose specific requirements that have to be considered and may limit the implementation of PBR, including MA G.L. c. 164, §94G (fuel charge statute); §§69G et seq (the siting statute); §94A (long-term gas and electric contracts); §§30, 70-76C, 86-91 (franchise obligations).(D.P.U. 94-158, Opinion, pp. 12, 48.)
- Ultimately, the MA DPU concluded that it was within its ratemaking authority "to modify, refine, or supplement the existing cost-based, rate-of-return regulatory framework, or to adopt new ratemaking approaches, as long as such action would result in just and reasonable rates, and are consistent with the statutory and constitutional requirements and the guidelines developed in this Order." (D.P.U. 94-158, Opinion, p. 39.)
- The order lists three primary objectives of incentive regulation: provide marketplace benefits to consumers by promoting efficient operations, cost control and opportunities for reduced electric and gas rates; provide opportunity for companies to adjust to competition as it develops; and achieve the longstanding goal of safe, reliable, and least cost service. (D.P.U. 94-158, Opinion, p. 34.)
- In the Order, the MA DPU specifies how it will evaluate incentive proposals brought before the department. Under a proposed performance-based rate, the proponent must show that the rate would be just and reasonable under the MA DPU's interpretation of G.L. c. 164 §94 and consistent with the goal of ensuring the provision of safe, reliable, and least-cost service.
- The MA DPU overview of incentive regulation called out a number of specific factors:
  - Giving utilities a financial stake in the associated cost savings from improved efficiency can provide more incentives than traditional cost of service/rate of return to deliver improved services at lower prices;
  - Any plan must credibly assign benefits to customers (lower prices, increase service) that improve on what would have been offered under current regulation;
  - A plan should not encourage or allow cross-subsidization or other anticompetitive behavior that could inhibit or suppress emerging competition;

  - The likelihood of exceptional reward and improved financial integrity for the firm, if its performance is good, is essential to any plan. Truncating a firm's rewards unduly risks the benefits to customers that well-designed plans can offer;
  - Incentive plans should be designed to ensure the continued pursuit of service quality and reliability;
  - Structural constraints (such as statutory requirements) may limit the scope of PBR proposals in some cases; and
  - Administrative and regulatory costs may be reduced because the ratemaking cycle is lengthened or eliminated and reasonableness reviews may be limited to certain, predetermined criteria or triggers.
- After concluding that specific mechanisms should vary based on the particular circumstances of the utility and deciding that it would not prescribe a specific mechanism for all utilities, the Order sets forth, as a general proposition that a petitioner "shall be required to demonstrate that its approach is more likely than current regulation to advance the MA DPU's traditional goals of safe and reliable energy service and to promote the objectives of efficiency, cost control, lower rates, and reduced administrative burden in regulation." (D.P.U. 94-158, Opinion, p. 48.)
- MA DPU then provides a series of more specific criteria for evaluating incentive ratemaking proposals. The proposal should address, and MA DPU will evaluate, whether the proposal:
  - Is consistent with MA DPU regulations, statutes, and governing precedent;
  - Is consistent with market-based regulation and enhanced competition
  - Safeguards system integrity, reliability, and current policy objectives
  - Rewards utility performance and address exogenous costs
  - Focuses on comprehensive results
  - Incorporates well-defined, measurable indicators of performance
  - Is consistent with accounting standards and acceptable within the financial community
- Finally, MA DPU "strongly encourages all jurisdictional gas and electric utilities to devise and propose incentive programs"—indicating that while not required, "any utility that does not file an incentive program following the issuance of this Order will be required to demonstrate with full specificity, in its next base-rate case, how it is seeking to achieve more efficient operations, better cost control, and lower rates, and to explain why it has not submitted an incentive proposal for these purposes." (D.P.U. 94-158, Opinion, pp. 54-55.)

<u>Vermont</u>

- The Vermont Department of Public Services (VT DPS) and the Public Service Board (VT PSB) are established by Vermont statutes, 30 V.S.A § 2 & 3. VT DPS is directed to "supervise and direct the execution of all laws relating to public service corporations… including the review of proposed changes in rate schedules and petition to the Public Service Board, and representation of the interests of the consuming public in proceedings to change rate schedules of public service companies…". (30 V.S.A. § 2 (a)(6))
- VT DPS and VT PSB are granted broad jurisdiction over charges and rates wherein VT DPS "…shall propose, and (VT PSB) through the establishment of rates of return, rates, tolls, charges, or schedules shall encourage the implementation by electric and gas utilities of energy-efficiency and load management measures which will be cost-effective for utilities and their

customers on a life cycle cost basis."(30 V.S.A. § 218(b).) If a utility's rates "…are found unjust, unreasonable or otherwise in violation of a provision of this chapter…" VT PSB is granted broad powers to supplement or change such rates, and make any changes to regulations or other practices of the utility to ensure such changes are undertaken, to ensure adequate service at just and reasonable rates. (30 V.S.A. § 218(a))

- Rate changes are controlled by VT PSB under broad statutory authority. Regulated utilities must submit notice to VT DPS detailing any requests to change rate schedules. The "justness and reasonableness" of which are to be investigated by VT DPS, which provides a recommendation to VT PSB. VT PSB is provided broad power to accept VT DPS's recommendation, or initiate its own investigation, or call a hearing on a recommendation; ultimately, no "…change [can] go into effect without the approval of VT PSB…." (30 V.S.A. § 225(a) & (b)) VT PSB is further empowered to suspend, on six days' notice, a rate change until it makes a final determination on the request for a rate change. (30 V.S.A. § 226(a), excludes municipal plants and electric cooperatives.) If VT DPS recommends acceptance of a proposed rate change, persons affected by the change may submit a petition to VT PSB opposing the change, and VT PSB can suspend the rate change as a result of such a petition. ([1] 30 V.S.A. § 226(c)) Finally, VT PSB can order, on its own motion, an investigation and hearing on the existing rates of any regulated utility.
- In 1991, the Vermont Legislature enacted legislation that established a "least cost integration plan" for regulated electric or gas utilities. The purpose of which is to "[meet] the public's need for energy services, after safety concerns are addressed, at the lowest present life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy supply, transmission, and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs." (30 V.S.A. § 218c (a)(1); added 1991, Public Act No. 99 § 2.) The legislation requires regulated utilities to prepare and submit a proposed least cost integration plan to VT DPS and Board at least every third year. VT PSB, after notice and opportunity for hearing, may approve a company's least cost integration plan if it determines the company's plan complies with § 218c (a)(1).(30 V.S.A. § 218c (b)) The requirements for a plan's compliance were later extended to include renewable energy targets.
- In 2003, the Vermont Legislature enacted legislation granting electric or natural gas utilities the ability to submit petitions for alternative forms of regulation under 30 V.S.A. § 218d. (30 V.S.A. § 218d; added 2003, Public Act No. 69, § 2.) The legislation (and as amended in 2005) granted VT PSB broad power to approve and set standards for the effectiveness of alternative forms of regulation upon finding that the proposed alternative regulation will:
    - establish a system of regulation in which such companies have clear incentives to provide least-cost energy service to their customers;
    - provide just and reasonable rates for service to all classes of customers;
    - deliver safe and reliable service;
    - offer incentives for innovations and improved performance that advance state energy policy such as increasing reliance on Vermont-based renewable energy and decreasing the extent to which the financial success of distribution utilities between rate cases is linked to increased sales to end use customers and may be threatened by decreases in those sales

- promote improved quality of service, reliability, and service choices;
- encourage innovation in the provision of service;
- establish a reasonably balanced system of risks and rewards that encourages the company to operate as efficiently as possible using sound management practices; and
- provide a reasonable opportunity, under sound and economical management, to earn a fair rate of return, provided such opportunity must be consistent with flexible design of alternative regulation and with the inclusion of effective financial incentives in such alternatives. (30 V.S.A. § 218d; added 2003, Public Act No. 69, § 2; amended by Public Act No. 61, § 11, 2005.)

- § 218d (d) permits broad range of acceptable forms of alternative regulations as long as they support the required findings under § 218d (a) and promote the public good; for example, they "…may include such changes or additions to, waivers of, or alternatives to, traditional rate-making procedures, standards, and mechanisms, including substantive changes to rate base-rate of return rate settings…."
- In 2005, the Vermont Legislature enacted legislation to amended § 218d to empower VT PSB to approve alternative forms of regulation upon request of VT DPS or on its own initiative—i.e., the amendment removed any statutory constraint on VT PSB's power to approve an alternate plan only upon the petition of such a plan by a utility. (Public Act No. 61, § 11, 2005.)
- In September 2006, VT PSB issued its first Order approving an Alternative Regulation Plan for a gas utility under 30 V.S.A. § 218d. Three months later, VT PSB issued its first Order approving an Alternative Regulation Plan for an electric utility, noting that "[a]lternative regulation, while authorized by [30 V.S.A. § 218d], is an option, not a requirement. As we have observed in the past, any meaningful analysis of alternative regulation must consider the opportunity cost of continuing under additional regulation. This means that we should expect that both the Company *and* its customers will benefit from alternative regulation."(State of Vermont Public Service Board Docket No. 7176, entered 12/22/2006, pp. 27-28.) VT PSB also concluded that any order approving an alternate regulation plan is non-precedential, "…and should not be interpreted more broadly as endorsing a similar alternative regulation plan for any other Vermont utility… [the appropriateness of any alternative regulation] must be made based on the facts relevant to that particular utility." (State of Vermont Public Service Board Docket No. 7176, entered 12/22/2006, p. 42.)