Public Service Regulation: Achieving Poverty Reduction through Accountability:

Legal Policy Framework

Johannesburg, September 2, 2004

Jerrold Oppenheim <u>www.DemocracyAndRegulation.com</u> +1-978-283-0897



UNIVERSAL ACCESS PUBLIC ACCOUNTABILITY

RIGHT TO PARTICIPATE

TRANSPARENCY

RESOURCES FOR PARTICIPANTS

September 2, 2004

RIGHT TO PARTICIPATE

- Procedure for intervention
- All proceedings open to public
- Liberal standing
- Standard administrative procedures
- Right to appeal
 - Statutory standards to control discretion
 - Must also follow own rules & precedent
 - Explain every decision, address every issue
 - Transcribed record of all proceedings

TRANSPARENCY

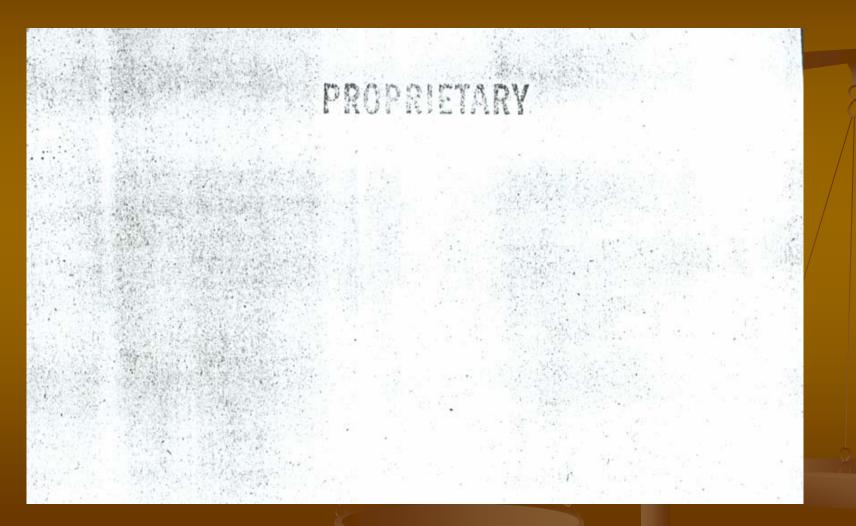
ALL information is available

Periodic detailed reports

Open Meetings?

September 2, 2004

SECRECY



TRANSPARENCY

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- amount invested in the utility, by category of investment (generating plant, transmission lines, supplies, etc.);
- profits;
- · amount of pollution emitted, by pollutant; and
- hours of labor lost due to injury.

Additional public information is available from the files of public agencies under state and federal Freedom of Information Acts (FOIA).

After several months of poring over the utility's testimony, data tables and answers, intervening members of the public may file their own proposals for what utility prices and practices should be. These proposals can include expert testimony, analyses and supporting tables and studies. The utility is then given time to ask discovery questions of the intervenors regarding their proposals.

| | BRIDGE STREET, NEW YORK | | RFQ 8823 A |
|----------------------------------|---|---------------------|----------------------------------|
| Invoice / | Scrap Vendor Truck | | Amount |
| 63720 | Charged 47,750/ X 7.25 CWT Correct to 47,750/ X 6.50 CWT Check / 128522 dtd 5/1/89 | Credit | \$3,461.87 3,103,75 358,12 |
| 63772 | Charged 25,640# X 7.25 Correct to 25,640# X 7.25 Check # 128522 dtd 5/1/89 *Winimum charge 30,000 | Credit | \$2,175.00 1,950.00 225.00 |
| 63689 | Charged 44, 51 C | Credit | \$3,248.72 2,912.65 336.07 |
| 63787 | Charged 38,100 X 7.25 Correct to 38,100 X 6.50 Check / 128109 dtd 4/26/89 | Credit | \$2.762.25 2.476.50 285.75 |
| 63261 | Charged 30,000 X 7.25 CNT Correct to 30,000 X 6.50 CMT Check # 125021 dtd 3/17/89 *Winimum charge 30,000 | Credit | \$2,175.00 1,950.00 225.00 |
| Figure 6 Dise Confidential Ir | | ublic Disclosure of | Commercially |

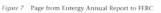


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TRANSPARENCY

| | | The Open Regulate | ory Process 6 | |
|---|---|---|------------------------------------|--|
| Name of Respondent | This Report Is: | Oate of Report Vi (Mo, Da, Yr) | Quite of Report Year of Report | |
| Enlargy Arkanaes, Inc. | (1) [X] An Original (2) [1] A Resubmission | (Mo, Da, Y?) De | ec. 31, 1999 | |
| | (1) [X]An Original (2) []A Resubmission ELECTRIC OPERATION AND MA | INTENANCE EXPENSES | | |
| I the amount for previous year is not der ine Acco | ived from previously reported fig- | Amount for Gurrent Year | | |
| | Account (#) | | Amount for Previous Year (C) | |
| 1 1. POWER PRODUCTION EXPENSES | y | (D) | (1) | |
| 2 A. Sleam Pover Generation | | | | |
| 3 Operation 4 (500) Operation Supervision and Engineer | lana . | 3,955,173 | CAD ENCOMPANY'S | |
| 5 (S01) Fuel | 5 (501) Fuel | | 3,863,71 | |
| 6 (SC2) Steam Expenses | | 197,651,690 3,125,735 | 2,430,3 | |
| (503) Steam from Other Sources (Lese) (504) Steam Transferred-Cr. | | -10.955 | 35.7 | |
| 9 (505) Electric Expenses | | 1,049,876 | 795.1 | |
| 10 (505) Macetaneous Steam Power Expens 11 (507) Rents | ies . | 4,797,944 | 5,537,71 | |
| 12 (509) Allowances | | 4,619,953 | 4,543,8 | |
| 13 TOTAL Operation (Enter Total of Lines 4 (5/1) 12) | | 215,211,336 | 197,530,85 | |
| 14 Maintenance 15 (510) Maintenance Supervision and Engineering | | Sand do in his standburger | Repeated and a state | |
| 16 ((\$11) Maintenance of Structures | ee'ry | 482,726 | 552,26 471,65 | |
| 17 (512) Maintenance of Boller Plant | | 6,650,958 | 6,941,53 | |
| 18 (513) Maintenance of Electric Plant | | 4,142,662 | 3,648,41 | |
| 19 (S14) Maintenance of Miscellaneous Steam Plant 20 TOTAL Maintenance (Enter Total of Lines 15 (bit) 19) | | 992,997 | 1,248,91 | |
| 21 TOTAL Power Production Expenses-Steam Power (Entr Tot lines 13.4.20) | | 228.322.659 | 210,393,72 | |
| 22 8. Nuclear Power Generation 23 Operation | | Participant in the second s | | |
| 24 (\$17) Operation Supervision and Engineering | | 13,367,527 | 11,922,95 | |
| 25 (518) Fuel | | 68,672,817 | 69,345,94 | |
| 26 (519) Coslants and Water 27 (520) Steam Expenses | | 5,340,407 22,656,331 | 5,337,61 | |
| 28 (521) Steam from Other Sources | | 22,656,331 | 16,194,35 | |
| 29 (Less) (522) Steam Transferred-Cr. | | | | |
| 30 (523) Electric Expenses 31 (524) Miscellaheous Nuclear Power Expen | | 21 549 427 | 30.012.4 | |
| 32 (525) Rente | | 2,012,400 | 1.875,64 | |
| 33 TOTAL Operation (Enter Total of lines 24 thru 32) | | 133,418,909 | 134 688 04 | |
| 34 Maintenance 35 (528) Maintenance Supervision and Engin | 44/04 | 15.432.135 | 14,295,21 | |
| 36 (\$29) Maintenance of Structures | | 10,361,356 | 8,356,63 | |
| 37 (530) Maintenance of Reactor Plant Equipment | | 8,360,853 | 7,643,81 | |
| 38 (531) Maintenance of Electric Plant 39 (532) Maintenance of Miscellaneous Nucl | ear Plant | 4,897,293 | 4,239,34 | |
| 40 TOTAL Maintenance (Enter Total of lines 35 thru 39) | | 87,498,379 | 81,603,51 | |
| 41 TOTAL Power Production Expenses-Nuc. 42 C. Hydraulic Power Generation | Power (Entritol lines 33.8.40) | 220,917,268 | 216,292,43 | |
| 43 Operation | | | | |
| 44 (535) Operation Supervision and Engineer | ng | 87,120 | 82,64 | |
| 45 (536) Water for Power 46 (537) Hydraulic Expenses | | 232,765 | 252,71 | |
| 47 (538) Electric Expenses | | 97,126 | 131,4 | |
| 48 (539) Miscellaneous Hydraulic Power Cen | eration Expenses | 221,933 | 154,92 | |
| 49 (540) Renta 50 TOTAL Operation (Enter Total of Lines 44 | (Prov #2) | 4,541 | 5,0 | |
| The second | | 1,175,498 | 1,218,0 | |



Finally, everyone presents their case in public hearings conducted by a hearing officer, administrative law judge or a regulator. In ordinary civil or criminal trials, discovery precedes all testimony; witnesses give sworn, direct oral testimony at the trial and are cross-examined immediately thereafter. "Utility trials" elicit much more probing information by reversing the sequence. Direct testimony is filed first and in writing and must include the boxes of quantitative information described above; then





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PARTICIPANT RESOURCES

Democratic process requires participation

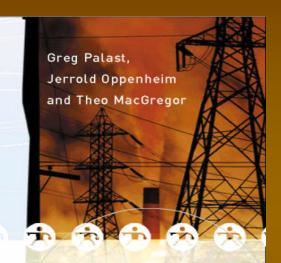
Avoid advocate capture

Training

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DEMOCRACY AND REGULATION

How the Public can Govern Privatised Essential Services

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Monitoring and Contract Analysis

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MONITORING: A PARTNERSHIP

Can be demanding, technical work

Resources do not all have to be in government

Public information

Resources

CONTRACT ANALYSIS

Publicly arrived at standards

Determined in advance

DISCRETION

Escalating and non-discretionary penalties

Performance standards

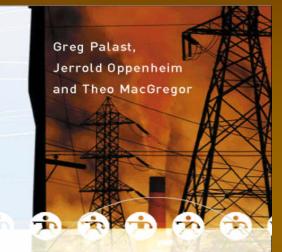
Principles of pricing, e.g., risk allocation

PETITION PROCESS

Standing
Participant resources
Transparency
Administrative procedure standards
Public process
Right to appeal

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About the Speaker

Jerrold Oppenheim is an independent consultant and attorney who has advised and represented low-income and other utility consumer advocates, labor unions, government agencies, and utilities across the country for more than 30 years. A graduate of Harvard College and Boston College Law School, he led utility litigation and argued precedent-setting cases for four Attorneys General in New York State and Massachusetts and for Legal Services in Boston, Chicago and New York City. He has spoken and published on four continents, including Democracy And Regulation with Theo MacGregor and Greg Palast, published by Pluto Press (London) and winner of the ACLU Upton Sinclair Award.