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Subject: FW: [EXTERNAL] Docket #2400044 - Electronic PDF Submission of Printed Document Submitted in Person at Hearing Today 04-28-2026
Date: Thursday, April 30, 2026 3:02:47 PM

From: [REDACTED]
Sent: Wednesday, April 29, 2026 12:00 AM
To: Contact TPUC <Contact.TPUC@tn.gov>
Subject: [EXTERNAL] Docket #2400044 - Electronic PDF Submission of Printed Document Submitted in Person at Hearing Today 04-28-2026

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April 28, 2026

TPUC Staff -

Here is the requested electronic copy of my printed document submission that I made in person at today's Hearing in Room G201 at the Andrew Jackson State Office Building. Please note that - per request - this is indeed a Notarized Affidavit copy. Any questions on this submission, please contact me. Thanks for the opportunity to address the Commission today on this matter.

- Douglas P. Turner



Attachment: TPUC Hearing 4-28-2026 Submission - Doug Turner + AELP State Model Legislation.pdf

Statement from Douglas P. Turner, filed online with the Tennessee Public Utility Commission (TPUC) Public Comment Website April 28-2026, on the matter of Docket #2400044 - Petition of Limestone Water Utility Operating Company LLC to Increase Charges, Fees and Rates and for Approval of a General Rate Increase and Consolidated Rates – Round #2.

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And so, it continues ... here we are again... CSWR/Limestone is back before TPUC for another rate increase... or should I say, looking for the **full balance** of what they had previously asked for this time last year, in 2025. At that time, the Commission had legitimate concerns, and only granted Limestone a 50% increase in their requested rates.

I say no! I encourage TPUC to say no. Limestone, its operating parent Central States Water Resources (“CSWR”) and its corporate investor parent Sciens **don’t deserve an increase. They haven’t earned it.**

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I have testified before this Commission last year, in person, and through documents filed. **I’m Doug Turner, residing at [REDACTED]** am a service customer of CSWR/Limestone (“Limestone”) for sewer services in the River Rest community in the Grassland area of unincorporated Franklin, in Williamson County TN. As a retired person, this proposed rate increase will **seriously impact my utility costs and monthly budget, so I must OBJECT to this rate increase request by Limestone/CSWR**, both personally for myself and as a homeowner representative for the River Rest Homeowners Association (RR-HOA) and advocate for the adjacent River Rest Condominiums (RR-Condos).

The residents of River Rest (RR-HOA and RR-Condos), in the Grassland community of Williamson County, represent 307 of the “taps” (customers) of the 563 total taps (over 54%) for sewer services provided by Limestone, an operating entity of Central States Water Resources (“CSWR”) from St. Louis, Missouri, and is a division of the private investor-owned Sciens Water. Limestone has an ongoing tariff application before the TN Public Utility Commission (TPUC) for **the balance of the initial rate increase of 106% (more than double)** of our monthly sewer services.

Previously, I had paid \$42.00 per month (plus a \$7.50 per month surcharge (implemented by the prior operator, Cartwright Creel/Schaffer Systems for “improvements” to the treatment plant; this was increased to \$46.50 per month in 2024, plus the \$7.50 surcharge, for a total of \$54.00 per month. In 2025, with the First Round increase approved by TPUC effective May 1, 2025, **my rates went up to \$70.00 per month**, though TPUC required Limestone to immediately eliminate the \$7.50 surcharge. RR-HOA has a combination of younger families on strict budgets plus older residents on limited incomes, and the majority of RR-Condos has older residents and retirees on limited incomes; **none of us can afford such a hefty increase in rates, amounting to an average \$384.00 annual increase.**

Now, Limestone is back for Round Two. Per what I can glean from Limestone’s “confidential” information, the new rate I will be paying **jumps up to \$90.00 per month** for my 3 bedroom home – and I am the sole occupant! **That’s \$1,080 per year - for sewer service!** And per various documents CSWR has filed in other states, Limestone’s target over the next several years is **\$120.00 average per homeowner – another \$30.00 per month increase for me, \$360.00 increase per year. That’s \$1,440 per year. Unacceptable.**

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Throughout the past year, and actually beginning with Limestone’s first meeting with the residents of River Rest back in 2021, Limestone has been the Illusion Artist with lies and false promises, the “Artful Dodger” who picks your pocket while dodging responsibilities and obfuscating their true intentions. They have continually provided misrepresented information to this Commission, and have become a real challenge to the team at TCAD, the Consumer Affairs Division of the Attorney General’s Office. **It’s a concerted effort by Limestone of falsehoods and lies.**

There's an old saying; "If you can't dazzle them with brilliance, baffle them with bullshit". Limestone has become the BS artist. Do I have proof of these allegations? How can I, or any other affected rate payer in this case. **Supporting financial data is listed as "Confidential" – for the Commission's eyes only.** Even TCAD, the Consumer Affairs Division, has to continually ask – beg – for the unmasking of pertinent data and numbers. Whether it is Limestone, or TPUC, we as the customers, the rate payers, are asked to trust the process. **Trust is earned, not freely given. Neither Limestone nor TPUC have earned that trust.** Neither has TDEC for that matter.

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Which now raises the question of TPUC's involvement in all this.

TPUC makes quasi-judicial decisions independently without legislative input, and these decisions may be appealable to the state Supreme Court. Commissioners are advised to act as objective, law-based decision-makers to earn legislative trust and respect. A common misconception is that commissions are policymakers rather than policy implementers, which can lead to misunderstandings about their role. And this is where lines can be blurred when dealing with a private utility company vs a truly public utility.

It is generally ***NOT*** a state agency's responsibility to **make a private utility company "financially whole," particularly if financial distress results from mismanagement, imprudent decisions, or market competition.** State public utility commissions (PUCs) operate under a "regulatory compact," which involves a balancing act, not a guarantee of profitability. Here are the key aspects of this relationship:

- The Regulatory Compact: Private utilities are granted **monopoly rights** to operate in a specific area in exchange for government supervision of their rates and services.
- Just and Reasonable Rates: Commissions are mandated to set rates that are **"just and reasonable" for consumers**, rather than rates that guarantee maximum profits for the company.
- Opportunity for Return: Utilities are given the opportunity to earn a fair return on their investments, but this return is **not guaranteed**. If a utility mismanages its operations, it will likely fail to get a rate increase to cover those losses.
- Protection Against Prudence Failures: Regulators specifically should exclude the costs of "imprudent" decisions from the rates that consumers pay. I consider the initial acquisition cost of \$1.4 Million by Limestone of the Cartwright Creek / Grassland plant an **imprudent purchase**, given the decrepit condition of the plant; **CSWR/Limestone failed in its proper due diligence**, and should have **paid one dollar for the plant**.
- Investment vs. Revenue: Utilities make money by investing in capital projects (e.g., building power plants, infrastructure or new sewer & water plants) approved by the PUC, on which they earn a return, not necessarily by selling their services profitably.

Utility Market and Regulatory Challenges:

- The U.S. utility system relies on private monopolies (IOUs) granted regional franchises, justified as natural monopolies to ensure universal service.
- IOUs seek to maximize profits, often leading to rates that increase faster than inflation, causing affordability crises and record rate hike requests.
- Regulators face difficulties in controlling profits due to existing frameworks and utility influence, making systemic change challenging without legislative action.

While Public Utility Commissions aim to ensure the financial viability of utilities to ensure safe and reliable service, they are **not responsible for guaranteeing profits or protecting shareholders** from poor financial performance and bad decisions.

Sciens Water, part of Sciens Capital Management, is an international, multi-billion dollar alternative asset management firm, founded to invest in private U.S. companies addressing water and wastewater infrastructure

challenges, focusing on aging infrastructure and resource scarcity, aiming to deliver **both income** and long-term value for **investors**. Sciens is essentially trying to run the show with PUCs in multiple states. **Does Sciens have TPUC in its back pocket? Hard to tell, frankly.**

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I and my colleagues at River Rest continue to maintain serious concerns about this process. Recapping:

1) Financial Concerns

- a) Ask TPUC to consider the extent that the rate increase is due to the company's **failure to do due diligence** in determining the decrepit condition and liability of the plant at the time of acquisition. Again, Limestone paid too much.
- b) **A five (5) year ROI is inappropriate** when public owned utilities amortize debt on the range of 20 years for the major structural part of the investment. **Limestone is front-loading their expenses short-term onto the rate-payers.**
- c) Limestone/CSWR did not take advantage of certain guaranteed grant money being offered for infrastructure.
- d) Escrow funds collected over 10+ years – **totaling \$654,000 per hearing testimony** – have apparently gone unused by Limestone and **there is no public record that these funds have been considered by Limestone as an offset** to the expenses Limestone has claimed for plant improvement and/or replacement. In fact, TPUC put restrictions on the use of these funds in its ruling in 2025, and we have not seen any public accountability for these funds.

2) Inequitable Billing and Rates

Sewer rates between Residential Customers and Commercial/Institutional (“C/I”) Customers continue to be problematic with Limestone, as **commercial/institutional customers have traditionally been billed at rates less than residential rates**, at **below costs**, which means that **residential customers have continued to subsidize** the actual incurred expenses by C/I customers. Although Equivalent Residential Unit (ERU) classifications have been recently implemented by Limestone, it is apparent that Limestone’s determinations and calculations are off the charts. The rate conflict with Old Natchez Trace Country Club – which had been paying a ridiculously low rate of \$44.50 per month and is now facing a sewer rate of over \$14,000.00 – is one example, although some refunds have been issued by Limestone. Another is that River Rest’s own Clubhouse – which also had been paying that low \$44.50 per month – has now jumped to \$171.75 per month, increasing our HOA expenses \$1,527.00 annually; this was NOT in our budget, and I hope that our HOA Board files an appeal with Limestone regarding the rating determination.

But what no one has clearly answered – what about the ERU assignments and rates for the two Williamson County Schools, Grassland Elementary and Grassland Middle School? They have been charged the same insanely low rates of \$37.00 to \$44.50 per month over the years since they were built (1992 and 1986, respectively), and Grassland Middle has undergone several renovations since then, including classroom additions in 1997 and 2006, and a Performing Arts Center opened in 2019. Yet, these are major **high-producing sewage flow creators – over 500 students** and staff for the Elementary School, and **nearly 900 students and staff** for the Middle School. **That’s 1,400 people**, 5 days a week, 7 to 8 hours a day, including extracurricular activities. **That’s more sewage flow** than all the homes and condos in River Rest + Hunterwood + Bobby Drive/Hillsboro Road in Grassland. **No wonder the plant has been beyond capacity for over 34 years. Williamson County Schools needs to pay its fair share! So, what are the ERUs for the schools?**

3) Sewage Overflow

River Rest continues to experience **overflows of the Grassland plant since late December 2024**; during the online Webex hearings of February 19 and 20, 2025, Limestone/CSWR executives and representatives **denied under oath that any such overflows had occurred**. They continue to deny the severity of these problems. And there has been no discernable improvement or repairs of the infrastructure of the Grassland plant and its feeder system.

4) Additional Pending Acquisitions by Limestone

Limestone continues to petition for a rate increases sooner than is typically allowed because of the rate of incurred debt, yet they have additional acquisitions pending in the state of TN. How can they be allowed to **not** finish, repair, replace, or even begin construction on currently-owned deficient systems, while acquiring new properties and doubling, even quadrupling rates? **Any additional utility acquisitions by Limestone should be disallowed at this time.**

5) Williamson County Public Utility

As I had stated in my in-person verbal testimony to the Commission at the hearing on February 13, 2025, before TDEC at that hearing on February 11, 2026 – and going back to the Cartwright rate increase public hearing at the Williamson County Rec Center in 2012 - **ALL** sewer and water systems in Williamson County should be owned and operated by a coordinated, county-wide public utility network, similar to Metro Water Services in Davidson County. **This is in the best long-term interest of the customer.** It removes the monopoly rights granted to Private Utilities, it removes the guarantee maximum profits for the private investor group, **and thus removes the potential for unjust rates to ALL customers, residential and commercial.**

6) Legislative Proposal and Key Innovations

There recently was introduced on February 17, 2026 model legislation from the American Economic Liberties Project, known as “**The Just and Reasonable Utility Prices for Consumers and Business Act**”. See attached. This document presents model legislation aimed at reforming utility rate regulation by implementing market-based mechanisms to ensure just and reasonable prices, **reduce excessive profits**, and address energy and utility affordability issues.

- The legislation aims to realign utility incentives with the **public interest** by establishing a market-based approach to setting return on equity (ROE).
- It introduces a Competitive Equity Auction for any new equity issued by utilities, providing a transparent, market-derived data point to determine appropriate utility profits.
- This approach reduces reliance on outdated financial models, curbing unjust profits and promoting fairer rates, something that private, for-profit utility investment groups are indeed concerned about.
- The legislation seeks to **lower utility rates, improve affordability, and curb excessive executive compensation.**
- It emphasizes transparency, competition, and market principles to ensure utility profits reflect true costs and market conditions.
- Overall, the bill aims to modernize utility regulation, **enhance consumer protections**, and address systemic issues in the energy and water management sectors.

I am fairly certain that CSWR/Limestone and its parent, Sciens, are very concerned about this proposed legislation.

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Bottom Line

A **reasonable** rate increase has already been granted by TPUC to Limestone in Round One in 2025, with **nothing to substantially show for it**, other than plans for a monstrous new facility which is too large, too expensive, and absolutely out-of-character for the neighborhood. I have already made my arguments to TDEC with a counter-proposal for a smaller, less expensive modular SBR plant and improved collection system, that still permits staged growth. Our whole community is against Limestone’s current proposed replacement plant design.

The increase requested by Limestone/CSWR is **not supported**, evidenced by CAD’s cross examination of Limestone/CSWR witnesses, CAD’s own expert witnesses, and the inflated expenses and accounting submitted by Limestone/CSWR. In all, the extremely high percentage increase, the prior lack of proper notice to the rate payers and public, the subterfuge utilized by Limestone/CSWR from its filed documents and testimony during the hearing, the lack of timely follow-through on maintenance and repairs by Limestone/CSWR, inflated numbers by Limestone/CSWR, and the lack of transparency by TPUC during the hearing process are all legitimate concerns that the tariff filing and requested rate increase by Limestone/CSWR **should be disallowed by the TPUC.**

TPUC is trying to make a determination **IN THE NEXT FEW DAYS**, as the next round of rate increases are effective May 1, 2026. **WHY is TPUC rushing this process**, if there are still open, valid questions that have yet to be answered with supporting **verifiable** documentation? Why not put this increase **ON HOLD** 30 to 60 days, for more complete information from Limestone?

I look forward to receiving responses from TPUC on all these issues.

Sincerely,



Douglas P. Turner
Resident Member - River Rest Homeowners Association
Advocate for River Rest Condominium Association

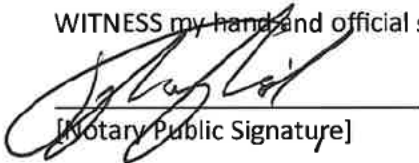
Notarized Affidavit

State of Tennessee

County of Williamson.

On this 28th day of April 2026, before me, Tyler John Reid, a Notary Public, personally appeared Douglas P. Turner, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, executed the instrument.

WITNESS my hand and official seal.



[Notary Public Signature]

[Notary Seal]



My Commission Expires Feb. 2, 2030

The Just and Reasonable Utility Prices for Consumers and Businesses Act:

Model Legislation for States to Rein in Unjust and Unreasonable Utility Profits

February 2026

The American utility market is based on a social contract. The government sanctions private, for-profit monopolies to provide approximately 70 percent of electricity and 95 percent of natural gas deliveries in the United States. (The rest is provided by publicly- or cooperatively-owned utilities.) Utilities are granted regional franchises under the rationale that they are “natural monopolies” – their service can be most efficiently provided by a single entity.

In return, these private monopolies, called investor-owned utilities (IOUs), agree to deliver universal service and be subject to cost-of-service regulation (COSR) of their customer rates by state utility commissions (sometimes referred to as public utility commissions/PUCs or public service commissions/PSCs).

In principle, a utility’s “rate of return” – or the price it is allowed to charge customers – must be “just and reasonable,” sufficient to recover only the actual and prudent costs incurred in providing service to captive customers. But there is an inherent tension in this model. As investor-owned businesses, IOUs seek to maximize their profits, which often conflicts with regulators’ requirement to achieve just and reasonable rates. Moreover, IOUs often have the upper hand in their interactions with regulators, to the detriment of their customers. Over the last three years, IOU residential electricity rates have increased 49 percent more than inflation. In contrast, their publicly-owned counterparts have increased 44 percent less than inflation.¹

Raising the urgency of this issue further is the overwhelming and pervasive energy affordability crisis facing Americans across the income spectrum. A quarter of U.S. households have been unable to pay their utility bill in full at least once over the last 12 months.² Meanwhile, IOUs requested a record \$31 billion in rate hikes during 2025 alone – double that of 2024,³ while their CEOs pocketed \$3 billion in salaries and bonuses between 2019 and 2023.⁴

As explained in a January 2025 American Economic Liberties Project (Economic Liberties) policy brief, policymakers can act now to rein in the unjust and unreasonable utility profits realized by IOUs across the country by passing legislation to realign utility investor incentives with the public

¹ Ellis, Mark, *Rate of Return Equals Cost of Capital: A Simple, Fair Formula to Stop Investor-Owned Utilities from Overcharging the Public* (Jan. 2025), <https://www.economicliberties.us/wp-content/uploads/2025/01/20250102-aelp-ror-v5.pdf>.

² United States Census Bureau, *Household Pulse Survey*, https://www.census.gov/data-tools/demo/hhp/#/?measures=ENERGYBILL&periodSelector=9&periodFilter=9,8,7,6,5,4,3,2,1&s_state= (last accessed Jan. 24, 2026).

³ PowerLines, *Utility Bills Are Rising: 2025 Review* (Jan. 29, 2026), <https://powerlines.org/utilities-requested-record-31-billion-in-rate-increases-in-2025-double-that-of-2024/>.

⁴ Energy and Policy Institute, *Pollution Payday: Analysis of Executive compensation and incentives of the largest U.S. investor-owned utilities* (Sept. 23, 2020), [Utilities executive compensation analysis](https://www.energyandpolicyinstitute.org/reports/pollution-payday) | Energy and Policy Institute.

interest.⁵ While state utility regulators may already be empowered to some degree, depending on existing state-specific frameworks, to make changes through traditional rate-setting forums, regulators are often faced with aggressive or alarmist predictions when even small changes are proposed, rendering systemic or meaningful change difficult to achieve without legislative direction and explicit authorization.⁶

What follows is model legislation that can be adopted by most states to do just that. Importantly, this model legislation operationalizes the innovative concept first introduced in the January 2025 Economic Liberties paper: a true market-based approach to determining an IOU's return on equity (ROE) through a Competitive Equity Auction. Specifically, the legislation requires any new, incremental equity issued by a monopoly utility to be competitively sourced, which will yield a direct, market-based data point that regulators must reference and use – rather than a continued reliance on outdated and skewed financial models used by utilities to justify decades of unreasonable profits.

Section by Section Headlines

Part I: Provides definitions applicable to implementation of the model legislation.

Part II: Establishes factors that a state utility commission may consider when determining a utility's rate of return. Clarifies that the cost of debt for ratemaking purposes shall reflect the actual embedded cost of debt that is substantiated during the rate proceeding and places guardrails around the inclusion in customer rates of speculative new or replacement debt issuances.

Part III: Establishes the process applicable to competitive equity auctions that are required pursuant to this model legislation for any new, incremental equity issuance by a regulated utility. Provides for certain guardrails regarding eligible bidders, including a cap of 10 percent on the voting securities that may be held by a single private equity investor.

Part IV: Defines the standard for what constitutes a reasonable return on equity for a regulated utility by defining the process by which a state utility commission will determine a range of reasonableness and make any adjustments thereto that may reflect reductions in risk encountered by the specific regulated utility. Instructs the state utility commission regarding how to include the results of the Competitive Equity Auction in the determination of the range of reasonableness. Requires the state utility commission to establish the return on equity at the lowest end of the range of reasonableness, but allows for an exception under specific circumstances if clear and convincing evidence is provided in the proceeding regarding the market-based cost of equity.

Part V: Establishes an annual reporting requirement by the state utility commission to the legislature's committee of cognizance regarding the implementation of this legislation.

Part VI: Clarifies the effective date of the legislation as applicable to any rate amendment proceedings initiated on or after the date of enactment.

⁵ Ellis, *Rate of Return Equals Cost of Capital*.

⁶ A November 14, 2025 proposed decision issued by the California Public Utilities Commission recommended a reduction in the return on equity by 0.35% for three IOUs. See 587323962.PDF. In response, the three IOUs alleged that a reduction of even 0.35% will affect the utilities' ability to attract necessary capital to continue investing in their grids. Conversely, critics of the proposed decision described the decline as too small to meaningfully impact ratepayers' bills. Carollo, Malena, "California is about to cut power company profits to historic lows. Your bill will barely drop" Cal Matters, Nov. 25, 2025, California utility profits to hit historic low as electricity bills stay high.

Part VII: Establishes a severability clause to ensure that remaining provisions are enforceable if any specific provisions are deemed invalid.

Section by Section Explainer

Part I. Definitions: Regulatory frameworks and the specific jurisdiction of state utility commissions vary state by state. In crafting the definition section of any proposed legislation based on this model, policymakers should first assess applicable state statutes to determine if existing definitions for electric, gas, and water investor-owned utilities are suitable for cross-referencing. For example, some state utility commissions may regulate other utility structures, such as cooperatives,⁷ in addition to IOUs, or in some instances may invoke a threshold customer or meter count as a prerequisite to the applicability of certain statutes.⁸

Economic Liberties recommends that proposals based on this model legislation apply uniformly to all electric, gas, and water IOUs regulated by the state, as the misaligned shareholder incentives and utility profit motive persist for privately-held utilities across all sectors and because the determination by the regulator of a utility's return on equity is functionally equivalent across each sector. Further, Economic Liberties recommends that the definitions do not allow for threshold applicability determinations based on customer or meter count and instead apply to every IOU regulated by the state regardless of size.

Part II. Factors to Consider in Determining a Utility's Rate of Return: State utility commissions generally act in a quasi-judicial manner when adjudicating utility rate requests or other types of applications that are deemed to affect the rights or duties of the regulated entity. As creatures of statute, regulators must adhere to the parameters outlined in the governing laws and can only make decisions based on the evidence in the record for any given proceeding. While the burden of proving that a rate request is just and reasonable resides with the requesting utility,⁹ the factors that the regulator is allowed to consider when taking evidence on the matter can inadvertently be artificially constrained by existing state laws.

Part II of this model legislation first recommends broadening the factors that the regulator can consider when determining a reasonable rate of return. In utility ratemaking, the Rate of Return (RoR), or Cost of Capital (CoC), is the weighted average cost of debt, preferred equity, and common stock a utility has issued to finance its utility capital investments.¹⁰ Mathematically, this requires multiplying the chosen capital structure (i.e., mix of debt, preferred equity, and common stock) by the respective cost for each component. Because it is important to determine the utility's appropriate capital structure and ROE in tandem, it is imperative to ensure that the lens through which a regulator views whether the resulting rate of return is just and reasonable is appropriately scoped. Because state utility commission statutes are often written to require regulators to ensure that the level and structure of rates approved in a proceeding are sufficient, but no more than sufficient, to recover a utility's costs, to allow the utility to attract its needed capital, and to provide

⁷ In Colorado, for example, the Public Utilities Commission maintains at least partial regulatory control over municipal utilities and cooperative electric associations. "Regulatory Information," Colorado Energy Office, 2025, Regulatory Information | Colorado Energy Office.

⁸ See, e.g., Conn. Gen. Stat. § 16-8(b)(4), which dictates that only utilities having more than seventy-five thousand customers are subject to routine management audits.

⁹ If this standard is not yet clearly codified in state statute, Economic Liberties recommends that a policymaker include such a provision in any resulting legislation. Example language may include, at a minimum, "In any proceeding involving a rate, the burden of proving that said rate under consideration is just and reasonable shall be on the utility."

¹⁰ "What is Cost of Capital (CoC)?", California Public Utilities Commission, 2025, <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/cost-of-capital>.

appropriate protection to the public interest, allowing regulators to consider myriad factors and to take evidence on such factors will result in a more robust balancing of investor and consumer interests.

Part II also clarifies that the cost of debt reflected in the utility's CoC must correspond to the actual cost of debt instruments submitted into the record by the utility during the rate case proceeding. In determining allowable expenses for inclusion in a utility's revenue requirement (from which its rates are determined), regulators generally look to evidence of actual expenditures incurred by the utility during a historical period known as the test year.

Adjustments may be made to account for "known and measurable" changes that are supported by a preponderance of the evidence, with the burden resting on the utility to substantiate such adjustments. Similarly, regulators look at the record for evidence provided by the utility of the actual cost of debt instruments and may adjust for prospective debt issuances if the record reflects known and measurable evidence on the matter.

Increasingly, however, utilities request and regulators authorize the inclusion of speculative debt costs, which is a slippery slope given that rates do not typically contain similar speculative adjustments for other items that may occur following the close of an evidentiary record (e.g., change in interest rates). As such, the model legislation reflects language intended to set the cost of debt at the rate actually incurred by the utility, placing guardrails around the inclusion of speculative costs that generally serve to increase customer rates.

Part III. Competitive Equity Auction Process: The model legislation directs that any incremental equity issuances or infusions would be subject to a new Competitive Equity Auction process spelled out in this section, which will move the state's regulatory environment incrementally closer with each auction to determining a true market-based cost of equity for use in setting customer rates. The model legislation addresses various aspects of the Competitive Equity Auction process that a state utility commission would have to consider in implementing this novel concept, which will require tailoring unique to each jurisdiction.

For example, the definition of "Incremental equity" provided in Part I seeks to ensure that any preexisting state statutes regarding change of control are not inadvertently supplanted by any new Competitive Equity Auctions, thereby preserving legislative intent regarding a change of control or acquisition in the state.

In this same vein, the model legislation recognizes that the innovative Competitive Equity Auction approach requires the adoption of strong consumer protection guardrails to ensure that the process does not introduce the potential for private equity firms to exert undue influence or control over the IOU through the acquisition of incremental equity interests. The guardrails stem from those established by the Federal Energy Regulatory Commission (FERC), which were further refined in a pair of orders issued in 2022. Specifically, FERC established a rebuttable presumption that ownership of more than ten percent of the voting securities of a regulated entity constitutes a change of control, but that ownership of less than ten percent may still constitute a change of control if the investor's own officers or directors are appointed to the board of the regulated entity.¹¹ Here, the legislation recommends that an accumulation of more than ten percent of the voting securities over time by a private equity group shall trigger a mandatory divestiture process overseen by the state utility commission. The model legislation further proposes that bids by public interest groups should be filled prior to those submitted by private equity groups, and that any entity

¹¹ TransAlta Energy Marketing (U.S.) Inc., 181 FERC ¶ 61,055 (2022); Evergy Kan. Central, Inc., 181 FERC ¶ 61,044 (2022).

participating in the Competitive Equity Auction commit to a long-term ownership interest of at least ten years as a condition of participation in the auction.

While the model legislation offers foundational considerations regarding the design of the Competitive Equity Auction, including recommended bidder eligibility requirements and consumer protection provisions, Economic Liberties recommends that the state utility commission be empowered through the legislation to draft corresponding regulations that address the more granular aspects of implementation, such as what constitutes a complete application from the requesting utility and the form, format, and timing of the bidder qualification process. Providing this discretion to the state utility commission regarding the detailed implementation questions, coupled with the strong statutory framework directing commissions that such Competitive Equity Auctions are the chosen path forward, strikes an appropriate balance between statutory clarity and regulatory flexibility.

Part IV. Determination of Authorized Return on Equity: Regulated utilities are entitled to an opportunity to recover prudent operating expenses as well as capital costs, including a fair and reasonable rate of return.¹² State utility commissions are not constitutionally bound “to the use of any single formula or combination of formulae in determining rates”¹³ and “[i]f the total effect of the rate order cannot be said to be unreasonable, judicial inquiry . . . is at an end.”¹⁴ This model legislation prescribes a standard for what constitutes a reasonable rate of return by synthesizing four key pieces of evidence: (1) Wall Street’s own market forecasts; (2) market signals; (3) academic consensus; and (4) systemic regulatory failure.

Major asset managers project long-term returns for U.S. equities of approximately 6-7 percent. Utilities are lower risk than the market as a whole, and thus, while the cost of equity for the market overall is estimated at the 30-year U.S. Treasury rate plus 1-3 percent (or 100 to 300 basis points), authorized returns on equity commensurate to the lower end of the range are more appropriate due to the lower risk faced by regulated monopolies. Nonetheless, IOUs have enjoyed significantly higher ROEs for decades, with the median ROE authorized in all electric utility rate cases climbing to 9.75% in the first quarter of 2025.¹⁵

Additionally, market signals consistently prove that authorized returns exceed what investors actually require, given that publicly-trading utility holding companies typically trade at 2.0-2.3x book value. Multiple academic studies support this finding, noting that returns authorized by state utility commissions are much higher than the utilities’ actual cost of equity.¹⁶

In total, ample evidence spanning multiple decades indicates that both state and federal regulators consistently authorize excessive returns, necessitating more specific statutory guidance that takes its cues directly from market-based indicators.

¹² Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944); Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679, 690 (1923).

¹³ Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 586 (1942).

¹⁴ Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989).

¹⁵ Gabelli, U.S. Powering the Future Capital Investment Super-Cycle EPS CAGR's to Rise, <https://gabelli.com/research/utilities-%E2%88%92-u-s-powering-the-future-capital-investment-super-cycle-eps-cagr-to-rise/> (last viewed Jan. 16, 2026).

¹⁶ Rode, David C. and Paul S. Fischbeck, “Regulated equity returns: A puzzle,” *Energy Policy* 133 (2019): 1, 16; Werner, Karl Dunkle and Stephen Jarvis, *Energy Institute WP 329R: Rate of Return Regulation Revisited* (Energy Institute at Haas, revised March 2025), <https://haas.berkeley.edu/wp-content/uploads/WP329.pdf>, 14, 34-35; Shlomit Azgad-Tromer and Eric Talley, “The Utility of Finance,” *The Center for Law and Economic Studies, Columbia Law School*, https://law-economic-studies.law.columbia.edu/sites/law-economic-studies.law.columbia.edu/files/content/docs/paper_575_talleyazgad_tromer_utility_of_finance_september_15_2017.pdf, pp. 4-5.

To remedy this regulatory shortcoming, the model legislation establishes a process that state utility commissions should follow to produce an authorized return on equity more closely reflective of the actual market cost of equity. To do this, the legislation dictates the creation of a range of reasonableness using readily available U.S. equity market return data, adjusted appropriately to recognize that regulated utilities face reduced risk (and thus warrant lower returns) than entities in competitive markets. The legislation also directs the inclusion of data points regarding the actual market-based cost of equity for the applicable utility, which will be secured via Competitive Equity Auctions for incremental equity, as outlined in Part III of this model legislation. Once the range of reasonableness is established and appropriately adjusted downward to reflect reduced risk, the legislation directs the state utility commission to set the authorized return on equity for the applicable utility at the lowest end of the range.

Notwithstanding the foregoing, if the utility presents clear and convincing evidence that establishing a return on equity at the lowest end of the range of reasonableness will inhibit its ability to attract needed capital, the legislation permits the state utility commission to authorize a higher return on equity that falls within the range of reasonableness determined in the proceeding. The legislation dictates that such clear and convincing evidence must stem from a market-based determination of the cost of equity, as made available through a Competitive Equity Auction process defined in Part III of this legislation.

Part V. Reporting Requirements: Economic Liberties recommends including a reporting requirement wherein the state utility commission is directed to report on an annual basis to the legislature's committee(s) of cognizance regarding implementation of any enacted legislation. The suggested reporting parameters will inject needed transparency into key metrics across the utility sectors so that the legislature can readily assess and quantify the differences between each utility's proposed versus authorized return on equity, rate of return, and capitalization structure, and thus measure the legislation's impact over time.

Part VI. Effective Date: Rate amendment proceedings are lengthy endeavors, often averaging between nine and 12 months. Once a formal proceeding is initiated – usually once a utility files its rate amendment application – the state utility commission, parties, and intervenors enter a period of “discovery” regarding the utility's application. While some states may allow a utility to substantively amend its application within a short window (e.g., up to 30 days following the application's submission), best practices dictate that material, new changes or requests should be discouraged thereafter as it is difficult for non-utility parties and intervenors, as well as the regulator, to evaluate ever-evolving changes to the rate request. As such, Economic Liberties recommends that any proposals stemming from this model legislation mirror these same principles and, therefore, be drafted to apply to any rate cases initiated on or after the enactment date of the legislation.

Part VII. Severability: Economic Liberties recommends the inclusion of a severability clause to ensure that if a certain provision is later determined to be invalid, illegal, or unenforceable, the remaining provisions are unaffected so that the legislation can continue to achieve its purpose to the fullest extent possible.

MODEL LEGISLATION

Part I. Definitions

“Authorized return on equity” means the rate of return on common equity authorized for ratemaking purposes in the utility’s most recent rate proceeding held in accordance with [cite to state statute governing utility base rate proceeding].

“Competitive equity auction” means a process administered by the [state utility commission] in accordance with this Act that provides a market-based determination of the cost of equity for a Covered utility.

“Covered utility” means any investor-owned electric, gas, or water company regulated by the [state utility commission].

“Financial academic” means an accredited, full-time finance teaching program with over 50 years of teaching experience that regularly publishes U.S. equity market expected return data and that provides a curriculum in business administration or finance.

“Financial institution” means an entity that manages over \$2 trillion in combined U.S. and global assets, which regularly publishes U.S. equity market expected return data.

“Incremental equity” means any increase in the amount of common equity accessible to the Covered utility following enactment of this Act in excess of the common equity percentage specified for use in setting rates through its most recent rate case decision, provided that the percentage of equity available and purchased in the auction would not trigger a change of control or acquisition proceeding for one or more recipients, in which case the appropriate statutory provisions for change of control prevail.

“Incumbent utility” means the Covered utility that initiates the Competitive equity auction process.

“Money center bank” means a U.S. bank that is on the list of global systemically important banks published by the Financial Stability Board that regularly publishes U.S. equity market expected return data.

Part II. Factors to Consider in Determining a Utility’s Rate of Return

(a) During each proceeding on a rate amendment under [cite to state statute governing utility base rate proceeding] proposed by an [electric, gas, or water utility], the [state utility commission] shall consider the following factors in determining a reasonable rate of return:

- (1) macroeconomic conditions at the time the rate application is pending before the [state utility commission];
- (2) the utility’s compliance with state law, regulations and the decisions of the [state utility commission];
- (3) the burden of the utility’s costs on residential ratepayers, measured as a percentage of household income, under the current and proposed rate;
- (4) trends in the utility’s accrual of bad debt;

(5) the rate impact on each customer class under the proposed rate; and

(6) any other issue deemed relevant by the [state utility commission].

(b) The [state utility commission] shall establish a cost of debt for ratemaking purposes that reflects the utility's actual embedded cost of debt as evidenced by existing debt instruments. The [state utility commission] shall not include in the cost of debt any instruments projected to be issued for new or replacement debt tranches during the rate year unless the utility provides clear and convincing evidence as to the funding purpose of the debt issuance, its date of issuance, the amount of debt, the length of the debt instrument, all terms and conditions, and the financing cost prior to the close of the evidentiary record in the rate amendment proceeding.

Part III. Competitive Equity Auction Process

(a) A Covered utility shall obtain the approval of the [state utility commission] for any Incremental equity or to amend any provision of an existing common equity issuance if such amendment would affect the issuance or terms. The [state utility commission] shall initiate a Competitive equity auction within thirty (30) calendar days of receipt of a complete application from the Covered utility.

(b) Auction mechanism. (1) The [state utility commission] shall conduct a sealed-bid competitive auction; (2) Qualified bidders shall bid the minimum return on equity they require pursuant to the offerings available in the Competitive equity auction; (3) The [state utility commission] shall accept the lowest qualifying bid(s) that is in the public interest, after considering any bid contingencies including but not limited to escalation clauses or other cost containment provisions; and (4) The [state utility commission] shall issue its final determination within one hundred and twenty calendar days of receipt of a complete application from the Covered utility.

(c) Qualification requirements. To qualify as a bidder, an applicant must demonstrate through a preponderance of the evidence: (1) Financial capacity to provide equity investment equal to Book equity value; and, (2) In the case of an equity investor taking equal to or more than a ten percent stake in aggregate, (A) technical, financial and managerial suitability, responsibility and competence to operate utility assets safely, reliably, affordably and consistent with the public interest, (B) a commitment to maintain all service obligations and regulatory compliance, and (C) the absence of conflicts of interest that would impair independent operations.

(d) The Incumbent utility, its parent company, and any affiliates may qualify as bidders, subject to the provisions of subsection (c), any existing code of conduct policies for affiliate transactions and any further eligibility requirements established by the [state utility commission] to prohibit inappropriate preferential treatment in the bidding process.

(e) Restrictions on Private Equity Bidders. (1) In each round of a Competitive equity auction, public interest allocations, such as those bid by pensions funds, community trusts or public buyers, shall be filled before private equity allocations; (2) Private equity bidders shall accept as a binding term and condition of participation in the Competitive equity auction, a long-term ownership commitment of at least ten years for the equity position purchased in the auction; and (3) If any single private equity group accumulates ten percent or more of the voting securities of the Covered utility or its own officers or directors are appointed to the board of the Covered utility or its parent company, a

mandatory divestiture clause is triggered for the full equity stake. The [state utility commission] shall oversee the mandatory divestiture process within sixty calendar days of occurrence.

(f) Consumer protection. No results of the Competitive equity auction process shall impair service reliability, safety or regulatory compliance. The winning bidder is prohibited from including any acquisition premium in rates in perpetuity. All operations and expenditures remain subject to full regulatory jurisdiction.

(g) The [state utility commission] may adopt regulations as necessary to implement the Competitive equity auction process.

Part IV. Determination of Authorized Return on Equity

(a) Prescribed standard. In determining the authorized return on equity for any Covered utility, the [state utility commission] shall first establish a range of reasonableness by determining the current average expected ten-year total or large-cap U.S. equity market return or equivalent measure and then making any necessary adjustments to account for reductions in risk applicable to the Covered utility attributable to its operation in a regulated market. The [state utility commission] shall establish the authorized rate of return on equity for the Covered utility at the lowest end of the range of reasonableness unless the Covered utility provides clear and convincing evidence that a higher return on equity, within the range of reasonableness, is required to attract needed capital and to maintain its financial integrity and would not yield rates that are more than is just, reasonable and adequate. Such clear and convincing evidence shall be sourced from a market-based determination of the cost of equity through a Competitive equity auction. The [state utility commission] shall not establish an authorized return on equity that exceeds the upper bounds of the range of reasonableness.

(b) The [state utility commission] shall determine the current average expected ten-year total or large-cap U.S. equity market return or equivalent measure by: (1) taking the midpoint expected ten-year total or large-cap U.S. equity market return or equivalent measure as estimated by Financial academics, Financial institutions and Money center banks for each of the last five years, and (2) using the average of the midpoints.

(c) The [state utility commission] shall adjust the current average expected ten-year total or large-cap U.S. equity market return or equivalent measure to account for the reduced risks of the Covered utility due to: (1) operating in a regulated market rather than in a competitive market and (2) any applicable state or [state utility commission] action, including but not limited to, the following risk reduction factors:

- (A) the approval of any alternative form of ratemaking;
- (B) the allowance of regulatory assets;
- (C) the allowance of operating cost riders and non-bypassable fees;
- (D) the allowance of recovery for any customer bad debt or under-collections;

(E) the approval of any securitization or bond revenue related to the provision of utility services; or

(F) the establishment or continuation of any other measure that reduces the risks of the Covered utility relative to an entity operating in the competitive market.

(d) In the event that one or more Competitive equity auction processes, as specified in [Part III], occurred between the effective date of the previous rate amendment decision for the Covered utility and prior to the close of the evidentiary record in the instant rate amendment application, the resulting market-based cost of equity data points shall be included in developing the range of reasonableness established by the [state utility commission].

Part V. Reporting Requirements

Not later than January 15, 202X, and every year thereafter, the [state utility commission] shall report to the [legislative committee of cognizance] on compliance with this Act. Such report shall include, but need not be limited to the following: (1) each Covered utility's requested return on equity, rate of return and capitalization mix proposed as part of its most recent rate amendment application and the preceding three rate amendment applications; (2) the corresponding actual return on equity, rate of return and capitalization mix authorized by the [state utility commission] for each Covered utility in the most recent three rate amendment proceedings; (3) the results of any Competitive equity auctions conducted pursuant to this legislation for the previous five calendar years; (4) an analysis of the impact on average customer rates, broken down by customer class, resulting from implementation of this Act; and (5) a summary of any enforcement actions taken.

Part VI. Effective Date

This Act shall take effect immediately upon enactment for any proceeding initiated on or after the enactment date held in accordance with [cite to state statute governing utility base rate proceeding].

Part VII. Severability

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.