

- 1 **Q. Page 12, Footnote 28: Please provide a copy of the National Association of Water**
2 **Companies survey and article referenced in this footnote.**
3
4 A. Attachment A provides a copy of the *National Association of Water Companies* survey
5 and article referenced in the evidence of Mr. Larry Brockman.

National Association of Water Companies Survey and Article

Prospectively Relevant Test Year

In a rising-cost industry with heavy capital investment requirements, the use of historic test years assures there will be no return on or recovery of capital that is invested during the test year and thereafter until the utility files another rate case. Any return on such investments could therefore be delayed for a number of years. This discourages necessary investment during these periods and skews construction and investment timing based on artificial test year issues rather than system needs and efficient construction planning processes. Due to regulatory lag, strictly historical test years can virtually ensure that the utility does not earn its allowed rate of return, thereby increasing risk and the cost of capital.

From a regulatory and public policy perspective, the touchstone for test years should be whether they produce rates that are prospectively relevant, that is, that the rates most accurately reflect the costs during the period the rates are most likely to be effective. A "best practice" in this area would provide the utility with the obligation to identify the most prospectively relevant test year and the choice to use that test year in a rate proceeding. The utility would have the choice of utilizing a historic, current or future test year and would have the burden of demonstrating the propriety of that choice in the rate proceeding. The use of future test years would have additional filing and proof requirements associated with them to assure that any projections are reasonable. Any party could of course challenge the utility's choice of test year.

This PDF is a 50-state survey on the test years utilized by public utilities commissions in setting rates.

STATE	TEST YEAR
Alabama <i>Historic Test Year</i> ¹	The Alabama Public Service Commission regulates the rates of eight small water companies but does so using an operating ratio method, not a rate base/rate of return approach. A prior year's income, adjusted for known and measurable changes, is the basis for its analysis.
Alaska <i>Historic Test Year</i>	Alaska Admin. Code, tit. 3, § 48.820(41) (2008) "Test year" means any 12 consecutive months of operating data selected to evaluate revenue requirements or cost of service; the period selected must be at least as recent as the utility's or pipeline carrier's latest calendar or fiscal year.
Arizona <i>Historic Test Year</i>	Arizona Admin. Code § R14-2-103(A)(3)(p) (2008) "Test year" – The one-year historical period used in determining rate base, operating income and rate of return. The end of the test year shall be the most recent practical date available prior to the filing.
Arkansas <i>Historic or Future² Test Year</i>	Ark. Code Ann. § 23-4-406 (2008) [A] utility may utilize either an historical test period of twelve (12) consecutive calendar months or a forward-looking test period of twelve (12) consecutive calendar months consisting of six (6) months of actual historic data derived from the books and records of the utility and six (6) months of projected data which together shall be the period or test year upon which fair and reasonable rates shall be determined by the Arkansas Public Service Commission.

¹ States that employ an historic test year may also permit utilities to reflect known and measurable changes that occur shortly after the end of the historic test year.

² For purposes of this survey, "a future test year" is a test period for setting rates any material portion of which extends beyond the date a rate request is filed. This survey does not further distinguish between partially and fully projected future test years.

California <i>Future Test Year</i>	<i>Re Valencia Water Co., 2007 WL 2126602 (Cal. P.U.C. June 21, 2007)</i> (explaining that the Commission bases public utility rates on future test years). <i>Order Instituting Rulemaking on Commission's Own Motion to Evaluate Existing Practices and Policies for Processing General Rate Cases and to Revise General Rate Case Plan for Class A Water Companies, 2004 Cal. PUC LEXIS 276 (Cal. P.U.C. June 9, 2004)</i> (statutes contemplate and Commission uses future test year).
Colorado <i>Historic or Future Test Year</i>	Colo. Rev. Stat. § 40-3-111(1) (2008) [T]he commission may consider current, future, or past test periods or any reasonable combination thereof and any other factors which may affect the sufficiency or insufficiency of such rates, fares, tolls, rentals charges, or classifications during the period the same may be in effect,
Connecticut <i>Historic Test Year</i>	Conn. Agencies Regs. § 16-1-54 (2008) [I]n each rate application the test year shall consist of the most recent twelve month period available ending at a calendar quarter. . . .

Delaware <i>Historic Test Year</i>	26-1000-1002A Del. Code Regs. § 1.2.1 – Major Utilities 1.2.1 Test Year Defined. The test year is the actual historical period of time for which financial and operating data will be required. The test year data must include the actual “Per Books” results of operation for a 12-month period at the end of a reporting quarter. In addition, the twelve month period must end no later than seven months prior to the filing of the application, but no sooner than one month after the final closing of the test year (post reversal of accrual entries) so that actual expenditures are reflected in the books of account. . . . 1.2.2.1 Test Period Defined. The test period consists of the twelve consecutive months ending at the end of a reporting quarter utilized by the utility to support its request for relief. The test period may be the same as the test year or may include some of the months included in the test year and some months projected, such as six months “actual” and six months “projected”, but may not include more than nine months “projected” 26-1000-1002B Del. Code Regs. § 1.2.1 – Small Utilities The test year is the actual historical period of time for which operating and financial data will be required. The test year must include the actual “Per Books” results of operation for a twelve month period ending no more than four months prior to the filing of the application for increased rates. In addition, the twelve-month period must end no later than seven months prior to the filing of the application, but no sooner than one month after the final closing of the test year 1.2.2 It is suggested but not required that the test year selected correspond with the company’s financial year.
District of Columbia	<i>PRIVATE WATER SYSTEMS NOT REGULATED</i>

Florida <i>Historic or Future Test Year</i>	Fla. Admin. Code 25-30.430 (2008) (1) Prior to the filing of an application for a general rate increase, a utility shall submit to the Commission a written request for approval of a test year, supported by a statement of reasons and justifications showing that the requested test year is representative of utility operations. . . . (2)(d) If a projected test year is requested, provide an explanation as to why the projected period is more representative of the utility's operations than a historical period. Fla. Admin. Code 25-30.443(2)(c) (2008)(describes filing requirements for Class C Water Utilities depending on whether they select a projected or historical test year) Fla. Admin. Code 25-30.445 (2008) (m) If the limited proceeding is being requested to change the current rate structure, [t]he test year should be the most recent 12-month period. . . .
Georgia	<i>PRIVATE WATER SYSTEMS NOT REGULATED</i>

Hawaii <i>Future Test Year</i>	Haw. Code R. § 6 – 61 (2008) § 6-61-87 Requirements for general rate increase applications by a public utility with annual gross operating revenues of \$2,000,000 or more. . . . (4) [T]he test year shall be a forward test year, determined as follows: (A) If an application is filed within the first six months of any year, the test year shall be from July 1 of the same year through June 30 of the following year; or (B) If an application is filed within the last six months of any year, the test year shall be from January 1 through December 31 of the following year; § 6-61-88 Requirements for general rate increase applications by a public utility with annual gross operating revenues of less than \$2,000,000. . . . (3) The test year shall be a forward test year, determined as follows: (A) If an application is filed within the first six months of any year, the test year shall be from July 1 of the same year through June 30 of the following year; or (B) If an application is filed within the last six months of any year, the test year shall be from January 1 through December 31 of the following year; and
Idaho <i>Historic Test Year</i>	Indus. Customers of Idaho Power v. Idaho Pub. Util. Comm’n, 134 Idaho 285, 1 P.3d 786, 200 P.U.R.4th 371 (2000)(in general rate setting proceeding, rates are fixed on the basis of historical data). Re Stonebridge Water Co., 2007 WL 4073403 (Idaho P.U.C. June 19, 2007)(stating that Commission policy when setting utility rates is to utilize a historic test year that can be verified by audit of actual numbers prior to placing new rates into effect).

Illinois <i>Historic or Future Test Year</i>	Ill. Admin. Code tit. 83 § 287.20 (2008) A utility, at its option, may propose either one of the following periods as its proposed test year: a) Historical. Any consecutive 12 month period, beginning no more than 24 months prior to the date of the utility's filing, for which actual data are available at the time of filing new tariffs; or b) Future. Any consecutive 12 month period of forecasted data beginning no earlier than the date new tariffs are filed and ending no later than 24 months after the date new tariffs are filed.
Indiana <i>Historic Test Year</i>	170 Ind. Admin. Code 1-1.1-9 (2008) (b) In any utility rate proceeding where the petitioner in its petition requests a specific test year and cutoff date, the commission shall, within thirty (30) days following the initiation of such proceeding, by order, fix the test year and cutoff date for purposes of accounting, engineering, and other evidence to be presented in such proceeding, which shall be binding upon all parties. The commission may, on its own motion, by order, fix such test year and cutoff date 170 Ind. Admin. Code 1-5-5 Accounting methodology and guidelines for cutoffs Sec. 5. All information filed by an electing utility under this rule shall conform to the following accounting guidelines: (1) The test year shall be historical for a twelve (12) month period, the end of which may not be more than one hundred eighty (180) days prior to the filing of the utility's case-in-chief
Iowa <i>Historic Test Year</i>	Iowa Code § 476.33(4) (2008) The board shall adopt rules that require the board, in rate regulatory proceedings under sections 476.3 and 476.6, to consider the use of the most current test period possible in determining reasonable and just rates, subject only to the availability of existing and verifiable data respecting costs and revenues, and in addition, to consider verifiable data that exists within nine months after the conclusion of the test year, respecting known and measurable changes in costs not associated with a different level of revenue, and known and measurable revenues not associated with a different level of costs, that are to occur at any time within twelve months after the date of commencement of the proceedings. . . .

Kansas <i>Historic or Future Test Year</i>	Kan. Admin Regs. § 82-1-231 (2008) (c) Class A utility rate proceedings (2) Each application shall be based upon data submitted for a test year. The test year selected by the applicant may be disapproved by the commission for cause. Kan. Admin. Regs. § 82-1-231b. Filing requirements for rate proceedings by electric, gas, water, and telecommunications utilities other than class A. (b)(1)(C) [T]he test year selected by the applicant may be disapproved by the commission for cause.
Kentucky <i>Historic or Future Test Year</i>	2008 Ky. Rev. Stat. § 278.192 (1) (2008) [T]he commission shall allow a utility to utilize either an historical test period of twelve (12) consecutive calendar months, or a forward-looking test period corresponding to the first twelve (12) consecutive calendar months the proposed increase would be in effect after the maximum suspension provided in KRS 278.190(2).
Louisiana <i>Historic Test Year</i>	Entergy Louisiana, LLC v. Louisiana Pub. Serv. Comm’n, 990 So.2d 716 (2008)(the test year is typically the most recent annual period from which actual operating data is available). Gordon v. Council of the City of New Orleans, 977 So.2d 212 (2008)(same).
Maine <i>Historic Test Year</i>	65-407-120 Me. Code R. § 2(L) (2008) Test year. A “test year” is a 12-month period used by a utility to serve as a basis for comparison of revenues, expenses, and investment in order to determine revenue requirements in a general rate case. A test year may be a calendar year or any other twelve (12) consecutive months.
Maryland <i>Historic Test Year</i>	Re Maryland Water Services, Inc., 89 Md. P.S.C. 233 (1998)(staff supports company selection of historical test year which represents the most recent period for which 12 months of data exist).

Massachusetts Historic Test Year	<i>Town of Hingham v. Dep't of Telecom. and Energy</i> , 433 Mass. 198, 740 N.E.2d 984 (2001)(the test year is generally the most recent twelve-month period for which financial information exists). <i>Investigation by the Dep't of Pub. Util. on its Own Motion into Rate Structures that will Promote Efficient Deployment of Demand Resources</i> , 2008 WL 2937826 (Mass. D.P.U. July 16, 2008) (“It is well-established Department precedent that base rate filings are based on an historic test year, adjusted for known and measurable changes.”).
Michigan	PRIVATE WATER SYSTEMS NOT REGULATED
Minnesota	PRIVATE WATER SYSTEMS NOT REGULATED
Mississippi Historic or Future Test Year	Miss. Code Ann. § 77-3-37 (2008) (5) The notice of intent for major changes in rates . . . shall state the test period adopted by the public utility in support of its proposed rate changes, which may be a twelve-month period beginning with the proposed effective date of the rates proposed in the notice. . . .
Missouri Historic Test Year	<i>Re The Empire Dist. Elec. Co.</i> , 267 P.U.R.4th 396 (2008)(noting that revenue requirement for ratemaking purposes “is based on the costs and income the company experienced during a historical test year”). <i>In the Matter of Missouri-American Water Co.’s Request for Auth. to Implement a Gen. Rate Increase for Water and Sewer Serv. Provided in Missouri Serv. Areas</i> , 2008 WL 4693063 (Mo. P.S.C. Oct. 20, 2008)(historical test year utilized). <i>Re Missouri-American Water Co.</i> , 2003 WL 22145634 (Mo. P.S.C. July 27, 2003)(stating “[r]ates are usually established based upon a historical test year”).
Montana Historic Test Year	Mont. Admin R. 38.5.106 (1) (2008) The statement of the cost of service shall contain an analysis of system costs as reflected on the filing utility’s books for a test period consisting of 12 months actual experience ending no earlier than 9 months prior to the date of filing

Nebraska <i>Historic or Future Test Year</i>	291 Neb. Admin. Code ch. 6 § 002 (2008) 002.08F Application or tariff filing for rate increases must be based on data submitted for a recently concluded test year or for a test year consisting of at least six (6) months actual experience and not more than (6) months estimated data, to be subject to correction or verification during the course of the proceeding considering the proposed rate increase.
Nevada <i>Historic Test Year</i>	Nev. Rev. Stat. Ann § 704.110 (3) (2008) [T]he public utility shall submit with its application a statement showing the . . . most recent 12 months for which data were available when the application was prepared. . . .
New Hampshire <i>Historic Test Year</i>	N. H. Admin Rules, PUC 1602.07 (2008) Puc 1602.07 “Test year” means a utility’s actual financial data for a 12-month period.
New Jersey <i>Historic Test Year</i>	Re Fayson Lake Water Co., 2007 WL 3023496 (N.J.B.P.U. Sept. 13, 2007)(requiring use of historical test year adjusted for known and measurable changes).
New Mexico <i>Historic or Future Test Year</i>	17.12.1.7 NMAC T. “Test Year Period”: Nothing herein shall preclude an applicant utility from adopting either an Historical Test Year Period or a Future Test Year Period, each as defined below, as the basis of the determination by the Commission of the applicant utility’s total revenue requirements. (1) “Historical Test Year Period”: The applicant utility’s twelve (12) months of actual experience adjusted for known and measurable changes, annualizations, or other changes for which period the applicant utility’s total revenue requirements shall be determined. (2) “Future Test Year Period”: The twelve (12) consecutive months immediately following the last day of the applicant utility’s twelve (12) months of actual experience [otherwise the Base Period] adjusted for known and measurable changes or estimates based on projections for which period the applicant utility’s total revenue requirements shall be determined. . . .

New York <i>Historic or Future Test Year</i>	<i>Proceeding on Motion of the Comm'n as to the Rates, Charges, Rules and Regulations of Consolidated Edison Co. of New York Inc. for Elec. Serv., 2008 WL 4829205 (N.Y.P.S.C. Nov. 4, 2008)</i> (in accordance with Commission policy and expectations for major rate proceedings, “utilities seeking rate relief should provide actual data with normalizing adjustments for a historic test year, projected data for the period for which new rates are to be set . . . and a verifiable link between the two periods” . . .).
North Carolina <i>Historic Test Year</i>	N.C. Gen. Stat. § 61-133 (c) (2008) The test period shall consist of 12 months’ historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding
North Dakota	<i>PRIVATE WATER SYSTEMS NOT REGULATED</i>
Ohio <i>Future Test Year</i>	Ohio Rev. Code Ann. § 4909.15 (C) (2008) The test period, unless otherwise ordered by the commission, shall be the twelve-month period beginning six months prior to the date the application is filed and ending six months subsequent to that date. In no event shall the test period end more than nine months subsequent to the date the application is filed. . . .
Oklahoma <i>Historic Test Year</i>	Okla. Admin. Code § 165:70-3-3. Test period (a) As a minimum, the utility shall file as the test year a recent historical twelve-month test period which shall be no more than six (6) months old at the time the application package is filed with the OCC Court Clerk. . . . Okla. Admin. Code § 165:70-9-10. Test period (Streamlined Application) The utility shall file as the test year a recent historical twelve-month test period which shall be no more than six (6) months old at the time the application package is filed with the OCC Court Clerk. . . .
Oregon <i>Historic Test Year</i>	<i>In the Matter of Clearwater Source LLC, 2008 WL 3845371 (Or. P.U.C. Aug. 8, 2008)</i> (guidance for water rate cases defined test year as “[g]enerally, the last 12-month period for which complete financial data is available.”).

Pennsylvania <i>Historic or Future Test Year</i>	66 Pa. C.S.A. § 315(e) (2008) In discharging its burden of proof a utility may utilize a future test year. 52 Pa. Code § 53.56 (2008) If a future test year is used, it shall be based on estimates for a period of 12 consecutive months, which begins on the day following the end of the required experienced 12-month period. . . . 52 Pa. Code § 53.52(b)(2), (c) and (c)(1) (2008) (requires data for 12 months ending not more than 120 days before the date of filing; 180 days for small companies).
Rhode Island <i>Historic Test Year</i>	90-060-001 R.I. Code R. § 2.6(a) (2008) 2.6 TEST YEAR AND RATE YEAR FILING (a) The test year constitutes a historic year of actual data for a period ending within nine (9) months of the filing date. The test year may be for such other period as the Commission may allow.
South Carolina <i>Historic Test Year</i>	S. C. Code Ann. § 103 – 823(A)(3) (requiring data for historic twelve-month test period unless otherwise directed).
South Dakota	<i>PRIVATE WATER SYSTEMS NOT REGULATED</i>
Tennessee <i>Historic or Future Test Year</i>	<i>Am. Ass’n of Retired Pers. v. Tennessee Pub. Serv. Comm’n</i>, 896 S.W.2d (Tenn. Ct. App. 1994)(“the Commission has the discretion to choose a historical test period, a forecast period, a combination of the two, or any other accepted method in rate making.”). <i>Re Aqua Util. Co.</i>, 2007 WL 4812199 (Tenn. R.A. Nov. 27, 2007)(same).
Texas <i>Historic Test Year</i>	Tex. Water Code § 13.002 (22) (2007) “Test year” means the most recent 12-month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing. . . .

Utah <i>Historic or Future Test Year</i>	Utah Code Ann. § 54-4-4 (2008) (3)(a) If in the commission’s determination of just and reasonable rates the commission uses a test period, the commission shall select a test period that, on the basis of evidence, the commission finds best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect. (b) In establishing the test period determined in Subsection (3)(a), the commission may use: (i) a future test period that is determined on the basis of projected data not exceeding 20 months from the date a proposed rate increase or decrease is filed with the commission under Section 54-7-12; (ii) a test period that is: (A) determined on the basis of historic data; and (B) adjusted for known and measurable changes; or (iii) a test period that is determined on the basis of a combination of: (A) future projections; and (B) historic data
Vermont <i>Historic Test Year</i>	<i>In re Green Mountain Power Corp.</i>, 162 Vt. 378, 648 A.2d 374 (1994)(test year is “usually the most recent full calendar year . . .”). <i>Re Mountain Water Co.</i>, 2006 WL 707729 (Vt. P.S.B. Jan. 20, 2006)(“To arrive at an appropriate cost of service for the prospective rate year, actual expenses incurred over a 12-month period are adjusted for known and measurable changes”). <i>Re Cent. Vermont Pub. Serv. Corp.</i>, 241 P.U.R.4th 1 (2005)(“The standard practice is for a utility to prepare a cost-of-service filing that is based on a historic test year, adjusted for known and measurable changes.”).

Virginia <i>Historic or Future Test Year</i>	20 Va. Admin Code § 5-200-30(A) (2008) 8. (For utilities requesting a rate increase) The selection of a test period is up to the applicant. However, the use of overlapping test periods will not be allowed. 9. (For utilities not requesting a rate increase) The test period shall be the current 12 months ending in the same month used in the utility's most recent rate application. . . . 20 Va. Admin Code § 5-200-40 (2008) (for small water utilities) 6. The company is free to choose any test period it wishes to support its rate changes. . . .
Washington <i>Historic Test Year</i>	<i>People's Org. for Washington Energy Resources v. Washington Util. and Transp. Comm'n</i>, 104 Wash.2d 798, 711 P.2d 319 (1985)(the test year or test period is "based on actual operating expenses in a recent past period . . ."). <i>Washington Util. and Transp. Comm'n, v. Cougar Ridge Water Sys.</i>, 2004 WL 3419342 (Wash U.T.C. Nov. 19, 2004)(in ratemaking proceedings at the Commission, a test period usually is defined as "the most recent 12-month period for which income statements and balance sheets are available.").
West Virginia <i>Historic Test Year</i>	W. Va. Code R. § 150-2-19 (2008) 19.2 TEST PERIOD: Actual audited or finally closed experience for the most recent 12 month period ending on a calendar quarter. . . . If the utility has been in operation less than twelve (12) months, estimates covering the period in which actual experience was not available, may be used in preparing the statements. . . .
Wisconsin <i>Historic or Future Test Year</i>	<i>Madison Gas and Elec. Co. v. Public Serv. Comm'n of Wisconsin</i>, 109 Wis.2d 127, 325 N.W.2d 339 (1982)(noting the use of a future test year "has become increasingly favored . . ."). <i>Madison Gas and Elec. Co. v. Public Serv. Comm'n of Wisconsin</i>, 105 Wis.2d 385, 313 N.W.2d 847 (1981)("To better account for future economic trends, regulatory commissions, including the PSC, have turned to future or forward-looking test years."). <i>Re Clintonville Water and Elec. Util.</i>, 2008 WL 1787695 (Wis. P.S.C. March 13, 2008)(utilized future test year in rate increase application).

Wyoming <i>Historic Test Year</i>	<i>Montana Dakota Util. Co. v. Pub. Serv. Comm'n of Wyoming, 847 P.2d 978 (1993)</i>(noting approval of Commission's use of historical test year adjusted for known and measurable changes). <i>Mountain Fuel Supply Co. v. Pub. Serv. Comm'n of Wyoming, 662 P.2d 878 (1983)</i>(affirming Commission rejection of future test year and use of historical test year adjusted for known and measurable changes).
--	--