Regulating Public Utility Performance:
The Law of Market Structure, Pricing and Jurisdiction

Chapter Nine

Filed Rate Doctrine: The "Filed Rate" Is the Only Lawful Rate

Scott Hempling
Attorney at Law LLC

Rate filings . . . are the essential characteristic of a rate-regulated industry.[1]

9.A. Filed rates: Purposes and principles

A railroad passenger buys a train ticket. The ticket agent misquotes the price at below the railroad's filed tariff rate. When the railroad catches the error, the passenger has to pay the difference. "[T]he rate of the carrier duly filed is the only lawful charge. . . . Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed."[2]

Welcome to the filed rate doctrine. Its legal source is mundane statutory language, like Missouri's:

> No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed [with the Commission] and in effect at the time.[3]

Its message is simple: The only legal rate is the filed rate, the one in the commission's public files: "The legal rights of shipper as against carrier in respect to a rate are measured by the published tariff. Unless and until suspended or set aside [by the regulator], this rate is made, for all purposes, the legal rate."[4] Whether the commission has acted on the rate is irrelevant: "It is the filing of the tariffs, and not any affirmative approval or scrutiny by the agency, that triggers the filed rate doctrine."[5]

The doctrine's original goal was to prevent discrimination. Prior to the Interstate Commerce Act, "railroad companies often charged substantially higher rates on noncompetitive routes, granted secret discounts to preferred shippers, and overcharged competitors of

1. MCI Telecomms. Corp. v. AT&T Co., 512 U.S. 218, 231 (1994).
2. Louisville & Nashville R.R. Co. v. Maxwell, 237 U.S. 94, 97 (1915). While this agent's error appeared to be unintentional, that was not always the case:

   > Past experience shows that billing clerks and other agents of carriers might easily become experts in the making of errors and mistakes in the quotation of rates to favored shippers, while other shippers, less fortunate in their relations with carriers and whose traffic is less important, would be compelled to pay the higher published rates.

   Poor v. Chi., Burlington & Quincy Ry. Co., 12 I.C.C. 418, 421–22 (1907) (quoted in Maislin Indus., U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116, 127–28 (1990)).
3. Mo. Rev. Stat. § 393.140(11).
4. Keogh v. Chi. & Nw. Ry. Co., 260 U.S. 156, 163 (1922).
5. Town of Norwood v. FERC, 202 F.3d 408, 419 (1st Cir. 2000).

preferred customers."[6] In passing the Act, Congress sought to "secure equality of rates as to all, and to destroy favoritism, these last being accomplished by requiring the publication of tariffs, and by prohibiting secret departures from such tariffs, and forbidding rebates, preferences and all other forms of undue discrimination."[7]

Over a century, the doctrine "has been extended across the spectrum of regulated utilities."[8] This extension has produced principles and applications that go beyond discrimination-prevention. This Chapter discusses seven:

- Courts must respect rates authorized by commissions.
- State commissions must respect rates authorized by federal commissions.
- Commissions must respect the rates they authorize.
- Courts cannot award antitrust damages to customers of utilities with filed rates.
- The doctrine applies to market-based (seller-set) rates.
- The doctrine applies to non-rate terms and conditions.
- Fraud does not block the filed rate defense.

9.B. Commission decisions constrain courts

Since the only legal rate is the commission-authorized rate, rates cannot be made or changed by courts. Two landmark cases apply this principle to federal and state courts, respectively.

9.B.1. Federal courts

Montana-Dakota Utilities Company and Northwestern Public Service Company were affiliates: They had common management, interlocking directorates, and joint officers. They also exchanged wholesale power, buying from and selling to each other at rates authorized by the Federal Power Commission under the Federal Power Act. Eventually they separated, disharmoniously. Montana-Dakota then sued Northwestern in federal district court, seeking compensation on grounds that Northwestern had overcharged and

6. Cal. *ex rel.* Lockyer v. FERC, 383 F.3d 1006, 1011 (9th Cir. 2004).
7. N.Y., New Haven & Hartford R.R. Co. v. Interstate Commerce Comm'n, 200 U.S. 361, 391 (1906); *see also Maislin*, 497 U.S. at 126 (citing the "close interplay" among the duty to file rates, the duty to adhere to those rates, the statutory filing requirement and the statutory prohibition against undue discrimination); Ariz. Grocery Co. v. Atchison, Topeka & Santa Fe Ry. Co., 284 U.S. 370, 384 (1932) ("In order to render rates definite and certain, and to prevent discrimination and other abuses, the statute require[s] the filing and publishing of tariffs specifying the rates adopted by the carrier, and makes these the legal rates, that is, those which must be charged to all shippers alike."); *Keogh*, 260 U.S. at 163 ("This stringent rule prevails, because otherwise the paramount purpose of Congress—prevention of unjust discrimination—might be defeated."); Tex. & Pac. R.R. Co. v. Abilene Cotton Oil Co., 204 U.S. 426, 440 (1907) ("[T]here is not only a relation, but an indissoluble unity between the provision for the establishment and maintenance of rates until corrected in accordance with the statute and the prohibitions against preferences and discrimination.").
8. Ark. La. Gas Co. v. Hall, 453 U.S. 571, 577 (1981). *See also MCI Telecomms. Corp.*, 512 U.S. at 220 ("The requirements of § 203 [of the Communications Act of 1934] that common carriers file their rates with the Commission and charge only the filed rate were the centerpiece of the Act's regulatory scheme.").