

**BEFORE THE WASHINGTON
UTILITIES & TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION, d/b/a AVISTA UTILITIES

Respondent.

DOCKETS UE-240006 & UG-240007 (*Consolidated*)

**CROSS-EXAMINATION EXHIBIT OF ADRIEN M. MCKENZIE
ON BEHALF OF THE
WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL
PUBLIC COUNSEL UNIT**

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Rode & Fisbeck (2019)

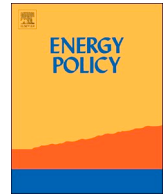
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Regulated equity returns: A puzzle

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ABSTRACT

Based on a database of U.S. electric utility rate cases spanning nearly four decades, the returns on equity authorized by regulators have exhibited a large and growing premium over the riskless rate of return. This growing premium does not appear to be explained by traditional asset-pricing models, often in direct contrast to regulators' stated intent. We suggest possible alternative explanations drawn from finance, public policy, public choice, and the behavioral economics literature. However, absent some normative justification for this premium, it would appear that regulators are authorizing excessive returns on equity to utility investors and that these excess returns translate into tangible profits for utility firms.

1. Introduction

In economics, the equity-premium puzzle refers to the empirical phenomenon that returns on a diversified equity portfolio have exceeded the riskless rate of return on average by more than can be explained by traditional models of compensation for bearing risk. Since Mehra and Prescott's (1985) initial paper on the subject, a large body of research has attempted to explain away the puzzle, but without much success (Mehra and Prescott, 2003). The most likely explanations for the premium appear to reside outside of classical equilibrium models. We call the reader's attention to the Mehra-Prescott puzzle as a means of introducing our instant problem, of which it may be considered an applied case. Simply put: why are the equity returns authorized by electric utility regulators so high, given that riskless rates are so low?

Our scope is as follows. We employ a much larger dataset than has previously been examined in the literature and seek to explain the rates of return *authorized* by state electric utility regulators. We investigate the extent to which the actual returns authorized can be explained by the Capital Asset Pricing Model (CAPM), which regulators (and others) purport to use. We also examine whether the CAPM is capable of explaining the clear trend of rising risk premiums present over the last four decades in electric utility rate cases.

While previous studies have investigated rates of return for regulated electric utilities, the majority of this work has either examined *actual* rates of return to utility stockholders, relied on very limited

samples of rate cases, or tested a variety of hypotheses connecting utility earnings to various structural and institutional factors. Table 1 summarizes the previous literature most similar to our study. By contrast, our study employs a far larger sample of rate cases (1,596) than previously examined in the literature. In addition, our focus on authorized rates of return highlights the impact of regulatory rate-setting on consumers, as opposed to stockholders, to the extent that authorized rates are used to set utility revenue requirements, while earned returns accrue to stockholders. This setting also enables us to analyze rate-setting in the context of regulatory decision-making. Actual rates of return earned by utilities can differ from the rates of return authorized by regulators due to factors such as the impact of weather on demand, but primarily due to the operational performance of a utility, including its ability to operate efficiently and control costs to those approved by regulators.

This regulated equity return puzzle is important not just from a theoretical asset-pricing perspective, but also for very practical reasons. The database used in this study reflects more than \$3.3 trillion (in 2018 dollars) in cumulative rate-base exposure.¹ An error or bias of merely one percentage point in the allowed return would imply tens of billions of dollars in additional cost for ratepayers in the form of higher retail power prices and could play a profound role in the allocation of investment capital. Coupled with utilities' tendencies toward excessive capital accumulation under rate regulation (Averch and Johnson, 1962; Spann, 1974; Courville, 1974; Hayashi and Trapani, 1976; Vitaliano

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¹ This figure reflects the simple cumulative sum of authorized rate bases across all cases. Because rate-base decisions may remain in place for several years, this sum most likely underestimates the actual figure, which should be the authorized rate base in each year examined, whether or not a new case was decided. We cite this figure merely as evidence of the substantial magnitude of the costs at stake.

Table 1

Previous studies of the determinants of electric utility rates of return.

Study	Sample	Description
Joskow (1972)	20 cases in New York between 1960 and 1970	Only capital markets parameter included was cost of debt. Focused on the requested rate of return.
Joskow (1974)	174 cases between 1958 and 1972	No CAPM parameters tested. Regulators tended to ignoring overearning as long as prices were falling.
Hagerman and Ratchford (1978)	79 survey responses from utilities about their last rate case	Used authorized rates. Found positive coefficients related to beta and the debt/equity ratio.
Roberts et al. (1978)	59 cases from 4 Florida utilities between 1960 and 1976	No CAPM parameters tested. Only structural factors examined.
Roll and Ross (1983)	Utility stock returns between 1925 and 1980	No authorized returns used. CAPM underestimates returns relative to the APT.
Pettway and Jordan (1987)	58 electric service companies between 1969 and 1976	Used stockholder returns only.
Binder and Norton (1999)	92 firms	Used stockholder returns to estimate beta. Suggested that regulation causes cash flow “buffering” and that firms may be underearning.
PJM Interconnection (2016)	22 regulated firms between 2000 and 2015	Examined stockholder returns and found regulated firms had positive alpha.
Haug and Wieshammer (2019)	N/A	Regulators in continental Europe “uniformly adopt the [CAPM]” and courts have ruled that the authorized rates are too low. The opposite finding to our study.

and Stella, 2009), the magnitude of the problem makes it incumbent on the industry and regulators to get it right.

There are also policy implications for market design and regulation. A recent *PJM Interconnection (2016)* study compared and contrasted entry and exit decisions in competitive and regulated markets to evaluate the efficiency of competitive markets for power. One finding that emerged from the study was that regulated utilities appeared to be “overearning” and had generated positive alpha, while competitive firms had not generated positive alpha.² Although the study used a limited time window of rate case data and focused on utility stock returns, not returns authorized by regulators, its findings are consistent with those we explore in more detail here.

As an old joke goes, an economist is someone who sees something work in practice and asks whether it can work in theory. Undoubtedly, the utility sector has been successful in attracting capital over the past four decades. We cannot necessarily say, however, that had returns been consistent with the dominant theoretical model used (and thus lower), this would still have been the case. Accordingly, this article also raises the question of whether our theoretical models of required return and asset pricing must be refined. Or, at the very least, whether there are important considerations that must be accounted for in the application of those models to the regulated electric utility industry.

In this article, therefore, we examine the historical data on authorized rates of return on equity in U.S. electric utility rate cases. We compare these rates of return to several conventional benchmarks and the classical theoretical asset-pricing model. We demonstrate that the spread between authorized equity returns (and also earned equity returns) and the riskless rate has grown steadily over time. We investigate whether this growing spread can be explained by classical asset-pricing parameters and conclude that it cannot. We then evaluate possible explanations outside of classical finance to suggest fruitful paths for future research. Specifically, we investigate whether the addition of variables for commission selection and case adjudication contribute explanatory power, in line with existing theories in the public choice literature. We conclude with a discussion of the policy implications of the observed premiums and how regulatory rate-setting could be adjusted to mitigate higher premiums.

Section 2 reviews the legal, regulatory, and financial foundations of rate of return determination for utilities. Section 3 describes the data used in our analysis and defines the risk premium on which our analysis

² In asset pricing models, positive alpha is evidence of non-equilibrium returns, meaning that investors are receiving compensation in excess of what would be required for bearing the risks they have assumed.

is based. Section 4 presents the results of our analysis and outlines the various factors explored, including both classical financial factors and factors outside of the classical paradigm. Section 5 highlights the policy implications of our research, suggests potential mitigating strategies, and concludes.

2. Regulated equity returns and the Capital Asset Pricing Model

At the outset, let us make clear that we are addressing only *regulated* rates of return on equity in this article. We draw no conclusions or inferences about the behavior of returns on non-regulated assets. Our focus is limited to regulated returns because in such cases it is regulators who are tasked with standing in for the discipline of a competitive market and ensuring that returns are just and reasonable. For more than a century, U.S. courts have ruled consistently in support of this objective, while recognizing that achieving it requires consideration of numerous factors that are subject to change over time. The task set to regulators, then, is to approximate what a competitive market would provide, *if one existed*.

Mindful of this mandate, two U.S. Supreme Court decisions are commonly thought to provide the conceptual foundation for utility rate-of-return regulation. In *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia* (262 U.S. 679 (1923)), the Court identified eight factors that were to be considered in determining a fair rate of return, ruling that “[t]he return should be reasonable, sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economic management, to maintain and support its credit and enable it to raise money necessary for the proper discharge of its public duties.” This position was made more concrete in *Federal Power Commission v. Hope Natural Gas Company* (320 U.S. 591 (1944)), wherein the Court ruled that the “return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks.”

In both *Bluefield* and *Hope*, the Court sought to balance the need for utilities to attract capital sufficient to discharge their duties with the need for regulators to protect ratepayers from what would otherwise be rent-seeking monopolists. These efforts in determining “just and reasonable” returns received significant assistance in the 1960s when groundbreaking advances in asset-pricing theory were made in finance. Specifically, the development of the Capital Asset Pricing Model (CAPM) (Sharpe, 1964; Lintner, 1965; Mossin, 1966) provided a rigorous framework within which the question of the appropriate rate of return could be addressed in an objective fashion. The security market line representation of the CAPM [1] set out the equilibrium rate of return on equity, r_E , as the sum of the rate of return on a riskless asset,

r_f , and a premium related to the level of risk being assumed that was defined in relation (through the factor β) to the expected excess rate of return on the overall market for capital, r_m .

$$r_E = r_f + \beta(r_m - r_f) \quad (1)$$

It is outside of the scope of this paper to delve too deeply into the foundations of asset pricing. We note, also, that the CAPM methodology is not the sole candidate for rate-of-return determination in utility rate cases. [Morin \(2006, p. 13\)](#) identifies four main approaches used in the determination of the “fair return to the equity holder of a public utility’s common stock,” of which the CAPM is but one.³ Nevertheless, the concept of the appropriate rate of return on equity being a combination of a riskless rate of return and a premium for risk-bearing has since become widely accepted as a means of determining the appropriate authorized return on equity in state-level utility rate cases ([Phillips, 1993](#), pp. 394–400). In contrast, the Federal Energy Regulatory Commission relies exclusively on the DCF approach, which is also common with natural gas utilities. For electric utilities, however, the CAPM in particular is seen as the “preferred” ([Myers, 1972](#); [Roll and Ross, 1983](#), p.22) and “most widely used” ([Villadsen et al., 2017](#), p. 51) method in regulatory proceedings. Multi-factor approaches such as Arbitrage Pricing Theory (APT) ([Ross, 1976](#)) and the [Fama and French \(1993\)](#) framework are used with significantly less frequency in practice ([Villadsen et al., 2017](#), p. 206). In other words, our focus on the CAPM is not solely because of its perceived normative status, but also because it is the method most regulators *say they are using*.

In *Hope*, however, the Court also advocated the “end results doctrine,” acknowledging that regulatory methods were (legally) immaterial so long as the end result was reasonable to the consumer and investor. In other words, there was no single formula for determining rates. A typical example of the latitude granted by the doctrine is found in [Pennsylvania Public Utility Commission \(2016, p. 17\)](#): “The Commission determines the [return on equity] based on the range of reasonableness from the DCF barometer group data, CAPM data, recent [returns on equity] adjudicated by the Commission, and **informed judgment** [emphasis added].” Rate determination in practice is often not simply a matter of arithmetic; rather, it is an act of judgment performed by regulators. As a result, our investigation examines not just the relation of authorized rates to those implied by the CAPM, but also the potential for that relationship to be influenced by regulator judgment.

Before we turn to the data, however, let us dispense with an alternate formulation of the underlying question. In questioning the size of the premium and why equity returns are so high, one might also ask instead why the riskless rate is so low. Indeed, [Mehra and Prescott \(1985\)](#) ask this very question, before dismissing it on theoretical grounds. We revisit this question in light of recent data and ask whether the premium during the period in question is more a function of riskless rates being forced down by the Federal Reserve’s intervention, than of equity premiums increasing (since the manifest intent of quantitative easing was to lower riskless rates).⁴ Our historical data, as Section 3

³ The other three approaches identified by [Morin \(2006\)](#) are: Risk Premium (which is an attempt to estimate empirically what the CAPM derives theoretically), Discounted Cash Flows (or “DCF,” which is a dividend capitalization model), and Comparable Earnings (which is an empirical approach to deriving cost of capital from market comparables based on *Hope*).

⁴ This has also been an ongoing issue of contention in recent regulatory proceedings. In Opinion 531-B (Federal Energy Regulatory Commission, March 3, 2015, 150 FERC 61,165), the Federal Energy Regulatory Commission (FERC) found that “anomalous capital market conditions” caused the traditional discount rate determination methods not to satisfy the *Hope* and *Bluefield* requirements (150 FERC 61,165 at 7). But in a related decision only eighteen months later (Federal Energy Regulatory Commission, September 20, 2016, 156 FERC 61,198), FERC acknowledged that expert witnesses disagreed as to whether any market conditions were, in fact, “anomalous” (156 FERC 61,198 at 10).

indicates, do not support that hypothesis. The premium growth has persisted since the beginning of our data series in 1980 and has persisted across a variety of monetary and fiscal policy regimes.

3. Regulated electric utility returns on equity, 1980–2018

3.1. Historical authorized return on equity data

The data used in this study were collected and maintained by Regulatory Research Associates (RRA), a unit of S&P Global. The RRA database is comprehensive. It contains every electric utility rate case in the United States since 1980 in which the utility has requested a rate change of at least \$5 million or a regulator has authorized a rate change of at least \$3 million. Our study comprises the period from 1980 through 2018. [Table 2](#) illustrates the bridge from the RRA rate-case population to the rate-case sample used in our analyses. We examined the returns on equity authorized by the regulatory agencies, *not* the returns requested by the utilities.⁵ The sample we use in this paper contains 79% of the RRA universe, but 97% of the rate cases in which a rate of return on equity was authorized by a state regulator.

Nearly all fifty states and Washington D.C. are represented in the data set.⁶ Thirty-two electric utility rate cases satisfying the qualifications listed above were filed in the average state over the past thirty-eight years, with the most being filed in Wisconsin (120) and the fewest being filed in Tennessee (3), Alaska (2), and Alabama (1). The frequency of filing in a state does not appear to have any relationship to premium growth. The average risk premium has grown in both the ten states that completed the most rate cases and the ten states that completed the fewest rate cases and has grown at very similar rates (see [Fig. 1](#)). In fact, as [Fig. 2](#) illustrates, the general trend across all states is similar.

In the early 1980s there were over 100 rate cases filed each year. By the late 1990s, in the midst of widespread deregulation of the electric power industry, the number of filings reached its lowest point (with six in 1999). Since then, filing frequency has increased to an average of forty-eight per year over the last three years (see [Fig. 3](#)). The decline in rate case activity in many instances was the direct result of rate moratoria related to the transition to competitive markets in the late 1990s, as well as to moratorium-like concessions made to regulators related to merger approvals over the last decade. Many of these moratoria will expire over the next two years, suggesting a new increase in rate case activity is likely. Finally, no individual utility had an outsized influence on the sample. One hundred forty-four different companies filed rate cases, but many have since merged or otherwise stopped filing.⁷ The average firm filed eleven rate cases in our sample. Within our sample the most frequently-filing entity was PacifiCorp, which filed seventy-three rate cases, or less than 5% of the sample.

3.2. Calculating the regulated equity premium

Regulated equity returns are generally equal to the sum of the riskless rate of return and a premium for risk-bearing. In the CAPM, the premium for risk-bearing is given by $\beta(r_m - r_f)$, where β is the utility’s

⁵ To be clear, we refer to the rates set by regulators as the “authorized” rates. These may be contrasted with utilities’ “requested” rates and also with the “earned” rates of return actually realized by utilities. Regulatory *authorization* of a rate is not a guarantee that a utility will actually *earn* such a rate. We address this issue in further detail in Section 4.5.

⁶ Only Nebraska did not have a reported rate case meeting the parameters of the data set. Nebraska is unique in that it is the only state served entirely by consumer-owned entities (e.g., cooperatives, municipal power districts) and therefore absent a profit motive it does not have the same adversarial regulatory system as all other states.

⁷ The level of analysis is at the regulated utility level. We recognize that many holding companies have multiple ring-fenced regulated utility subsidiaries.

Table 2
Bridge illustrating how our sample is constructed from the RRA electric utility rate case population data.

Number of cases	Percent of cases	Description
2033	100.0%	All electric utility rate cases 1980–2018 in which utility has requested a rate change of at least \$5 million or a regulator has authorized a rate change of at least \$3 million.
-19	-0.9%	Rate cases with final adjudication (i.e., fully-litigated or settled) still pending as of December 31, 2018, are excluded
-369	-18.2%	Rate cases with no return on equity determination are excluded
-30	-1.5%	Rate cases with no capital structure determination are excluded
-19	-0.9%	Rate cases with authorized rates lower than the then-prevailing riskless rate are excluded
1596	79.0%	Rate cases used in our analysis

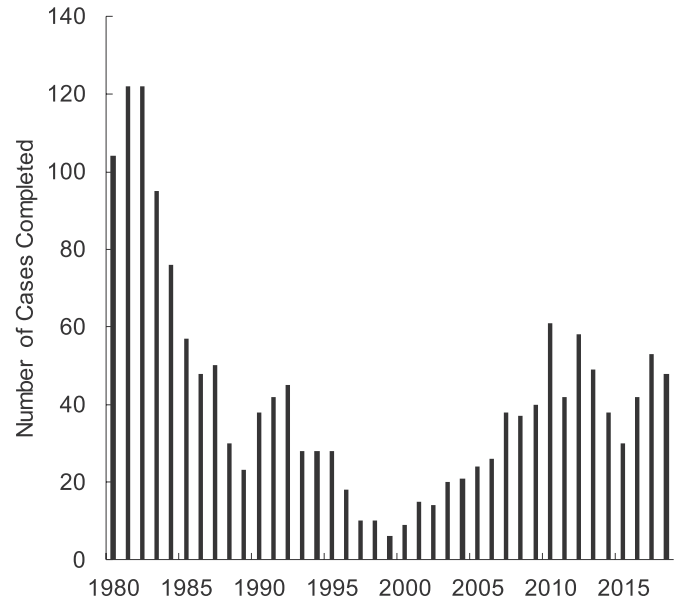
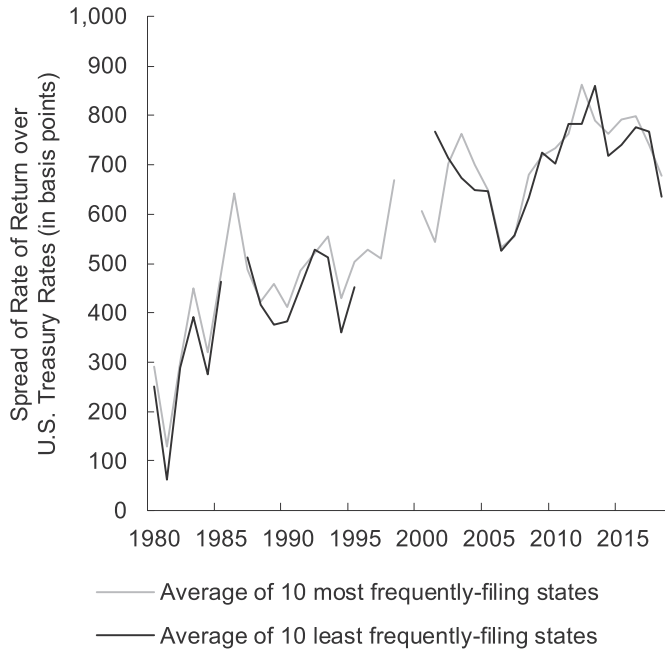


Fig. 3. Number of electric utility rate cases finalized by year.

Fig. 1. Risk-premium growth by frequency of case filing. Gaps in the series reflect years in which no rate cases were filed for the subject group. The risk premium is calculated as $r_E - r_f$, or the excess of the authorized return on equity over the then-current riskless rate.

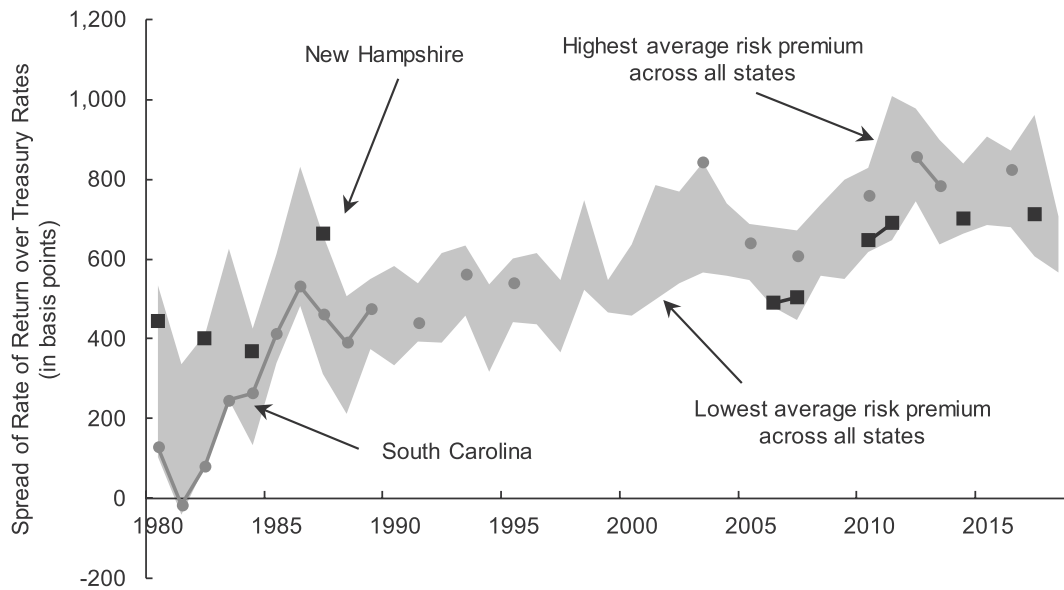


Fig. 2. Range of risk-premium growth across states. States with highest (New Hampshire) and lowest (South Carolina) rates of risk-premium growth over the period (among states with at least five rate cases) are highlighted.

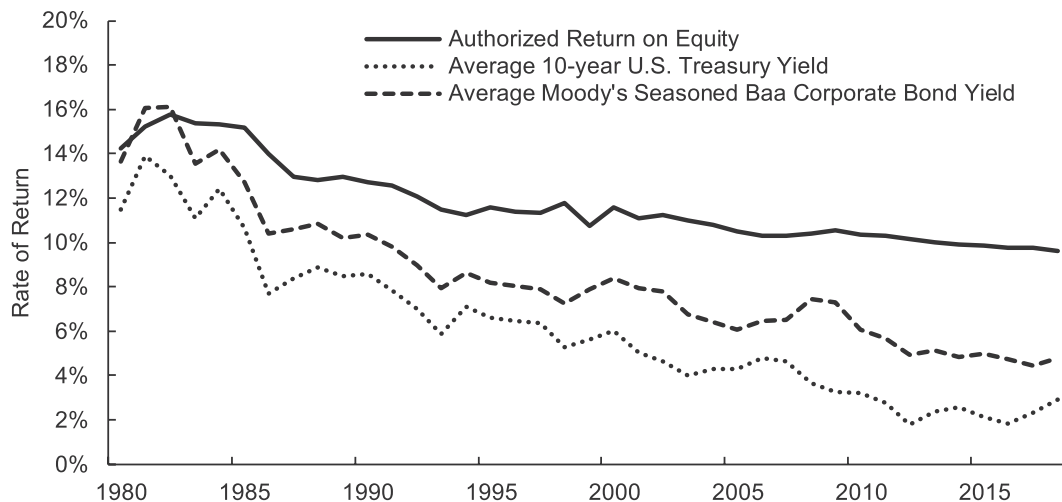


Fig. 4. Annual average authorized return on equity vs. U.S. Treasury and investment grade corporate bond rates.

equity beta. Rearranging the security market line equation [1], we define the regulated equity premium as $r_E - r_f = \beta(r_m - r_f)$. Presented thus, we first note that the existence of a (positive) regulated equity premium is not, by itself, evidence of irrational investor behavior or model failure. Neither is the existence of a growing regulated equity premium. We take no position here on what the “correct” premium should be in any instance. Rather, we shall be content in this article simply to determine whether or not the behavior of the risk premium in practice is consistent with financial theory.

On average, the authorized return on equity is 5.1% (standard deviation = 2.2%) higher than the riskless rate. Fig. 4 illustrates the average authorized return on equity over the period against the average annual riskless rate and investment-grade corporate bond rate.⁸ For avoidance of doubt, we note that only the U.S. Treasury note rate should be considered the riskless rate. We include corporate bond rates solely to assess whether the trend in riskless rates is materially different from the trend in risky debt.

While the regulated equity premium has averaged 510 basis points across the entire time period, in 1980 the average premium was only 277 basis points, whereas in 2018 it averaged 668 basis points. Fig. 5 shows the difference between the authorized return on equity and the riskless rate for each case in the data over the past thirty-eight years. Although the premium is determined against the riskless rate of return (represented here as the yield on a 10-year U.S. Treasury note), we also present for comparison the spreads determined against the yield on the Moody's Seasoned Baa Corporate Bond Index to illustrate that the effect is not an artifact of recent monetary policy on Treasury rates. The trends of the two series are quite similar (and both have statistically-significant positive slopes); accordingly, we shall present only the Treasury rate-determined premiums throughout the remainder of this paper.

Given that a large and growing regulated equity premium exists, our question is whether or not it can be explained within an equilibrium asset-pricing framework such as the CAPM. If β were to have increased during the time period in question, for example, the growth of the regulated equity premium may well be explained by the increasing (relative) riskiness of utility equity. As Section 4 demonstrates, however, in fact it cannot.

⁸ We used the 10-year constant maturity U.S. Treasury note yield as a proxy for the riskless rate and the yield on the Moody's Seasoned Baa Corporate Bond Index as a proxy for investment-grade corporate bond rates. Both series were obtained from the Federal Reserve's FRED database (Board of Governors of the Federal Reserve System, n.d.-a; n.d.-b).

4. Potential explanations for the premium

Having demonstrated the existence of a large and growing regulated equity premium, we investigate various potential explanations. As we indicated above, we proceed with our investigation of explanations for the premium via the Capital Asset Pricing Model. The CAPM allows three basic mechanisms of action for a change in the risk premium: (i) the manner in which the underlying assets are financed has changed, (ii) the risk of the underlying assets themselves has changed, and/or (iii) the rate at which the market in general prices risk has changed. We explore each in turn and formally test whether the trend in the data can be explained by the CAPM. Finding that it cannot, we then turn to theoretical explanations outside of the CAPM. The potential alternative explanations in Sections 4.5 through 4.7 all represent viable paths for further research.

4.1. Capital structure effects

As corporate leverage increases, the underlying equity becomes riskier and thus deserving of higher expected returns. In finance, the Hamada equation decomposes the CAPM equity beta (β) into an underlying asset beta (β_A) and the impact of capital structure (Hamada, 1969, 1972). Specifically, the Hamada equation states that $\beta = \beta_A \left[1 + (1 - \tau) \frac{D}{E} \right]$, where τ is the tax rate and D and E are the debt and equity in the firm's capital structure, respectively. We use the marginal corporate federal income tax rate for the highest bracket, as provided in Internal Revenue Service (n.d.).

One explanation for a growing risk premium would be steadily increasing leverage among regulated utilities. However, regulators also generally approve of specific capital structures as part of the rate-making process. As a result, our database also contains the authorized capital structures for each utility.⁹ In fact, utilities are *less* leveraged today than they were in 1980. The average debt-to-equity ratio in the first five years of the data set (1980–1984) was 1.74; in 2014–2018 it was 1.05. More generally, we can observe the impact of leverage

⁹ To be clear, the authorized capital structures evaluated here apply to the regulated utility subsidiaries, and not necessarily to any holding companies to which they belong. The holding companies themselves may utilize more or less leverage, but typically the regulated utility subsidiaries are “ring-fenced” so as to isolate them from holding company-level risks. Similarly, rate-of-return regulation would apply only to the regulated subsidiaries, not to the parent holding company. As a result, the capitalization of the regulated entity (studied here) is often different from the capitalization of the publicly-traded entity that owns it.

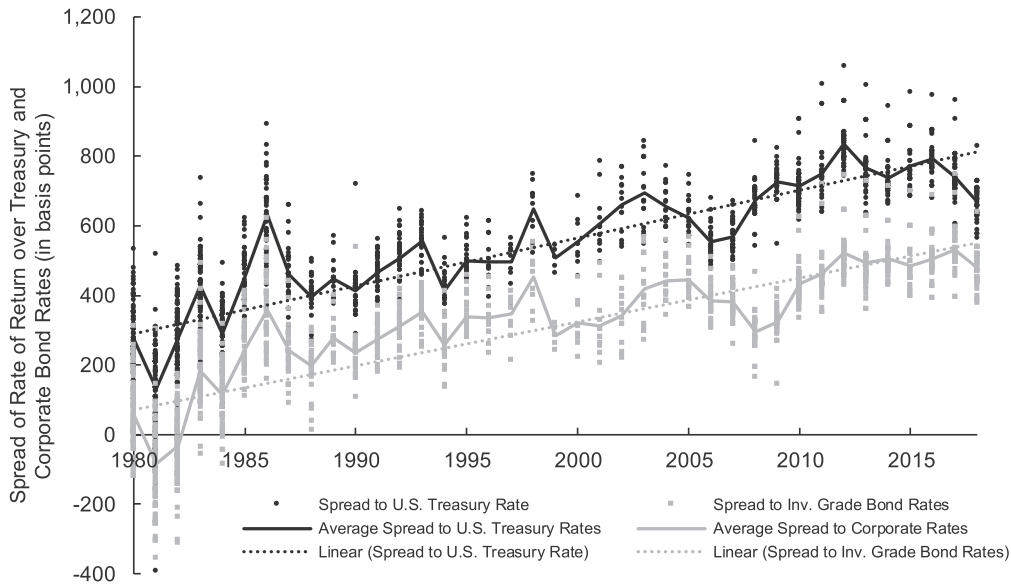


Fig. 5. Authorized return on equity premium, 1980–2018.

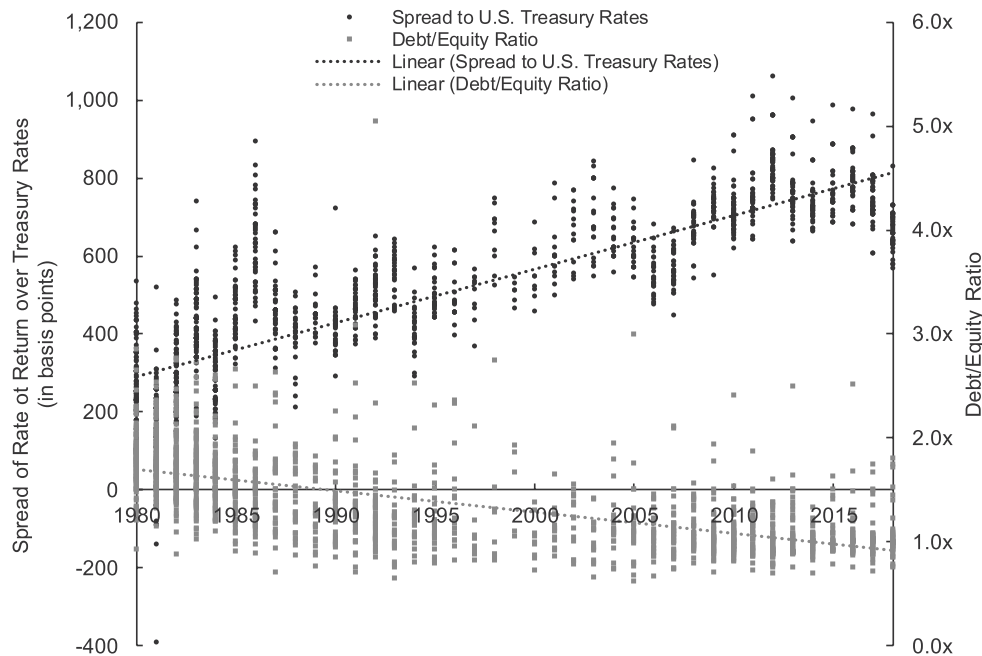


Fig. 6. Authorized return on equity premium vs. utility leverage.

moving in the opposite direction of what one may expect, whether we examine the debt-to-equity ratio exclusively or the Hamada capital structure parameter (i.e., the portion of the Hamada equation multiplied by β_A , or $\left[1 + (1 - \tau)\frac{D}{E}\right]$) in its entirety. Figs. 6 and 7 illustrate these results. As a result, it does not appear as if capital structure itself can explain the behavior of the risk premium.

4.2. Asset-specific risk

As noted above, the Hamada equation decomposes returns into

compensation for bearing asset-specific risks and for bearing capital structure-specific risks. Even if a firm's capital structure remains unchanged, the riskiness of its underlying assets may change. This risk is represented by the unlevered asset beta, β_A . An increase in the asset beta applicable to such investments would, all else held equal, justify an increase in the risk premium.

To examine such a hypothesis, we used the fifteen members of the Dow Jones Utility Average between 1980 and 2018 as a proxy for “utility asset risk.” We estimated five-year equity betas for each firm by regression of their monthly total returns against the total return on the S&P 500 index.¹⁰ The equity betas calculated were then converted to

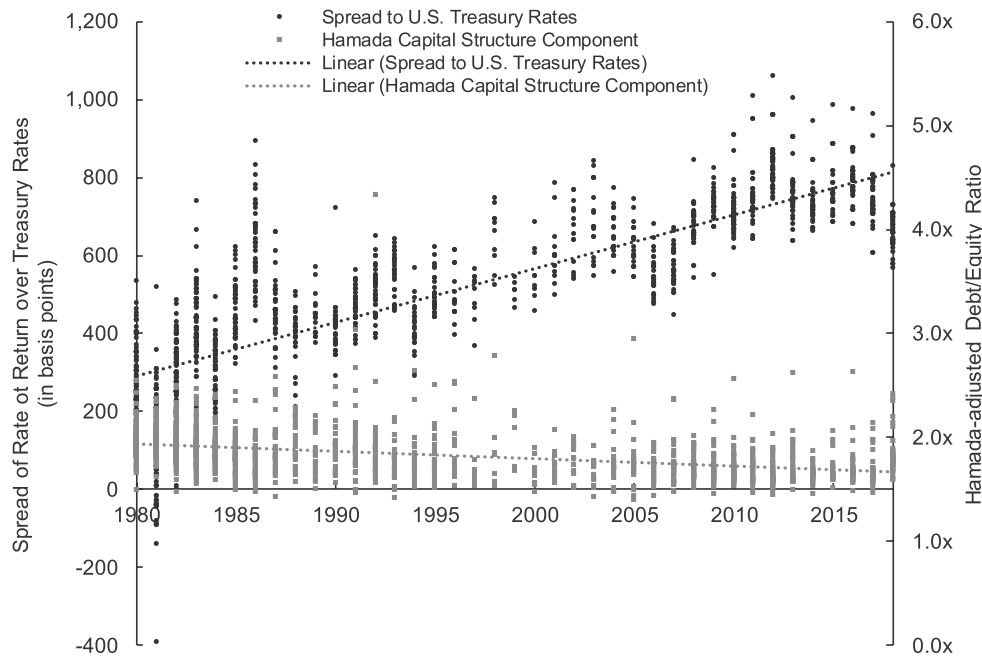


Fig. 7. Authorized return on equity premium vs. the Hamada capital structure parameter.

asset betas using Hamada's equation and corrected for firm cash holdings using firm-specific balance sheet information. We then averaged the fifteen asset betas calculated in each year as our proxy for utility asset risk.¹¹ The results remain substantively unchanged whether an equal-weighted or a capitalization-weighted average is used.

Although there is, of course, variation in the industry average asset beta across the thirty-eight years, the general trend is down. Fig. 8 presents the risk premium in comparison to the industry average asset beta. As a result, the asset beta is moving in the opposite direction from what one might expect, given a steadily-increasing risk premium, and therefore does not appear to explain the observed behavior of the risk premium.

4.3. The market risk premium

The last CAPM-derived explanation for a changing risk premium relates to the pricing of risk assets in general. If investors require greater compensation for bearing the systematic risk of the market in general, then the risk premium across all assets would increase as well (all else held equal) as a result of the average risk aversion coefficient of investors increasing. The market risk premium reflects this risk-bearing cost in the CAPM.

Although we can observe the *ex post* market risk premium, investors' assessment of the *ex ante* market risk premium is generally based on assuming that historical experience provides a meaningful guide to

¹⁰ We determined the composition of the Dow Jones Utility Average index at the end of each year and used a rolling five-year window to perform the regressions. For example, the 1980 regression betas were estimated based on monthly returns from 1975 to 1979, the 1981 regression betas were estimated based on monthly returns from 1976 to 1980, and so on.

¹¹ The balance sheet and total return data are taken from Standard & Poor's COMPUSTAT database. We calculate $\beta'_A = \beta / \left[1 + (1 - \tau) \frac{D}{E} \right]$ and $\beta_A = \beta'_A / \left[1 - \frac{C}{D+E} \right]$, where C equals the amount of cash and cash equivalents held by each firm and D and E represent, respectively, the debt and equity of each firm. We measure D as the sum of Current Liabilities, Long-Term Debt, and Liabilities-Other in the COMPUSTAT data. Because final firm accounting information was not available for 2018 at the time of writing, we maintained the capital structures calculated using 2017 data.

future experience.¹² It is customary to examine the actual market risk premium over some historical time period and base one's estimate of the *expected* future market risk premium on that historical experience (Sears and Trennepohl, 1993; Villadsen et al., 2017, p. 59). While the size of the historical window is subjective, it is sufficient for our purposes to note that the slope of the market risk premium over time has been negative irrespective of the historical window used.¹³ Most sources advocate for using the longest time window available (Villadsen et al., 2017, p. 61); we use a fifty-year historical window for calculation purposes. As Fig. 9 illustrates, that declining trend in the market risk premium appears to be inconsistent with the increasing risk premium exhibited by the rates of return authorized by regulators.

4.4. Testing a theoretical model of the risk premium

Although we have illustrated that each component of the CAPM risk premium appears at odds with the risk premium derived from rates of return authorized by regulators, we now turn to a formal exploration of these relationships. By combining the security market line representation of the CAPM [1] and the Hamada equation, we can define the risk premium, $r_E - r_f$.

$$r_E - r_f = \beta_A \times \left[1 + (1 - \tau) \frac{D}{E} \right] \times MRP \tag{2}$$

In [2], $r_E - r_f$ is the risk premium, or the difference between the authorized rate of return on equity for a given firm in a given rate case and the then-prevailing riskless rate. The asset beta, β_A , is calculated as described in Section 4.2. The middle component is taken from the Hamada equation and reflects the marginal corporate income tax rate (τ) in effect in the year in which the equity return was authorized and the authorized debt-to-equity ratio reflected in the regulators' decision for each case. Lastly, MRP is the *ex ante* estimate of the market risk

¹² We do not dwell here on the issue of the "observability" of the market portfolio as it relates to testability of the CAPM. We shall assume that the S&P 500 index is a reasonable proxy for the market portfolio.

¹³ The market risk premium data used here are taken from data on the S&P 500 and 10-year U.S. Treasury notes collected from the Federal Reserve (Damodaran, n.d.).

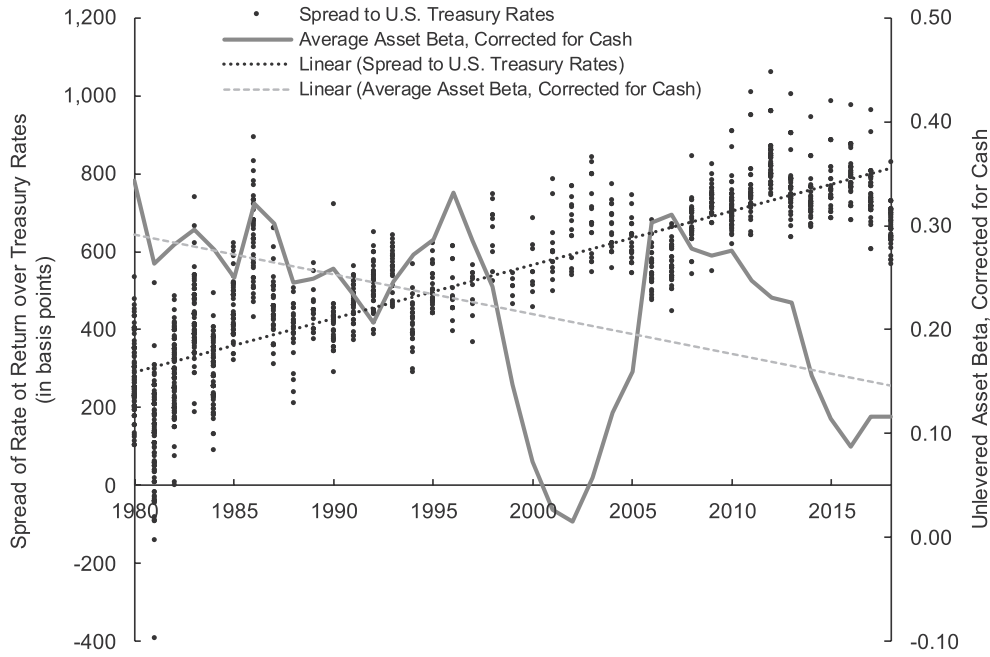


Fig. 8. Authorized return on equity premium vs. industry average asset beta.

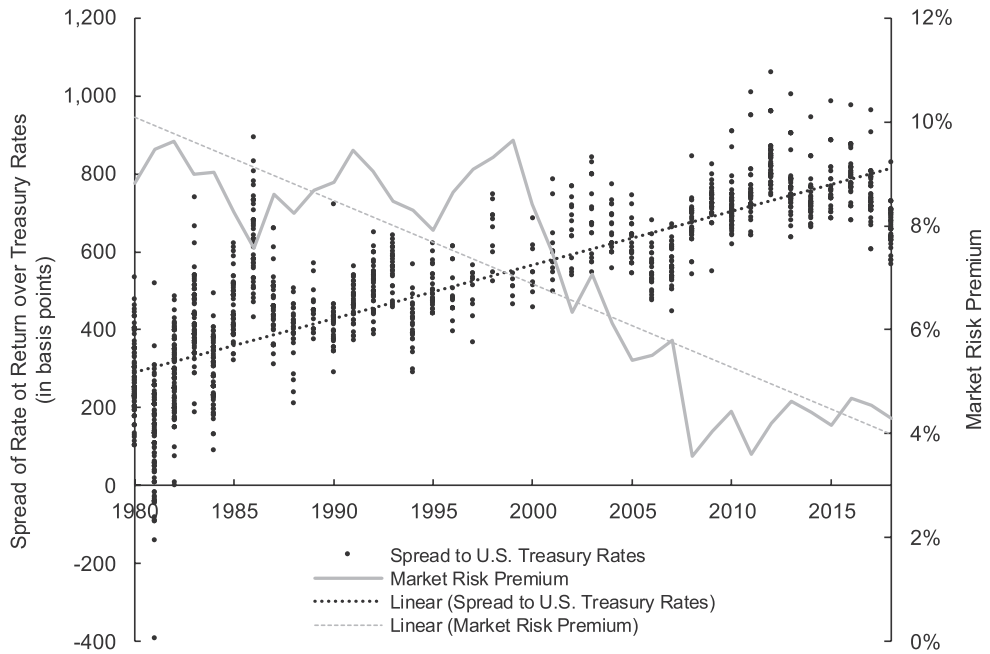


Fig. 9. Authorized rate-of-return premium vs. *ex ante* estimated market risk premium.

premium based on a fifty-year historical window as of the year in which each equity return was authorized.

Let $i = 1, \dots, N$ index firms and $t = 1, \dots, T$ index years. Not every firm files a rate case in every year. In addition, firms enter and exit over time due to merger or bankruptcy. Because regulators must have an evidentiary record to support their determinations, we assume that each rate case is evaluated independently in an adversarial hearing across time.

By using a logarithmic transform of [2], we arrive at equation [3].

$$\ln(r_{E,it} - r_{f,t}) = \gamma_0 + \gamma_1 \ln(\beta_{A,t}) + \gamma_2 \ln \left[1 + (1 - \tau_i) \frac{D_{it}}{E_{it}} \right] + \gamma_3 \ln(MRP_t) \tag{3}$$

In a traditional ordinary least squares (OLS) regression setting, the CAPM would hypothesize that γ_0 should be zero (or not significant) and $\gamma_1, \gamma_2,$ and γ_3 should be positive and significant. What we find, however, is exactly the opposite of that (Table 3). The coefficients are negative and strongly significant. Further, a comparison of the observed risk premium to the risk premium estimated by our regression model reveals a good fit (Fig. 10). The negative coefficients are problematic for the CAPM, but also suggest rather counterintuitive effects at an applied

Table 3

Regression results for CAPM-based risk premium model. Coefficients for both the OLS regression model and a model controlling for utility-level fixed effects are shown.

	OLS	Controlling for utility-level fixed effects
	$\ln(r_E - r_f)$	$\ln(r_E - r_f)$
γ_0 , Constant	3.641**** (0.130)	
γ_1 , Asset beta, $\ln(\beta_A)$	-0.158**** (0.022)	-0.156**** (0.023)
γ_2 , Capital structure, $\ln\left[1 + (1 - \tau)\frac{D}{E}\right]$	-0.492**** (0.103)	-0.967**** (0.142)
γ_3 , Market risk premium, $\ln(MRP)$	-0.947**** (0.035)	-0.898**** (0.039)
R-squared	46.4%	46.6%
Adjusted R-squared	46.3%	41.2%
F statistic	458.8****	420.9****
No. of observations	1596	1596

Standard errors are reported in parentheses.

*, **, ***, and **** indicate significance at the 90%, 95%, 99%, and 99.9% levels, respectively.

level. Regulators use CAPM prescriptively in rate cases; they are determining what utilities *should* earn. A negative capital structure coefficient suggests, for example, that investors in firms with high leverage *should* be compensated with *lower* returns. Similarly, negative coefficients imply that investors in firms with riskier assets (higher asset betas) and during periods of higher risk aversion (higher market risk premiums) should also be compensated with *lower* returns. These results would be difficult for regulators to justify on normative grounds.

It may be the case, however, that common cross-sectional variation is biasing the results for this data by creating endogeneity issues for the OLS-estimated coefficients. For example, the repeated presence of the same utilities over time could introduce entity-level fixed effects into the analysis. Accordingly, we performed an F-test to evaluate the presence of individual-level effects in the data (Judge et al., 1985: p. 521). The test strongly supports the presence of individual (utility-level) effects ($F_{143,1449} = 1.5$, $p < 0.001$). In addition, the Hausman test (Hausman, 1978; Hausman and Taylor, 1981) supports the fixed-effect specification in lieu of random effects ($\chi^2(3) = 24.0$, $p < 0.001$). As a result, Table 3 also provides the regression coefficients controlling for utility-level fixed effects. These coefficients, while numerically different than the OLS results, are nevertheless still negative and strongly significant, in conflict with both financial theory and regulator intent.

Fig. 10 also reveals a distinct shift in the predicted trend of the risk premium beginning in 1999. This is notable because for many parts of the U.S., 1999 represented the year that implementation of electric market reform and restructuring began, with wholesale markets such as ISO-New England opening and several divestiture transactions of formerly-regulated generating assets occurring, establishing market valuations for formerly regulated assets (Borenstein and Bushnell, 2015). In addition, FERC issued its landmark Order 2000 encouraging the creation of Regional Transmission Organizations. To examine this point in time, we divided the data into two sets, 1980–1998 and 1999–2018, and estimated separate regression models for each subset using both OLS and controlling for utility-level fixed effects (Table 4). As before, the F (pre-1999 $F_{129,805} = 1.6$, $p < 0.001$; post-1998 $F_{129,525} = 3.2$, $p < 0.001$) and Hausman (pre-1999 $\chi^2(3) = 15.5$, $p < 0.01$; post-1998 $\chi^2(3) = 23.8$, $p < 0.001$) tests both strongly support the model controlling for utility-level fixed effects over OLS.

Although the results in both cases are consistent with our earlier finding that the standard finance model appears at odds with the empirical data, the two regression models are noticeably different from one another and appear to better represent the data (Fig. 11). We

performed the Chow (1960) test and confirmed the presence of a structural break in the data in 1999 ($F_{4,1588} = 91.6$, $p < 0.001$).¹⁴ We find this result suggestive that deregulatory activity may have an influence even on still-regulated utilities—a point to which we shall return in Section 5.2.

4.5. Potential finance explanations other than the CAPM

In Mehra and Prescott's (2003) review of the equity premium puzzle literature, the authors acknowledge that uncertainty about changes in the prevailing tax and regulatory regimes may explain the premium. Such forces may also be at work with regard to regulated rates of return. To the extent that investors require higher current rates of return because they are concerned about future shocks to the tax or regulatory structure of investments in regulated electric utilities (e.g., EPA's promulgation of the Clean Power Plan, the U.S. Supreme Court's stay of the Clean Power Plan, expiration of tax credits), such concern may be manifest in a higher degree of risk aversion that is unique to investors in the electric utility sector, and therefore a higher "market" risk premium on the assumption that capital markets are segmented for electric utilities.

A separate line of inquiry concerns a criticism of the Hamada equation in the presence of risky debt (Hamada (1972) excluded default from consideration). Conine (1980) extended the Hamada equation to accommodate risky debt by applying a debt beta. Subsequently, Cohen (2008) sought to extend the Hamada equation by adjusting the debt-to-equity parameter to incorporate risky debt in the calculation of the equity beta [4].

$$\beta = \beta_A \left[1 + (1 - \tau) \frac{r_D D}{r_f E} \right] \quad (4)$$

We view neither of these proposed solutions as entirely satisfying, and note that they tend to be material only for high leverage, which is not common to regulated utilities. Nevertheless, we acknowledge that adjustments to the capital structure may influence the risk premium. However, applying the Cohen (2008) modification and using the Moody's Seasoned Baa Corporate Bond Yield as a proxy for the cost of risky debt (r_D), we note that our regression results are substantively unchanged. As Table 5 illustrates, use of the Cohen betas still results in highly significant, but negative coefficients, which is contrary to theory. These results are maintained when controlling for utility-level fixed effects, and the F (Hamada $F_{143,1449} = 1.5$, $p < 0.001$; Cohen $F_{143,1449} = 1.3$, $p < 0.01$) and Hausman (Hamada $\chi^2(3) = 24.0$, $p < 0.001$; Cohen $\chi^2(3) = 6.3$, $p < 0.1$) tests are significant in support of the fixed effects model.

In lieu of modifying the CAPM parameters, some researchers have suggested that Ross's (1976) Arbitrage Pricing Theory (APT) is preferable to the CAPM because the CAPM produces a "shortfall" in estimated returns (Roll and Ross, 1983) and "underestimates" actual returns in utility settings (Pettway and Jordan, 1987). While the works of these authors are suggestively similar to the analysis contained in this paper, we note that those authors were examining the *actual* returns on utility common stocks, rather than the rates of return *authorized* by regulators for assets held in utility rate bases. The distinction is important. In the case of the former, it is a question of asset pricing models and efficient capital markets. In the case of the latter, it is an issue of regulator judgment. We note specifically that regulators are making decisions that set these rates, and in many cases are doing so explicitly stating that they are relying in whole or in part on the CAPM. Our question concerns not just whether the CAPM is a better asset pricing model (than the APT, for example), but whether regulators' own judgment can

¹⁴ Additional testing using the Andrews (1993) approach supports the presence of structural breaks during the transitional regulatory period identified by Borenstein and Bushnell (2015), confirming the appropriateness of our selection of 1999 as a year with strong historical motivation for a structural break.

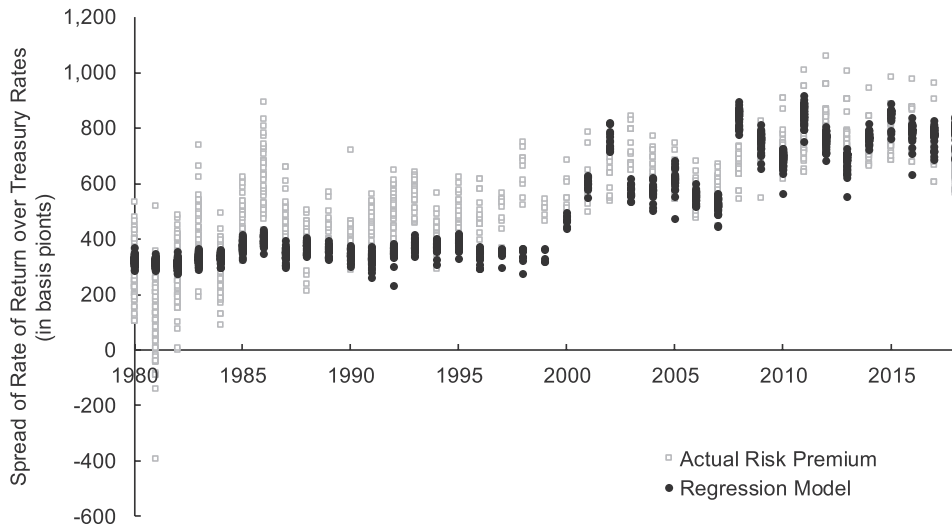


Fig. 10. Actual vs. OLS regression-model risk premium.

Table 4

Regression results for a two-period CAPM-based risk premium model. For purposes of the Chow test, the combined sum of squared residuals was 272.5. Coefficients for both the OLS regression model and a model controlling for utility-level fixed effects are shown.

	OLS		Controlling for utility-level fixed effects	
	1980–1998	1999–2018	1980–1998	1999–2018
	$\ln(r_E - r_f)$	$\ln(r_E - r_f)$	$\ln(r_E - r_f)$	$\ln(r_E - r_f)$
γ_0 , Constant	-6.259**** (0.718)	5.159**** (0.093)		
γ_1 , Asset beta, $\ln(\beta_A)$	-0.940**** (0.131)	-0.071**** (0.008)	-0.972**** (0.135)	-0.065**** (0.008)
γ_2 , Capital structure, $\ln\left[1 + (1 - \tau)\frac{D}{E}\right]$	-0.140 (0.150)	-0.325**** (0.049)	-0.865**** (0.224)	-0.636**** (0.075)
γ_3 , Market risk premium, $\ln(MRP)$	-4.529**** (0.261)	-0.471**** (0.026)	-4.326**** (0.267)	-0.432**** (0.025)
R-squared	26.7%	36.9%	30.2%	44.9%
Adjusted R-squared	26.4%	36.6%	18.8%	31.0%
F statistic	113.3****	127.3****	116.0****	142.5****
Sum of squared residuals	214.4	8.4	170.8	4.7
No. of observations	938	658	938	658

Standard errors are reported in parentheses.

*, **, ***, and **** indicate significance at the 90%, 95%, 99%, and 99.9% levels, respectively.

be explained by the model on which they claim to rely.

Lastly, to address a related point, we also examined the actual earned rates of return on equity for the 15 utilities in the Dow Jones Utility Average over our historical window. We used each firm's actual return on equity, calculated annually as Net Income divided by Total Equity, as reported in the COMPUSTAT database. This measure of firm profitability examines how successful the firms were at converting their *authorized* returns into *earned* returns. In general, the earned returns closely tracked the authorized returns, suggesting that the decisions of regulators are significantly influencing the actual earnings of regulated utilities. Fig. 12 compares the spread of *authorized* rates of return over riskless rates to the spread of *earned* rates of return over riskless rates and to the median net income of utilities in constant 2018 dollars.¹⁵ The

¹⁵ We used the median earned rate of return over the 15 Dow Jones utilities. The results are substantively equivalent if the average earned rate of return is used but are more volatile due to the impact on earnings of the California energy crisis of 2000–2001 and the collapse of Enron in 2001.

steadily increasing risk premium we have identified is present in both series. The series are correlated at 0.77 (authorized vs. earned), 0.59 (authorized vs. median net income), and 0.75 (earned vs. median net income), all of which are significantly greater than zero ($p < 0.001$). Further, the “capture rate” (the percentage of authorized rates actually earned by the utilities) averaged 96% over the entire time period. As a result, we conclude that the trend of increasing risk premiums is not an abstract anomaly occurring in a regulatory vacuum, but rather a direct contributor to the earnings of regulated utilities.

However, these measures of firm performance must be interpreted with caution. The authorized rates of return apply to jurisdictional utilities, while the earned rates of return are calculated based on holding company performance, which in many cases are not strictly equivalent. Further, increasing net income may be due to industry consolidation producing larger firms (with income increasing only proportionally to size), rather than an increase in profitability itself. In fact, the average income-to-sales ratio of the Dow Jones Utility Average members remained remarkably stable across the period of our study,

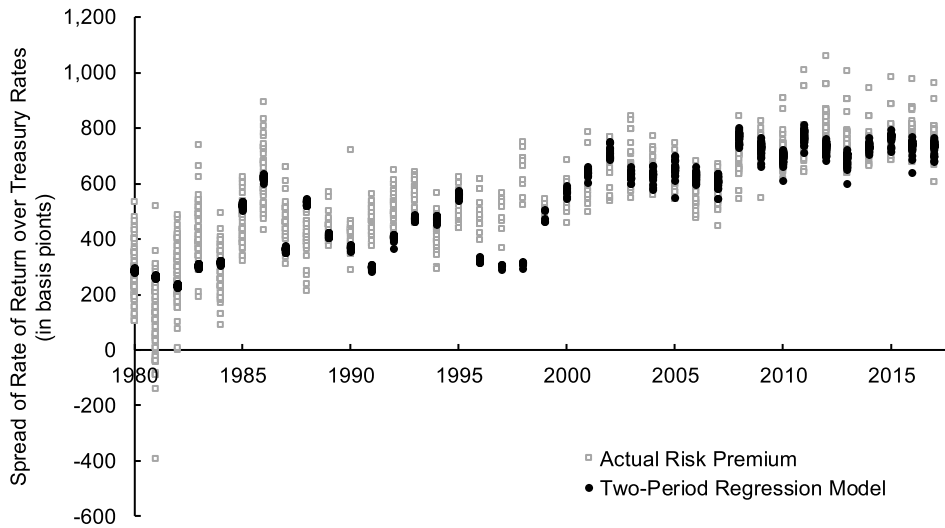


Fig. 11. Actual vs. two-period OLS model-predicted risk premium.

Table 5

Regression results for the standard Hamada capital structure model and Cohen (2008) capital structure model that incorporates risky debt. Coefficients for both the OLS regression model and a model controlling for utility-level fixed effects are shown.

	OLS		Controlling for utility-level fixed effects	
	Hamada $\ln(r_E - r_f)$	Cohen $\ln(r_E - r_f)$	Hamada $\ln(r_E - r_f)$	Cohen $\ln(r_E - r_f)$
γ_0 , Constant	3.641**** (0.130)	3.191**** (0.085)		
γ_1 , Asset beta, $\ln(\beta_A)$	-0.158**** (0.022)	-0.169**** (0.022)	-0.156**** (0.023)	-0.175**** (0.023)
γ_2 , Capital structure, $\ln\left[1 + (1 - \tau)\frac{D}{E}\right]$	-0.492**** (0.103)		-0.967**** (0.142)	
γ'_2 , Capital structure, $\ln\left[1 + (1 - \tau)\frac{r_D D}{r_f E}\right]$		-0.156* (0.081)		-0.275**** (0.040)
γ_3 , Market risk premium, $\ln(MRP)$	-0.947**** (0.035)	-1.046**** (0.036)	-0.898**** (0.039)	-1.087**** (0.040)
R-squared	46.4%	45.7%	46.6%	45.1%
Adjusted R-squared	46.3%	45.6%	41.2%	39.6%
F statistic	458.8****	447.1****	420.9****	396.9****
No. of observations	1596	1596	1596	1596

Standard errors are reported in parentheses.

*, **, ***, and **** indicate significance at the 90%, 95%, 99%, and 99.9% levels, respectively.

and actually slightly declined, suggesting that gains in net income came from growing revenue, rather than increasing margins (although revenue growth may itself be a function of rising authorized rates of return). Nevertheless, the results are suggestive.

We have not repeated the analysis of Roll and Ross (1983) and Pettway and Jordan (1987) and examined the relationship between firm performance and stock performance. Their findings, however, suggest that regulated utilities have realized *higher* stock returns than can be explained by the CAPM—a finding congruent with our work and suggestive of other factors being priced by the market. This does not entirely explain the judgment issue, however: why regulators appearing to use a CAPM approach provide utilities with returns that also appear to be excessive.

4.6. Potential public choice explanations

Another category of potential explanations emerges from the public choice literature on the role of institutional factors. Regulators may be

deliberately or inadvertently providing a “windfall” of sorts to electric utilities. Stigler (1971), among others in the literature on regulatory capture, noted that firms may seek out regulation as a means of protection and self-benefit. This is particularly true when the circumstances are present for a collective action problem (Olson, 1965) of concentrated benefits (excess profits to utilities may be significant) and diffuse costs (the impact of those excess profits on each individual ratepayer may be small). Close relationships between regulators and the industries that they regulate have been observed repeatedly, and one possible explanation for the size and growth of the risk premium is the electric utility industry’s increasing “capture” of regulatory power.

We are somewhat skeptical of this explanation, however, both because of the degree of intervention in most utility rate cases by non-utility parties, and because the data do not suggest that regulators have become progressively laxer over time. Fig. 13 compares the rates of return on equity *requested* by utilities in our data set against the rates of return ultimately authorized. As the trend line illustrates, this ratio has remained remarkably stable (within a few percent) over the thirty-eight



Fig. 12. Comparability of spreads measured with authorized and earned rates of return and utility net income.

years of data, even as the risk premium itself has steadily increased. As a result, the data do not suggest in general an obvious, growing permissiveness on the part of regulators. However, the last nine years are suggestive of an increasing level of accommodation among regulators. We propose a possible explanation for this particular pattern in Section 4.7.

To examine the public choice issues further, we investigated whether the risk premiums were related to the selection method of public utility commissioners and whether or not the rate cases in question were settled or fully litigated. The traditional hypothesis has been that elected (instead of appointed) commissioners were less susceptible to capture, more “responsive” to the public, and therefore more pro-consumer. Further, that cases that were settled were more likely to be accommodating to utilities (as money was “left on the table”) and therefore would result in higher rates.

A sizable body of literature, however, has largely rejected the selection method hypothesis. Hagerman and Ratchford (1978) and Primeaux and Mann (1986) concluded that the selection method had no impact on returns or electricity prices respectively. Others have agreed that the selection method alone doesn't matter; it is how closely the regulators selected are monitored that matters (Boyes and McDowell, 1989). In addition, whatever evidence of an effect that may exist is likely due to selection method being a proxy for states with different intrinsic structural conditions (Harris and Navarro, 1983). Lastly, while states with elected utility commissioners (Kwoka, 2002) or commissioners whose appointment by the executive requires approval by the legislature (Boyes and McDowell, 1989) tend to have lower electricity prices, those low prices may create the perception of an “unfavorable” investment climate and may therefore lead to a higher cost of capital (Navarro, 1982). Alternatively, if lower prices are observed, it then remains unclear who actually pays (utility shareholders in foregone profits or consumers in higher costs of capital) for the lower observed prices (Besley and Coate, 2003).

To examine the impact of commission selection method and means of case resolution on risk premium, we categorized each state as having an elected or appointed utility commission based on data in Costello (1984), Besley and Coate (2003), and Advanced Energy Economy (2018). In addition, each rate case was reported as being either fully litigated or settled. The literature has hypothesized (but largely not found) that elected commissions are more “responsive” and therefore more pro-consumer. As a result, the expectation would be that the risk premiums implicit in authorized rates were higher for appointed commissions. Similarly, for means of case resolution, risk premiums would

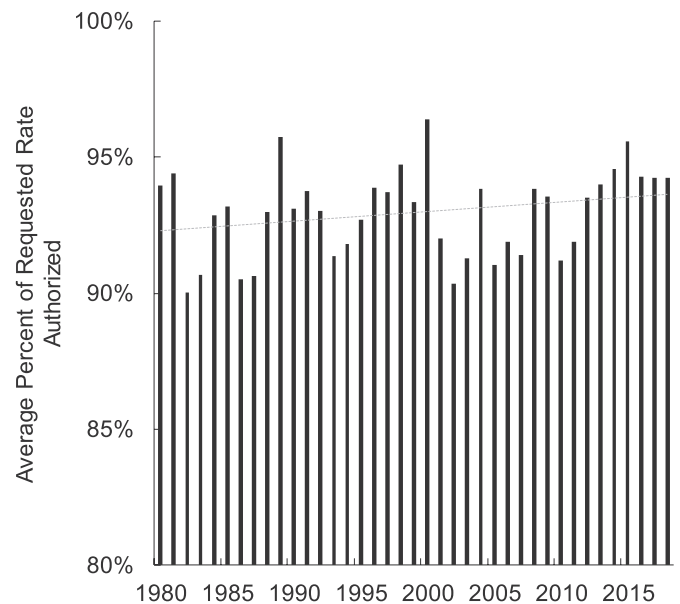


Fig. 13. Rate of return authorized as a percent of rate of return requested.

Table 6

Average risk premium in basis points by commission selection method and means of case resolution. The number of cases in each group is provided in parentheses.

	Appointed Commissions	Elected Commissions	Subtotals
Settled Cases	612 (367)	697 (89)	629 (456)
Fully Litigated Cases	460 (1008)	488 (181)	464 (1189)
Subtotals	500 (1375)	557 (270)	510 (1645)

be higher for settled, rather than fully litigated rate cases.

Like other authors, we found no significant effect overall for selection method, but a very significant effect for whether cases were settled or fully litigated. In addition, there appears to be a significant interaction between selection method and means of case resolution, suggesting that the lack of evidence of an effect in the literature may be related to its interaction with the means of case resolution, which has not been examined in this depth before. Table 6 illustrates the average risk

Table 7

Regression results for the standard CAPM model and the CAPM model plus two public choice variables (commission selection method and means of case resolution). Coefficients for both the OLS regression model and a model controlling for utility-level fixed effects are shown.

	OLS		Controlling for utility-level fixed effects	
	CAPM	CAPM + Public Choice	CAPM	CAPM + Public Choice
γ_0 , Constant	$\ln(r_E - r_f)$ 3.641**** (0.130)	$\ln(r_E - r_f)$ 3.519**** (0.137)	$\ln(r_E - r_f)$ -0.156**** (0.023)	$\ln(r_E - r_f)$ -0.154**** (0.023)
γ_1 , Asset beta, $\ln(\beta_A)$	-0.158**** (0.022)	-0.159**** (0.022)	-0.156**** (0.023)	-0.154**** (0.023)
γ_2 , Capital structure, $\ln\left[1 + (1 - \tau)\frac{D}{E}\right]$	-0.492**** (0.103)	-0.463**** (0.102)	-0.967**** (0.142)	-0.917**** (0.141)
γ_3 , Market risk premium, $\ln(MRP)$	-0.947**** (0.035)	-0.927**** (0.036)	-0.898**** (0.039)	-0.858**** (0.041)
γ_4 , Settle = 1		0.223*** (0.057)		0.249**** (0.060)
γ_5 , Appointed = 1		0.159**** (0.034)		0.132** (0.058)
γ_6 , Settle = 1 \times Appointed = 1		-0.182**** (-0.061)		-0.197**** (-0.065)
R-squared	46.4%	47.4%	46.6%	47.3%
Adjusted R-squared	46.3%	47.2%	41.2%	41.9%
F statistic	458.8****	238.5****	420.9****	216.5****
AIC	-2809	-2810		
No. of observations	1596	1596	1596	1596

Standard errors are reported in parentheses.

*, **, ***, and **** indicate significance at the 90%, 95%, 99%, and 99.9% levels, respectively.

premium observed in each group. The average risk premium for settled cases is significantly higher than for fully litigated cases ($p < 0.001$). Further, while the average risk premium for settled cases and appointed commissions is significantly greater than for fully litigated cases and elected commissions ($p < 0.001$), there is an interaction effect suggesting that the impact of selection method on risk premium depends on the means of case resolution ($p < 0.05$).

Notwithstanding these differences, the incremental explanatory value of these public choice variables is minimal (but significant). [Table 7](#) compares the standard CAPM model with an OLS model that incorporates selection method and means of case resolution. The Akaike Information Criterion (AIC) indicates that incorporation of the public choice variables has only slight incremental value. We estimate that the marginal impact is only approximately 8 basis points—much less than the observed increase over time.¹⁶ As before, the F (CAPM $F_{143,1449} = 1.5$, $p < 0.001$; CAPM + Public Choice $F_{143,1446} = 1.4$, $p < 0.001$) and Hausman (CAPM $\chi^2(3) = 24.0$, $p < 0.001$; CAPM + Public Choice $\chi^2(6) = 24.1$, $p < 0.001$) tests strongly support controlling for utility-level fixed effects in the model. [Table 7](#) also includes coefficients incorporating such controls.

4.7. Potential behavioral economics explanations

To this point, we have examined a number of factors related to economic and institutional influences. At the outset, however, we noted the potential for rate determination to be influenced by regulator judgment. In many cases there is evidence that regulators are not behaving in accordance with the method they in fact purport to be using (i.e., CAPM). As we cannot escape the fact that ultimately the authorized return on equity is a product of regulator decision-making, we now consider possible explanations for the risk premium based on insights from behavioral economics.

First, we note that regulator attachment to rate decisions from the recent past may be coloring their forward-looking decisions. Earlier we referenced a report from Pennsylvania regulators about their stated

¹⁶ For example, the marginal impact of a settled vs. fully-litigated case would be $\exp(3.513 + 0.223) - \exp(3.513) = 8.4$ using the OLS coefficients.

reliance on (*inter alia*) “recent [returns on equity] adjudicated by the Commission” ([Pennsylvania Public Utility Commission, 2016](#), p. 17). The legal weight attached to precedent may give rise here to a recency bias, where regulators anchor on recent rate decisions and insufficiently adjust them for new information. While stability in regulatory decision-making is seen as useful in assuring investors, to the extent that it results in a slowing of regulatory response when market conditions change, regulators should be encouraged to weigh the benefits of stability against the costs of distortionary responses to authorized returns that lag market conditions.

Our second insight from behavioral economics involves a curious observation in the empirical data: the average rate of return on regulated equity appears to have “converged” to 10% over time. Although the underlying riskless rate has continued to drop, authorized equity returns have generally remained fixed in the neighborhood of 10%, only dropping below (on average) over the last few years. Anecdotally, we have observed a reluctance among potential electric power investors to accept equity returns on power investments of less than 10%—even though those same investors readily acknowledge that *debt* costs have fallen. To that extent, then, a behavioral bias may be at work.

The finance literature has noted a similar effect related to crossing index threshold points (e.g., every thousand points for the Dow Jones Industrial Average). These focal points, which have no normative import, appear to influence investor behavior. Trading is reduced near major crossings ([Donaldson and Kim, 1993](#); [Koedijk and Stork, 1994](#); [Aragon and Dieckmann, 2011](#)), with some asserting that the behavior of investors in clienteles may produce this behavior ([Balduzzi et al., 1997](#)). We propose a related theory.

In economics, “money illusion” refers to the misperception of nominal price changes as real price changes ([Fisher, 1928](#)). [Shafir et al. \(1997\)](#) proposed that this type of choice anomaly arises from framing effects, in that individuals give improper influence to the nominal representation of a choice due to the convenience and salience of the nominal representation. The experimental results have been upheld in several subsequent studies in the behavioral economics literature ([Fehr and Tyran, 2001](#); [Svedsäter et al., 2007](#)).

The effect here may be similar: investors and regulators may conflate “nominal” rates of return (the authorized rates) with the risk

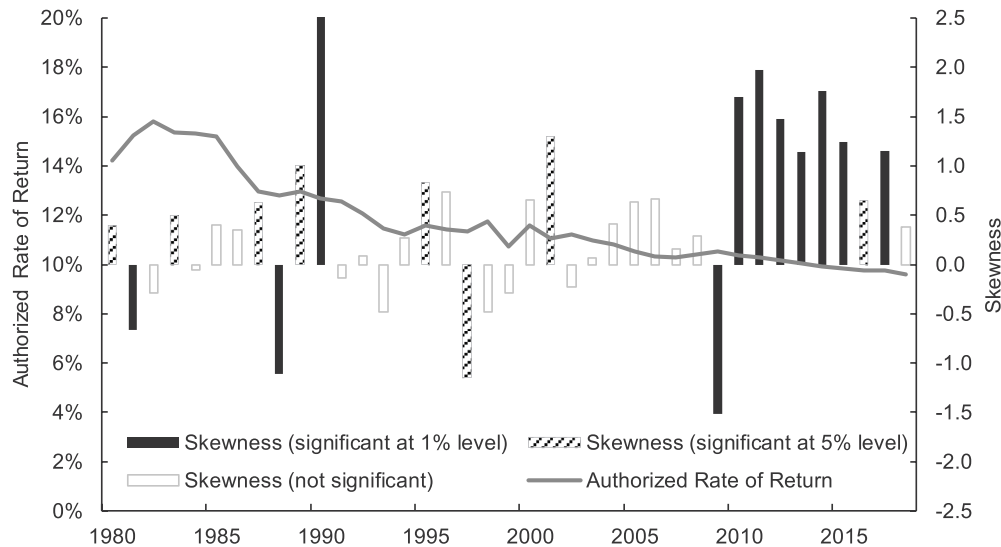


Fig. 14. Authorized rates of return on equity and skewness.

premium underlying the authorized rate. The apparent “stickiness” of rates of return on equity around 10% is similar to the “price stickiness” common in the money illusion (and, indeed, the rate of return is the price of capital). If there was in fact a tendency (intentional or otherwise) to respect a 10% “floor,” one might expect that the distribution of authorized returns within each year may “bunch up” in the left tail at 10%, where absent such a floor one may expect them to be distributed symmetrically around a mean. As Fig. 14 illustrates, we see precisely such behavior. As average authorized returns decline to 10% (between 2010 and 2015), the skewness of the within-year distributions of returns becomes persistently and statistically significantly positive, suggesting a longer right-hand tail to the distributions, consistent with a lack of symmetry below the 10% threshold.¹⁷ We note also that this period of statistically significant positive skewness coincides precisely with what appeared to be a period of increased regulator accommodation in Fig. 13. Further, once the threshold is definitively crossed, skewness appears to moderate and the distribution of returns appears to revert toward symmetry.

A related finding has been reported by Fernandez and colleagues (Fernandez et al., 2015, 2017, 2018), where respondents to a large survey of finance and economics professors, analysts, and corporate managers tended, on average, to overestimate the riskless rate of return. In addition, their estimates exhibited substantial positive skew, in that overestimates of the riskless rate far exceed underestimates.¹⁸ The authors found similar results not just in the U.S., but also in Germany, Spain, and the U.K. In the U.S., the average response during the high skewness period exceeded the contemporaneous 10-year U.S. Treasury rate by 20–40 basis points, before declining as skewness moderated in 2018. It may be that overestimating the riskless rate is simply one way for participants in regulatory proceedings to “rationalize” maintaining the authorized return in excess of 10%. Alternatively, it may be an additional bias in the determination of authorized rates of return.

If such biases exist, there are clear implications for the regulatory

function itself. For example, this apparent 10% “floor” was even recognized recently in a U.S. Federal Energy Regulatory Commission proceeding (Initial Decision, Martha Coakley, et al. v. Bangor Hydro-Electric Co., et al., 2013, 144 FERC 63,012 at 576): “if [return on equity] is set substantially below 10% for long periods [...], it could negatively impact future investment in the (New England Transmission Owners).” Our findings here draw us back to Joskow’s (1972) characterization of regulator decision-making as a sort of meta-analysis. That is, commissioners do not merely directly evaluate the CAPM equations. Rather, they look at the nature of the evidence *as presented to them*. Accordingly, their judgments are based not just on capital market conditions in a vacuum, but on the format, detail, and context of the information contained within the evidentiary record of a rate case. As a result, regulators are susceptible to biases in judgment, and calibration of regulatory decision-making during the rate-setting process should be a required step.

5. Conclusions and policy implications

In this paper, we have examined a database of electric utility rates of return authorized by U.S. state regulatory agencies over a thirty-eight-year period. These rates have demonstrated a growing spread over the riskless rate of return across the time horizon studied. The size and growth of this spread—the risk premium—does not appear to be consistent with classical finance theory, as expressed by the CAPM. In fact, regression analysis of the data suggests the *opposite* of what would be predicted if the CAPM holds. This is particularly perplexing given that regulators often *claim* to be using the CAPM. In addition to the traditional finance factors, our work examined the influence of institutional, structural, and behavioral factors on the determination of authorized rates of return. We find support for many of these factors, although most cannot be justified on traditional normative grounds.

The pattern of large and growing risk premiums illustrated in this paper has significant implications for both utility and infrastructure investment and regulation and market design in environments where both regulated and restructured firms compete for capital. In particular, if rate case activity increases over the next several years as rate moratoria expire, the implications for retail rate escalation and capital investment may be significant. We discuss each in turn before offering some thoughts on possible mitigating factors.

¹⁷ Formally, we test the hypothesis that the observed skewness is equal to zero (a symmetric, normal distribution). The test statistic is equal to the skewness divided by its standard error $\sqrt{6n(n-1)/(n-2)(n+1)(n+3)}$, where n is the sample size. The test statistic has an approximately normal distribution (Cramer and Howitt, 2004).

¹⁸ At the time of the 2015 survey, for example, the 10-year U.S. Treasury rate was 2.0%. The average riskless rate reported by the 1983 U.S. survey respondents was 2.4% (median 2.3%), but responses ranged from 0.0% to 8.0%.

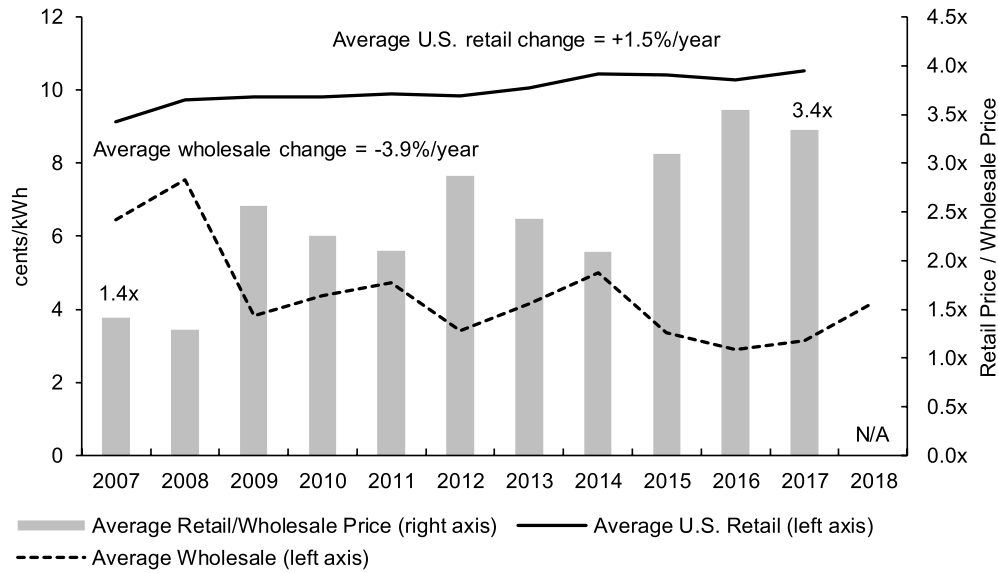


Fig. 15. Peak wholesale (2007–2018) vs. retail (2007–2017) power prices. Wholesale prices represent the average annual peak electricity price in MISO-IN, ISO-NE Mass Hub, Mid-C, Palo Verde, PJM-West, SP-15, and ERCOT-North. Retail prices collected from U.S. Energy Information Administration (https://www.eia.gov/electricity/data/state/avgprice_annual.xlsx). The retail price is the average for the entire country (using only the 7 states with wholesale markets included does not change the result).

5.1. Wholesale and retail electricity price divergence

A growing divergence has emerged over the last decade. Although fuel costs and wholesale power prices have declined since 2007, the retail price of power has increased over the same period (see Fig. 15). One explanation for this divergence in wholesale and retail rates may be the presence of a growing premium attached to regulated equity returns and therefore embedded into rates. To be sure, other forces may also be at work (for example, recovery of transmission and distribution system investments is consuming a greater portion of retail bills—a circumstance potentially exacerbated by excessive risk premiums). Further, even if the growing divergence between wholesale and retail rates is related to a growing risk premium, it does not necessarily follow that such growth is inappropriate or inconsistent with economic theory. Nevertheless, the potential for embedding of such quasi-fixed costs into the cost structure of electricity production may be significant for end users, as efficiency gains on the wholesale side are more than offset by excess costs of equity capital on the retail side.

5.2. Regulation itself as a source of risk

Public policy, or regulation itself, may be a causal factor in the observed behavior of the risk premium. The U.S. Supreme Court acknowledged, in *Duquesne Light Company et al. v. David M. Barasch et al.* (488 U.S. 299 (1989), p. 315) that “the risks a utility faces are in large part defined by the rate methodology, because utilities are virtually always public monopolies dealing in an essential service, and so relatively immune to the usual market risks.” The recognition that the very act of regulating utilities subjects them to a unique class of risks may influence their cost of capital determination. And yet, if the purpose (or at least a purpose) of regulating electric utilities is to prevent these quasi-monopolists from charging excessive prices, but the practice of regulating them results in a higher cost of equity capital than might otherwise apply, it calls into question the role of such regulation in the first place.

Similarly, we may also question whether the hybrid regulated and non-regulated nature of the electric power sector in the U.S. plays a role as well. Has deregulation caused risk to “leak” into the regulated world

because both regulated and non-regulated firms must compete for the same pool of capital? Has the presence of non-regulated market participants raised the marginal price of capital to all firms? In Section 4.4 we illustrated a shift in the trend of risk premium growth in 1999, as several U.S. markets were switching to deregulation, but further study of this question is needed.

The trajectory of public policy during the entire time period studied has been toward deregulation (beginning before 1980 with Public Utility Regulatory Policy Act, through the Natural Gas Policy Act in the 1980s, and electric industry deregulation in the 1990s) and “today’s investments face market, political and regulatory risks, many of which have no historical antecedent that might serve as a starting point for modeling risk.” (*PJM Interconnection, 2016*) The general unobservability of the *ex ante* expected returns on deregulated assets complicates determining if the progressive deregulation of the industry has caused a convergence in regulated and non-regulated returns over that time period. While the data do not suggest that utilities in states that have never undertaken deregulation have meaningfully different risk premiums, there are many ways to evaluate the “degree” of deregulatory activity that could be explored.

Another public policy-related factor could be a change in the nature of the rate base or of rate-making itself. Toward the beginning of our study period, most of the electric utilities were vertically integrated (i.e., in the business of both generation and transmission of power). Over time, generation became increasingly exposed to deregulation, while transmission and distribution of power have tended to remain regulated. To the extent that the portion of the rate base comprised of transmission and distribution assets has increased at the expense of generation assets, it may suggest a shift in the underlying risk profile of the assets being recognized by regulators. We note, for example, that public policy has tended to favor transmission investments with “incentive rates” in recent years in order to address a perceived relative lack of investment in transmission within the electric power sector. Our data, however, reveal the opposite. Based on data since 2000, there have been 172 transmission and distribution-only cases, out of 653 total cases. The average rate of return authorized in the transmission and distribution cases is approximately 60 basis points lower than those in vertically-integrated cases from the same period. These have been *state-*

level cases however. We note as deserving of further study that (inter-state) electric transmission is regulated by FERC using a well-defined DCF approach instead of CAPM. The impact of having differing regulatory frameworks to set rates for assets that are functionally substantially identical remains an open question.

As for a change in the nature of rate-making itself, we note that the industry has tended to move from cost-of-service rate-making to performance-based ratemaking. If this shift, in an attempt to increase utility operating efficiency, has inadvertently raised the cost of equity capital through the use of incentive rates, it would be important to ascertain if the net cost-benefit balance has been positive. In general, there has been a lack of attention to the impact of regulatory changes on discount rates. The data on authorized returns on equity provides a unique dataset for such investigations.

5.3. Strategies for mitigating the growing premium

Our research does not necessarily imply that the rates of return authorized by regulators are too high, or otherwise necessarily inappropriate for utilities. An evaluation of whether these non-normative factors constitute a legitimate basis of rate of return determination deserves separate study. But if institutional or behavioral factors lead to departures from normative outcomes in setting rates of return on equity, then perhaps like Ulysses and the Sirens, regulators' hands should be "tied to the mast."

One notable jurisdictional difference in regulatory practice is between formulaic and judgment-based approaches to setting the cost of capital. In Canada, for example, formulaic approaches are more prevalent than in the United States (Villadsen and Brown, 2012). California also adjusts returns on equity for variations in bond yields beyond a "dead band," and the performance-based regulatory approaches in Mississippi and Alabama rely on formulaic cost of capital determination (Villadsen et al., 2017).

By pre-committing to a set formula (e.g., government bond rates plus n basis points) in lieu of holding adversarial hearings, regulators could minimize the potential for deviation from outcomes consistent with finance theory. Villadsen and Brown (2012) noted, for example, that then-recent rates set by Canadian regulators tended to be lower than those set by U.S. regulators despite nearly equivalent riskless rates of return. An intermediate approach would be to require regulators to calculate and present a formulaic result, but then allow them the discretion to authorize deviations from such a result when circumstances justify such departures. In such cases, regulators could avoid anchoring on past results, and instead anchor on a theoretically-justifiable return, before adjusting for any mitigating factors. If regulator judgment is impaired or subject to bias, then minimizing the influence of judgment by deferring to models may be prudent. In the end, we may observe simply that what regulators *should* do, what regulators *say* they're doing, and what regulators *actually* do may be three very different things.

Conflicts of interest

The authors declare that they have no conflict of interest.

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Appendix A. Supplementary data

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