



Bureau of
Energy Resources,
United States
Department of State



National
Association of
Regulatory
Utility
Commissioners

Administrative Hearing Process

Cat Nguyen

Connecticut Public Utilities Regulatory Authority

August 27, 2015





DUE PROCESS

- The U.S. Constitution guarantees no deprivation of life, liberty, or property without due process of law.
- In the administrative law context, these requirements take the form of notice and a hearing.
- The Connecticut Uniform Administrative Procedure Act establishes all the procedural requirements for a hearing.



Typical life of a PURA contested docket

- Application
- Service List
- Notice of Proceeding
- Time schedule
- Interrogatories
- Notice of Hearing
- Pre-filed testimonies
- Hearing
- Late-filed exhibits
- Another hearing (if needed)
- Briefs
- Reply briefs
- Proposed final decision
- Written exceptions
- Oral arguments
- Final decision



NOTICE

A Notice of Hearing shall include:

- The time, place, and nature of the hearing;
- The legal authority and jurisdiction under which the hearing is to be held;
- A reference to the particular statutes or regulations involved; and
- A short and plain statement of the matters asserted or of the issues involved.



NOTICE

A Notice of Violation and Assessment of Civil Penalty shall include:

- A reference to the statute, regulation or order involved;
 - A short and plain statement of the matter asserted or charged;
 - A statement of the prescribed civil penalty for the violation; and
 - A statement of the person's right to a hearing.
- Notice must be personally delivered or sent via U.S. certified mail.
 - Recipient has 20 days to request a hearing.



NOTICE

A Notice for Revoking a License:

- Prior to the start of a revocation proceeding, notice must be given the licensee including:
 - facts or conduct which warrant revocation; and
 - the specific statutes or regulations authorizing the revocation.
- The licensee must be given an opportunity to show compliance with all requirements for the retention of the license.
- (Exception for public health, safety or welfare.)



HEARING OFFICER

A Hearing Officer:

- Must be fair, unbiased and impartial toward the issues;
- Must not have carried out the function of an investigator in the case;
- Should disqualify himself or herself in any proceeding in which his or her impartiality might reasonably be questioned.



EX PARTE COMMUNICATIONS

Prohibited communication:

- Direct or indirect communication;
- Between any party and the agency;
- Concerning law or facts;
- Without notice and opportunity for all parties to participate.



HEARING PROCESS

Evidentiary Record:

- The evidentiary record in a contested proceeding consists of the pleadings, motions, items administratively noticed, transcripts, rulings, evidence, and offers of proof.
- Any materials that have not been made part of the record cannot be considered in deliberations.

Hearing Officer can:

- Administer oaths;
- Take testimony under oath;
- Cross-examine witnesses;
- Require production of records and physical evidence.



HEARING PROCESS

Witnesses:

- All witnesses are required to swear to or affirm and declare to solemnly tell the truth.
- Members of the public are afforded the opportunity to express their views, which become part of the record.

Testimonies and evidence:

- Each party and the agency has the:
 - Right to copy and inspect relevant records;
 - Right to present witnesses and evidence;
 - Right to cross-examine other witnesses.
- Hearings can be expedited by evidence being received in written form (example: pre-filed testimony) so long as “the interests of the parties will not be prejudiced substantially.”



DECISION

- A decision must be based on evidence in the record.
- A decision must include findings of fact and conclusion of law on each issue.
- If a decision is adverse to any party, PURA must allow parties to:
 - Submit written exceptions, and
 - Present oral arguments.
- A decision must be delivered promptly to each party by certified U.S. mail or personal delivery.
- A decision becomes effective when delivered or mailed.



RECONSIDERATION

- A petition for reconsideration of a decision may be filed within 15 days.
- Grounds for reconsideration include:
 - An error of fact or law;
 - New evidence; or
 - Other good cause.
- Agency must decide within 25 days (otherwise petition is deemed denied).



APPEALS

- An aggrieved party may appeal to the Superior Court within 45 days of the decision.
- The court shall affirm the decision is:
 - In violation of constitutional or statutory provisions;
 - In excess of statutory authority of the agency;
 - Made upon unlawful procedure;
 - Affected by other error or law;
 - Clearly erroneous in view of reliable and substantial evidence on the whole record; or
 - Arbitrary or capricious or characterized by abuse of discretion.
- The court does not retry the facts, re-examine the evidence or substitute its judgment for agency's expertise.