

# **VERMONT PUBLIC SERVICE BOARD PROCEDURES**



*NARUC Energy Regulatory Partnership Program*

*The Energy Regulatory Commission of the Republic of Macedonia  
and  
The Vermont Public Service Board*

*by*  
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**Vermont Public Service Board**

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## *Substantive v. Procedural*

### ❖ Substantive

- Federal
- State

### ❖ Procedural

## *Substantive Federal Law*

- ❖ Federalism in Regulation —
- ❖ Supreme Law of the Land
- ❖ Federal statutes assign authority over electricity transmission and wholesale sales to FERC
- ❖ Federal statutes reserve state authority over electricity distribution and retail sales
- ❖ 50 state regulatory commissions

## *Substantive State Law*

- ❖ Under Vermont state law, the Public Service Board has jurisdiction over the following industries (to varying extents):
  - Electric
  - Telecommunications
  - Cable
  - Gas
  - Water
  - Sewer

# *Procedural*

## Federal and State Administrative Procedures Acts

- ❖ Traditionally, two categories of administrative procedures: Rulemaking and Adjudication
- ❖ Rulemaking — legislature as model
- ❖ Adjudication — court as model
  - By Board directly
  - By Hearing Officer
- ❖ Criticisms of rulemaking v. adjudication dichotomy
  - Inaccurate
  - unwise

## *Other Types of Procedures*

- ❖ Generic investigation
- ❖ Notice-and-comment permitting/licensing
- ❖ Negotiated rulemaking
- ❖ Alternative Dispute Resolution

## *Major Objectives of Administrative Procedure*

- ❖ Fairness
- ❖ Efficiency (including timely decisions)
- ❖ Accuracy of decisions
- ❖ Clear standards and predictability
- ❖ Acceptability
- ❖ Accountability
- ❖ These objectives are sometimes in conflict

## *Considerations in Selecting a Particular Administrative Procedure*

- ❖ Statutory requirements and constraints (e.g., statutory deadlines for decisions)
- ❖ Policy objectives
- ❖ Board's need for information, including the type of information needed
- ❖ Need for close regulation of the entity
- ❖ Likely or desired parties, need for or desirability of public participation, and role of the public advocate (if any)
- ❖ Needs of the parties

## *Contested-case Adjudication*

- ❖ The largest part of our work
- ❖ Rules of practice, modeled on courts' rules of practice, with some modifications — e.g., typically we require pre-filed testimony
- ❖ Generally follow the same rules of evidence as the courts, but somewhat more liberally applied

## *Public Involvement*

- ❖ Public Advocate
- ❖ Public Hearings
- ❖ Evidentiary hearings open to public, but only the formal parties can participate
- ❖ Written comments from the public
- ❖ Public Records Act

## *Appeals of Public Service Board Decisions*

- ❖ Appeals go directly to Vermont's highest court (Supreme Court)
- ❖ No one represents the Board; instead, as with an appeal of a lower court decision, the entire case — including the record and the parties — moves to the Vermont Supreme Court
- ❖ Standard of appellate review: decision must be supported by the evidence, and "not clearly erroneous"; deference to expert agency

## *Representation of Public Service Board in Other Proceedings*

- ❖ Not represented in appeals of Board decisions
- ❖ For other court cases, represented by the Vermont Attorney General's Office
- ❖ For federal administrative proceedings of concern, might appear directly, or retain outside counsel, or be represented by the Vermont Attorney General's Office