

Mission Statement:

The UTC protects consumers by ensuring that utility and transportation services are fairly priced, available, reliable and safe.



Washington Utilities and Transportation Commission

Public Participation in UTC Regulatory Proceedings March 2011

Prepared for The Energy Regulatory
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Proceedings at the UTC



- The commission makes decision in three types of proceedings:
 - Adjudicative proceedings
 - Informal proceedings
 - Rulemakings
- Persons affected by a UTC regulatory decision have a right to receive notice about the action, and a right to be heard by the decision makers.
- Proceedings are open. No person desiring to be present shall be denied access. RCW 80.04.160

Types of proceedings



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- The commission makes decisions in three types of proceedings:
 - Adjudicative proceedings
 - Informal proceedings
 - Rulemakings

Adjudicative proceedings



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- These are formal evidentiary hearings.
 - Commissioners sit as a tribunal.
 - Administrative Law Judge presides or makes initial decision in minor cases.
 - UTC Regulatory staff act as an independent party before the commissioners.
 - Parties cross examine expert witnesses in the case.
 - A court reporter documents oral testimony throughout the hearing.

Adjudicative proceedings



- Examples of adjudicative proceedings:
 - Setting rates for energy companies
 - Mergers, transfers of ownership or control
 - Complaint proceedings for service violations, failure to comply with UTC rules or standards
 - Siting of energy facilities
 - (EFSEC – Energy Facility Siting Evaluation Council)

Adjudicative proceedings



- Ex Parte Restrictions
 - Commissioners and administrative law judges must have no private contact with the parties regarding a formal hearing
 - If an ex parte communication occurs, the communication must be placed in the record of the hearing (RCW 34.05.455(5)).

Adjudicative proceedings



- Who represents the public in adjudications?
 - The Office of Public Counsel is part of the Office of the Attorney General.
 - OPC is authorized by law to represent the public as a party in energy and telecommunications matters before the UTC.
 - Members of the public may participate as “parties” only if authorized by the Commission.

Adjudicative proceedings



- Formal participation
 - The Commission may allow a person to “intervene” in a proceeding if :
 - It determines that the petitioner qualifies under any provision of law (e.g., Public Counsel).
 - Intervention is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.
 - Intervenors are “parties” to the case. They are expected to bring analysis, perspective, and information that contributes to building the factual record and legal and economic analysis.

Adjudicative proceedings



- Typical parties to an adjudicative proceeding:
 - UTC staff
 - Office of Public Counsel
 - Industrial customers (e.g., Microsoft, Boeing)
 - Environmental advocacy organizations
 - Social welfare advocacy organizations
 - Labor unions
 - Energy industry stakeholders (e.g., wind power developers)
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Adjudicative proceedings



- Participation by persons who are not formal parties to a case
 - There is no law requiring public comments.
 - It is UTC practice to allow comments by public.
 - Comments may be by telephone, fax, e-mail, or regular mail.
 - When public testimony is heard, Public Counsel may inform the public at the beginning of a hearing on the issues and Public Counsel's position.

Adjudicative proceedings



- The UTC has rules and procedures to facilitate public comment
 - Companies must provide *each* affected customer a notice about the proceeding 30 days before the proposed effective date.
 - The notice tells people to contact the UTC staff directly with their concerns about the proposal, and/or advise us of unresolved issues.

Adjudicative proceedings



- Facilitating public comment (continued)
 - All comments are documented and reviewed to determine whether there are unresolved complaint issues. UTC staff respond to their questions, provide updates, and advise them about the opportunity to comment in person. Unresolved complaint issues are managed by staff.
 - A Public Comment summary is entered as an exhibit by Public Counsel. This exhibit expresses public sentiment about the pending matter for consideration by the commissioners.

Customer Name: _____

Address: _____

Phone: _____

Email: _____

Comments: RECENT S-REVIEW
HEADLINES

"NATURAL GAS GLUT A BOOM
TO USERS"

"AVISTA'S 1ST QUARTER EARNINGS
UP 23%"

"AVISTA RAISES STOCKHOLDER
DIVIDENDS"

WHEN IS THE WUTC
GOING TO ADDRESS THIS
PROBLEM!

MOST OF US ARE OUT
OF WORK

(Please do not mail with bill to Avista)



Comments:

My company froze
our wages for 2009.
— for everybody.

Did Avista do that
too? We're exhorted
to save energy & then
get hit with a 9%
increase. Where's the
logic? They should
tighten their belt like
the consumers.

(Please do not mail with bill to Avista)

Adjudicative proceedings

Comment Information		
Theme	Cost of Living, Fixed Income, Single-parent home	Open Date 05/01/2008
Filing Support	<input type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> Undecided	Closed Date 10/10/2008
Source	<input type="radio"/> Email <input checked="" type="radio"/> Mail <input type="radio"/> Phone <input type="radio"/> Web	Web Create Date
Public Involvement Lead	Gail Griffin-Wallace	
Duplicate Comment	<input type="radio"/> Yes <input type="radio"/> No	
Description	I do not fill you need another power increase. I being a single parent with a child to support have a tough enough time making ends meet as it is. I do not think the shareholders need a increase at the expense of the people like me and other on a fixed income. I had to take a cut in pay to keep my job. Why can't you take a freeze in teh increase you want. Why do you need a new plant to provide service to your customers. Why are we still asked to pay for storms from 2003 to 2007. I thought all the other increases you have gotten should have covered this.	
Attachments		
Issue Information		
Issue ID	194	
Company	Puget Sound Energy	
Filing	072300	
Staff	Gene Waas	
Complaint Information		
Unresolved Complaint	<input type="radio"/> Yes <input type="radio"/> No	Complaint ID

Adjudicative proceedings



- What is the value of public comments?
 - Little evidentiary value
 - Not subject to cross-examination
 - If illustrative exhibits are deemed detailed or exceptional, UTC must treat separately and allow cross-examination.
 - Political/social considerations
 - Transparency – confidence that UTC processes are open, fair and impartial
 - Media relations
 - Legislative relations

Adjudicative proceedings



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- Addressing costs and benefits of public comment hearings
 - When is a public comment hearing appropriate?
 - How many? Where are they located?
 - Considerations:
 - Is there high public interest?
 - Does proceeding address controversial issues?
 - Is it necessary to ensure transparency, due process?
 - Will public comments have higher evidentiary value?
 - Are alternatives sufficient?

Informal Cases



- Open public meetings
 - The commissioners make decisions at open public meetings at the UTC, two times a month, on cases not set for formal adjudicative proceedings.
 - Commissioners are not allowed to discuss open meeting items with each other outside of the meeting before making a decision.
 - Matters addressed in open meetings may be set later for adjudicative proceedings.

Informal Cases

- Open public meetings (continued)
 - All participants, including members of the public, staff and companies have the same opportunity to express their interest and concerns about a specific agenda item.
 - UTC takes comments by phone, email and letter.
 - Same as the formal hearing process. Staff summarizes customer comments and addresses them in a memorandum to commissioners, along with recommendations for actions.

Rulemaking proceedings



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- Like many state government agencies, the UTC has the authority to establish regulations (also called rules) necessary to implement the laws that affect it.
 - For example, utility service quality standards, utility billing practices, notice requirements, filing processes, and penalty amounts are contained in rules established by the UTC.
 - When establishing rules, the UTC acts as a “quasi-legislative” body.

Rulemaking proceedings



- Stakeholder workshops
 - Occasionally, the UTC convenes workshops to discuss policy or procedural issues, and proposed changes to UTC rules.
 - Attendees at workshops are typically regulated companies and other stakeholders affected by the rule change, however, members of the public are welcome to attend workshops and contribute to the discussion.

Rulemakings proceedings



- Comments from the public
 - Members of the public and stakeholders may also submit written comments on draft rules which become part of the formal record.
 - Same as the formal hearing process, except that a summary of customer comments is included in the staff's recommendation memo which is presented during the open meeting to the commissioners.
- Public comment hearing
 - Final changes to rules are considered at one of the open public meetings held at the UTC.
 - Interested persons may attend and provide comments.

Informational Public Meetings



- In cases with numerous public comments, and/or controversy, staff will recommend that the UTC host an informational meeting in the company's service territory before any decisions are made by the commission.
- At times it may be appropriate for companies or industry experts to provide a presentation on a particular topic of interest, such as, major market issues, or major storm cleanup.

Protecting Confidential Information in a Public Process



- Washington State has the most expansive open records law in the nation.
- RCW 42.56 makes all documents in the agency's possession available to the public upon request, unless a specific exemption applies.
- If requested, the UTC is obligated to gather, photocopy or make available on disc all non-exempt documents and records.

Protecting Confidential Information in a Public Process

continued



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- There is an exemption allowing the UTC to protect records filed with the commission from public disclosure. RCW 80.04.095 and RCW 42.56.330(1).
 - The protected information must be “valuable commercial information,” such as, trade secrets, confidential marketing, cost or financial information.
 - If necessary, a court will decide whether disclosure would result in “private loss, including an unfair competitive advantage.”

Protective orders



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- The UTC would waive an exemption if it gives confidential information to a member of the public other than the person filing the information.
 - To address this, the UTC may issue a “protective order” that allows parties to a case to exchange confidential information with each other and the agency without losing confidentiality.

Protective orders - *continued*



- Key features of a protective order:
 - Regulates how confidential information is treated
 - Limits use of the confidential information to the present case
 - Limits use of confidential information to persons signing a confidentiality agreement
- Issues: Is the confidential designation legitimate? Who decides? How should the commission treat confidential information in a public hearing?

Confidential documents



- Rules describe how confidential information must be filed:
 - Washington Administrative Code (WAC) 480-07-160
- Key features of “confidential” documents:
 - Must be marked confidential, often on yellow or blue paper
 - Must be filed in a sealed envelope
 - Must be filed along with a redacted version (confidential material blocked out)

Outreach Activities



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- The UTC website (www.utc.wa.gov) provides a variety of information about regulatory activities, and current newsworthy items.
 - Social media, like Facebook, increases visibility.
 - Electronic newsletters, such as, our bi-monthly UTC Connections, delivers up-to-date information to the public and to consumer organizations.
 - Good relations with the media and press is very important. We provide news releases, media advisories and respond regularly to reporter inquiries.
 - Partnering with consumer organizations are other ways to reach out and get more people involved.

Consumer Protection at the UTC



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- Public participation in UTC proceedings is only one aspect of our work with the public:
 - We ensure that regulated companies treat consumers fairly, and that companies are in compliance with commission consumer laws, rules and policies.
 - We actively educate consumers with important information about the industries and services we regulate.
 - We help customers resolve disputes with their utility by collaborating with the companies to help meet their obligations and maintain their utility services.
 - We actively investigate company business practices and provide technical assistance to regulated companies.