

# Utility Regulation in the US: Transparency and openness

Presentation to the  
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# Transparency and Accountability in Government

- Origin of the idea of open government
- Purpose of open government
- Federal Freedom of Information Act
- State “Sunshine” Laws

# Origins of Open Government

- Age of Enlightenment in Europe
- Sweden: Freedom of the Press Act 1766
- France: Declaration of the Rights of Man 1789
- US: Constitution 1787 and Bill of Rights 1791

# Open Government

- The First Amendment to the US Constitution provides that Congress shall make no law abridging the freedom of the press (1791)
  - This is known as the “right of access” by the press
  - A safeguard on governmental power is the public “deputizing” the press as guardian of their liberty
- The 6<sup>th</sup> Amendment says criminal cases must be tried in a public trial
- Article 1, Section 18 of the Missouri Constitution guarantees a speedy public trial to those accused of crimes

# Open Government

- Ideas of freedom of the press and right to access lead to the Freedom of Information Act in the US: 1966
- State's pass "Sunshine Law" legislation to open government activities and documents to citizens
- Missouri Sunshine Law: 1973

# Purpose of Open Government

- Public scrutiny and oversight of government
- Hold public officials accountable
- Fight corruption
- Encourages participation by citizens

# Organizing principles:

- All information is public
- All meetings are open

# Exceptions are carved out of the presumption of openness –

*Rather than the opposite approach,  
which assumes everything is secret  
unless made public*



**States (and federal  
government) have  
open records acts and  
open meeting laws  
which define the  
exceptions**

# Public records - Kentucky

**Available on website – [psc.ky.gov](http://psc.ky.gov)**

- PSC statutes and regulations
- Case files, including formal complaints
- All PSC orders
- Videos of hearings, public meetings
- Utility tariffs – rate schedules and terms of service
- Basic utility information – includes some maps
- Utility reports to PSC – annual financial
- PSC reports and publications
- Consumer complaint data

# Public records - Kentucky

## Not yet available on website

- Inspection reports
- Completed investigation reports
- Customer complaint records
- Correspondence
- Personnel records – including salaries

# Public records - Kentucky

## Restricted access records

- Security-sensitive maps
- Confidential case information – released only to case participants on signature of non-disclosure agreement

# Public records - Kentucky

## Non-public information

- Documents related to agency internal deliberations – staff recommendations, drafts orders, etc.
- Security-sensitive infrastructure information
- Confidential business information
- Personal information of employees or ratepayers
  - Personal e-mail addresses
  - Personal telephone numbers
  - Utility or bank account numbers
- Certain material related to litigation or personnel actions

# Public records - Kentucky

## Public access to information

- Information on website is always accessible
- PSC file room is open to public during normal business hours – has case files, reports, company correspondence files
- Documents in public files usually available on request
  - Records request form may be required
- Other documents (investigation reports, consumer complaint files, etc) require written request
  - PSC has three business days to respond

# Public records - Kentucky

## Databases

- PSC does not maintain databases
- PSC generally does not provide regular information to databases
- Information about Kentucky utilities available through other databases, such as US Energy Information Administration

# Public Databases, Public Records and Public Access in Missouri

- Commission has electronic filing and information system the public may access
- Any person may make a “sunshine law request” for records
- Any person may attend any hearing or meeting of the Commission unless confidential information is provided



# Public Access

- If the Commission refuses to provide records to a person requesting them, a specific, legal reason must be provided in writing why access is denied
- The person requesting records may file a case in Court claiming the Commission is violating the sunshine law
- If the person requesting records wins the Court case, the Commission and possibly each Commissioner, will have to pay penalties, attorney's fees and court costs to the winner

# Federal Freedom of Information Act

Freedom of Information Act (FOIA) provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

# FOIA

A FOIA request can be made for any agency record. Before sending a request to a federal agency, you should determine which agency is likely to have the records you are seeking. Each agency's website will contain information about the type of records that agency maintains.

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# **Confidential and Proprietary Information: Missouri's approach**

# Confidential and Proprietary Information

- The Commission is bound by law to maintain confidential and proprietary information of regulated companies
- Commission rules define what can be classified as confidential or proprietary

# Confidential Information

- Relating to specific customers
- Employee personnel information
- Marketing analysis relating to competition
- Work papers of internal or external auditors
- Strategies to be employed in contract negotiations
- Security of company's facilities

# Proprietary Information

- Trade secrets
- Private technical, financial and business information

# Handling of Confidential Information

- By rule, companies and parties can mark information they provide to the Commission as confidential or proprietary
- The convention is to mark documents or electronic information with an “HC” for confidential or a “P” or “PR” for proprietary
- The Commission or other parties may challenge the designations and try to force the information to be released publicly



# Access to Confidential Information in a case

- Highly confidential information may be disclosed only to attorneys of record or to outside experts that have been retained for purposes of the case
- For example, intervenors in an electric utility rate case are usually large industrial or commercial customers. Employees of the intervenor cannot view HC information.

# Access to HC

- EFIS is designed so that only certain persons have access to the HC document
- Persons viewing may not make copies
- Limited notes are allowed, the notes become HC
- Outside experts must sign a certification that they will maintain confidentiality

# Legal Basis for Confidential or Proprietary Designations

- **Information not to be divulged--exception--penalty.**  
386.480. No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. The public counsel shall have full and complete access to public service commission files and records. Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section, divulges any such information shall be guilty of a misdemeanor.

# **Release of Confidential Information to the Public**

The Commission may, by majority vote at a public agenda meeting, issue an order to change the designation of documents from confidential or proprietary

# Public participation - Kentucky

## Public comments

- Accepted in all matters before the Commission
- Written comments in all cases
- Field meetings in major cases

# Public participation - Kentucky

## Intervention in PSC proceedings

- Only public organization with statutory role is Kentucky Attorney General, as representative of ratepayers as a whole
- Other organizations allowed at discretion of PSC
  - Large industrial or commercial customers
  - Advocates for low-income consumers
  - Environmental organizations
  - Local government entities

# Public participation - Kentucky

## Intervention in PSC proceedings

- Intervenors may present testimony, question other parties to a case
- Joint settlement agreements – all parties, including applicant, must agree
- Partial settlements (stipulations)
  - Unanimous agreement on some issues
  - Partial agreement on all issues
  - Partial agreement on some issues

# Public participation - Kentucky

## Intervention in PSC proceedings

- PSC can approve, modify, or reject settlements and stipulations
- No participating organization has veto power or power to otherwise block (or approve) PSC decisions
- Appeals process exists
- PSC (like any other administrative or regulatory body) is subject to court jurisdiction



# Media relations

- Freedom of the press is accepted
- News media have general access to regulatory agencies
- Agencies do not determine legitimacy of news organizations
- No accreditation required by most state or federal agencies (notable exceptions – White House, Congress, national security agencies)
  - Accreditation often determined by media organization representatives

# Media relations – Kentucky PSC

- Public information officer is primary contact
  - Commissioners rarely speak to media
- Responsive and pro-active
- As-needed basis – no regular schedule
- Rarely conduct media briefings or news conferences - generally on major issues or commission reports, almost never on cases
- Response to media inquiries
  - Within an hour to simple questions
  - Within 24 hours to complex requests

# Media relations – Kentucky PSC

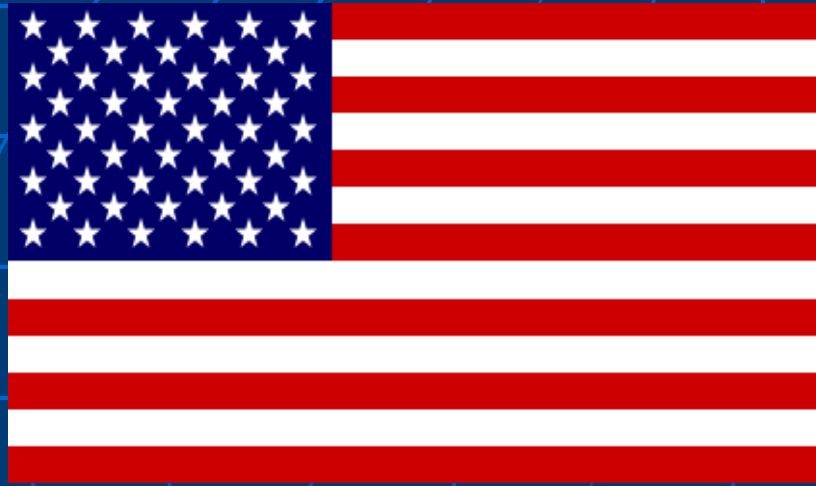
## Dealing with negative/inaccurate media coverage

- Ignore opinions, focus on facts
- Differences of opinion are best left ignored
- Respond formally only to factual inaccuracies
- Responses may take several forms:
  - Letter or other written response, especially in response to opinion pieces such as editorials
  - Factual inaccuracies in news stories – call reporter to request correction, follow up with editors if necessary

# Media relations – Kentucky PSC

- Principal tool for announcing decisions is news release (Order is only official tool)
- Website is key to communications
  - Post news releases, orders, reports, etc
  - Media briefings/news conferences via webcast
- Website averages 12,000-15,000 visits/month
- Increasing reliance on social media
  - Twitter is most valuable tool
  - Quick way to push information, especially in situations such as power outages

# Питання?



***Щиро дякуємо!***

**THANK YOU**