

Commission Decisions



National
Association of
Regulatory
Utility
Commissioners

Ohio

**Public Utilities
Commission**

Commission Process

- Approximately 2,400 cases filed each year. Not all require a hearing
- Prior to scheduling a hearing, the Legal Department schedules a settlement conference to mediate a dispute, scheduled soon after filing
- Parties can meet and discuss issues informally to determine if the issues can be resolved without going through the formal legal process
- If settlement is achieved, the terms are reduced to writing so that there is no misunderstanding and then the case is dismissed
- If the case does not settle, a hearing will be scheduled.

Commission Process - 2

- All items (i.e., case number, case name, and general description of action to be taken) to be included on the agenda for the following week's Commission meeting emailed to Legal Department on Monday prior to Commission meeting.
- A draft meeting agenda for the following week is created and emailed to all Department Directors and Commissioners.

Commission Process - 3

- Supervisors are generally encouraged to read all documents created by their employees prior to the documents being included in the agenda packet.
- If a case concerns a matter of significance, the expectation of commissioners is that supervisory review and approval will occur prior to a document being included in an agenda packet.
- Supervisors should ensure that issues are clearly explained, conclusions are justified, and that basic principles of grammar are followed.

Commission Process - 4

- If a director or employee wishes to take issue with the document, the department must coordinate discussion within the department and reach an accord.
- May then request a conference with the director/employee who drafted the document to express his or her or the department's concerns.
- If an accord between departments regarding the document cannot be reached, the director of the department with concerns has the option of drafting a cover memo to be included with the document when it is distributed in the agenda meeting packets on Thursday morning.
- If a hearing has been held and staff made an appearance at the hearing, the director may raise for consideration possible consequences of what is being recommended by the attorney examiner, but the director or designated deputy director may not lobby the attorney examiner to change the recommendation or outcome.

Commission meetings

- Usually scheduled once per week
- Open to public
- Agenda published the week prior to the meeting
- Minutes of prior meeting are considered
- Cases are considered individually
- After case is called by chairman, legal department section chief provides summary of case
- Document is moved and seconded
- Opportunity for discussion is offered
- Vote taken
- Commissioners may vote in favor, vote against, or abstain
- Commissioners may provide a dissenting or concurring opinion
- Meeting is adjourned.

Agenda

- Employees of departments submit summaries of items for following week's agenda
- Draft agenda circulated to department directors
- Copies of documents to be included in packet are delivered to Legal Department.
- Agenda packets are created and distributed approximately 6 days prior to commission meeting
- Meeting agenda is distributed by email to all requesting it and posted on Commission's Web site.

Case Consideration

- If a commissioner does not understand or dislikes the outcome as presented, he may discuss with author or supervisors of author. Author's and secretary's initials are shown at the bottom of the document.
- If author accepts recommendations/proposed revisions of commissioner, author may create revision and submit revised document for distribution.
- If author disagrees with recommendations/proposed revisions of commissioner, author shall inform commissioner of disagreement and no changes are made unless commissioner secures the agreement of at least two other commissioners.
- Commissioner may request that an agenda item be rescheduled to next week's meeting to allow additional time to consider issues or to discuss with staff. Chairman may require document to stay on the agenda.

Case Consideration - 2

- Commissioner has right to request opportunity to review all changes, including last minute changes. Commissioner needs to know what he/she is signing.
- Commissioner has the right to dissent and may draft a dissenting opinion or request assistance from the author of the original document to draft a dissenting opinion. Dissenting opinions need to be circulated to other commissioners in a timely manner prior to the start of a Commission meeting.
- Commissioner has the right to file a separate concurring opinion that explains why the commissioner voted for a document.

Ex Parte Discussions

Section 4903.08, Revised Code, provides:

After a case has been assigned a formal docket number, neither a member of the public utilities commission nor any attorney examiner associated with the case shall discuss the merits of the case with any party or intervenor to the proceeding, unless all parties and intervenors have been notified and given the opportunity of being present or a full disclosure of the communication insofar as it pertains to the subject matter of the case has been made. Failure of any assigned examiner of the public utilities commission or any commissioner to abide by this section may, at the discretion of the commissioners, lead to that examiner's or commissioner's removal from a particular case or appropriate disciplinary action

Ex Parte - 2

Commission Rule 4901-1-09, Ohio Administrative Code, provides:

After a case has been assigned a formal docket number, neither any commissioner nor any attorney examiner assigned to the case shall discuss the merits of the case with any party or intervenor to the proceeding, unless all parties and intervenors have been notified and given the opportunity of being present or a full disclosure of the communication insofar as it pertains to the subject matter of the case has been made.

Ex Parte - 3

- When an ex parte discussion occurs, a representative of the party or parties at the discussion shall prepare a document listing the parties in attendance and providing a full disclosure of the communications made. Within two business days of the occurrence of the ex parte discussion, the document shall be provided to the commission's legal director or his designee or to an attorney examiner present at the discussion for review. Upon completion of the review, the final document shall be filed with the commission's docketing division and served upon the parties to the case within two business days.

Public Meetings

- Section 121.22, Revised Code, requires that all commissioners of the Public Utilities Commission take official action and conduct all deliberations upon official business **only in open meetings** unless the subject matter is specifically excepted by law, e.g., discuss hiring, discipline, or termination of an employee, or consultation with attorneys to discuss pending or imminent court action.
- Meeting means “any prearranged discussion of the public business of the public body by a majority of its members.” **Therefore, no more than two commissioners may meet to discuss the merits of a case except at a public meeting**