

# **Statutory Framework of the Washington State Utilities and Transportation Commission**

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# Statutory Framework for Regulation

**Two major parts** of the statutory framework of Commission electricity regulation:

\* what we do    \* how we do it.

- **Substantive law** -- Authority to make rules, adjudicate, and regulate

- **Procedural law**

- Open meetings    \* Public access to documents
- Rulemaking        \* Adjudications (hearings)

# Agency Regulatory Law—What We Do

Allow entry (some industries)

Set rates

Require information

- prescribe the format of its presentation
- inspect facilities --audit records

Complain for violations of laws, rules, or orders—

Public service companies; Officers, agents, employees;

Other companies; Any person

# What We Do II

- Monitor performance
- Assess penalties for violations
- Recover overcharges and collect reparations
- Seek prosecution for crimes –misdemeanors
- Seek damages, if violations of regulatory law cause damages to persons affected

# Procedural Law—How We Do It

Agency performs three functions:

- Executive duties –
  - Program administration
  - Decisions that are not adjudications or rulemaking
- Legislative duties – rulemaking
- Judicial duties – adjudications

# Procedural Law—How We Do It (2)

- Two different laws
- Three different sets of procedure
  - Open Meeting Act
    - Multi-member agencies (such as commissions)
    - All functions, unless excepted
    - APA exception is largest
  - APA: Administrative Procedure Act
    - Rulemaking
    - Adjudications
- A Third Law for Transparency in the Commission's activities
  - Public Records Act – availability of government records

# Open Meetings

- Open meeting law
  - Does not apply to rulemaking or adjudications
  - Applies to multi-member bodies only
  - All agency business must be considered in open session
  - A majority of the commissioners may not discuss agency business except in an open meeting

## – Limitations

- » Does not apply to a single director
- » Does not apply to rulemaking or adjudications

# Adjudications

- Administrative Procedure Act
  - When a “hearing” must be held
  - Procedures similar to a trial
  - Statute or Constitutional right
  - Optional with agency when not required
  - A hearing must be held, unless waived
  - Defines and forbids *ex parte* communication
  - Hearing sessions must be open, with limited exceptions
  - Commissioners must preside in some proceedings



# Rulemaking

- Administrative Procedure Act governs Rulemaking
  - Legislative function
  - Any directive of general application must follow APA
  - One adoption hearing must be held
  - Record not confined to what happened at the hearing
  - Commissioners need not preside at the adoption hearing

# Public Records Law

- • Public records law
  - » All government records are public records
  - » Public may access all public records
  - » Exceptions --
  - » Business records such as trade secrets
  - » Some personal records
  - » Process:
    - » Agency must allow access
    - » UTC special law: owner designates confidential
    - » If requested, owner may ask for a court order restricting access

# Transparency in Decisions I

	<b>Open meeting</b>	<b>Adjudication</b>	<b>Rulemaking</b>
Presentations must be	Open	Open <sup>(1)</sup>	Closed OK; one hearing required
Individuals can lobby individual commissioners	Yes	No – doing so is violation(2)	Yes
Commissioners can (deliberate) in <b>closed</b> session	No	Yes	Yes
Records are open for disclosure(3)	Yes	Yes	yes
(1) Sessions may be closed in exceptional circumstances (2) The Commission must disclose “ <i>ex parte</i> ” violations and offer other parties the opportunity to respond. Violators must be reported to professional licensing authority (3) Records may be excused from public disclosure in identified circumstances			

# Transparency in Decisions II

		<b>Open meeting</b>	<b>Adjudication</b>	<b>Rulemaking</b>
A. Decision-making procedure	<b><u>(1) Written materials</u></b> (a) reviewed by or prepared by staff	Yes	Yes	Yes
	(b) available to public (except confidential documents) when received	Yes	From parties only, <b>not advisory staff</b>	Yes
	(c) staff materials available to public	Yes, before meeting	<b>No</b>	Yes, after briefing
	(d) Staff prepares order for Commission signature	Yes	Yes	Yes

# Transparency in Decisions III

		<b>Open meeting</b>	<b>Adjudication</b>	<b>Rulemaking</b>
Decision making procedure	<b>(2) Oral information</b> (a) okay outside of a meeting	Yes, but only individual commissioners, not a quorum	<b>No – an ethical /procedural violation</b> (except advisory staff)	Yes, individually or together
	(b) Staff analyzes and orally briefs commissioners before decision	Yes, but only individual commissioners	Yes, meets with commission, before and after the hearing	Yes, meets with commission before and after the hearing
	<b>(3) Private all-Commissioner conference</b>	No – only during the meeting	Yes, closed, as needed	Yes, closed, as needed
Voting		In open meeting only	In closed session	In closed session

# Transparency in Decisions IV

		<b>Open meeting</b>	<b>Adjudication</b>	<b>Rulemaking</b>
Announcement of decisions	Announcement of the decision	Orally, in open meeting. Most decisions require a later written order	Adjudicative order implements decision	Rulemaking adoption order filed, then published by state, to implement decision
	Opportunity for review by commission	Reconsideration (very rare)	Reconsideration then judicial review	No formal means for Commission review.
	Review by governor	No	No	Yes, in limited situations
	Review by court system	Yes	Yes	Yes

# Agency Decision-making

- Decision-making process in practice
  - Agency decision-making is a group process
    - Commissioner perspectives
    - Consideration of the record of decision and parties' evidence and arguments
    - Consideration of staff expertise
  - Product is a balance of these different views and perspectives

# Collegiality

- Collegiality
  - Most commissions work well together
    - Appointees often skilled politicians
    - Try to avoid hard feelings -- makes work difficult
    - Differences of opinion normal and sometimes challenging



# Accountability

- Accountability
  - Independent agency, not under direct control of governor
  - Removable for cause, once confirmed
    - » Accountable to the Governor
    - » Accountable to the legislature
    - » Accountable to courts
    - » Accountable to each other
    - » Accountable to public

# Confidentiality

- Levels of information discussed during open sessions
  - Open discourse is the general rule
  - Assertedly confidential commercial information is exempt from disclosure pending formal request and judicial order
  - Statutory test for Confidential designation:
    - » Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information

# Confidentiality (2)

- Some confidentiality is essential
  - Companies would otherwise resist staff efforts to provide information needed for regulation
  - Law smoothes access to essential sensitive information
- Secrecy hurts.
  - The information eventually gets out
  - Companies are penalized for secrecy
    - » Example: Secret telephone contracts, awarded to competitors, resulted in fine

# Third-party Access to Information

- Submission of information to third parties
  - Most information on file is available on Commission's web site
    - Public records act followed
    - Litigation documents excepted
  - Protective order in commission hearings
    - Requires parties to limit access to confidential data

# Working Relationships With Other Agencies and Stakeholders

- UTC strives to maintain good working relationships
  - » Assists in getting needed information when required
  - » Assists when pursuing common goals
  - » Assists in making litigation easier
- Stakeholders include
  - Regulated companies
  - Consumer groups and representatives

- Federal and state agencies with related jurisdiction include
  - » ○ State department of trade and economic development (policy issues)
  - » ○ State department of transportation (rail and ferry issues)
  - » ○ State Energy facility site evaluation council
  - » ○ Federal railway agency
  - » ○ Federal office of pipeline safety
  - » ○ Bonneville power administration (federal)
  - » ○ Federal communications commission – telecommunications
  - » ○ Federal power commission – electricity