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Association of
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Commissioners

Regulatory Commissions: Overview and Process

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“Independent” Commissions

- “Independent” because no one branch of government controls, i.e. executive, legislative, judicial
 - Yet, Commission created by, and dependent upon the other branches of government for support
- Originally created to address regulation in an efficient manner
 - Prior to creation, utilities were subjected to either direct legislative control or judicial review
- Created pursuant to legislative mandate
 - Enabling statute sets forth the Commission’s powers
 - Limits and duties



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“Independence” assured by limiting power of influence

- Appointment of Commissioners are for definite, but staggered terms
 - In Pennsylvania, no more than 3 of 5 Commissioners may be from the same political party
 - Removal of Commissioners from office is limited and may be confined to issues of “inefficiency, neglect of duty or malfeasance.”
- Executive (Governor)
 - Appoints Commissioners as terms expire or members resign
- Legislative (General Assembly)
 - Provides statutory authority for Commission
 - Approves annual budget
 - Although actual funding is achieved through assessments on the utilities the Commission regulates
 - Confirms Governor’s appointment of Commissioners
- Judicial (Courts)
 - Reviews Commission decisions to ensure legality



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A Combination of Functions: The Commission as a Quasi-Judicial Body

- Contrary to basic pattern of American “separation of powers” doctrine, Utility Commissions generally assume the combined tasks of:
 - Administrator (Executive)
 - Rate investigation
 - Safety standards investigation
 - Judge (Judicial)
 - Conduct hearings
 - examine evidence
 - make decisions
 - Legislator
 - Adopt rules and regulations
 - Prescribe utility standards



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Regulator's Rights and Obligations

- May exercise only such power as its enabling statute provides
- Right to data access, discovery, enforcement of rules and regulations
- Can prescribe reporting and filing requirements, establish system of accounts
- Must engage in balanced and practical approach to regulation; ensure financial viability of utility while insuring that consumers are not over-charged
- Must provide open and transparent process with opportunity for public input
 - All Commission actions must take place at Public Meeting
 - Public is afforded ample opportunities to participate in proceedings
- Commission must protect consumer interests



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Typical Commission duties include:

- Review and approve rates and charges
- Control market entry and exit (certificate of need)
- Approve utility additions and expansion
- Impose a system of accounts
- Require annual financial reports
- Approve financial issuances (stocks, bonds)
- Approve mergers and acquisitions
- Conduct financial and management audits
- Specify standards and terms of service
- Resolve consumer complaints
- Require planning and forecasting
- Ensure infrastructure safety and reliability
- Implement restructuring policies – deregulation (relatively new function)



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Case Study: Pennsylvania Public Utility Commission

- Overview
 - Employs ~ 500 people
 - Created in 1937 as successor to public service commission
 - 2007-2008 budget ~ \$51 million
 - Regulates ~ 6,000 utilities
 - Water/wastewater
 - Electricity
 - Natural gas
 - Telephone (wired)
 - Transportation services

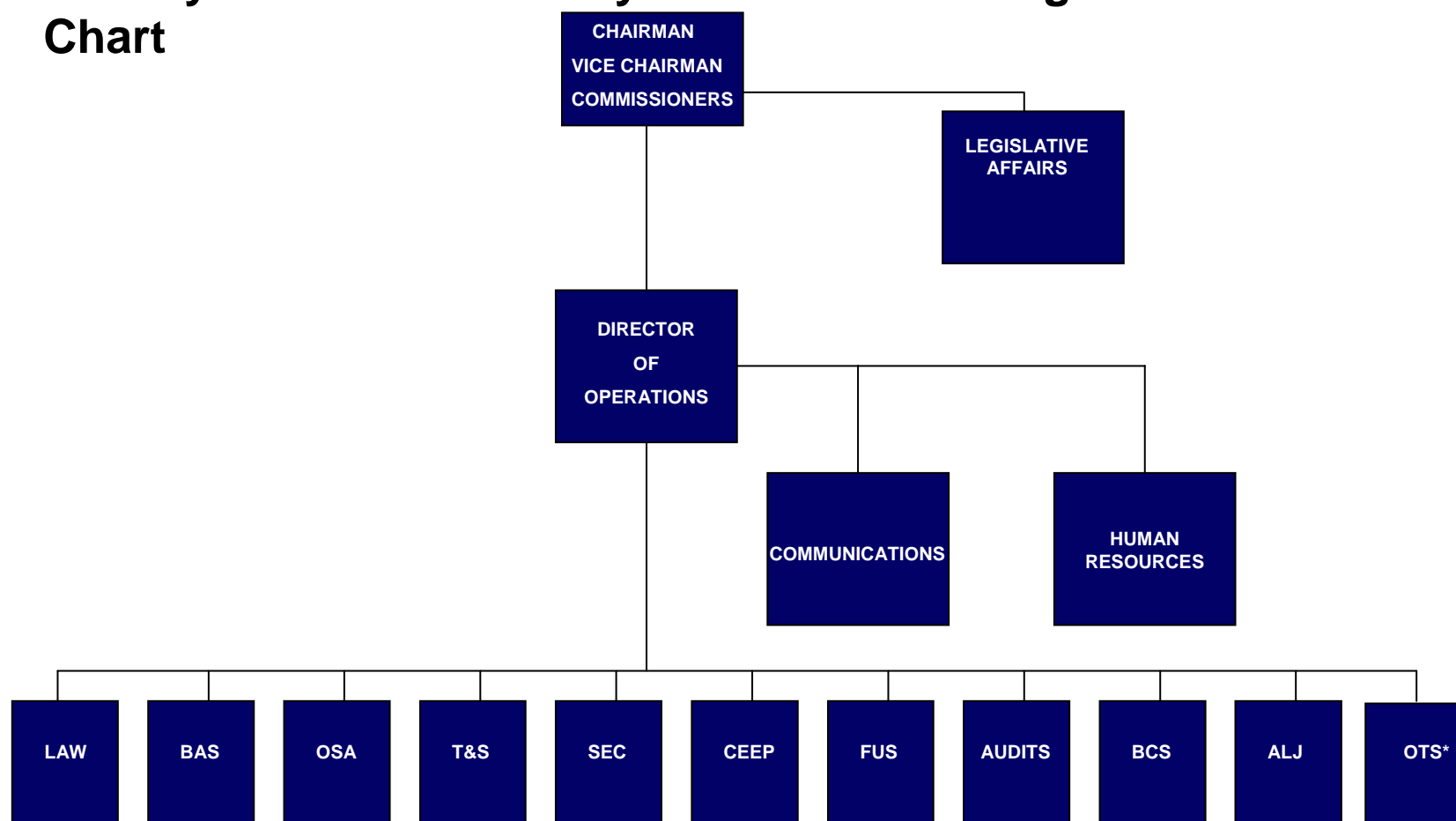


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Pennsylvania Public Utility Commission – Organizational Chart





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Case Study: Pennsylvania Public Utility Commission Organization

Chairman, Vice-chairman, Commissioners

- Appointed by Governor for staggered, 5-year terms
- Chairman selected by Governor, Vice-chairman selected by peers
- Each Commissioner and the Chairman has one vote at Public Meeting
- No more than 3 Commissioners may be from the same political party



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Case Study: Pennsylvania Public Utility Commission Organization, continued

- Director of Operations
 - Responsible for day-to-day administration and operation of bureaus and offices
- Legislative Affairs
 - Serves as the liaison between the Commission and the Legislature
- Communications
 - Media relations
 - Public outreach



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Case Study: Pennsylvania Public Utility Commission Organization, continued

- Law Bureau
 - Commission's in-house counsel
 - Advisory: provides legal opinions to Commissioners and Bureaus
 - Representational: Appears on behalf of the Commission in court proceedings and before administrative bodies
 - Enforcement: pursues legal action to enforce Commissioner directives
- Office of Special Assistants
 - Drafts Opinions and Orders for Commissioners to vote on at Public Meeting
 - Handles all post-Order administrative relief (e.g., requests for consideration)



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Case Study: Pennsylvania Public Utility Commission Organization, continued

- Transportation & Safety
 - Assists in ensuring safe and reliable natural gas, rail and motor carrier service
 - Enforces pipeline safety regulations and investigates natural gas explosions
 - Handles motor carrier issues, including vehicle inspections
- Bureau of Conservation, Economics and Energy Planning
 - The Commission's research bureau that gathers data on energy market issues
- Bureau of Audits
 - Conducts financial and management audits of regulated utilities
- Bureau of Consumer Services
 - Responsible for most activities involving services to consumers
 - Handles consumers' informal complaints
 - Monitors "universal service" programs and low income assistance programs



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Case Study: Pennsylvania Public Utility Commission Organization, continued

- Office of Administrative Law Judge
 - Fulfills judicial role within the Commission (acts in place of Commissioners who are unable to hear every case)
 - Hearing cases
 - Mediating cases through alternative dispute resolution
 - Issuing initial and recommended decisions
- Office of Trial Staff
 - Chief Prosecutor of the Commission
 - Semi-independent bureau
 - Represents “public interest”
 - Participates as a party in Commission proceedings involving fixed utility rates
 - Employs financial analysts, engineers and accountants who review filings and provide expert testimony



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Case Study: Pennsylvania Public Utility Commission Organization, continued

- Wrap-up
 - Some bureaus are **advisory**: they give advice or recommendations to the Commission – i.e., Office of Special Assistants
 - Some bureaus are **prosecutory**: they participate as parties in cases before the Commission and advocate certain positions – i.e., Office of Trial Staff
 - Some bureaus have both **advisory** and **prosecutory** roles: they have staff who might be parties in a case before the Commission and other staff who will provide advice to the Commission in the case
 - Note: advisory and prosecutory functions may be present in one bureau, but same personnel may not perform both functions



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Case Study: Pennsylvania Public Utility Commission Agency Decision Making

- Processing filings – generally
 - Formal filings, including applications, petitions, complaints, are made with the Secretary's Bureau
 - Secretary's Bureau assigns to the appropriate bureau(s) for handling
 - Bureau prepares a recommendation and submits it to the Commission
 - Commission votes at a Public Meeting whether to adopt the bureau's recommendation; and
 - Orders adopted by the Commission are issued to the public



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Case Study: Pennsylvania Public Utility Commission Agency Decision Making

- Rate requests
 - New tariff filed by Company with Commission's Secretary Bureau
 - Before any utility may change its rates, it must seek permission to do from the Commission
 - As part of the filing requirement, the utility must give notice to its customers regarding intent to seek rate increase
 - Extensive supporting documentation must accompany filing as prescribed by law or regulation
 - Effective date of tariff no earlier than 60 days in the future



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Case Study: Pennsylvania Public Utility Commission Agency Decision Making – Rate Request, continued

- Copies of tariff distributed to various bureaus and served on statutory parties
 - Office of Consumer Advocate: created by legislature to represent the interests of consumers in utility matters
 - Office of Small Business Advocate: created by legislature to represent the interests of small businesses in utility matters
 - Office of Trial Staff: semi-independent “arm” of the Commission charged with prosecuting rate cases.
 - Statutory parties may intervene in rate cases “as of right” i.e. do not have to show direct interest
 - If no complaints are filed, Bureau of Fixed Utility Services prepares a recommendation and submits to the Commission for approval



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Case Study: Pennsylvania Public Utility Commission Agency Decision Making – Rate Request, continued

- Complaints may be filed by statutory parties, consumers or other interested parties who may be affected by the rate request
 - If complaints are filed, the Commission will vote at Public Meeting to suspend the tariff for an additional 6 months and assign disposition of the case to the Administrative Law Judge for preparation of Recommended Decision
 - When a complaint is filed, the Commission must act to suspend the filing i.e., cannot approve without formal proceeding
- Formal proceedings before Administrative Law Judge
 - Pre-hearing conference/discovery
 - Submission of expert testimony
 - Evidentiary hearing
 - Recommended decision



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Case Study: Pennsylvania Public Utility Commission Agency Decision Making – Rate Request, continued

- All participants in formal proceeding are afforded opportunity to conduct discovery, review filing and submit testimony
- The public is given ample opportunity to participate in formal proceedings
 - May file formal complaints against the filing
 - Customer is a formal participant in the rate filing
 - May file informal complaints against the filing
 - Customer files complaints noting its objections, but does not become formal participant
 - May choose to attend a Public Input hearing and voice opinion
 - Customers make their complaints known on the record before the Commission, representatives of the utility and other case participants



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Case Study: Pennsylvania Public Utility Commission Agency Decision Making – Rate Request, continued

- ALJ prepares a Recommended Decision
 - Approve rate increase
 - Deny rate increase
 - Modify rate increase
- Parties may file Exceptions to Recommended Decision
 - May disagree with Recommended Decision in whole, or in part
- Commissioners vote at Public Meeting to either adopt, reject, or modify Recommended Decision



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Case Study: Pennsylvania Public Utility Commission Agency Decision Making – Rate Request, continued

- Parties may file for Reconsideration of Commission decision or file an appeal with state court.
 - Reconsideration granted by the Commisison only in very limited circumstances
 - Judicial review of cases is limited to whether there is enough evidence to support the Commission's decision or whether Commission failed to give "due process"
 - Appellate courts will give "deference" to the decision of the Commission because Judges are without specialized ratemaking knowledge.