

Decision Making Process

Authority

- The Commission is a creature of statute whose powers are derived from the Delaware Legislature
- Pursuant to its legislative authority, the Commission regulates investor-owned utilities offering the following services: electric distribution, cable television, natural gas, telecommunications, water, and wastewater

Authority (con't.)

- Powers of the Commission do not extend to municipally owned utilities (except in some cases of service territory)
- Commission is not authorized to perform certain acts, such as:
 - Issue subpoenas
 - Confiscate utility property
 - Appropriate funds collected through fines
 - Award damages to any party in a proceeding

Agency Activities

- Regulations (may require hearing if substantive)
 - Reporting requirements, termination of service, service quality, reliability, transition to competitive market, rules for competitive suppliers
- Rate cases (hearing)
 - Base rates, fuel adjustments, standard offer service
- Complaints (hearing, depending on issue)
 - Customer vs. utility, competitor vs. utility
- Investigations (hearing)
 - Storm response, billing issues, service quality

Agency Activities (con't.)

- Approval of mergers (hearing)
- Arbitration of interconnection agreements between telecommunications providers (may require hearing)
- Licenses or certification (hearing required if opposed)
 - Exclusive territories for electric distribution
 - Non-exclusive territories for electric suppliers
- Informal Agency Activities (no hearing)

Hearings

- Historical Overview

- U.S. Constitution prohibits any state from depriving a person of life, liberty, or property without due process

- Governing Rules

- Delaware Administrative Procedural Act (APA)
- Delaware Public Utilities Act of 1974
- Rules of Practice and Procedure of Delaware Public Service Commission

Due Process

- Procedural - focus on process
 - Notice
 - Opportunity to be heard
- Substantive
 - Right to cross examine witnesses
 - Absence of arbitrary standards

Parties to a Proceeding

- Commission Staff
 - “Party” to proceeding (segregated), advisor to Commission, adjunct to Hearing Examiner
- Hearing Examiner
 - Subordinate to Commission, manages proceedings and conducts hearings, issues findings and recommendations with proposed order
- Public advocate
 - Represents public, particularly residential and small commercial
- Interveners
 - Interests not represented by any other party, such as large industrial and commercial concerns or Individuals with special circumstances or interests

Pre-Hearing Activities

- Notice to Commission
- Application
- Initiating Order
- Public Notice
- Temporary Rates
- Interventions
- Discovery
- Motions
- Pre-filed Testimony
- Public Comment Sessions
- Settlements

Public Comment Sessions

- Noticed in newspapers and on Commission's website
- Sessions held in each of three counties in Delaware (fewer if customer base is localized to a particular area)
- Forum for input by customers of utilities
- Presided over by Hearing Examiner
- Transcribed by court reporter
- Comments not subject to cross examination
- Parties are usually present but do not comment or respond to questions

Evidentiary Hearing Procedures

- Burdens of Proof
 - The burden of proof is on the moving party, except where placed on another party by law or Commission Order
- Opening Statements
- Evidence
- Witnesses
 - Any party may present experts to testify on their behalf
- Exhibits
- Closing Arguments

Post Hearing

- Briefs
- Findings and Recommendations of the Hearing Examiner
- Exceptions
- Oral Argument before the Commission
- Deliberations
- Remand
- Final Order

Appeal to Superior Court

- Scope of Review
 - “On the record”
 - Deference to PSC expertise in factual matters
- Standard of Review
 - Legal error
 - Substantial evidence test
- Delaware does not have a “prudence” standard due to a State Supreme Court decision which established a “business judgment” standard
 - Efforts to resurrect the “prudence” standard have been unsuccessful in the Delaware Legislature

Ex Parte Communications and Sunshine Law

- No discussions with any party on a substantive issue in a case during a litigated proceeding
- All public meetings must be noticed
- Three Commissioners (a quorum) cannot meet to discuss any substantive issues without the public allowed to view Commission deliberations
- Very rare occurrence when Commissioners can meet in an executive (closed) session
 - Personnel issues
 - Strategy sessions on Commission litigation
 - Discussion of information deemed confidential

Ethical Considerations

- Commissioners and Staff, as well as their immediate family members, are required to avoid the appearance of impropriety as this undermines the credibility of the Commission
- Actions to be avoided include:
 - Acceptance of gifts or favors of a not insignificant value from any representatives of entities subject to Commission jurisdiction
 - Ownership or other financial interest in any regulated entity
 - Disclosure of confidential information to which Commissioners and Staff are privy
- Questions about propriety of any action should be directed to the Commission's counsel or the state ethics agency