2017 WIAWWA Annual Conference  
September 21, 2017  

PRACTICE AND PROCEDURE BEFORE THE PUBLIC SERVICE COMMISSION OF WISCONSIN - 
Tips for Effectively Presenting Your Case  

Cynthia Smith, Chief Legal Counsel  
Public Service Commission of Wisconsin
Topics Covered

• What is a contested case?

• Preparing Your Case
  - Pre-filing best practices
  - Assembling your team

• Presenting Your Case
  - Required procedures
  - Filing requirements
What is a Contested Case?

• Defined in Wis. Stat. § 227.01(3) as:
  “an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely affected by a decision or order.”

• Referred to as a Proceeding at the Commission
Typical Water Contested Cases

• Conventional Water Rate Cases
  • Rate increase (hearing required)
  • Tariff changes that diminish service (hearing required)
  • SRCs **not** contested cases (no hearing required)

• Construction Cases requesting Certificate of Authority where the Commission has exercised its discretion to hold a hearing

• Contested vs. Disputed
Contested Cases: Legal Implications

• Wisconsin Administrative Procedures Act, Wis. Stat. ch. 227 applies

• Wisconsin Admin. Code ch. PSC 2 procedures must be followed
  - Intervention
  - Discovery
  - Motions

• Contested Case Guidelines Issued by Administrative Law Judge apply
Guide to Becoming a Party in PSC Proceedings

What is a proceeding? +
What is a party to a proceeding? +
What is an Intervenor? +

Guide to the Rate Cases Process

Overview +
PSC Review +
Who Participates in a Contested Case?

• Applicant (Utility)
• Commission Staff
• Intervenors
  - Person, business or organization who participates to protect or advance a substantial interest or offer a particular perspective that will promote the proper disposition of the issues.
  - To become an intervenor, must file a request for intervention, and be admitted as a party into the proceeding by the Administrative Law Judge.
  - Common intervenors in rate cases include customer groups (Citizen Utility Board), individual customers or a group of customers
• Members of the Public (need not be a party to participate in a proceeding)
Key Components of a Contested Case

- Application*
- Notice of Proceeding*
- Orders on Intervention
- Prehearing Conference
- Discovery
- Pre-Filed Testimony and Exhibits*
- Hearing*
- Briefs
- Decision Matrix
- Final Decision *

* In all cases
Preparing Your Case
Pre-Filing – Preparing an Effective Case

• The most important part of your case happens before you even file the application with the Commission

• Before you file, have you:
  - Clearly identified the issues you think need to be addressed?
  - Reviewed any past Commission cases addressing those issues?
  - Talked with Commission staff?
  - Reached internal consensus?
  - Identified and reached out to potentially impacted customers?
  - Attempted to narrow/resolve issues prior to filing?
Pre-Filing – Preparing an Effective Case

• Have you….
  - Reviewed the filing requirements?
  - Assembled relevant documents and information you will need?
  - Made sure you have time and resources available to dedicate to the process?
  - Reviewed Contested Case Guidelines?
Guide to Becoming a Party in PSC Proceedings

What is a proceeding?

All proceedings provide a person the opportunity to participate either as a member of the public, or as a party. A member of the public participates in a proceeding solely to express a personal opinion on the case. To become a party a person must either:

1) initiate a proceeding by application, petition, or complaint, or

2) intervene in an existing proceeding. For all parties, participation must occur in a formal trial-type hearing process.

*For more information please see [Guidelines for Contested Case Proceeding](#)
Pre-Filing – Preparing an Effective Case

• Assembling your team is the next most important thing you will do to prepare

• Team members
  - Internal team members: key decision makers and those who know the facts
  - External team members
Preparing an Effective Case - External Team Members

- Outside Consultants
- Attorneys
- Select someone knowledgeable about Commission practice and procedure who has proven track record
  - Review Commission dockets for names of experts
  - Talk to other utilities and relevant organizations
Pre-Filing – Preparing an Effective Case

• Within the team, establish roles and responsibilities

• Establish clear lines of communication within team

• Identify a single point person
Presenting Your Case
The Process - Application

• An effective case starts with a clearly stated and complete application. This is your foundation. A complete application minimizes data requests and delays in processing your case.

• Incomplete applications will be rejected
The Process - Notice

• Once complete application is received, Commission will issue **Notice of Proceeding**

  - Brief summary of request
  - Access to Documents
  - Participation
  - Intervention
  - WEPA
  - Assessment
  - ADA
  - Commission contact person
The Process – Ex Parte Prohibitions

• Parties and interested persons cannot speak to Commissioners or Other Decision Makers (ALJ, Division Administrator for Delegated Decisions) about the merits of the case

• Wis. Stat. § . 227.50
Rate Case Process - Contested

Application Filed → Audit Review by Commission Staff → Final Revenue Requirement → COSS & Rate Design

Utility Input

Direct Testimony/Exhibits → Rebuttal Testimony/Exhibits → Surrebuttal Testimony/Exhibits

Public & Party Hearing → Attorney Briefs → Final Decision/Order → Final Form Tariffs
Process: The Pre-Hearing Process

• Prehearing Conference before ALJ
  - Sets schedule and identifies issues

• Parties may make Discovery/Data Requests to each other, *Wis. Admin. Code § PSC 2.24*

• Pre-Filed Testimony/Exhibits
  - Direct, rebuttal, surrebutal
  - Some may be filed in whole or in part confidentiality
  - Each round of testimony narrows the issue for the hearing
Process: The Hearing

• General
  - Notice of Hearing issued
  - Hearings conducted by administrative law judge
  - Recorded by court reporter
  - Commissioners may attend

• Technical Hearing
  - Trial-type hearing, with testimony and cross-examination
  - Generally public but could be closed session in camera

• Public Hearing
  - Members of the public may provide input electronically on ERF or by testifying at public hearing
Public Service Commission of Wisconsin

The Public Service Commission of Wisconsin (PSC) is an independent regulatory agency dedicated to serving the public interest. The agency is responsible for the regulation of Wisconsin public utilities, including those that are municipally owned, since 1907.

New Broadband Grants

Governor Walker announced a new round of Fiscal Year 2018 Broadband Expansion Grants. Click here to learn more and apply!

Tools you can use

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e-Subscribe and keep up-to-date on issues important to you.

File a Comment  ERF Upload  Live Broadcast  e-Subscribe  Latest News  Docket Search
Process: The Hearing

- Introduction of pre-filed testimony and exhibits
- Cross Examination
- Public Testimony
- Live broadcasts of hearings held in Madison (telephonic or video links in service-territory/project area)
The Hearing

• End result of the hearing is creation of an administrative record
  - Introduced Pre-Filed Testimony and Exhibits
  - Party and Public Session Hearing Transcripts and Public Comments received

• Commissioners can only base their decision based upon what is in the record. So if you want the decision-maker to see the information, get it into the record!

• Be succinct. No need to repeat testimony.
Process: Post Hearing

• Briefs
  - Can only cite to information that has been introduced into the administrative record

• Decision Matrix identifies issues and provides Commissioners with a road map
  - Party positions summarized with notation to record
Process: Final Decision

• The Commissioners meet in Open Meeting(s)
  - Commissioners discuss record at one or more open meetings and reach decision
  - Oral discussion is not the ruling of the Commission
  - The final decision is the written Order/Final Decision
Public Service Commission of Wisconsin

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# Public E-Agenda

## E-Services Portal

### Public E-Agenda

#### PSC Event Calendar

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### Disclaimer

**Proposed Schedule & Agendas**

This is a tentative schedule for planning purposes only and is subject to change. Persons wishing to verify the times of an event should contact **Sandy Paske at (608)266-1265.**

**Current Agenda - Live Broadcast**

While the PSC attempts to publish the open meeting agendas on this web site at least 24 hours prior to an open meeting, it is not the official posting place for such items and may not contain an agenda until close to the time the meeting convenes. If you are attempting to locate an agenda that has not yet been published on our web site, please contact Sandy Paske at *(608)*266-1265.

- **Commission’s Open Meeting Minutes**
- **3 Most Recent Minutes**
  - Thursday, September 07 2017
  - Thursday, August 31 2017
  - Thursday, August 17 2017

**Open Meeting Handout**

- **Commissioner Robert’s Anaerobic Digester System Handout.pdf**
  - (Commissioner Roberts Anaerobic Digester System Han) **Issued by** Lon Roberts *(8/10/2017)*
Final Decision

• Staff prepares Final Decision memorializing Commission’s decision
  - Commissioner may dissent in whole or in part in Commission’s decision and may submit written dissent

• Final Decision may be reviewed/revised at open meeting, or a Commissioner can be delegated authority to work with staff to finalize