



2017 WIAWWA Annual Conference
September 21, 2017

**PRACTICE AND PROCEDURE BEFORE THE PUBLIC
SERVICE COMMISSION OF WISCONSIN -**

Tips for Effectively Presenting Your Case

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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



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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?](#)

What is a party to 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

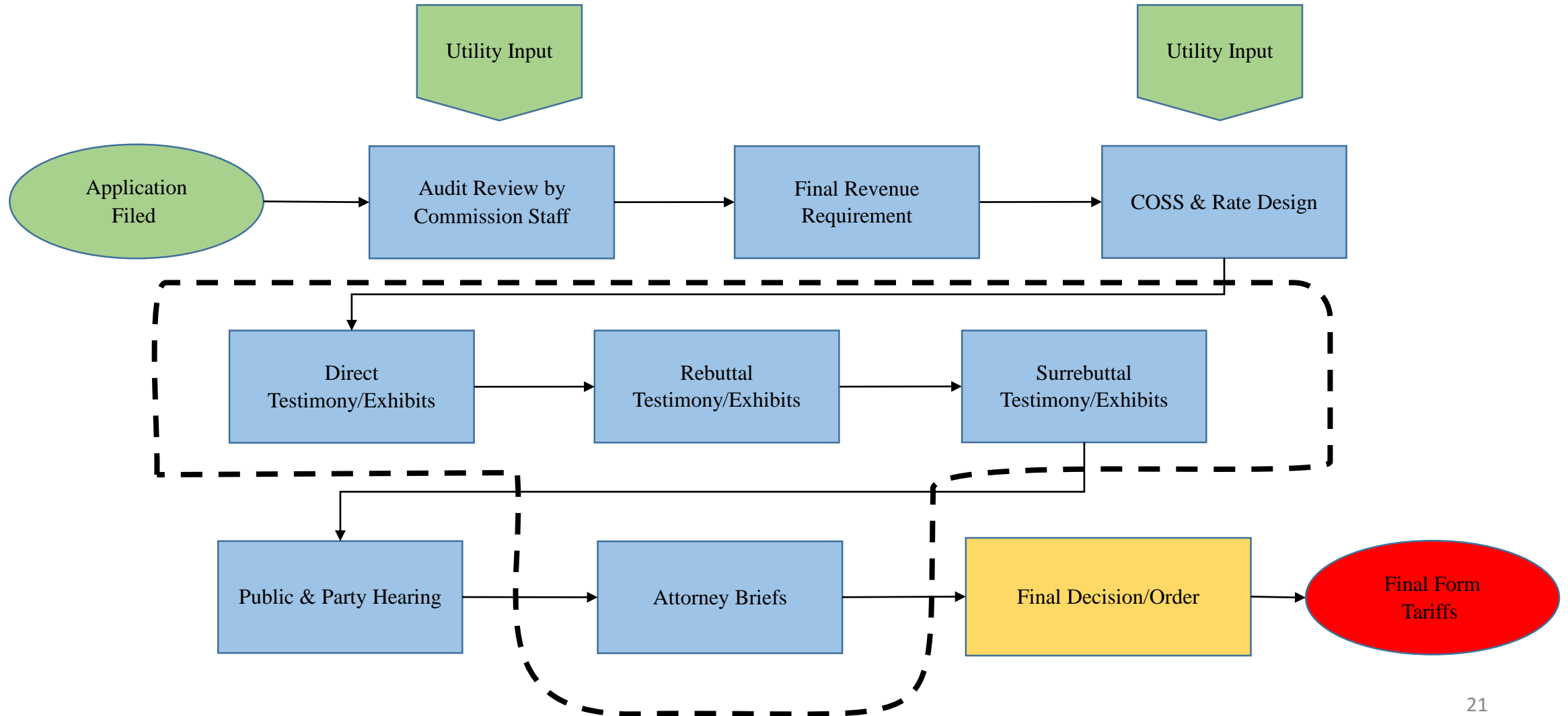
The Process - Notice

- 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



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 confidentially
 - 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 Participation

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!



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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**

Process: Final Decision



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New Broadband Grants



Tools you can use



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Public E-Agenda

PSC Event Calendar

September 2017						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
27	28	29	30	31	1 Hearing(s)	2
3	4 OFFICES CLOSED	5	6	7 Open Meeting	8 Hearing(s)	9
10	11	12 Hearing(s)	13 Hearing(s)	14 Hearing(s)	15 Open Meeting E-Agenda	16
17	18	19 Hearing(s)	20 Hearing(s)	21 Hearing(s)	22	23
24	25	26	27	28	29	30

Color Key: ● Public Hearing ● Open Meeting ● Other Meeting

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 (9/15/2017)

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