World Bank/PUROC Training Program on Utility Regulation & Strategy
Managing the Regulatory Process: Settling Cases

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Role and Function of the Florida Public Service Commission

- The PSC is an agency of the legislative branch, headed by five commissioners, and funded by regulated companies through a regulatory trust fund.
- The Commission regulates certain electric and gas services, telecommunications services, and water and wastewater services.
- In this capacity, the Commissioners make determinations of substantial interest.
Commission Authority to Act

- Chapter 350, Florida Statutes (F.S.)
  - Establishes and funds the Commission
- Chapter 366, F.S.
  - Provides for the regulation of public utilities
- Chapter 364, F.S.
  - Provides for the regulation of telecommunications companies
- Chapter 367, F.S.
  - Provides for the regulation of water and wastewater systems
- Commission rules are contained within Chapter 25 of the Florida Administrative Code (F.A.C.)
Types of Quasi-judicial Actions Undertaken by the Commission

• Enforcement proceedings
• Complaints
• Generic Proceedings
Commission Procedures for Processing Matters

• **Docketed Matters**: Commission dockets are opened to address matters including complaints, rate cases, need determinations, and tariff filings.

• **Case Assignment and Scheduling Record (CASR)**: Once a docket is opened Commission staff develops and files a CASR which establishes a schedule for resolving the matter.
Commission Procedures for Processing Matters

• Controversial matters: are often scheduled directly for hearing.

• Routine or non-controversial matters: are assigned to the Commission’s “consent agenda” and voted on by the Commissioners at the regularly scheduled agenda conference.
Commission Procedures for Processing Matters:
Recommendation Process

- Staff drafts detailed recommendations for Commission decisions.
- Recommendations are filed 12 days before each agenda conference.
- At the agenda conference, staff summarizes their recommendation on an item and members of the public are able to participate.
Commission Procedures for Processing Matters:
Recommendation Process

- The Commission’s actions are primarily based upon staff’s recommendation with the Commissioners either approving, modifying, or denying staff’s recommended approach.
Commission Orders

• **Orders**: An order reflecting the Commissioners’ decision is traditionally issued within 20 days of the agenda.

• Commission orders reflect the initial determination of the Commission

• Primary types of initial determinations:
  – Proposed Agency Action (PAA) orders
  – Tariff Orders
  – Orders initiating show cause proceedings

• All of the aforementioned orders are preliminary and subject to protest
Protest of Initial Determinations

• When an initial determination of the Commission is protested by a substantially affected person, the matter is set for hearing.
• Once the matter is set for hearing, a Commissioner is assigned as the pre-hearing officer.
• The pre-hearing officer issues an order establishing procedure which sets forth the rules and schedule for the proceeding.
Hearing Procedures

- **Testimony**: Direct and rebuttal testimony are pre-filed.

- At the hearing, witnesses are asked to summarize their testimony for the Commissioners and are then subject to cross-examination by the Commissioners, parties, and Commission staff.
Staff’s Role in the Hearing Process

• While staff is not a party to a Commission proceeding staff may act as a party at hearings in order to develop a complete record.

• Staff endeavors to ensure that a complete record exists in order to facilitate an informed public policy determinations by the Commission.

• Staff acts as the Commission’s eyes, ears, and legs.
Staff’s Role in the Hearing Process

• Staff ensures that a complete record exists by:
  – Conducting extensive pre-hearing discovery
  – Cross examining witnesses
  – Sponsoring Staff witnesses when necessary
Post Hearing Procedures

• After the hearing, the parties file post-hearing statements.

• Staff drafts a recommendation which is presented to the Commission at either the Commission’s regularly scheduled agenda conference or a special agenda conference.

• Commissioners may then approve, modify, or deny the post-hearing recommendation.
Informal Dispositions of Adjudicatory Matters

• Pursuant to Section 120.57(4), F.S., informal disposition may be made of any proceeding by:
  – Stipulation of the parties
  – Agreed settlement
  – Consent order
Settlements Via Stipulations of the Parties

- Commission staff plays a limited role in settlement negotiations between the parties.
- Rather, the parties to an adjudicatory action engage in independent settlement negotiations.
- Once a settlement agreement has been reached, the proposed settlement is submitted to the Commission.
Settlements Via Stipulations of the Parties

• Settlement agreements are reviewed by Commission staff and submitted for approval at an agenda conference.

• Commissioners review the proposed agreement at the agenda conference to determine if it is in the public interest.

• The panel of Commissioners then approves, modifies, or denies the proposed settlement agreement.
Settlements Via Stipulations of the Parties

• The Commission favors resolution of disputes via stipulation of the parties.
• The Commission may approve a negotiated settlement without an evidentiary hearing.
Mediation of Disputes

• Section 120.573, F.S., also allows for the mediation of certain matters affecting substantial interests if:
  – The Commission and all of the parties to the action agree in writing to mediate the matter within 10 days after the time period stated in the announcement for election of an administrative remedy is received.
Mediation of Disputes

• The mediation must conclude within 60 days of the commencement thereof.
• The mediation agreement must include:
  – The selection of the mediator
  – The allocation of costs and fees
  – The mediating parties’ understanding regarding the confidentiality of discussions and documents introduced during the mediation.
Mediation of Disputes

• If the mediation results in the settlement of the dispute, the Commission must enter a final order incorporating the final agreement of the parties.

• If the mediation terminates without settlement, the administrative hearing process is resumed.
Bibliography & Citation of Sources

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Bibliography

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Other sources relied upon are the Florida Statutes and Florida Administrative Code.

Citation of Sources

2. Slide 2, Bullet 2, quoting id. at 30.
4. Slide 3, citing id. at 30 n. 5; see also Florida Public Service Commission STATUTORY DEADLINES UNIQUE TO THE PSC November 19, 2003.
7. Slide 6, citing id. at 30-31.
8. Slide 7, Bullet 1, quoting id. at 31.
10. Slide 7, Bullet 3, citing id. at 31.
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12. Slide 9, Bullet 1, quoting id. at 31
13. Slide 9, Bullets 2-4, citing id. at 31.
14. Slide 10, Bullet 1, quoting id. at 32.
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25. Slide 17, id.
28. Slide 20, id.
29. Slide 21, id.