

PENNSYLVANIA PUBLIC UTILITY COMMISSION

ADMINISTRATIVE PROCESS:
OPEN MEETING LAW
PUBLIC MEETING

PRESENTED BY:
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ASSISTANTS

SUNSHINE ACT - 1

- **OPEN MEETINGS** - Official action and deliberations by a quorum of the members of an agency, shall take place at a meeting open to the public.
 - **DEFINITIONS**
 - **MEETING** - Prearranged gathering of an agency; attended or participated in by a quorum of the members; for the purpose of deliberating agency business or taking official action

SUNSHINE ACT - 2

– DEFINITIONS (Cont)

- **AGENCY BUSINESS** - Framing, preparation, making or enactment of:
 - **Laws,**
 - **Policy,**
 - **Regulations,**
 - **Creation of liability by contract,**
 - **Adjudication of**
 - » **Rights**
 - » **Duties**
 - » **Responsibilities**

SUNSHINE ACT - 3

- **DEFINITIONS (Cont.)**

- **Agency Business (Cont.)**

- Does not include administrative action, that is,

- » Execution of policies regarding persons/things previously authorized or required by official agency action at an open meeting

- **DELIBERATION - Discussion of agency business for purpose of making a decision**

SUNSHINE ACT - 4

– DEFINITIONS (Cont.)

• OFFICIAL ACTION -

- Recommendation made by an agency pursuant to statute, ordinance, executive order
- The establishment of policy by an agency
- Decisions on agency business made by agency
- The vote taken by an agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order

SUNSHINE ACT - 5

- **DEFINITIONS (CONT)**

- **PUBLIC NOTICE**

- **For a meeting:**

- 1) **Notice of the place, date and time;**

- » **In a newspaper of general circulation;**

- » **In the political subdivision where the meeting will be held**

- 2) **Posting a notice of place, date, time**

- » **Prominently at the principal office of the agency holding the meeting or at the public building where the meeting will be held**

SUNSHINE ACT - 6

- **PUBLIC NOTICE (CONT)**

3) Upon request, to any newspaper, radio station or party

- **FOR 1ST REGULAR MEETING OF CALENDAR/FISCAL YEAR**

Not less than 3 days prior to meeting

- **REMAINING REGULAR MEETINGS**

In time for publication before meetings

SUNSHINE ACT - 7

– PURPOSES (CONT)

- **TO ENHANCE AND ENSURE PROPER FUNCTIONING OF DEMOCRATIC PROCESS BY PROTECTING PUBLIC'S RIGHT TO:**
 - Notice of Meetings
 - Be present at meetings of agencies
 - Attend and Witness deliberations, policy formulation, and decision making for agency business
- **TO AVOID SECRECY IN PUBLIC AFFAIRS WHICH:**
 - Undermines the public's faith in government
 - Undermines the public's role in a democratic society

SUNSHINE ACT - 8

- **LAW APPLIES TO:**
 - **General assembly**
 - **Executive branch of government (including governor's cabinet when meeting on official policy making business)**
 - **Any board, council, authority**
 - **Any commission**
 - **Any political subdivision (state, municipal, township)**
 - **School authority, school board, school governing body**

SUNSHINE ACT - 9

- **RECORDING OF VOTES**

- **Vote of each member who actually votes must be:**
 - **Publicly cast**
 - **Recorded**

- **MINUTES**

- **WRITTEN MINUTES MUST BE KEPT SHOWING:**
 - **date, time & place of meeting**
 - **names of members present**
 - **the substance of all official actions & record by individual member of the roll call votes taken**
 - **names of anyone officially appearing and their comments**

SUNSHINE ACT - 10

- **EXCEPTIONS TO OPEN MEETING LAW:**
 - **EXECUTIVE SESSIONS:**
 - **Public excluded (although the agency may admit those necessary to carry out the purpose of the meeting)**
 - **ISSUES FOR EXECUTIVE SESSION:**
 - **Employment**
 - **Appointment**
 - **Termination**
 - **Terms & conditions**
 - **Performance evaluations**
 - **Promotion/discipline**

SUNSHINE ACT - 11

– ISSUES FOR EXECUTIVE SESSION (CONT)

- **LABOR RELATIONS/COLLECTIVE BARGAINING**
 - Information
 - Strategy
 - Negotiations
- **PURCHASE OR LEASE OF REAL PROPERTY (LAND/STRUCTURES)**
- **CONSULTATION(LLEGAL/PROF)**
 - Information
 - Strategy
 - » In connection with litigation or issues on which identifiable complaints are expected to be filed
- **PRIVILEGED AGENCY BUSINESS**

SUNSHINE ACT - 12

- **PUBLIC PARTICIPATION:**

- **Must permit opportunity for comment before official action is taken:**

- » **Exception: if agency had practice, before 1993, of holding special meetings solely for the purpose of public comment in advance of advertised regular meetings, then there is no requirement for comment at the open meeting**

PUBLIC MEETINGS - 1

- **FREQUENCY:**
 - Regular public meetings generally held at set time every 2 weeks
- **PUBLIC NOTICE:**
 - Regular meetings - notice given once for each calendar or fiscal year
 - Notice shows time, date and place of meetings

PUBLIC MEETINGS - 2

- **PUBLIC NOTICE (Cont)**
 - **SPECIAL MEETINGS/RESCHEDULED MEETINGS**
 -
 - **Notice by**
 - » **Publication in newspapers of general circulation**
 - » **Posting copy prominently in principal office of commission OR**
 - » **Building where meeting will be held**

PUBLIC MEETINGS - 3

- **PUBLIC NOTICE (Cont)**
 - **At least 3 days before first regularly scheduled meeting**
 - **At least 24 hours before time of special or rescheduled meeting**
- **EMERGENCY MEETING - Involving a clear and present danger to life or property, will not violate law**

PUBLIC MEETINGS - 4

- **MINUTES -**
 - Transcribed by court reporter
 - Tape recording to assist in preparation of official minutes
- **TRANSCRIPTS - Available to public for inspection during normal business hours**
 - Transcript may not be copied; copies may be purchased from court reporter
 - Notes may be taken

Proceedings - 1

- **HOW MATTERS GET TO PUBLIC MEETING**
 - **UNCONTESTED PROCEEDINGS:**
 - **Examples:**
 - **Tariff Changes**
 - **Rate Cases**
 - **Application cases**
 - **Certificates of Convenience**
 - » **Abandonment**
 - **Affiliated Interest proceedings**
 - **BUREAU RECOMMENDATION**
 - **Report/proposed order**
 - » **Minimum of 9 days before scheduled meeting**

Proceedings - 2

- **CONTESTED PROCEEDINGS**
 - **OFFICE OF ADMINISTRATIVE LAW JUDGE**
 - Provides open, fair forum and full opportunity for individuals/groups to present positions
 - Types of cases
 - » customer complaints
 - » rate increase requests
 - » applications
 - » tariff rule changes
 - » affiliated interest contracts, etc.

Proceedings - 3

- **Hearings before ALJs are public and are transcribed by court reporter**
 - **parties must follow rules of evidence**
 - **right to discovery and cross-examine witnesses under oath**
 - **right to file briefs, and exceptions**
 - **ALJS:**
 - **Prehearing conference**
 - » **Identify parties**
 - » **Identify issues**
 - » **Discovery schedule**
 - » **Litigation schedule**
 - » **Public input hearings**

Proceedings - 4

- **ALJS (Cont)**
 - Preside at formal hearings
 - Gather all facts
 - Prepare written decision outlining issues and recommending resolution
- **MEDIATORS -**
- **ALTERNATE DISPUTE RESOLUTION**
 - Avoids expensive, time consuming litigation
 - Facilitates amicable resolution of issues
- **ALJ DECISIONS**
 - Initial decisions
 - Recommended decisions

Proceedings - 5

- **EXCEPTIONS/REPLIES TO EXCEPTIONS**
 - **OFFICE OF SPECIAL ASSISTANTS**
 - **Reviews exceptions**
 - **Recommends resolution**
 - **Public meeting report and proposed opinion and order**
 - » **Confidentiality of reports**
 - **Polls**
 - » **Binding**
 - » **Non-binding**

PUBLIC MEETING - 1

- **COMMISSION REVIEW**
 - **Motions**
 - **More than two commissioners cannot meet and discuss cases for action**
 - **Role of commissioners assistants**
- **AGENDA**
 - **REGULAR**
 - **Tentative/Final**
 - **CARRY-IN**
 - **FORMAT**
 - **Bureau**
 - **Case**
 - **Identification**
 - **Recommendation**

PUBLIC MEETING - 2

- **CONDUCT OF PUBLIC MEETING**
 - **CALL TO ORDER**
 - **APPROVAL OF MINUTES OF LAST MEETING**
 - **SPECIAL ACKNOWLEDGEMENTS**
 - **PRESENTATION OF CASES**
 - **Motions**
 - **To adopt recommendation**
 - **To take other action**
 - **VOTE ON MOTION**
 - **Majority necessary to adopt motion**
 - **If motion fails, another motion must be advanced**
 - **Effect of tie vote**

PUBLIC MEETING - 3

- **RESULT OF VOTE**
 - **OPINIONS AND ORDERS**
 - Re-write
 - Circulation
 - Entry
 - **RECONSIDERATION, CLARIFICATION**
 - **MODIFICATION**
- **MISCELLANEOUS:**
 - **EXECUTIVE SESSIONS**
 - **NOTICE PROVIDED IN PUBLIC MEETING AGENDA**

PUBLIC MEETING - 4

- **MISCELLANEOUS (Cont)**
 - **EXECUTIVE SESSIONS (Cont)**
 - **TOPICS:**
 - **Personnel items, litigation consultation, initiation & conduct of investigations, legally privileged matters, collective bargaining issues, sale, purchase, lease of real estate.**
 - **NOTATIONAL VOTING**
 - **EMERGENCY ORDERS**
 - **Ratification at Public Meeting**