
New York Public Service Commission Regulatory Decision Making Procedures

*Generic Proceedings, Rulemakings, Hearings &
Collaborative Forums*

David Flanagan
Director of Public Affairs
NYS Public Service Commission

The Commission

- Bipartisan by law since 1970
- The Chairman, William M. Flynn, is the Chief Executive Officer of the Department
- The five members are appointed by the Governor and confirmed by the State Senate for a term of six years
- Current members are:
 - *Thomas J. Dunleavy*
 - *Leonard A. Weiss*
 - *Neal N. Galvin*

Mandate

- To ensure that all New Yorkers have access to reliable low-cost utility services
- The Department is the staff arm of the Public Service Commission
- Charged by law with responsibility for setting rates and ensuring safe and reliable service
- The Commission also exercises jurisdiction over the siting of major gas and electric transmission facilities

Regulation & Oversight

- The Commission regulates the state's electric, gas, steam, telecommunications, and water utilities
- The Commission also oversees the cable-television industry

Decision Making Processes

- Rate Case - Review
- Generic Proceedings
- Rulemaking
- Collaborative Proceedings
- Tariff Filings

Decision Making Processes

- Vehicles
 - *Commission Sessions*
 - *Hearings*
 - Public Statement
 - Evidentiary
 - Legislative
 - *Paper Proceedings*
 - *Collaborative Forums*

Rate Case

Instituting a Rate Case

- Can be instituted on motion of the Commission, but normally the utility files for a rate change
- Utility filing must be acted on within 11 months of the application

Rate Case

Utility Filing Requirements

- Utility has burden of proof
- Three years of historic data
- An historic test year and a forecast rate year
 - *Links must be provided explaining any changes*
- Testimony supporting request plus workpapers

Rate Case

Typical Schedule

- Month 1: Discovery period begins
 - *Public hearings*
 - *Normally a meeting of all parties is held where the utility explains its request*
- Month 4: Staff and intervenor testimony files
- Month 5: Company rebuttal
- Month 5: Hearings
- Month 7: Brief and Reply Briefs to ALJ
- Month 8: Judge's Recommended Decision
- Month 9: Brief and Reply Brief to Commission
- Month 11: Commission Opinion Issued

Issues Other Than the Size of the Pie

- Rate Design and Revenue Allocation
- Shopping credits
- Performance incentives
- Retail access incentives and rules
- Economic Development Programs
- Low Income Programs

Generic Proceeding

- While rate cases are more utility specific, generic cases are used to examine issues of common interest to all utilities: examples:
 - *Should we introduce competition in the generation industry?*
 - *How do we address the needs of low-income customers?*
 - *How do we determine the cost of capital?*
 - *Should NYS implement a Renewable Portfolio Standard Program?*

Generic Proceeding

- There is no statutory clock; Commission provides guidance on timeframe for the proceeding, typically through the Judge
- Commission typically issues an Order explaining the scope of the proceeding and its expectations
- The process could take several forms depending on the topic and parties

Generic Proceeding

- Interdisciplinary staff team formed; typically takes lead in the proceeding; at times leadership shared with other parties
- Parties work together, write white papers to articulate issues better
- Typically several meetings held to discuss papers
- Position papers exchanged

Generic Proceeding

- If there is consensus, parties can express their common position to the Judge who will report that with his analysis to the Commission
- If there is no consensus, parties can file opposing views with ALJ. Hearings held, if needed.
- ALJ provides analysis to the Commission

Generic Proceeding

Example of a Generic Proceeding

- New York State Public Service Commission voted to adopt a renewable energy policy designed to increase to at least 25 percent by 2013 the proportion of electricity sold to consumers in New York State that is generated from renewable resources.

Generic Proceeding

Example of a Generic Proceeding (cont'd)

- The Commission instituted its proceeding to explore and develop a Renewable Portfolio Standard in February 2003. Over 150 active parties, representing a broad range of public and private interests, participated in the process of developing an RPS policy for New York. Department staff conducted an extensive public education effort for the RPS initiative, including public forums in New York City, Long Island, Buffalo, Henrietta, Syracuse, Binghamton, Watertown and Albany. Over 150 speakers provided comments at the forums, and the Department received 1,161 letters, e-mails and opinion line calls providing additional comments.

Rulemaking

- Rulemaking is typically initiated to make changes to the Commission's existing rules and regulations and/or to introduce new rules
- This could be at the initiation of staff or Commission or other parties to achieve certain goals
- This is an elaborate process governed by the State Administrative Procedures Act (SAPA)

Rulemaking

- Staff drafts proposed rules and regulations and provides an analysis to the Commission
- The proposed rules are then issued for public comment
- Staff then analyzes the comments and makes recommendations to the Commission
- If major changes are made to the proposed rules, then they may have to be reissued once more for comments

Tariff Filings

Purpose

- Make minor 'housekeeping' changes
- Make changes to terms and conditions of service
- Make rate changes that may be revenue neutral
- In compliance with Commission determinations
 - *rate case outcomes*
 - *legislative changes*

Tariff Filings

- Housekeeping changes don't need much analysis or public input
- Other filings subject to public comment
- Staff from the lead division, with input from public and from other Offices in the PSC, makes a recommendation to the Commission

Vehicles

- Commission Sessions
- Hearings
- Paper proceedings
- Collaborative Forums

Vehicles

Commission Sessions

- Held at least once in a month or more as needed
- Sessions, including the agenda, are noticed at least a week ahead of schedule
- There has to be a quorum of Commissioners
- The sessions are held in public and the discussion and voting on items by the Commissioners is done in public

Vehicles

Commission Sessions (cont'd)

- Only the Commissioners and senior Commission staff speak at the sessions; others are not allowed to speak

- PSC staff or Judges prepare session items for Commissioners' consideration and distribute them at least 10 days ahead of session.
 - *They are interoffice memorandums and are not made public.*
 - *After the session, they may be made public as is or with some changes.*
 - *Some items result in special Orders and Opinions of the Commission (rate cases, policy items, etc).*
 - *Final Commission Orders and Opinions are public documents.*

Vehicles

Hearings

- Public Statement Hearings
- Evidentiary Hearings
- Legislative Hearings

Vehicles

Hearings – Public Statement

- Held in the context of rate cases and major policy, or generic, proceedings
- At least a few are held in the affected territories, giving an opportunity for the general public to come and make their views known.
- Typically they are conducted by the ALJ assigned to the case. The Judge explains the process for the case.

Vehicles

Hearings – Public Statement (cont'd)

- Typically at least one Commissioner attends the hearing.
- The comments of public are transcribed and made a part of the official record in the case
- The Judge summarizes the comments from the public in his analysis to the Commission
- The Judge and the PSC incorporate the comments in their decision making.

Vehicles

Hearings – Evidentiary

- Are typically held in the context of rate cases or other proceedings where there is an issue of fact in question
- Witnesses are deposed before the Judge; all the official parties to the Case can cross examine the witness
- The hearings are transcribed and become a part of the official record.

Vehicles

Hearings – Legislative

- Are held typically for very major policy proceedings
(*i.e., RPS*)
- Parties are given time to address the Commissioners at a public Commission session to explain their views and positions
- Senior members of the parties typically address the Commission
- Commissioners ask the parties questions directly
- Hearing transcribed and becomes part of official record

Vehicles

Paper Proceedings

- There may be no PSH or evidentiary hearings
- Most of the record is developed based on paper submissions by the parties in a given case
- Staff or Judge summarize views of the parties and make recommendation to the Commission
- Parties may or not meet at all during the course of the proceeding

Vehicles

Collaborative Forums

- This process is becoming more of the norm for dealing with issues
- Less adversarial process; parties openly express their views in a collaborative process
- Forums are facilitated by an ALJ or staff or professional facilitators
- Attempts are made to find common ground for all the parties and resolve conflicts amicably; evidentiary hearings possible on issues where agreement cannot be reached

Vehicles

Collaborative Forums (cont'd)

- Parties are less intimidated by the process
- Easier for parties with less sophistication in the regulatory process to participate and make their views known
- Sometimes it can be a tedious, frustrating and time consuming process, however.