

Florida Public Service Commission

Commission's Mission Statement: To facilitate the efficient provision of safe and reliable utility services at fair prices.

Background:

The Florida Public Service Commission ("Commission") was originally created by the Florida Legislature in 1887 to regulate the rates charged by Florida's railroads for passengers and freight service. As Florida's population grew and its industry diversified, the Commission's jurisdiction expanded. At one time, the Commission regulated the rates charged by railroads, motor carrier transportation companies, and airlines. Today, the Commission exercises regulatory authority over investor-owned electric, natural gas, telephone, water, and wastewater utilities in one or more of three key areas: (1) rate base/economic regulation; (2) competitive market oversight; and (3) monitoring of safety, reliability, and service. The Commission exercises limited regulatory authority over municipal and rural electric cooperatives.

The Commission carries on its work through two primary functional units: The Office of the Executive Director and the Office of the General Counsel. These Offices are charged with implementing chapters 350, 364, 366, 367, 368 and 427, Florida Statutes, and sections 403.064, 403.501-403.539, and 403.9401-403.9425, Florida Statutes. The Commission's promulgated rules are located in chapter 25 of the Florida Administrative Code.

The Commission is headed by five Commissioners. Commissioners are now nominated by the Florida Public Service Commission Nominating Council, appointed by the Governor, and confirmed by the Senate. The Commission Chairman is elected by a majority vote of the Commissioners to serve as chair for a period of two years. The Chairman is the chief administrative officer of the Commission, presiding at all hearings and conferences when present, setting Commission hearings, and performing those duties prescribed by law. In the Chairman's absence, the senior member of the Commission panel presides. A majority of any Commission panel constitutes a quorum, and the Commission cannot take formal action in the absence of a quorum. A majority vote of the quorum determines Commission action. Where only two Commissioners are assigned to a proceeding and they do not agree on a final decision, the Chairman of the Commission, after appropriate review of the record, shall cast the deciding vote. When the Chairman is one of a two-member panel and the panel does not agree on a final decision, the matter shall be referred to the full Commission for disposition. In such an event, the full Commission shall review the record as appropriate.

The Commission conducts most of its regulatory business at its regularly scheduled Agenda Conferences, which are usually every other Tuesday. At these conferences, the Commission reviews the staff recommendations for dockets on the agenda. Depending on the procedural status of the dockets, the Commission entertains comments from the parties and the public. The Commission's order may adopt, reject, or modify the staff recommendations. Orders issued by the Commission are available on its website: <http://www.psc.state.fl.us/dockets/orders/>.

Commission final orders involving the rates or service of electric, gas, or telephone companies are appealed directly to the Florida Supreme Court. Commission final orders related to water and wastewater are appealed to the First District Court of Appeal. In addition, under the Federal Telecommunications Act of 1996, some Commission decisions implementing federal law are reviewable by complaint in the U.S. District Court for the Northern District of Florida.

Commissioners:

Chairman Matthew M. Carter, II (Appointed through 01/01/10) (Current Chair)

Commissioner Lisa Polak Edgar (Appointed through 01/05/09)

Commissioner Katrina J. McMurrian (Appointed through 01/01/10)

Commissioner Nancy Argenziano (Appointed through 01/01/11)

Commissioner Nathan A. Skop (Appointed through 01/01/11)

Executive Director:

Mary Andrews Bane
Office of Executive Director
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6068

The Office of the Executive Director advises the Commission on all technical and policy matters under the Commission's jurisdiction and, in coordination with the Office of the General Counsel, serves as the Commission's liaison with federal and state agencies as well as the Florida Legislature. Also, the Office of the Executive Director has authority over all divisions and offices, except the Office of the General Counsel.

Agency Clerk:

Ann Cole
Office of Commission Clerk
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6770

The Office of Commission Clerk is responsible for accepting official filings, maintaining the official case files, coordinating the Commission's records management program, and issuing all commission orders and notices. The hours of operation are from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays. For information on Dockets and Filings, please refer to <http://www.psc.state.fl.us/dockets> or call the Office of the Commission Clerk.

General Counsel:

Michael G. Cooke
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6199

The General Counsel, Michael G. Cooke, is responsible for all legal advice provided to the Commission and all legal matters under the Commission's jurisdiction. He supervises the attorneys and staff in the Office of General Counsel and advises the Commission on ethics law issues and other non-regulatory matters. The Office of General Counsel, in coordination with the

Office of the Executive Director, serves as the Commission's liaison with federal and state agencies as well as the Florida Legislature and political subdivisions of the state. In the course of evidentiary proceedings before the Commission, the Office of the General Counsel and its sections are responsible for presentations of staff positions in the proceedings, including cross examination of witnesses and presentation of staff testimony.

Number of Lawyers on Staff: 21

Kinds of Cases:

Utility Regulation, Telecommunications Arbitration

The Office of the General Counsel is divided into three sections: (1) Appeals, Rules, and Mediation Section; (2) Economic Regulation Section; and (3) Competitive Markets and Enforcement Section. The Appeals, Rules, and Mediation Section is responsible for defending Commission orders on appeal, defending the Commission rules challenged before the Division of Administrative Hearings ("DOAH"), and representing the Commission before state and federal courts. The Section supports technical divisions in making filings with, or presentations to, other federal, state or local agencies. The Section advises in the promulgation of rules, and attends or conducts rulemaking hearings at the direction of the Commission. It also offers mediation services to parties to Commission proceedings.

The Economic Regulation Section is responsible for legal issues related to electric, natural gas, water and wastewater industries. The Competitive Markets and Enforcement Section is responsible for legal issues related to the telecommunications industry. Both sections are responsible for conducting discovery, presenting staff positions, presenting any staff testimony, and cross-examining other parties' witnesses in matters involving evidentiary hearings before the Commission or an Administrative Law Judge. In conjunction with the appropriate technical staff, the Office of General Counsel prepares recommendations to the Commission and prepares written orders memorializing Commission decisions.

APA Interaction:

The Commission is subject to the Administrative Procedure Act (Chapter 120) and is generally subject to the Uniform Rules of Procedure. However, the Commission has a number of specific exemptions from the Uniform Rules, so a practitioner must be sure to consult Chapters 25-22 and 25-40, Florida Administrative Code. In addition, the Commission has several agency-specific procedural provisions in section 120.80, Florida Statutes. While the Commission has the authority to send cases to DOAH for hearings before an Administrative Law Judge, the vast majority of Chapter 120 proceedings are heard by the five-member Commission or by a panel of two or more Commissioners.

Practice Tips:

The Commission has several unique procedural practices: (1) the Commission uses pre-filed written testimony in cases heard by the Commission or a Commission panel; (2) the Commission has strict rules for the classification and handling of confidential materials; and (3) the Commission makes available options for the reconsideration of final Commission orders.

Questions about these or any other procedural matters may be directed to any member of the General Counsel's office.

For an excellent article on practicing before the Commission, please refer to Charles W. Murphy's article, *Public Service Commission Practice*, which was published in *The Florida Bar Journal* in its January 1995 issue (69 Fla. B.J. 30).