

Submitted by Commissioner Nathan A. Skop

In all docketed proceedings in which a hearing has been held, commission staff shall not initiate, engage in, nor consider ex parte communications during the time between the end of the hearing, when the record is closed, and the filing of the commission staff recommendation. This subsection does not apply to commission staff who are required to initiate, or respond to, written communications for the purpose of scheduling or completing discovery. All written communications falling within this exemption for commission staff shall be filed with the commission clerk, placed in the docket, and posted to the commission website within 72 hours from the time that the written communication was sent or received by the commission.

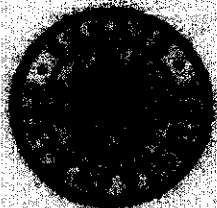
JEFF ATWATER
President of the Senate

LARRY CRETEL
Speaker of the
House of Representatives

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J.D. Kelly
Public Counsel



February 4, 2010

Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Stuart Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Ms. Cole:

Enclosed are the suggested alternative proposals of the Public Counsel (OPC) to Rule 25-22.033, F.A.C. Suggested alternative language is contained in red as underlines or ~~strikethrough~~ to the Proposed Rule Development version included in the January 27, 2010. Notice of the Rule Development Workshop.

The OPC offers these suggestions with the constructive purpose of assisting the Commission in revising its staff communication rules for the first time in nearly 17 years. Like the Commission, the Public Counsel believes that the fundamental purpose behind this Rule Development process is to continue to maintain the credibility, integrity and public confidence in the Commission's decision making process.

The OPC recognizes that these proposals need to be measured against the need of the Commission to efficiently and effectively fulfill its obligations. There may be better ways to capture the intent of the OPC's proposals. Even so, the OPC believes that, in order to maintain public confidence whatever rules are adopted must, at a minimum:

- Clearly prohibit *ex parte* Communications
- Provide a workable mechanism for reasonable and timely notice of intended communications
- Provide a level communications playing field for all with interests before the commission
- Prohibit circumvention of the clear intent of the rules

The Public Counsel looks forward to explaining the enclosed suggestions and is committed to constructively assisting in the rule development process.

Sincerely,

Charles Beck
Deputy Public Counsel

Enclosure

JEFF ATWATER
President of the Senate



J.R. Kelly
Public Counsel

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LARRY CRETUL
Speaker of the House of Representatives



February 5, 2010

Samantha Cibula
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Samantha:

Attached is a revised version of the Public Counsel's Alternative Suggestions for amendments to Rule 25-22.033 for your consideration. I apologize but the version that was sent yesterday did not include page numbers and language in sections (6) and (7) omitted references to sections 120.54 and 120.565 as well as the inclusion of "interested persons" in the same sections. These additions are necessary to make the sections consistent with sections (2) and (3). Please substitute the attached rules proposal language for what was submitted on February 4, 2010, along with this explanation.

I apologize for the inconvenience. Please call with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles J. Rehwinkel".

Charles J. Rehwinkel
Associate Public Counsel

Enclosure

OFFICE OF PUBLIC COUNSEL ALTERNATIVE SUGGESTIONS

1 **25-22.033 Commission Employee Communications with ~~Communications Between Commission~~**
2 **~~Employees and Parties and Interested Persons.~~**

3 (1)The Commission recognizes that Commission employees must exchange information with
4 parties and other persons who have an interest in Commission proceedings. However, the
5 Commission also recognizes that all parties and interested persons to docketed ~~adjudicatory~~
6 proceedings need to be notified and given an opportunity to participate in certain communications.
7 The intent of this rule is not to prevent or hinder in any way the exchange of information, but to
8 provide all parties and interested persons to docketed ~~adjudicatory~~ proceedings notification of and
9 the opportunity to participate in certain communications.

10 (2)~~(1)~~This rule shall govern ~~communications between~~ Commission employees'
11 communications with ~~and~~ parties and interested persons to docketed proceedings before the
12 Commission. This rule shall not apply to ~~in emergency operation center activities, proceedings under~~
13 ~~Sections 120.54, 120.565, proceedings under Section 367.0814, F.S. Florida Statutes, proposed~~
14 ~~agency action proceedings before the Commission has voted to issue a proposed agency action order,~~
15 ~~non-rate case tariffs, or workshops (other than rulemaking workshops), internal affairs meetings~~
16 ~~,except for communications related to, but outside of, internal affairs meetings. Also exempted are~~
17 docketed and undocketed audits, field telephone service evaluations, informal consumer complaints,
18 and electric and gas safety inspections, and cases pending in the court system. Nothing in this rule is
19 intended to modify or supersede the procedural requirements for formal discovery under Rules 1.280
20 through 1.390, the Commission's rules and applicable provisions of the Florida Rules of Civil
21 Procedure, or affect communications regarding discovery request, procedure, or other matters not
22 concerned with the merits of a case.

NOTICE OF PROPOSED RULE DEVELOPMENT
UNDOCKETED
February 4, 2010

1 (3) For purposes of this rule, the following definitions shall apply:

2 (a) "Party" or "Parties" are those individuals or entities designated in the docket file of the
3 proceeding or by order of the Commission as an Official Party of Record and includes employees,
4 witnesses, consultants and persons acting in a representative capacity for individuals or entities
5 designated in the docket file.

6 (b) "Interested persons" are those individuals or entities listed in the docket file of the proceeding
7 but not designated as an Official Party of Record to the proceeding and persons, other than those persons
8 specified in S.350.042 (2), F.S., who have, or could reasonably be presumed to have, an interest in the
9 outcome of the proceeding in either their individual or representative capacity.

10 (c) "Ex parte Communication" means any communication that, if written, is not served on all
11 parties and interested persons to a proceeding, and, if oral, is made without adequate notice to the parties
12 and an opportunity to be present.

13 ~~(4)(2)~~Written Communications -- Notice of any Ex parte written communications are prohibited.
14 Written communications between Commission employees and parties or interested persons shall be
15 transmitted to all other parties at the same time as the written communication is transmitted, ~~whether by~~
16 ~~U.S. Mail or other means.~~ Transmittal of the communications to all required persons and parties shall be
17 in the same form, by the same means and simultaneous with transmittal to the recipient, whether by U.S.
18 Mail or other means.

19 ~~(5)(3)~~Scheduled Meetings and Conference Calls All parties to the proceeding shall be given
20 reasonable notice of the time and place of any meeting or conference call Commission employees and
21 parties or interested persons. For purposes of this subsection, a conference call is defined as a telephone
22 call involving three or more persons. The notice of the meeting or conference call shall be posted on the
23 Commission's website, www.floridapsc.com, prior to the meeting or conference call. (5)(3). Ex parte
24 unwritten communications are prohibited. Notice of any meeting or telephone call shall be provided to

NOTICE OF PROPOSED RULE DEVELOPMENT
UNDOCKETED
February 4, 2010

1 parties and interested persons, and shall be posted on the Commission's web site, www.floridapsc.com, a
2 reasonable time prior to the meeting or telephone call. Meetings or calls that circumvent, or which are
3 intended to circumvent, the fair and open communications purposes of this rule are prohibited.

4 (6) All written communications between Commission employees and parties or interested persons
5 in proceedings in which the Commission is determining the substantial interests of a party pursuant to
6 Sections 120.54, 120.565, 120.569 and 120.57, F.S., except discovery requests and discovery responses,
7 shall be placed in the docket file to which the communication pertains by the person making the
8 communication within 3-7 days of the date of the communication. If a Commission employee orally
9 communicates with a party or interested person in such proceedings outside of a noticed meeting or
10 conference call, the Commission employee shall summarize in writing the oral communication and file
11 the summary in the docket file within 7-3 days of the date of the communication. If the communication
12 occurs less than 7-3 days before a hearing or decision making point in the proceeding, the
13 communication or the summary, if the communication is oral, shall be placed in the docket file within a
14 reasonable time in advance of the hearing or decision making point. Nothing in this section is intended to
15 provide a cure for an otherwise unlawful or prohibited communication.

16 (7) No Commission employee shall contact a party or interested person and no party or interested
17 person shall contact a Commission employee on any matter at issue in a Sections 120.54, 120.565,
18 120.569 or 120.57, F.S., proceeding during the period of time between the conclusion of the hearing in
19 the proceeding and the issuance of the final order in the proceeding unless all parties to the proceeding are
20 included in the communication. The prohibitions in this subsection shall not apply to those
21 communications between Commission employees and parties to investigate and assist in the resolution of
22 informal consumer complaints.

23 (8)(4) Response to Communications - Any party to a proceeding may prepare a written response
24 to any communication between a Commission employee and another party or interested person. Notice of

NOTICE OF PROPOSED RULE DEVELOPMENT
UNDOCKETED
February 4, 2010

1 ~~any such~~ Written responses shall be transmitted to all parties at the same time as the written response,
2 whether by U.S. Mail or other means.

3 CODING: Words underlined are additions; words in struck through type are deletions from existing law.

4 (9)(5)Prohibited Communications - No Commission employee shall directly or indirectly relay to
5 a Commissioner any communication from a party or an interested person which would otherwise be a
6 prohibited ex parte communication under Section 350.042, F.S. ~~Florida Statutes~~. Nothing in this
7 subsection shall preclude non-testifying advisory staff members from discussing the merits of a pending
8 case with a Commissioner, provided the communication is not otherwise prohibited by law. However, a
9 staff member who testifies in a case or who has acted in a prosecutorial role in a license revocation or
10 suspension proceeding or a proceeding imposing administrative fines or penalties shall not discuss the
11 merits of that case with any Commissioner during the pendency of that case.

12 Specific Authority 350.01 (7),350.127(2) FS.

13 Law Implemented 120.569, 120.57,350.042 FS.

14 History-New 3-24-93, Amended _____.

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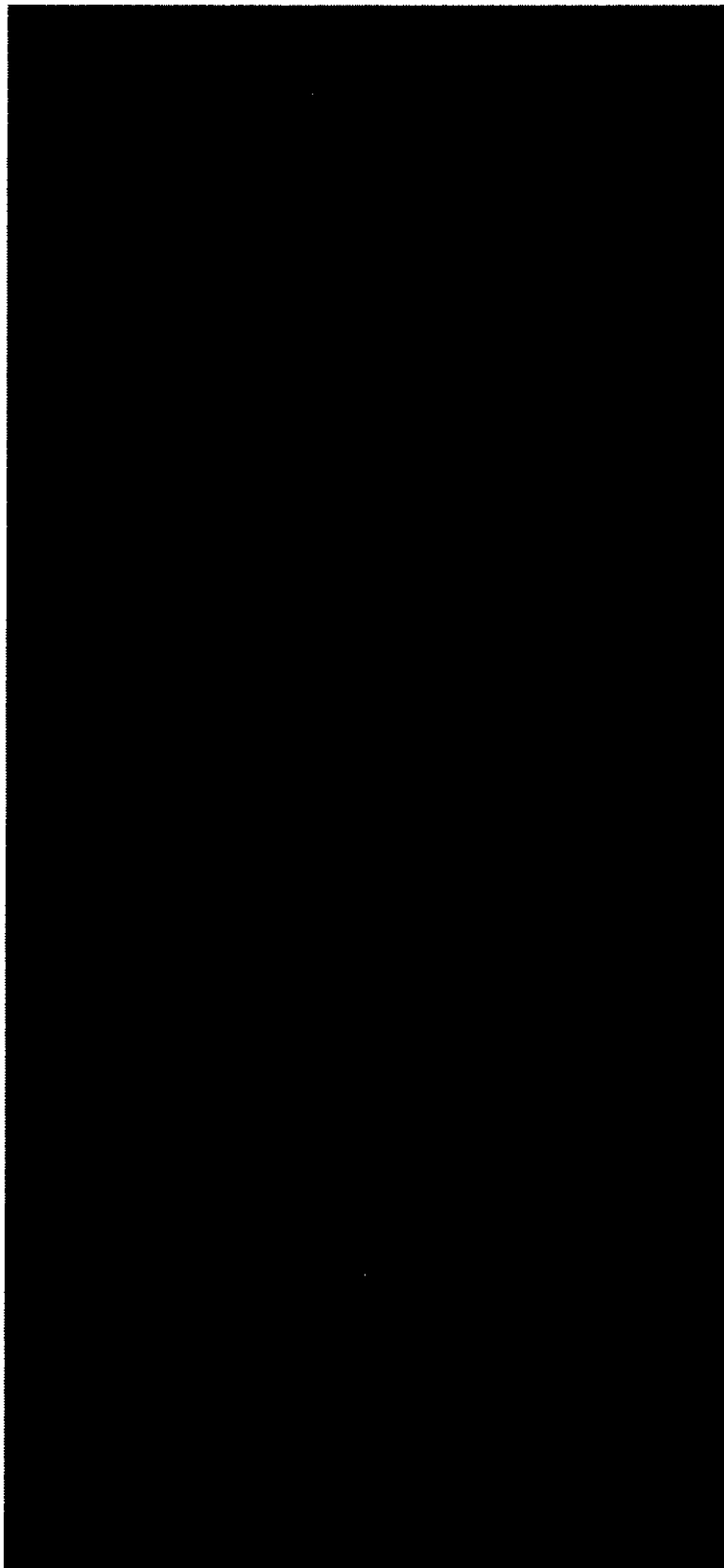
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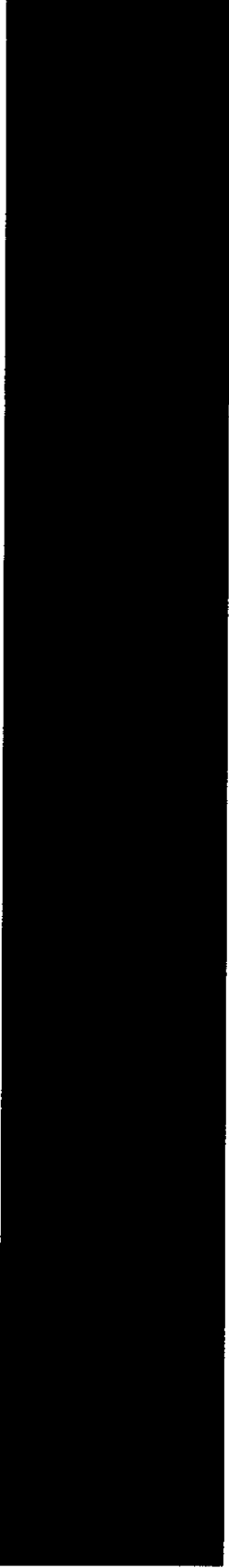
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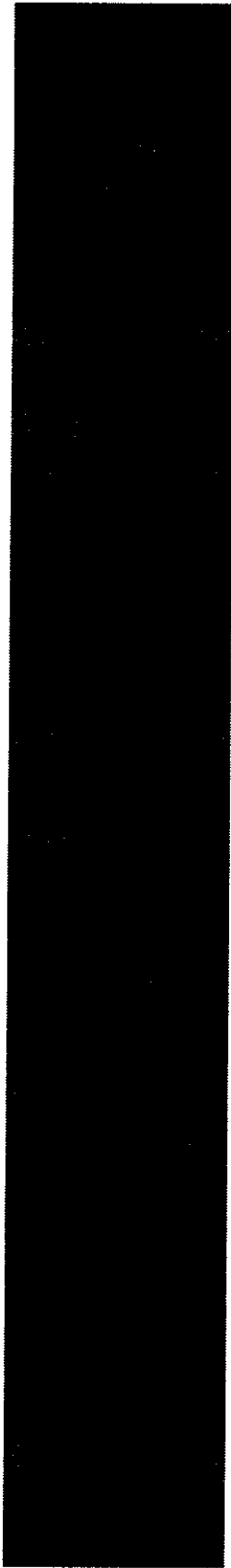
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20 CODING: Words underlined are additions; words in struck through type are deletions from existing law.



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- **OPC STATE SURVEY**
 - **23 STATES RESPONDING**
 - **COMMISSIONER SELECTION**
 - **STAFF ORGANIZATION**
 - **TRIAL JUDGES, ALJs, HEARING OFFICERS**
 - **STAFF PROCEDURES—
ADVISORY/PROSECUTORIAL**
 - **EX PARTE COMMUNICATIONS**



- CALIFORNIA
- CONNECTICUT
- FLORIDA
- GEORGIA
- INDIANA
- IOWA
- KANSAS
- MAINE
- MASSACHUSETTS
- MICHIGAN
- MINNESOTA
- MISSISSIPPI
- NEW JERSEY
- NEVADA
- NEW YORK
- OHIO
- PENNSYLVANIA
- TENNESSEE
- TEXAS
- UTAH
- WASHINGTON
- WEST VIRGINIA
- WYOMING

- 
- ELECTED COMMISSIONERS = 2 STATES
 - APPOINTED COMMISSIONERS = 21 STATES

NUMBER OF COMMISSIONERS:

- THREE COMMISSIONERS = 12 STATES
- FOUR COMMISSIONERS = 1 STATE
- FIVE COMMISSIONERS = 10 STATES

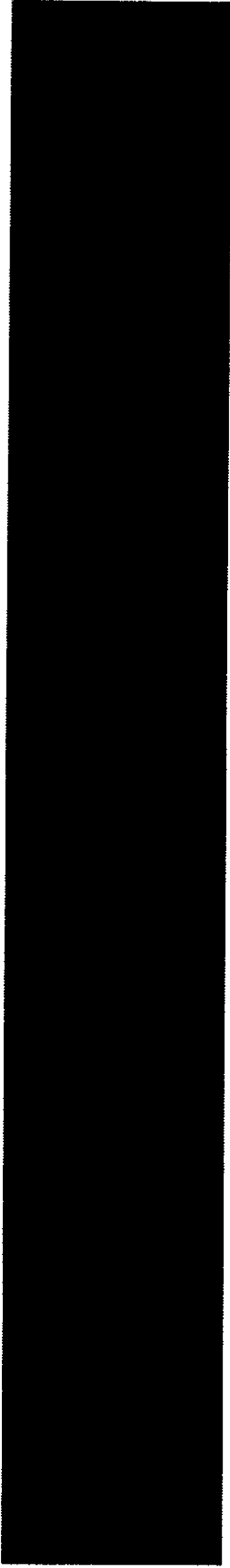


- **FUNCTIONAL SEPARATION
WITHIN PSC**

- **11 STATES**

- **PROSECUTORIAL OR ADVOCACY
FUNCTION**

- **ADVISORY FUNCTION**

- 
- **SEPARATE ORGANIZATION
OUTSIDE PSC**
 - **PROSECUTORIAL FUNCTION**
 - **INDEPENDENT ORGANIZATION**
 - **ASSUMES PARTY STATUS IN DOCKET**
 - **5 STATES**



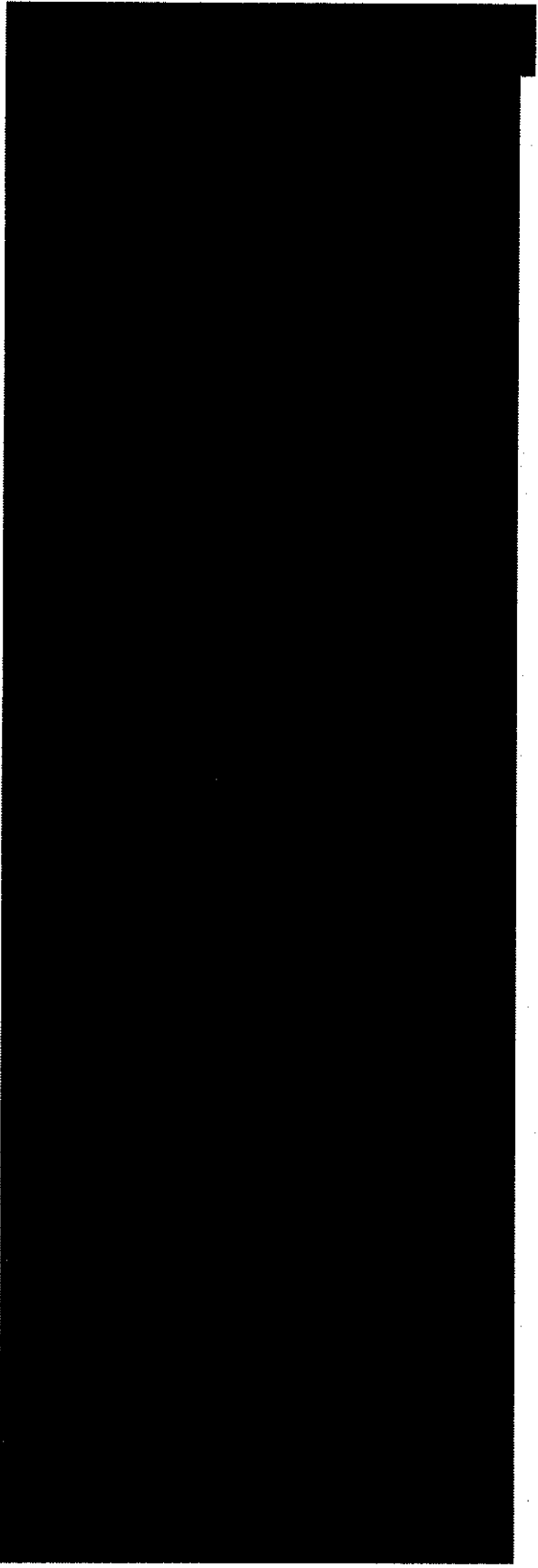
- **PSC STAFF PERFORMS ALL FUNCTIONS W/O DISTINCTION (NO SEPARATION)**

- **ADVISORY**

- **TECHNICAL**

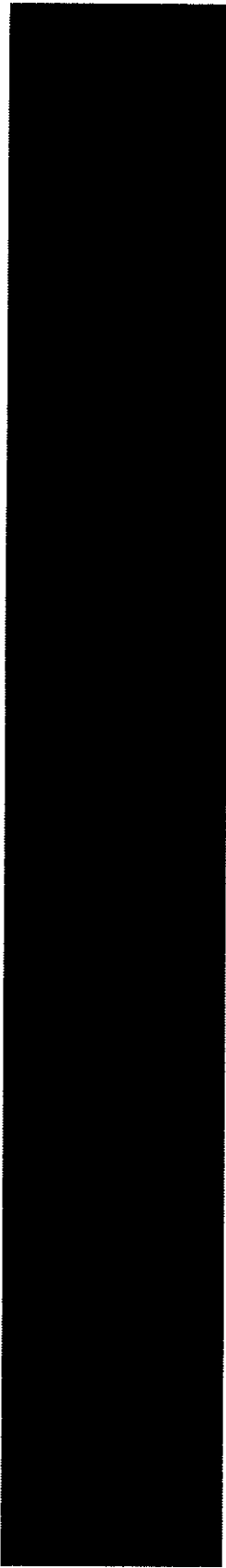
- **PROSECUTORIAL**

- **7 STATES (INCLUDING FLORIDA)**


- 
- **19 out of 23 states report use of Trial Judges, Administrative Law Judges or Hearing Officers**
 - **i.e. Massachusetts has 19 hearing officers on staff**
 - **Some states appoint staff members as hearing officers on a docket by docket basis**
 - **Others go outside the agency**

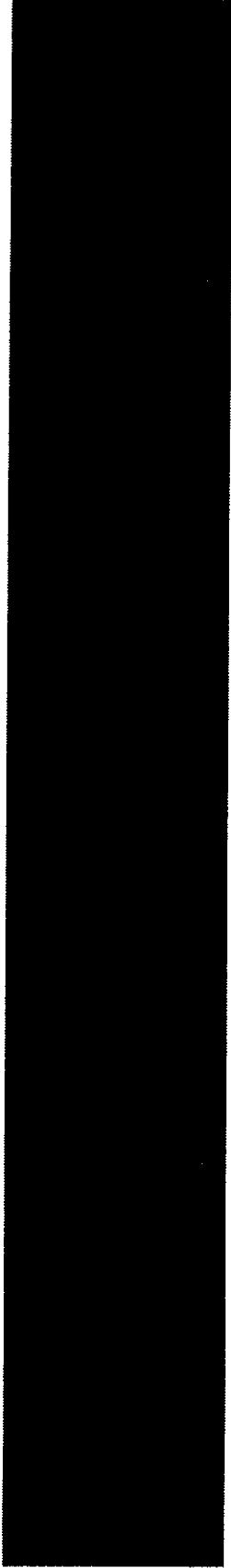


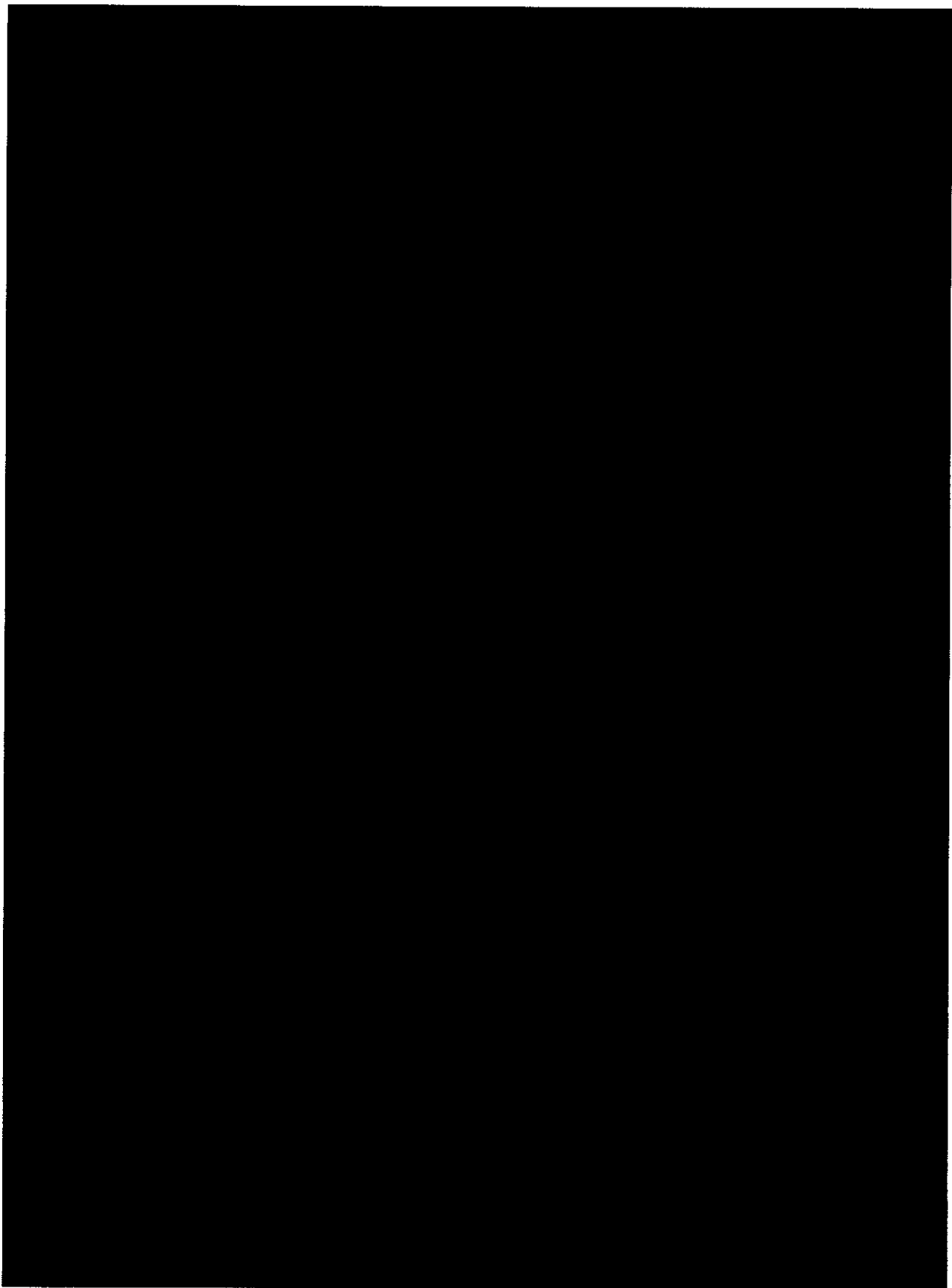
- **ACTS AS PARTY IN DOCKETS = 17 STATES**
- **SPONSORS WITNESSES = 17 STATES**
- **TAKES POSITIONS ON ISSUES = 17 STATES**
- **ENGAGES IN DISCOVERY = 21 STATES**
- **CROSS EXAMINES WITNESSES = 21 STATES**
- **ISSUES RECOMMENDATION = 11 STATES**



- **FILE BRIEFS & TAKES POSITIONS = 11 STATES**
- **SPONSORS WITNESSES = 11 STATES**
- **ENGAGES IN DISCOVERY = 11 STATES**
- **CROSS EXAMINES WITNESSES = 11 STATES**
- **ISSUES RECOMMENDATION = 5 STATES**

- 
- **9 STATES PROHIBIT EX PARTE COMMUNICATION BETWEEN COMMISSIONERS AND PROSECUTORIAL STAFF**
 - **15 STATES PROHIBIT EX PARTE COMMUNICATION WITH TRIAL JUDGES/ALJ'S AND HEARING OFFICERS**

- 
- **19 STATES PROHIBIT EX PARTE BETWEEN COMMISSIONERS & PARTIES—DOCKETS**
 - **9 STATES PROHIBIT EX PARTE BETWEEN COMMISSIONERS & PARTIES—RULEMAKING**
 - **9 STATES PROHIBIT EX PARTE BETWEEN COMMISSIONERS AND SOME STAFF**
 - **8 STATES PROHIBIT EX PARTE BETWEEN PROSECUTORIAL STAFF AND ADVISORY STAFF**
 - **9 STATES PROHIBIT EX PARTE BETWEEN ADVISORY STAFF AND PARTIES**



REGULATORY PROCEDURES MATRIX
SUMMARY

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	CONN, CAL, FLORIDA, GA, INDIANA, IOWA, KAN, MAINE, MASS, MICH, MINN, MISS, NJ, NEV, NY, OHIO, PA, TENN, TEXAS, UTAH, WASH, WV, WYO		
2. NAME OF REGULATORY BODY:			
3. ELECTED COMMISSIONERS?			2
4. APPOINTED COMMISSIONERS?		21	
5. NUMBER OF COMMISSIONERS?	THREE COMMISSIONERS = 12 STATES FOUR COMMISSIONERS = 1 STATE FIVE COMMISSIONERS = 10 STATES		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		19	4
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?		9	14
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	11 STATES ASSIGN PROSECUTORIAL FUNCTION WITHIN STAFF. SEVEN STATES HAVE ADVISORY STAFF ONLY. FIVE STATES HAVE SEPARATE OFFICES THAT PERFORM PROSECUTORIAL FUNCTION (SEE # 11)	11	7
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	Ranges from 100 to 3. Conn. Assigns 3 per docket. Others such as PA are functionally separated for specific dockets only		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?			
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?	UTAH; IOWA; TENN; MINN; INDIANA	5	
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	UTAH=45; IOWA=15; TENN=10; MASS=22		
13. DOES STAFF FUNCTION		17	6

AS A PARTY IN MAJOR DOCKETS/CASES?			
14. DOES STAFF SPONSOR WITNESSES?		17	6
15. DOES STAFF TAKE POSITIONS ON ISSUES?		17	6
16. DOES STAFF ENGAGE IN DISCOVERY?		21	2
17. DOES STAFF CROSS EXAMINE WITNESSES?		21	2
18. DOES STAFF FILE A RECOMMENDED DECISION?		11	12
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?		10	
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?		9	12
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	Where prohibited, prohibition applies only to prosecutorial staffs functioning as a party in a docket, not advisory staff.		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	19 states out of 23 reported use of Trial Judges, ALJs or Hearing Officers. Mass., for example has 19 Hearing Officers. Several others appoint Staff members on a docket by docket basis.	19	4
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?		15	3
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:	Parties are required to follow ex parte rules; WV= Parties and Staff only are prohibited		
<u>[ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS]</u>			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?		11	
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?		11	
27. DOES PROSECUTORIAL		11	

STAFF CROSS EXAMINE WITNESSES?			
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?		11	
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?		11	
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?		5	6
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?		8	3
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?		9	2
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			11
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?	Not known. If so, informal	9	2
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?	No.	10	2
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?		9	2
37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

		<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	California			
2. NAME OF REGULATORY BODY:	California Public Utilities Commission (CPUC)			
3. ELECTED COMMISSIONERS?	No.			
4. APPOINTED COMMISSIONERS?	Yes, appointed by Governor, confirmed by Senate			
5. NUMBER OF COMMISSIONERS?	Five. Appointed for staggered 6 year terms			
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?	No. But parties are not permitted ex parte contacts with Commissioners in adjudicatory cases.			X
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?	No.			X
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	Yes. There are several subdivisions within the CPUC: (1) Commissioners and their staff, including legal and subject matter advisors; (2) staff devoted to particular industry categories, part of their duties would be assisting ALJs in proceedings (e.g., rulemakings); (3) The Division of Ratepayer Advocates, the ratepayer advocacy staff on most policy cases, utility applications and general rate cases; (4) the Consumer Protection Division, responsible for prosecuting complaints and some rules violations; and (5) legal division consisting of staff attorneys who could be assigned to assist different divisions. The same lawyer may be assigned as prosecutorial and advisory, but never on the same issue or case.	X		
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	DRA is a ratepayer advocacy division which contains about 140 people. The Consumer Protection Division contains about 208 people. Many of these are analysts and inspectors. Legal			

	Division has about 35 attorneys that spend part or all of their time on prosecutorial functions.		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?	Approximately 4 staff members for each Commissioner at the executive level, so approx. 20 total who are directly assigned to advise Commissioners. The president's office may have a few more. However all staff in the Telecom, Energy, Water and Transportation Divisions (collectively industry divisions) serve as "advisors" in different circumstances. For example, if there is a rulemaking, staff in an industry division might be responsible for running workshops, submitting data requests and providing analysis at the request of an ALJ or Commission office preparing a proposed decision. The total number in Industry divisions may be between 500 and 600.		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?	See ans. 8.		
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	See ans. 8.		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?	The Division of Ratepayer Advocates is a division of the Commission and they function as a party in most major dockets, except in transportation and small water company general rate cases. The Consumer Protection and Safety Division functions as a party in some dockets (e.g., when they propose rules). The industry divisions rarely function as a separate party, but it has happened.	X	
14. DOES STAFF SPONSOR WITNESSES?	Yes. The Division of Ratepayer Advocates sponsors witnesses. The Consumer Protection Division would also sponsor witnesses	X	
15. DOES STAFF TAKE POSITIONS ON ISSUES?	Yes. The Division of ratepayer Advocates and Consumer Protection Division take positions on issues. The industry staff typically does not take official positions on rulemakings and rate-setting proceedings but generally have a position on issues. Industry division staff are delegated limited decision making powers through an advice letter process where they are responsible for addressing matters covered in advice letters and do draft resolutions. In that sense, they take positions.	X	
16. DOES STAFF ENGAGE IN DISCOVERY?	Both Consumer Protection and Safety Division and the Division Ratepayer advocates as a party will engage in discovery. Both have statutory powers to compel information in addition to traditional discovery.	X	
17. DOES STAFF CROSS EXAMINE WITNESSES?	If the Division of Ratepayer Advocates or Consumer Protection Division are parties to a proceeding, they would cross examine witnesses. The Industry Division Staff does not. Nor do commissioner advisors.	X	X
18. DOES STAFF FILE A	No. The Administrative Law Judge or the commissioner		X

RECOMMENDED DECISION?	assigned to a proceeding ("Assigned Commissioner") submits a proposed decision. Other Commissioners can submit alternate proposed decisions. Staff from industry divisions are sometimes assigned to help the ALJ or Commissioner prepare proposed decisions. Staff who has appeared as a party does not submit recommended decisions.		
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?	Yes.	X	
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?	Not with industry/advisory staff; but yes, in some situations with procedural staff.	X	X
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	See #23 and #31 below		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	Yes. The CPUC uses ALJs.	X	
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?	No, except in adjudicatory proceedings. Parties (including procedural staff) are required to comply with ex parte rules. These vary depending on the case. Commissioners have no restrictions on their communications with ALJs. Here is a link to the CPUC's ex parte rules: http://docs.cpuc.ca.gov/published/RULES_PRACT_PROC/105138-07.htm#P499_110956		X
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:	See the CPUC's ex parte rules.		
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS</u>			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?	Yes.	X	

26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?	Yes.	X	
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?	Yes.	X	
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?	Yes.	X	
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?	Yes.	X	
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?	No.		X
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?	No, except in adjudicatory proceedings.		X
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?	No, except in adjudicatory proceedings.		X
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?	No.		X
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?	Yes and could be written or oral communications.	X	
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?	Not usually; as recommendations by industry division staff and Advisor to the commissioner would be considered privileged communication. Industry division staff does on occasion however proffer recommendations in their reports which depending on the circumstances and subject matter may or may not become public documents.	X	X
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?	Not Commission Advisors, except in adjudicatory proceedings; but yes for industry division staff who may provide extended staff support to Commissioners, ALJs and Commissioner Advisors. CPUC ex-parte rules only apply to "decision-makers" (e.g. ALJs, Advisors and Commissioners).	X	X

37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	Connecticut		
2. NAME OF REGULATORY BODY:	Department of Public Utility Control		
3. ELECTED COMMISSIONERS?	No.		
4. APPOINTED COMMISSIONERS?	Yes, appointed by Governor, approved by General Assembly		
5. NUMBER OF COMMISSIONERS?	Five; 3 of majority party		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		√	
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?			
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	Prosecutorial is not a permanent feature of the DPUC, but is appointed infrequently (of late) most often in complex rate cases		
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	See ans. 8. Varies on an ad hoc basis; usually no more than 2-3 staff members on a given docket.		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?	The DPUC has about 120 staff members.		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?	See ans. 8.		
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	See ans. 8.		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR	No. All DPUC staff represent the DPUC itself.		√

DOCKETS/CASES?			
14. DOES STAFF SPONSOR WITNESSES?	No.		√
15. DOES STAFF TAKE POSITIONS ON ISSUES?	Not publicly. Presumably they are allowed to voice opinions in the preparation of discovery and drafting decisions.		√
16. DOES STAFF ENGAGE IN DISCOVERY?	Yes. The DPUC itself issues interrogatories and evidence requests.	√	
17. DOES STAFF CROSS EXAMINE WITNESSES?	Finance, consumer, engineering and legal staff all participate in cross examination	√	
18. DOES STAFF FILE A RECOMMENDED DECISION?	The DPUC itself publicly issues a draft decision		
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?	The DPUC itself publicly issues a draft decision in most cases, subject to written exceptions and oral argument.	√	
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?	there are no ex parte rules within the DPUC since staff is not separate from the Commissioners.		
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	Except for the rare exception when prosecutorial staff is appointed to a specific docket, See ans. 8., there are no ex parte rules within the DPUC since staff is not separate from the Commissioners.		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	No.		
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?	n/a		
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:	n/a		
<u>[ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS]</u>	See ans. 8. If prosecutorial staff is appointed in a given docket, then they function as a full party to the docket.		
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?		√	
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?		√	

27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?		√	
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?		√	
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?		√	
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?	Prosecutorial would file pleadings like any party; they would not file a "decision".		√
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?		√	
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?		√	
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			√
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?	Presumably, advisory staff drafts the decision, subject to approval by the Commissioners.	√	
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?	No. The official, publicly available draft decision (in those instances when one is issued, most of the time) is the only communication from the DPUC regarding the final decision, prior to the end of the docket.		
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?		√	
37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	FLORIDA		
2. NAME OF REGULATORY BODY:	PUBLIC SERVICE COMMISSION		
3. ELECTED COMMISSIONERS?			X
4. APPOINTED COMMISSIONERS?		X	
5. NUMBER OF COMMISSIONERS?	5		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		X	
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?			X
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	NO, EXCEPT THAT STAFF IS DIVIDED FOR PURPOSES OF SHOW CAUSE INVESTIGATIONS		X
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?			
10. APPROXIMATE NUMBER OF ADVISORY STAFF?			
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?			X
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?			
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR			X

DOCKETS/CASES?			
14. DOES STAFF SPONSOR WITNESSES?	NO, EXCEPT ON RARE OCCASSIONS		X
15. DOES STAFF TAKE POSITIONS ON ISSUES?			X
16. DOES STAFF ENGAGE IN DISCOVERY?		X	
17. DOES STAFF CROSS EXAMINE WITNESSES?		X	
18. DOES STAFF FILE A RECOMMENDED DECISION?		X	
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?		X	
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?	NO, EXCEPT THAT TESTIFYING STAFF MEMBERS CANNOT DISCUSS THE CASE WITH COMMISSIONERS		X
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:			
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?			X
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?			
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:			
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS</u>			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?			
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?			
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE			

WITNESSES?			
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?			
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?			
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?			
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?			
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?			
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?			
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?			
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			
37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	GEORGIA		
2. NAME OF REGULATORY BODY:	GEORGIA PUBLIC SERVICE COMMISSION		
3. ELECTED COMMISSIONERS?		X	
4. APPOINTED COMMISSIONERS?			X
5. NUMBER OF COMMISSIONERS?	FIVE		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?	EX PARTE PROHIBITED FROM TIME HEARING ENDS until the day after the official time for filing for reconsideration (or until the Commission has rendered its final decision on any motion for reconsideration.) During Ex Parte period time all oral communications must be provided openly, during noticed meetings, and written or electronic communication filed with Executive Secretary and served upon all parties.	X	
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?			X
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	ADVOCATE STAFF AND ADVISORY STAFF ARE APPOINTED ON A CASE BY CASE BASIS Rule 515-2-1-.14 (1) (a) 'Commissioner Advisory Staff' means the staff members assigned to serve in a non-Party advisory capacity in a particular proceeding. Rule 515-2-1-.14 (1) (d) 'Public Interest Advocacy Staff' means the staff members assigned to participate in a particular proceeding as a Party.	X	
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	VARIES		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?	VARIES		
11. IF STAFF IS NOT			X

SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?			
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	NA		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?	ADVOCATE STAFF - Public Interest Advocacy Staff	X	
14. DOES STAFF SPONSOR WITNESSES?	ADVOCATE STAFF - Public Interest Advocacy Staff	X	
15. DOES STAFF TAKE POSITIONS ON ISSUES?	ADVOCATE STAFF - Public Interest Advocacy Staff	X	
16. DOES STAFF ENGAGE IN DISCOVERY?	ADVOCATE STAFF - Public Interest Advocacy Staff	X	
17. DOES STAFF CROSS EXAMINE WITNESSES?	ADVOCATE STAFF - Public Interest Advocacy Staff	X	
18. DOES STAFF FILE A RECOMMENDED DECISION?	ADVISORY STAFF - Public Interest Advocacy Staff	X	
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?		X	
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?	ADVOCATE STAFF DURING EX PARTE PERIOD	X	
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:			
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	HEARING OFFICERS APPOINTED OCCASIONALLY FROM STAFF ON NON-CONTROVERSIAL DOCKETS	X	
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?		X	
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:			
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF</u>			

FUNCTIONS			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?		X	
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?		X	
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?		X	
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?		X	
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?		X	
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?		X	
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?	Ex Parte rule applies to Commissioners, Commission hearing officers and members of the Commissioner Advisory Staff	X	
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?	Ex Parte rule applies to Commissioners, Commission hearing officers and members of the Commissioner Advisory Staff	X	
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			X
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?		X	
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?		X	
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?	Ex Parte rule applies to Commissioners, Commission hearing officers and members of the Commissioner Advisory Staff	X	
37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	Indiana		
2. NAME OF REGULATORY BODY:	Indiana Utility Regulatory Commission (IURC)		
3. ELECTED COMMISSIONERS?			√
4. APPOINTED COMMISSIONERS?	Yes. A statutorily-created 7-member Nominating Committee, which includes 3 members appointed by the Governor; 2 by the House, with one from each party; and 2 by the Senate, again with one from each party. The Committee reviews applications and conducts interviews. It then submits a list of the 3 most highly qualified candidates to the Governor for consideration and appointment.	√	
5. NUMBER OF COMMISSIONERS?	Five, with no more than three from the same political party. The Chairman is named by the Governor. At least one must be a licensed attorney.		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?	Ex Parte rule found at 170 IAC 1-1.5	√	
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?	Rulemakings are exempt from ex parte rules		√
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	The IURC may direct staff to conduct an analysis and it "may" become part of the record, subject to cross-examination. The IURC has designated "testimonial" or "negotiating" staff on occasion. No full time designation of testimonial staff.		√
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	N/A		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?	Approximately 40 technical experts		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?	The Indiana Office of Utility Consumer Counselor (OUCC) represents consumer interests in proceedings before the Commission. (The term "prosecutorial" doesn't accurately	√	

	capture the OUCC's role.)		
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	The OUCC has 8 practicing attorneys and 28 utility analysts who serve as expert witnesses.		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?	If designated as "testimonial."		√ (rarely)
14. DOES STAFF SPONSOR WITNESSES?	If designated as "testimonial."		√ (rarely)
15. DOES STAFF TAKE POSITIONS ON ISSUES?	If directed to file a report to become a part of the record and subject to cross-examination.		√ (rarely)
16. DOES STAFF ENGAGE IN DISCOVERY?	If "testimonial," an attorney is also assigned who can engage in discovery. If "advisory," the staff must submit questions to the presiding administrative law judge and/or Commissioner to issue via docket entry or ask during hearing. IURC staff members may also recommend that the Commission request information or records from regulated utilities outside the context of a docketed proceeding.		√ (rarely)
17. DOES STAFF CROSS EXAMINE WITNESSES?	If "testimonial," an attorney is also assigned who can cross-examine witnesses. IURC staff may provide questions for the presiding administrative law judge or Commissioners to ask as bench questions during evidentiary hearings; but members of the IURC technical staff do not conduct cross-examination.		√ (rarely)
18. DOES STAFF FILE A RECOMMENDED DECISION?	If "testimonial," an attorney is also assigned who can file a recommended decision.		√ (rarely)
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?	Only if staff has been designated as "testimonial," in which case the testimonial staff's recommended decision would be publicly filed.		
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?	There is no prohibition on communication between Commissioners and "advisory" staff. In rare cases when the Commission designates "testimonial" or "negotiating" staff, communication between Commissioners and "testimonial" or "negotiating" staff is prohibited.		√ (not usually)

	In such cases, communication is also prohibited between members of the Commission's "advisory" staff and members of the Commission's "testimonial" or "negotiating" staff.		
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	See above response.		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	Administrative Law Judges	√	
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/ HEARING OFFICERS OR ALJs?	Parties may discuss procedural (i.e., non-substantive) matters with the ALJ. Commissioners and IURC advisory staff may communicate freely with ALJs.	√	
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:	IURC advisory staff and ALJs act together as advisors to the Commission, so the concept of ex parte communication does not apply to communication between them.		
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS</u>	<u>***This rarely occurs, but in such an instance, the following answers would apply to Questions #25 - #33 below:</u>		
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?	***	√	
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?	***	√	
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?	***	√	
28. DOES PROSECUTORIAL STAFF FILE BRIEFS AND TAKE POSITIONS ON ISSUES?	***	√	
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?	***	√	
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?	***	√	
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?	***	√	
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?	***	√	

33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?	***		√
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?		√	
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?			√
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?		√	
37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

		<u>YES</u>	<u>NO</u>
1.	STATE: IOWA		
2.	NAME OF REGULATORY BODY: IOWA UTILITIES BOARD		
3.	ELECTED COMMISSIONERS?	X	
4.	APPOINTED COMMISSIONERS?	X	
5.	NUMBER OF COMMISSIONERS? 3		
6.	ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?	X	
7.	ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?		X
8.	IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?		X
9.	APPROXIMATE NUMBER OF PROSECUTORIAL STAFF? NONE		
10.	APPROXIMATE NUMBER OF ADVISORY STAFF? 50 (70 TOTAL STAFF, 20 ADMINISTRATIVE)		
11.	IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION? OFFICE OF CONSUMER ADVOCATE		
12.	APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF? 15		
13.	DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?		X
14.	DOES STAFF SPONSOR WITNESSES?		X
15.	DOES STAFF TAKE POSITIONS ON ISSUES?		X
16.	DOES STAFF ENGAGE IN DISCOVERY?		X
17.	DOES STAFF CROSS EXAMINE WITNESSES?		X
18.	DOES STAFF FILE A RECOMMENDED DECISION?		X
19.	IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?		
20.	ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?		X
21.	IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:		
22.	DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	X (ON OCCASION)	
23.	ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALI'S?	X	
24.	PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:		
<u>[ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS]</u>			
25.	DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?		
26.	DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?		
27.	DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?		
28.	DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?		
29.	DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?		
30.	DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?		
31.	IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?		
32.	IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?		

33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?

37. ADDITIONAL COMMENTS:

IUB STAFF IS ADVISORY ONLY BUT BRIEFS THE BOARD MEMBERS FOR HEARING AND PREPARES "CROSS" QUESTIONS WHICH MAY BE (AND USUALLY ARE) ASKED BY BOARD MEMBERS DURING THE HEARING. WHEN IUB ISSUES A SHOW CAUSE ORDER OR INITIATES A PROCEEDING, OCA STAFF OFTEN ENDS UP "PROSECUTING." SINCE 1984, WHEN THE OCA WAS SEPARATED FROM THE BOARD AND PUT UNDER THE AUTHORITY OF THE ATTORNEY GENERAL, THE IUB STAFF HAS NEVER PROSECUTED OR PRESENTED A CASE BEFORE THE BOARD.

REGULATORY PROCEDURES MATRIX

	<u>YES</u>	<u>NO</u>
1. STATE:	Kansas	
2. NAME OF REGULATORY BODY:	Kansas Corporation Commission	
3. ELECTED COMMISSIONERS?		No
4. APPOINTED COMMISSIONERS?	Yes	
5. NUMBER OF COMMISSIONERS?	Three	
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES? <i>Ex parte communications between Commissioners and parties regarding the merits of a proceeding are prohibited <u>only after hearings have been set</u>. However, members of technical staff are not considered parties for purposes of the ex parte communications rules and are therefore permitted to communicate with Commissioners. K.S.A. 77-545; K.A.R. 82-1-207.</i>		
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES? <i>Ex parte communications between Commissioners and parties regarding the merits of a proceeding are prohibited <u>only after hearings have been set</u>. However, members of technical staff are not considered parties for purposes of the ex parte communications rules and are therefore permitted to communicate with Commissioners. K.S.A. 77-545; K.A.R. 82-1-207.</i>		
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS? <i>Commission <u>technical staff</u> are not separated into prosecutorial and advisory functions. However, Commission <u>legal staff</u> are separated into litigation and advisory counsel functions. Commissioners are not prohibited, however, from communicating with technical staff regarding the merits of a proceeding even after hearings have been set. K.S.A. 77-545; K.A.R. 82-1-207.</i>		
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF? <i><u>Technical staff for natural gas, electric, water and telecommunications utilities (46). Litigation attorneys (15). Additional Commission staff include: Advisory (5); Public Affairs and Consumer Protection (7); Conservation (88); Information Technology (17); Human Resources (2); Front Office excluding Commissioners (5); Fiscal/Support Services (9); Transportation (31); and Energy (11).</u></i>		
10. APPROXIMATE NUMBER OF ADVISORY STAFF? <i>5, including 3 Advisory Counsel attorneys.</i>		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION? <i>No</i>		
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	N/A	
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?	Yes	
14. DOES STAFF SPONSOR WITNESSES?	Yes	
15. DOES STAFF TAKE POSITIONS ON ISSUES?	Yes, in most cases.	
16. DOES STAFF ENGAGE IN DISCOVERY?	Yes	
17. DOES STAFF CROSS EXAMINE WITNESSES?	Yes	
18. DOES STAFF FILE A RECOMMENDED DECISION? <i>In contested cases, technical staff pre-file testimony taking positions on applicable issues. As permitted with all parties, staff files post-hearing briefs which may include proposed findings of fact and conclusions of law. In uncontested matters and in some general investigation dockets, technical staff may file a staff memorandum containing its recommendation.</i>		
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE? <i>Staff's filed comments, testimony, post-hearing briefs, and Memorandum's are publicly available.</i>		
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF? <i>Commissioners are prohibited from communications with staff <u>counsel</u> regarding the merits of a proceeding <u>only after hearings have been set</u>.</i>		

21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN: *Commissioners are prohibited from communications with staff counsel regarding the merits of a proceeding only after hearings have been set. However, members of technical staff are not considered parties for purposes of the ex parte communications rules and are therefore permitted to communicate with Commissioners at any stage of a proceeding. K.S.A. 77-545; K.A.R. 82-1-207.*
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS? *Our Commissioners generally handle major docket hearings, but assign hearing officers to manage procedural matters and occasionally assign a staff or advisory attorney to serve as a presiding officer in isolated cases. Due to a recent statutory amendment requiring presiding officers to be 1) the agency head, 2) members of the agency head, or 3) an ALJ assigned by the office of administrative hearings, our Commission has ceased assigning staff counsel as presiding officers.*
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S? *Parties are prohibited from ex parte communications about the merits of a proceeding with a presiding officer if a hearing has been scheduled under Commission rules. Our Commission no longer appoints persons other than Commissioners as presiding officers. Communications with hearing officers assigned to manage procedural matters are not expressly prohibited under Commission rules or other state law. As previously stated above, members of technical staff are not considered parties for purposes of the ex parte communications rules. K.A.R. 82-1-207.*
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF: *See discussion above.*

ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS *Kansas technical staff are not separated into prosecutorial and advisory staff functions.*

25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
37. ADDITIONAL COMMENTS:

REGULATORY PROCEDURES MATRIX

YES NO

1. STATE: Maine
 2. NAME OF REGULATORY BODY: Public Utilities Commission
 3. ELECTED COMMISSIONERS? No
 4. APPOINTED COMMISSIONERS? Yes
 5. NUMBER OF COMMISSIONERS? 3
 6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES? Yes
 7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES? No
 8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS? No
 9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?
 10. APPROXIMATE NUMBER OF ADVISORY STAFF?
 11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION? No
 12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?
 13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES? No
 14. DOES STAFF SPONSOR WITNESSES? Yes on occasion
 15. DOES STAFF TAKE POSITIONS ON ISSUES? Yes, on occasion
 16. DOES STAFF ENGAGE IN DISCOVERY? Yes
 17. DOES STAFF CROSS EXAMINE WITNESSES? Yes
 18. DOES STAFF FILE A RECOMMENDED DECISION? Yes
 19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE? Yes
 20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF? No
 21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:
 22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS? Yes (members of staff)
 23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S? No
 24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:
- ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?
 26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?
 27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?
 28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?
 29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?
 30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?
 31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?
 32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?

33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
37. ADDITIONAL COMMENTS: Maine appoints an advocacy staff only on rare occasions. It was the norm before the mid 1990s

REGULATORY PROCEDURES MATRIX

	<u>YES</u>	<u>NO</u>
1. STATE:		Massachusetts
2. NAME OF REGULATORY BODY:		Department of Public Utilities
3. ELECTED COMMISSIONERS?		No
4. APPOINTED COMMISSIONERS?		Yes
5. NUMBER OF COMMISSIONERS?		Three
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		Yes
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?		No
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?		No, advisory only ¹
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?		N/A, DPU has approximately 19 hearing officers
10. APPROXIMATE NUMBER OF ADVISORY STAFF?		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?		Yes, Office of the Attorney General, Office of Ratepayer Advocacy
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?		Office of Ratepayer Advocacy has 22 employees
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?		No
14. DOES STAFF SPONSOR WITNESSES?		No
15. DOES STAFF TAKE POSITIONS ON ISSUES?		No
16. DOES STAFF ENGAGE IN DISCOVERY?		Yes
17. DOES STAFF CROSS EXAMINE WITNESSES?		Yes
18. DOES STAFF FILE A RECOMMENDED DECISION?		No, The Hearing Officers give the commissioners a draft decision and then they all mark it up and change it.
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?		N/A
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?		No
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:		N/A
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?		Hearing Officers
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?		Yes ²
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:		

¹ The Attorney General does not have a right to intervene in water company cases. In water cases, the Staff is divided into prosecutorial and advisory functions.

² Except for scheduling, administrative and procedural matters.

37. **ADDITIONAL COMMENTS:** Ex parte is allowed in adjudicatory proceedings upon reasonable notice and opportunity for all parties to participate. 220 CMR 1.02 (9)(a). Further, ex parte communications are prohibited from the time of the initial filing in an adjudicatory proceeding until the rendering of a final decision. *Id.* The Attorney General expressed concerns that ex parte communications could occur between a Company and the Commission prior to the time that an initial filing is made but during a time period when the Company knows that a filing is imminent. We generally ask a discovery request concerning conversations before rate case filings.

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	MICHIGAN		
2. NAME OF REGULATORY BODY:	MICHIGAN PUBLIC SERVICE COMMISSION		
3. ELECTED COMMISSIONERS?			X
4. APPOINTED COMMISSIONERS?		X	
5. NUMBER OF COMMISSIONERS?	Three		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		X	
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?			X
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?			X
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	0		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?	150		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?			X
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	na		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR		X	

DOCKETS/CASES?			
14. DOES STAFF SPONSOR WITNESSES?		X	
15. DOES STAFF TAKE POSITIONS ON ISSUES?		X	
16. DOES STAFF ENGAGE IN DISCOVERY?		X	
17. DOES STAFF CROSS EXAMINE WITNESSES?		X	
18. DOES STAFF FILE A RECOMMENDED DECISION?			X
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?	na		
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?			X
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	na		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	Hearing Officers	X	
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALI'S?			X
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:			
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS</u>			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?			
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?			
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE			

WITNESSES?			
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?			
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?			
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?			
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?			
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?			
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?			
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?			
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			
37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	Minnesota		
2. NAME OF REGULATORY BODY:	Minnesota Public Utilities Commission		
3. ELECTED COMMISSIONERS?	No.		
4. APPOINTED COMMISSIONERS?	Yes. Appointed by Governor to 6-year, staggered terms		
5. NUMBER OF COMMISSIONERS?	5. No more than three commissioners can be of the same political party and at least one commissioner must reside at the time of appointment outside the seven-county metropolitan area.		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		X	
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?	Prohibition relates to "material" issues in a rulemaking proceeding, but only after the beginning of commission deliberations	X	
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	Advisory predominantly, with a small "Consumer Affairs Office" that offers mediation and information services.		X
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	N/A		
10. APPROXIMATE NUMBER OF ADVISORY	Approximately 50 full-time staff divided in the following functions: Commissioners,		

STAFF?	Commission Counsel, Consumer Affairs, Energy, Energy Facilities Permitting, Executive Secretary, Admin/HR, IT, Telecommunications and Legal.		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?	Yes. The Minnesota Department of Commerce (Telecommunications Division) and Minnesota Department of Commerce Office of Energy Security (Energy matters) as well as the Office of the Attorney General - Residential and Small Business Utilities Division	X	
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	unknown		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?			X
14. DOES STAFF SPONSOR WITNESSES?			X
15. DOES STAFF TAKE POSITIONS ON ISSUES?	Generally will offer recommendations in public briefing papers	X	
16. DOES STAFF ENGAGE IN DISCOVERY?		X	
17. DOES STAFF CROSS EXAMINE WITNESSES?		X	
18. DOES STAFF FILE A RECOMMENDED DECISION?	Typically yes.	X	
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?		X	
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?			X
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	n/a		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	Administrative Law Judges from the Minnesota Office of Administrative Hearings (OAH)	X	

23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?		X	
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:	n/a		
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS</u>			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?			
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?			
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?			
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?			
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?			
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?			
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?			

32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?			
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?	Generally yes in briefing papers filed publically before Commission deliberations.	X	
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?	See 34.	X	
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?		X	
37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	MISSISSIPPI		
2. NAME OF REGULATORY BODY:	MISSISSIPPI PUBLIC SERVICE COMMISSION		
3. ELECTED COMMISSIONERS?		X	
4. APPOINTED COMMISSIONERS?			X
5. NUMBER OF COMMISSIONERS?	THREE		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		X	
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?			X
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?		X	
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	40		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?	70		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?			X
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	NA		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR		X	

DOCKETS/CASES?			
14. DOES STAFF SPONSOR WITNESSES?		X	
15. DOES STAFF TAKE POSITIONS ON ISSUES?		X	
16. DOES STAFF ENGAGE IN DISCOVERY?		X	
17. DOES STAFF CROSS EXAMINE WITNESSES?		X	
18. DOES STAFF FILE A RECOMMENDED DECISION?		X	
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?		X	
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?			X
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:			
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?			X
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?	NA		
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:			
<u>[ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS]</u>			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?			
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?			
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE			

WITNESSES?			
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?			
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?			
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?			
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?			
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?			
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?			
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?			
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			
37. ADDITIONAL COMMENTS:	Please see "Rules of Practice and Procedures" available on Mississippi PSC web site.		

Subject:

RE: REGULATORY PROCEDURES SURVEY

1. STATE: New Jersey
 2. NAME OF REGULATORY BODY: New Jersey Board of Public Utilities
 3. ELECTED COMMISSIONERS?
 4. APPOINTED COMMISSIONERS? By Governor
 5. NUMBER OF COMMISSIONERS? 5
 6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES? yes
 7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?
 8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS? No
 9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF? Overall staff 265; Staff represented by Attorney General represents staff and represent Commissioners and advising and litigation are kept separate
 10. APPROXIMATE NUMBER OF ADVISORY STAFF? 265
 11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?
 12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?
 13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES? Depends on the utility
 14. DOES STAFF SPONSOR WITNESSES? In electric and gas gases
 15. DOES STAFF TAKE POSITIONS ON ISSUES? In electric, gas and water cases
 16. DOES STAFF ENGAGE IN DISCOVERY? Yes
 17. DOES STAFF CROSS EXAMINE WITNESSES? Yes
 18. DOES STAFF FILE A RECOMMENDED DECISION? No.
 19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?
 20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF? No
 21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:
 22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS? Yes
 23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S? Yes
 24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:
- [ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS]
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?
 26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?
 27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?
 28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?
 29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?
 30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?
 31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?
 32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?
 33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
 34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?
 35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?
 36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
 37. ADDITIONAL COMMENTS:

REGULATORY PROCEDURES MATRIX

	<u>YES</u>	<u>NO</u>
1. STATE: New York		
2. NAME OF REGULATORY BODY: New York State Public Service Commission		
3. ELECTED COMMISSIONERS?		X
4. APPOINTED COMMISSIONERS?	X	
5. NUMBER OF COMMISSIONERS? 5		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		X
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?		X
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS? No, all but commissioners work for the Department of Public Service		
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF? ?		
10. APPROXIMATE NUMBER OF ADVISORY STAFF? ?		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION? No, general counsel's office does all work		
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF? ?		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?	X	
14. DOES STAFF SPONSOR WITNESSES?	X	
15. DOES STAFF TAKE POSITIONS ON ISSUES?	X	
16. DOES STAFF ENGAGE IN DISCOVERY?	X	
17. DOES STAFF CROSS EXAMINE WITNESSES?	X	
18. DOES STAFF FILE A RECOMMENDED DECISION? No, ALJ does		
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE? Yes, ALJ's RD is publicly available		
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF? I don't believe so		
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS? ALJs		
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S? Yes, during proceeding		
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF: The ALJs are not part of negotiated rulemaking process, but are brought in for hearings and to the parties submit joint proposals to the ALJs		
<u>[ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS]</u>		
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?		
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?		
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?		
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?		
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?		
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?		
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?		
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS		

WITH COMMISSIONERS?

33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
37. ADDITIONAL COMMENTS:

REGULATORY PROCEDURES MATRIX

YES NO

1. STATE: NEVADA
2. NAME OF REGULATORY BODY: PUBLIC UTILITIES COMMISSION OF NEVADA
3. ELECTED COMMISSIONERS? NO
4. APPOINTED COMMISSIONERS? YES
5. NUMBER OF COMMISSIONERS? 3
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES? YES
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES? NOT BY STATUTE
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS? YES
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF? 49
10. APPROXIMATE NUMBER OF ADVISORY STAFF? 7
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION? N/A
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF? N/A
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES? YES
14. DOES STAFF SPONSOR WITNESSES? YES
15. DOES STAFF TAKE POSITIONS ON ISSUES? YES
16. DOES STAFF ENGAGE IN DISCOVERY? YES
17. DOES STAFF CROSS EXAMINE WITNESSES? YES
18. DOES STAFF FILE A RECOMMENDED DECISION? NO
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE? N/A
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF? YES
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN: PROHIBITED FROM COMMUNICATING WITH PROSECUTORIAL STAFF
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS? YES, HEARING OFFICERS
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S? PARTIES AND STAFF ARE PROHIBITED FROM COMMUNICATING WITH HEARING OFFICERS
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF: NOT KNOWN WHETHER HEARING OFFICERS COMMUNICATE WITH COMMISSIONERS

[ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS]

25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES? YES
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY? YES
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES? YES
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES? YES
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY? YES
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION? NO
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS

WITH ADVISORY STAFF? YES

32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS? YES
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES? NO
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS? YES, AS PART OF PUBLIC RECORD ON UNCONTESTED MATTERS
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES? YES
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES? YES
37. ADDITIONAL COMMENTS:

37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	Ohio		
2. NAME OF REGULATORY BODY:	Public Utilities Commission of Ohio		
3. ELECTED COMMISSIONERS?			No
4. APPOINTED COMMISSIONERS?		Yes	
5. NUMBER OF COMMISSIONERS?	Five		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?	Ohio's ex parte rule: http://codes.ohio.gov/oac/4901-1-09		
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?	See above		
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	There is no split "officially", however, on a case by case basis we have seen staff divide itself into a negotiating/advisory group and a litigation group.		No
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	n/a		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?	n/a		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?			No
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	n/a		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR	Staff is considered a party where it is required by rule to provide a report, such as in major rate	Yes	

DOCKETS/CASES?	cases.		
14. DOES STAFF SPONSOR WITNESSES?		Yes	
15. DOES STAFF TAKE POSITIONS ON ISSUES?		Yes	
16. DOES STAFF ENGAGE IN DISCOVERY?		Yes	
17. DOES STAFF CROSS EXAMINE WITNESSES?		The attorney general, which represents staff does	
18. DOES STAFF FILE A RECOMMENDED DECISION?			No
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?	n/a		
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?			No
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	n/a		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	Hearing examiners		
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?			No
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:	No rules in place to prohibit.		
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS</u>			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?			

26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?			
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?			
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?			
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?			
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?			
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?			
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?			
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?			
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?			
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			
37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	Pennsylvania		
2. NAME OF REGULATORY BODY:	Pennsylvania Public Utility Commission		
3. ELECTED COMMISSIONERS?	No		
4. APPOINTED COMMISSIONERS?	Yes. 66 Pa.C.S. § 301		
5. NUMBER OF COMMISSIONERS?	Five, full-time.		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		√	
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?			√
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	<p>Until late 2008, the Pennsylvania Public Utility Code established the Office of Trial Staff and Law Bureau as separate bureaus within the PaPUC.</p> <p>The Office of Trial Staff was the "chief prosecutor of the commission." See 66 Pa.C.S. § 306(a) (deleted 2008).</p> <p>The Law Bureau was <u>and continues</u> authorized to wear many hats. Section 308(b) provides that the Law Bureau "shall be a multi-function legal staff, consisting of a prosecutor function, an advisory function, a representational function and an enforcement function." Law Bureau counsel may serve in a prosecutorial function in one case and advisory in another, so long as the cases are not factually related. Law Bureau counsel represent the PaPUC in appeals in state and federal courts.</p>	√	

	<p>The Public Utility Code was amended in late 2008 to delete the statutory basis for the Office of Trial Staff and certain advisory offices. In its place, Section 308.2 was added, which provides the PaPUC with broad discretion to structure the Commission staff and offices to provide a list of services and functions. See 66 Pa.C.S. § 308.2.</p> <p>Section 308.2(b) extends the prohibition against commingling, which already applies to Law Bureau staff, more broadly:</p> <p>(b) Prohibition on commingling of functions. A commission employee engaged in a prosecutory function may not, in that matter or a factually related matter, provide advice or assistance to a commission employee performing an advisory function as to that matter.</p> <p>The Pa PUC has not yet exercised the full discretion afforded by the 2008 amendments of the Public Utility Code. So for now, the Office of Trial Staff continues as the prosecutor, representative of the public interest, in most rate matters before the PaPUC, while Law Bureau staff may prosecute utilities for failure to pay assessments, file annual reports, comply with utility safety regulations, etc.</p>		
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?			
10. APPROXIMATE NUMBER OF ADVISORY STAFF?			
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?			
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?			
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?		√	
14. DOES STAFF SPONSOR		√	

WITNESSES?			
15. DOES STAFF TAKE POSITIONS ON ISSUES?	Only if a party to a case.		√
16. DOES STAFF ENGAGE IN DISCOVERY?		√	
17. DOES STAFF CROSS EXAMINE WITNESSES?		√	
18. DOES STAFF FILE A RECOMMENDED DECISION?	<p>In contested, on-the-record proceedings, commission prosecutory staff sets forth its evidence and legal argument in briefs. Administrative Law Judges preside over contested, on-the-record proceedings and then issue an initial or recommended decision.</p> <p>When the Pa PUC votes on matters, contested or not, at public meeting, the Commission may review and consider recommendations from advisory staff. These informal staff recommendations or draft proposed orders are not public. See comments below re Pennsylvania's Right to Know Law.</p>		√
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?	The Initial Decision or Recommended Decision issued by an ALJ are publicly available.	√	
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?		√	
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	See Answer 23, below.		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?		√	
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?	<p>Section 334 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 334, establishes the role and tasks of "Presiding Officers." The statute also draws the lines as to ex parte communications.</p> <p>Sec. 334(b) provides that outside consultation is prohibited.</p> <p>"Save to the extent required for the disposition of ex parte matters not prohibited by this part, no presiding officer shall consult any</p>		

person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall any presiding officer be responsible to or subject to the supervision or direction of any officer, employee or agent engaged in the performance of investigative or prosecuting functions for the commission. No employee, appointee, commission or official engaged in the service of, or in any manner connected with the commission shall engage in ex parte communications save to the extent permitted by this part. No officer, employee or agent engaged in the performance of an investigative or prosecuting functions for the commission shall, in that or a factually related case, participate or advise in the decision, recommended decision or commission review, except as a witness or counsel in public proceedings."

Section 334(c) establishes when ex parte communications are prohibited, whether directed to the presiding officer, commissioners, or commission staff.

"Ex parte communications prohibited in this section shall mean any off-the-record communications to or by any member of the commission, administrative law judge, or employee of the commission, regarding the merits or any fact in issue of any matter pending before the commission in any contested on-the-record proceeding. Contested on-the-record proceeding means a proceeding required by a statute, constitution, published commission rule or regulation or order in a particular case, to be deciding on the basis of

	<p>the record of a commission hearing, and in which a protest or a petition or notice to intervene in opposition to requested commission action has been filed. This subsection does not prohibit off-the-record communications to or by any employee of the commission prior to the actual beginning of hearings in a contested on-the-record proceeding when such communications are solely for the purpose of seeking clarification of or corrections in evidentiary materials intended for use in subsequent hearings."</p> <p>66 Pa.C.S. § 334(b), (c).</p>		
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:			
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS</u>			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?		√	
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?		√	
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?		√	
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?		√	
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?		√	
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?			√
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS		√	

WITH ADVISORY STAFF?			
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?		√	
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			√
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?		√	
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?	<p>Pennsylvania adopted a new open records or Right to Know (RTK) Law, effective Jan. 1, 2009. While the new RTK Law creates a presumption that state agency records are open, there is a deliberative process exception:</p> <p>(b) Exceptions. — Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:</p> <p style="text-align: center;">* * *</p> <p>(10) (i) A record that reflects: (A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.</p> <p>65 P.S. § 65.708(b)(10).</p> <p>The Pa PUC's regulations governing discovery practices apply to complaint and contested proceedings, Commission investigations, and Commission instituted on-the-record proceedings. 52 Pa.Code § 5.321. However, the discovery rules expressly do not apply "to discovery sought of Commissioners or Commission staff serving in an</p>		√

	<p>advisory or adjudicatory capacity." 52 Pa. Code § 5.321(d).</p> <p>Commission staff serving in a prosecutory function may engage in discovery, the same as other parties. 52 Pa. Code § 5.321(e).</p>		
<p>36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?</p>	<p>The Pennsylvania Public Utility Code's Code of Ethics applies to commissioners and ALJs and requires avoidance of all prohibited ex parte communications. 66 Pa.C.S. § 319(a)(3). Section 319(a)(5) extends the same requirements of fidelity and diligence to staff under the direction of a commissioner or ALJ.</p> <p>Also, Section 334(c) quoted above, describes prohibited communications as "any off-the-record communications <i>to or by any member of the commission, administrative law judge, or employee of the commission</i>, regarding the merits or any fact in issue of any matter pending before the commission in any contested on-the-record proceeding."</p>	√	
<p>37. ADDITIONAL COMMENTS:</p>			

REGULATORY PROCEDURES MATRIX

YES NO

- | | | | | |
|-----|--|--------------------------------------|-----|-------------|
| 1. | STATE: | TENNESSEE | | |
| 2. | NAME OF REGULATORY BODY: | TENNESSEE REGULATORY AUTHORITY (TRA) | | |
| 3. | ELECTED COMMISSIONERS? | | | X |
| 4. | APPOINTED COMMISSIONERS? | | X | |
| 5. | NUMBER OF COMMISSIONERS? | 4 | | |
| 6. | ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES? | | X | |
| 7. | ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES? | | X | |
| 8. | IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS? | | | X |
| 9. | APPROXIMATE NUMBER OF PROSECUTORIAL STAFF? | | N/A | |
| 10. | APPROXIMATE NUMBER OF ADVISORY STAFF? | | N/A | |
| 11. | IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION? | | X | |
| 12. | APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF? | 10 | | |
| 13. | DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES? | | | ON OCCASION |
| 14. | DOES STAFF SPONSOR WITNESSES? | | | ON OCCASION |
| 15. | DOES STAFF TAKE POSITIONS ON ISSUES? | | | ON OCCASION |
| 16. | DOES STAFF ENGAGE IN DISCOVERY? | | X | |
| 17. | DOES STAFF CROSS EXAMINE WITNESSES? | | X | |
| 18. | DOES STAFF FILE A RECOMMENDED DECISION? | | X | |
| 19. | IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE? | | | |
| 20. | ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF? | | | X |
| 21. | IF ANSWER IS YES ABOVE, PLEASE EXPLAIN: | | | |
| 22. | DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS? | HEARING OFFICERS | | |
| 23. | ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S? | | X | |
| 24. | PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF: | | | |
- [ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS]**
- | | | | | |
|-----|---|--|--|--|
| 25. | DOES PROSECUTORIAL STAFF SPONSOR WITNESSES? | | | |
| 26. | DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY? | | | |
| 27. | DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES? | | | |
| 28. | DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES? | | | |
| 29. | DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY? | | | |
| 30. | DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION? | | | |
| 31. | IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF? | | | |
| 32. | IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS? | | | |

33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?
37. ADDITIONAL COMMENTS:

REGULATORY PROCEDURES MATRIX

YES NO

1. STATE: **Texas**
2. NAME OF REGULATORY BODY: **Public Utility Commission**
3. ELECTED COMMISSIONERS? **NO**
4. APPOINTED COMMISSIONERS? **YES**
5. NUMBER OF COMMISSIONERS? **3**
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES? **YES**
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES? **YES**
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS? **YES**
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF? **30**
10. APPROXIMATE NUMBER OF ADVISORY STAFF? **15**
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION? **NO-STAFF IS SEPARATE**
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF? **N/A**
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES? **YES**
14. DOES STAFF SPONSOR WITNESSES? **YES**
15. DOES STAFF TAKE POSITIONS ON ISSUES? **YES**
16. DOES STAFF ENGAGE IN DISCOVERY? **YES**
17. DOES STAFF CROSS EXAMINE WITNESSES? **YES**
18. DOES STAFF FILE A RECOMMENDED DECISION? **YES**
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE? **YES**
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF? **YES (In docketed proceedings)**
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS? **YES**
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S? **YES**
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:

[ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS]

25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES? **YES**
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY? **YES**
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES: **YES**
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES? **YES**
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY? **YES**
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION? **YES**
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF? **YES**
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS? **YES**

33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES? **NO**
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS? **YES**
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES? **YES**
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES? **YES**
37. ADDITIONAL COMMENTS:

REGULATORY PROCEDURES MATRIX

YES NO

- | | | | |
|---|---|----|----|
| 1. | STATE: Utah | | |
| 2. | NAME OF REGULATORY BODY: Public Service Commission | | |
| 3. | ELECTED COMMISSIONERS? | | X |
| 4. | APPOINTED COMMISSIONERS? | X | |
| 5. | NUMBER OF COMMISSIONERS? 3 | | |
| 6. | ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES? | X | |
| 7. | ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES? | X | |
| 8. | IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS? | | X |
| 9. | APPROXIMATE NUMBER OF PROSECUTORIAL STAFF? NA | | |
| 10. | APPROXIMATE NUMBER OF ADVISORY STAFF? NA | | |
| 11. | IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION? | X | |
| 12. | APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF? | 45 | |
| 13. | DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES? | | X |
| 14. | DOES STAFF SPONSOR WITNESSES? | | X |
| 15. | DOES STAFF TAKE POSITIONS ON ISSUES? | | X |
| 16. | DOES STAFF ENGAGE IN DISCOVERY? | | X |
| 17. | DOES STAFF CROSS EXAMINE WITNESSES? | | X |
| 18. | DOES STAFF FILE A RECOMMENDED DECISION? | | X |
| 19. | IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE? | | NA |
| 20. | ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF? | | X |
| 21. | IF ANSWER IS YES ABOVE, PLEASE EXPLAIN: | | |
| 22. | DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS? Commission hears major dockets | | |
| 23. | ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALI'S? | | X |
| 24. | PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF: | | |
| <u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS</u> | | | |
| 25. | DOES PROSECUTORIAL STAFF SPONSOR WITNESSES? | X | |
| 26. | DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY? | X | |
| 27. | DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES? | X | |
| 28. | DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES? | X | |
| 29. | DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY? | X | |
| 30. | DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION? | X | |
| 31. | IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF? | | X |
| 32. | IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS? | | X |

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| 33. | PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES? | | X |
| 34. | DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS? | | X |
| 35. | ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES? | X | |
| 36. | IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES? | X | |
| 37. | ADDITIONAL COMMENTS: | | |

I ASSUME THAT QUESTIONS 13-17 ARE REFERING TO ADVISORY STAFF

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	Washington		
2. NAME OF REGULATORY BODY:	Washington Utilities and Transportation Commission (UTC)		
3. ELECTED COMMISSIONERS?	No.		
4. APPOINTED COMMISSIONERS?	Yes, appointed by Governor, approved by Senate		
5. NUMBER OF COMMISSIONERS?	3; 2 of majority party		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		X	
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?		X	
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	Yes	X	
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	100 total		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?	4.		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?	See ans. 8. Advisory staff perform none of the functions discussed below as litigation activities, but sit as assistants to the Commission in analyzing the evidence. They do from time to time issue "bench requests" to parties for information, but these are formally issued by the Commission itself, not advisory staff.		
12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL	See ans. 8.		

STAFF?			
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?	Prosecutorial Staff acts as any other party in adjudication dockets including: discovery, written testimony of staff members and outside experts, cross-exam at hearing, briefs.	x	
14. DOES STAFF SPONSOR WITNESSES?		x	
15. DOES STAFF TAKE POSITIONS ON ISSUES?		x	
16. DOES STAFF ENGAGE IN DISCOVERY?		X	
17. DOES STAFF CROSS EXAMINE WITNESSES?		X	
18. DOES STAFF FILE A RECOMMENDED DECISION?			x
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?	See 18		x
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?		x	
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	Yes, ex parte rules apply to prosecutorial staff (aka trial/advocacy staff) as to any other party. No distinction is made. The bar extends to the advisory staff and senior administrators also (e.g. Executive Director).		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	Administrative Law Judges employed by the UTC	x	
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?	The "ex parte" wall separates Commissioners and their advisory staff and the ALJ from all parties, including the prosecutorial staff.	X	
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:	n/a		
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS</u>	These seem redundant of questions above.		

25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?		X	
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?		X	
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?		X	
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?		X	
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?		X	
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?	No, but like all parties, they recommend an outcome in testimony and brief (e.g. a specific revenue requirement in a general rate case).		√
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?		√	
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?		√	
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			√
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?	Not known. If so, informal		√
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?	No.		
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?		√	
37. ADDITIONAL COMMENTS:			

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	West Virginia		
2. NAME OF REGULATORY BODY:	Public Service Commission of West Virginia ("WVPSC")		
3. ELECTED COMMISSIONERS?	No.		
4. APPOINTED COMMISSIONERS?	Yes, appointed by Governor, approved by Senate		
5. NUMBER OF COMMISSIONERS?	Three; max. 2 of same party; at least 1 must be lawyer; appointed for staggered 6 year terms		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?		√	
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?			
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	Yes. There are several subdivisions within the WVPSC: (1) Commissioners and their staff, including general counsel and law clerks; (2) various utility divisions organized along line of business; and (3) legal division consisting of staff attorneys	√	
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	10 staff attorneys. Number assigned to particular docket usually is 1; in rare cases, 2 staff attorneys may be assigned. Staff attorneys work with any number of utility and rate analysts, engineers and customer service technicians.		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?	The WVPSC has roughly 224 staff members (excludes 24 Commissioners and staff, 14 legal division attorneys and staff, and 13 administrative law judges and staff).		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?	See ans. 8.		

12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	See ans. 8.		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?	Yes. WVPSC staff is a party in every formal case docket.	√	
14. DOES STAFF SPONSOR WITNESSES?	Yes (WVPSC legal staff sponsors utility division staff witnesses).	√	
15. DOES STAFF TAKE POSITIONS ON ISSUES?	Yes.	√	
16. DOES STAFF ENGAGE IN DISCOVERY?	Yes.	√	
17. DOES STAFF CROSS EXAMINE WITNESSES?	Yes.	√	
18. DOES STAFF FILE A RECOMMENDED DECISION?	Yes. WVPSC staff's positions/recommendations are offered via a bifurcated, joint memorandum procedure. Utilities division staff issues "initial," "further" and/or "final" "utilities division memorandum"; Legal division then issues "initial," "further" and/or "final" "joint staff memorandum." Note: Legal division and Utilities division recommendations may differ or even conflict though divisions traditionally try to resolve such conflicts internally.	√	
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?	Yes.	√	
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?	Yes. Staff (consisting of Utilities and Legal divisions) is a party and ex parte limitations generally apply.	√	
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	See ans. 20.		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	Yes. The WVPSC includes an Administrative Law Judge ("ALJ") division, consisting of 10 ALJs and staff. In addition, under W. Va. Code § 24-1-4, the WVPSC may – and on rare occasions has – appointed WVPSC employees other than ALJs to act as "hearings examiners."	√	
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?	Yes.	√	
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT	See ans. 23.		

PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:			
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF FUNCTIONS]</u>			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?	Yes.	✓	
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?	Yes.	✓	
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?	Yes.	✓	
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?	Yes.	✓	
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?	Yes.	✓	
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?	Yes.	✓	
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?	No.		✓
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?	Yes.	✓	
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?	No. Subject however to ethical rules limiting contact with adverse party represented by counsel.		✓
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?	Yes.	✓	
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?	Yes.	✓	
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?	No.		✓

REGULATORY PROCEDURES MATRIX

	<u>COMMENTS</u>	<u>YES</u>	<u>NO</u>
1. STATE:	Wyoming		
2. NAME OF REGULATORY BODY:	Wyoming Public Service Commission		
3. ELECTED COMMISSIONERS?			x
4. APPOINTED COMMISSIONERS?		x	
5. NUMBER OF COMMISSIONERS?	Three		
6. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING DOCKETS/CASES?	Yes		
7. ARE COMMISSIONERS PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES REGARDING PENDING RULEMAKING DOCKETS/CASES?	No, not really. Rulemakings are not considered a contested proceeding.		x
8. IS THE COMMISSION STAFF SEPARATED INTO PROSECUTORIAL AND ADVISORY STAFF FUNCTIONS?	The Office of Consumer Advocate is technically an independent division of the PSC so yes, as we litigate as a party (but not in all matters before the PSC). The remaining staff generally functions as advisory. So, my responses below are based on the fact that the OCA is technically staff of the PSC – although on a practical basis we function as a separate agency (which we are not).	x	
9. APPROXIMATE NUMBER OF PROSECUTORIAL STAFF?	Six (the number of us in the OCA)		
10. APPROXIMATE NUMBER OF ADVISORY STAFF?	Total of 28 staff at the PSC excluding the OCA. About 8 are mostly administrative (IT, docketing, clerical, etc.)		
11. IF STAFF IS NOT SEPARATE, DOES A SEPARATE OFFICE PERFORM A PROSECUTORIAL FUNCTION?	The OCA, as noted above. However, the law does not prohibit the advisory staff from further separating themselves for the purpose of having certain staff members acting as a party to take an adverse position.		

12. APPROXIMATE NUMBER OF SEPARATE PROSECUTORIAL STAFF?	Six – the number in the OCA		
13. DOES STAFF FUNCTION AS A PARTY IN MAJOR DOCKETS/CASES?	Just the OCA portion of the Staff	X	
14. DOES STAFF SPONSOR WITNESSES?	Just the OCA portion of the Staff		
15. DOES STAFF TAKE POSITIONS ON ISSUES?	Yes. Even the advisory staff has taken positions on cases that were adverse to the positions of the other parties of record.	X	
16. DOES STAFF ENGAGE IN DISCOVERY?		X	
17. DOES STAFF CROSS EXAMINE WITNESSES?		X	
18. DOES STAFF FILE A RECOMMENDED DECISION?	The Commission deliberates publicly and then the decision is written based on that deliberation. There is no recommended decision – just the one final decision.		X
19. IF YES, IS RECOMMENDED DECISION PUBLICLY AVAILABLE?			
20. ARE COMMISSIONERS PROHIBITED FROM COMMUNICATIONS WITH ANY STAFF?		X	
21. IF ANSWER IS YES ABOVE, PLEASE EXPLAIN:	Just the OCA or other staff who may be acting as a formal party		
22. DO YOU USE TRIAL JUDGES, HEARING OFFICERS OR ADMINISTRATIVE LAW JUDGES TO MANAGE MAJOR DOCKETS?	One or more staff attorney functions as the hearing officer for any individually assigned case. There are not separate attorney and ALJ's/hearing officers.	X	
23. ARE COMMISSIONERS, PARTIES, STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH TRIAL JUDGES/HEARING OFFICERS OR ALJ'S?	The Commission may not have ex parte communications with any staff who participates as a formal intervener in the proceeding. Practically, that just means that there is no ex parte between the Commission/Commission Staff and the OCA.	X	
24. PLEASE EXPLAIN ABOVE RESPONSE IF EX PARTE NOT PROHIBITED BY ALL PARTIES, COMMISSIONERS AND STAFF:			
<u>ANSWER THE FOLLOWING QUESTIONS ONLY IF STAFF IS SEPARATED INTO PROSECUTORIAL STAFF AND ADVISORY STAFF</u>			

FUNCTIONS]			
25. DOES PROSECUTORIAL STAFF SPONSOR WITNESSES?		x	
26. DOES PROSECUTORIAL STAFF ORIGINATE DISCOVERY?		x	
27. DOES PROSECUTORIAL STAFF CROSS EXAMINE WITNESSES?		x	
28. DOES PROSECUTORIAL STAFF FILE BRIEF'S AND TAKE POSITIONS ON ISSUES?		x	
29. DOES PROSECUTORIAL STAFF ENGAGE IN DISCOVERY?		x	
30. DOES PROSECUTORIAL STAFF FILE A RECOMMENDED DECISION?	On infrequent occasion – generally only when the parties are requested to do so by the Commission	x	
31. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH ADVISORY STAFF?		x	
32. IS PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH COMMISSIONERS?		x	
33. PROSECUTORIAL STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?			x
34. DOES ADVISORY STAFF PROVIDE WRITTEN RECOMMENDATIONS TO COMMISSIONERS?	Not generally. Often, there is a briefing memo by the advisory staff but the memo rarely (if ever) contains a recommendation. The recommendation is instead generally offered at deliberations.		x
35. ARE RECOMMENDATIONS PUBLICLY AVAILABLE TO PARTIES?			x
36. IS ADVISORY STAFF PROHIBITED FROM EX PARTE COMMUNICATIONS WITH PARTIES?		x	
37. ADDITIONAL COMMENTS:			