



Public Utilities Commission - Improvements to Avenues for Consumers to Raise Concerns Possible; Risk of Actual and Perceived Bias Persists

Report No. SR-PUC-12

Issues OPEGA noted during this review:

- PUC's adjudicatory proceedings/process can be confusing and intimidating for consumers who want to represent themselves as parties in PUC cases. (pg. 31)
- On-line case file system is difficult to navigate and search without a specific docket number. (pg. 33)
- Consumers may not be aware that unsworn testimony and on-line comments submitted in PUC cases cannot be relied upon in the Commission's decision-making. (pg. 35)
- PUC does not always make decisions on Ten-Person complaints that go to adjudicatory proceedings within nine months as required by statute. (pg. 36)
- PUC lacks a structured process for identifying and addressing emerging issues and common concerns from individual complainants. (pg. 37)
- Past associations and current working relationships between PUC staff or Commissioners and the utilities they regulate create risk of actual or perceived bias. (pg. 39)

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a report to the
Government Oversight Committee
from the
Office of Program Evaluation & Government Accountability
of the Maine State Legislature

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Recommendations



PUC Should Explore Ways to Assist Consumers Appearing Pro Se in Commission Proceedings

The Commission conducts much of its official business through formal legal cases following an adjudicatory proceedings process prescribed in Maine Statute and PUC Rules. Being a party to a case is one way that consumers can get their concerns before the Commission. However, OPEGA heard and observed that adjudicatory proceedings, by their nature, are difficult and intimidating for consumers to follow and participate in. This is particularly true for consumers appearing *pro se* (not represented by an attorney).

Adjudicatory proceedings are similar in many ways to a court proceeding. The PUC may take testimony, subpoena witnesses and records, issue decisions or orders, and hold public and evidentiary hearings. Parties to the case may submit evidence, bring witnesses, file data requests, cross-examine witnesses and are included in technical conferences. PUC Rules state that non-attorneys appearing before the PUC are expected, as a condition of representation, to be familiar with PUC Rules Chapter 110, the Maine Rules of Civil Procedure where applicable, the Maine Rules of Evidence where applicable, and to abide by Maine Rules of Professional Conduct for attorneys. The typical citizen probably does not meet these requirements.

Interviewees and unsolicited comments received by OPEGA during this review specifically noted that in order to participate one really needs an attorney and when one has an attorney the PUC treats them better. One lead complainant for a Ten-Person complaint told OPEGA that the PUC recommended he hire an attorney, possibly because the adjudicatory process PUC must use is legalistic and easier for attorneys familiar with the rules and procedures to navigate. PUC's General Counsel told OPEGA they try to be flexible by holding pre-hearing conferences and creating opportunities for intervenors to ask questions and get a better understanding of the process, but it is by nature a legal process. OPEGA heard from PUC staff members and a Commissioner that intervenors without legal representation can be challenging to work with in part because they do not understand, or ignore, the process and procedures the PUC is required to follow. However, hiring an attorney can be expensive and is not always feasible for consumers.

PUC Commissioners OPEGA spoke with noted that the public is at a disadvantage with the utilities in terms of resources and expertise. As one Commissioner noted, utilities have an interest in presenting issues opaquely and the PUC and utilities could present issues in a more understandable way such as by using less technical jargon and acronyms. Another Commissioner said that consumers intervening in cases might not exactly understand the specific issues that are before the PUC. Consequently, they may not ask questions or make comments directly related to the material issue and, as a result, the Commission may not consider their remarks in deciding the case.

The PUC told us it tries to help consumers who intervene in cases by using what it calls a “hot bench.” A hot bench means that Commissioners actively question parties during proceedings and it enables staff to pick up the issues of a case and press them in conferences with other parties. Commissioners can ask questions intervenors may want to ask, but may not know how to do so effectively. However, according to one Commissioner, it is difficult to help people better articulate their case. Attitudes consumers bring about utility companies can also be an obstacle to their understanding of a case and there can be differences in interpretation of stipulation language between consumers, the utility and PUC.

Rules prohibiting *ex parte* communications during cases that are in the investigation/adjudicatory proceedings phase also limits the PUC’s ability to assist consumers during the proceedings. *Ex parte* communications refer to communications between one or more, but not all, parties and the deciding body and its advisory staff in an adjudicatory proceeding. In PUC cases, Commissioners and staff assigned to the case, such as the Hearing Examiner and Division staff, are deciding the case. Therefore, they cannot speak with any parties separately about any decision, issue of fact, or law unless all parties are provided notice and an opportunity to participate. Any violation of the *ex parte* rule must be disclosed to all parties within 48 hours of realizing it occurred. Parties are not prohibited from discussing the case with one another.

The PUC staff can speak with parties about procedural matters and PUC Division Directors report spending a lot of time talking about the process with consumers who are representing themselves. The PUC also will suggest that consumers speak with OPA about their case and they usually do. If asked, OPA will assist as much as possible, but as a party in a case OPA may or may not agree with, or be able to support, the citizen’s position. OPA is required by statute to represent the interests of all ratepayers, so OPA itself may take a different position on issues. Consequently, the complainants or intervenors can be left without much assistance or guidance regarding substantive matters in the case.

OPEGA also observed concerns and frustration on the part of consumers participating in proceedings regarding the way PUC staff and Commissioners treated them. Some had developed mistrust in the process and the PUC partly because of this. PUC strives to be accessible and responsive to consumers and, in many ways, they succeed. However, with the exception of the Consumer Assistance Division, the PUC is not designed to be a customer service agency. PUC staff in the other divisions interacts primarily with legal and other representatives of regulated utilities within the context of PUC cases. Unlike CAD staff, they are not trained in customer service, nor is that their primary responsibility.

Overall, the complexity and formality of adjudicatory proceedings limit accessibility and responsiveness for consumers whose complaints and concerns are considered through such proceedings. Consumers are able to represent themselves before the PUC, but not effectively or easily. Even attorneys who are not involved in utility cases regularly can find the process confusing and hard to follow. There may be ways for PUC to make the adjudicatory proceedings a bit more user friendly for consumers. OPA and PUC staff suggested some to us that should be explored.

Recommended Management Action:

The PUC and OPA should together explore ways to facilitate consumers' ability to effectively represent themselves in adjudicatory proceedings before the Commission and implement those ideas deemed feasible. Specifically, they should consider assigning a staff person(s), or perhaps creating a position, in either the PUC or OPA that is not subject to *ex parte* communication rules to assist and advise members of the public in navigating the adjudicatory process and various procedures at the PUC.

The function of this position would not be to represent or advocate, rather to assist by providing as much guidance as allowable under statute and rules. For example, this consumer-oriented function could actively assist consumers who are involved in cases as parties/intervenors or commenters by explaining how the process works, what rules and laws participants are required to comply with, how to submit evidence, how to communicate effectively with the Commission, and what types of information are helpful or have been effective with the Commission. The person might also be responsible for developing simple brief written materials to educate and provide guidance in these areas and others, such as navigating the Ten-Person complaint process.

The function would require someone with a broad perspective and some authority who understands the types of cases, as well as the process and underlying legal procedures and requirements, and could speak with people at length to understand and answer their questions.

Additionally, the PUC should consider:

- establishing guidelines for parties to follow in preparing testimony and submitting documents in cases that promote readability and understandability for the general public as much as possible, i.e. avoiding technical jargon, acronyms, and/or defining technical terms used; and
- possible revisions to current Rules and procedures that would make it easier for consumers to represent themselves before the Commission.



PUC Should Continue to Improve the Usability and Accessibility of Its On-line Case File System

The PUC uses a web-based electronic on-line filing system called iGOVERN Complaint and Quality Management. The part of this system that contains and manages the official files for the Commission's docketed cases is called the Case Management System (CMS), and is accessed through the PUC's website. Parties to a case create an account in this system and then may submit filings electronically. CMS also notifies parties automatically when a new filing is posted. Any member of the public can also use CMS to review filings and submit public comments on cases that are before the Commission. This is a new system, implemented in July of 2012, and is a tremendous resource for ratepayers and members of the public. However, we noted a number of areas where CMS could be made more accessible and user friendly.