

Agency Snapshot: Florida Public Service Commission

By Kurt Schrader

Agency Background

The Florida Public Service Commission was created by the Florida Legislature in 1887 as the Florida Railroad Commission. The primary purpose of the Commission, at its inception, was the regulation of rates and operation of railroads for passengers and freight. The Legislature abolished the Commission in 1891, but subsequently re-established it in 1897. Since its re-establishment, with Florida's massive growth through the 20th century, the authority and mission of the Commission has expanded to include the regulation of telephone and telegraph (1911), motor carrier transportation (1929), investor-owned electric utilities (1951), natural gas utilities (1952), water and wastewater utilities (1959), airlines (1972), rate structure of municipal and rural cooperative electric utilities (1972), and safety jurisdiction over all electric utilities (1986).

Beginning with federal deregulation of the airline industry in 1978, deregulatory legislation passed at both the federal and state levels has revised the Commission's jurisdiction over Florida industries. This included a significant deregulation of the telecommunications industry in 2011 through the Regulatory Reform Act, Chapter 2011-36, Laws of Florida. While the Regulatory Reform Act significantly reduced the Commission's jurisdiction over telecommunications, it still retains authority to ensure that incumbent local exchange carriers meet their obligation to provide unbundled access, interconnection, and resale to competitive local exchange companies in a nondiscriminatory manner, administers the system to provide Telecommunications Relay Services, and oversees the federal Lifeline Assistance program for the state.

Today, the Commission's primary areas of regulation are over inves-

tor-owned electric companies, investor-owned natural gas companies, investor-owned water and wastewater utilities, certificated or registered telecommunications companies, and safety authority over all electric and gas systems in the state. The Commission also has limited authority over municipal and cooperative electric utilities (regarding rate structure, territorial boundaries, bulk power supply operations and planning), and gas districts and municipally-owned gas utilities (regarding territorial boundaries and safety).

The Commission is headed by five commissioners appointed by the Governor from a list of nominees provided by the Florida Public Service Commission Nominating Council, and confirmed by the Senate. Commissioner terms are four years and commissioners may apply for additional terms. However, any commissioner appointed after July 1, 2015, may not serve more than three consecutive terms. The chief administrative officer for the Commission is the Chairperson, who is elected to a two-year term by a majority vote of the Commission. The current commissioners are:

Chairman: Art Graham
 Commissioner: Julie Imanuel Brown
 Commissioner: Donald J. Polmann
 Commissioner: Gary F. Clark
 Commissioner: Andrew Giles Fay

Venues

Though the Commission may refer certain matters to the Division of Administrative Hearings for adjudication, nearly all of the Commission's business is conducted either through its regularly-scheduled agenda conferences (a schedule of which may be found on the Commission's website at <http://www.floridapsc.com/Conferences/ScheduleCommConf>) and through various hearings scheduled by the Commission. The Commission

typically meets in Tallahassee; however, it has discretion to hold session anywhere in Florida.

Pursuant to article V, section 3(b)(2) of the Florida Constitution, final orders of the Commission relating to the rates or services of utilities providing electric, gas, or telephone service in Florida are appealed directly to the Florida Supreme Court. Other actions of the Commission must be appealed to the First District Court of Appeal.

Commission Clerk

Official filings with the Commission should be submitted to the Office of the Commission Clerk. The Commission strongly encourages electronic filing and may transition to mandatory electronic filing in the future. Regular business hours for the Commission Clerk are 8:00 a.m. to 5:00 p.m. (Eastern Time), Monday through Friday (excluding state holidays). The Clerk may be contacted as follows:

Commission Clerk:

Claudia Stauffer

Mailing Address:

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

Physical Address:

Gerald L. Gunter Building
 2540 Shumard Oak Boulevard,
 Suite 152
 Tallahassee, Florida 32399-0850

E-mail: Clerk@psc.state.fl.us

Telephone: (850) 413-6770

Website: <http://www.floridapsc.com/ClerkOffice>

The Clerk is also available to assist with public records requests pursuant to chapter 119, Florida Statutes.

Office of General Counsel

The Office of the General Counsel
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is responsible for a number of duties, including:

- 1) Making reports and recommendations to the commissioners as requested;
- 2) Preparing formal orders conforming with Commission actions;
- 3) Representing the public interest in matters before the Commission;
- 4) Attending and participating in public hearings and conferences;
- 5) Advising commissioners on legal matters;
- 6) Representing the Commission in legal proceedings at both the state and federal levels; and
- 7) Other duties as directed by the Commission.

The Office of General Counsel is divided into three sections. The Economic Regulation Section (ECR) is responsible for handling utility rate cases, certifications, customer complaints, quality of service, territorial disputes, and other matters involving water, wastewater, electric, and gas industries. ECR handles these matters in both informal and formal proceedings before the Commission, the Division of Administrative Hearings, and in civil courts. The Regulatory Analysis Section (RAS) handles cases relating to development of competitive markets and certain other

formal proceedings before the Commission, the Division of Administrative Hearings, and in civil courts. RAS also reviews and provides counsel on contracts, personnel, and administrative matters. The Appeals, Rules, and Mediation Section (APP) handles all rulemaking, mediation, and the defense of Commission orders on appeal.

The current General Counsel for the Commission is Keith C. Hetrick who joined the Commission as General Counsel in March 2016. His role is divided between managing the Commission's legal staff and providing advice and counsel to the Commission on all legal and regulatory matters within the jurisdiction of the Commission. Prior to joining the Commission, he was an independent solo practitioner with the Ramba Law Group, Broad and Cassel, and Greenberg Traurig, representing clients' corporate needs as well as clients' policy and regulatory issues before the Florida Legislature and in state agency regulatory forums. He has also served as an Assistant General Counsel for the Florida Department of Environmental Protection and in-house General Counsel for the Florida Home Builders Association. He is Board Certified by The Florida Bar in State and Federal Government and Administrative Practice.

Role of Commission Attorneys

In general, Commission staff members, including Commission attorneys, are not advocates in Commission proceedings given that the Commission staff is not a party in such proceedings. Rather, it is the role

of staff to assist the commissioners by developing the case record to ensure the commissioners are fully informed as to all relevant facts and legal considerations when reaching decisions. The exception to this is "show cause" and revocation proceedings. A show cause proceeding involves whether a utility should be assessed penalties for violation of Commission rules or orders, or certain statutes that are the responsibility of the Commission to enforce. A revocation proceeding involves whether a Certificate of Authorization for a water or wastewater utility should be revoked. In show cause and revocation proceedings, Commission attorneys serve in a role that is more prosecutorial in nature.

Practice Tips

Though proceedings before the Commission are generally conducted pursuant to Florida's Administrative Procedure Act and the Uniform Rules of Procedure, the Commission also has a number of unique procedures. These include the frequent use of pre-filed testimony in matters before the Commission and—given the proprietary nature of a substantial amount of the information utilized or relied upon during Commission proceedings—strict rules for the determination and handling of confidential material. For a comprehensive list of the Commission's exceptions to the Uniform Rules of Procedure, see Florida Administrative Code Rule 25-40.001. Persons practicing before the Commission should also make themselves familiar with the Commission's Rules of Procedure found in Florida Administrative Code chapter 25-22.

