

About the Colorado Public Utilities Commission

What Are Public Utility Commissions (PUCs)?

PUCs are legislatively or constitutionally created state agencies that have unique expertise, such as engineering, economics, and accounting, related to the regulation of public utilities. Public utilities are generally considered natural monopolies in which a single entity is best positioned to decrease costs per unit of a good--i.e., customers do not necessarily have a cost-competitive alternative to their product. Because of this, PUCs act as a “check” on the prices charged by public utilities. PUCs regulate utilities’ applications to set rates, provide services or programs, and procure power. For example, PUCs may consider whether utilities have “unduly discriminated” between different types of customers when proposing rates for different customer classes (such as residents versus businesses). Accordingly, a PUC’s primary function is often as an economic regulator.

About the Colorado PUC

The Colorado PUC’s mission is to “serve[] the public interest by effectively regulating utilities and facilities so that the people of Colorado receive safe, reliable, and reasonably-priced services consistent with the economic, environmental and social values of our state.” In other words, the Colorado PUC must consider ratepayers’ bills when they make decisions, but they also consider priorities related to utility safety and reliability, environmental standards, and the utility’s opportunity to make a fair profit on its investments. Different stakeholders at the PUC can have different conceptions of “the public interest,” such as whether it should be viewed over the short-term or the long-term, and the appropriate balance between priorities.

What Entities Does the PUC Regulate?

The Colorado PUC regulates different aspects of electric, natural gas, steam, telecommunications, transportation, railroad, and water utility services, according to state law. It does not regulate every type of utility--for example, it regulates investor-owned electric utilities (Xcel Energy and Black Hills Energy, which are private companies with shareholders), but it has limited ability to regulate municipal electric utilities and rural electric cooperatives. While the General Assembly reduced the PUC’s ability to regulate telecommunications providers in recent years, it expanded the PUC’s authority to regulate “transportation network companies” (services like Uber and Lyft).

The Colorado Commissioners

Colorado has three commissioners--no more than two of the same political party--who are appointed by the governor and confirmed by the Senate. The commissioners have four-year terms. One commissioner is the chairperson who is responsible for managing their meetings. Due to the Colorado Sunshine Law, the Colorado PUC must conduct its meetings in public. The commissioners are also prevented from having individual discussions with each other or with outside parties about issues under litigation.

The Colorado PUC Staff

The Colorado PUC is authorized to have up to 96 full-time employees. The staff is divided based on their subject matter expertise (e.g., electric or transportation issues). Some staff are “advisory” or “trial” staff, which is relevant in litigated proceedings--trial staff actively participate in PUC proceedings to help build the factual record and make recommendations on the

outcome, whereas the advisory staff work directly with the commissioners behind-the-scenes to provide them with advice and technical support. PUC staff also monitor utilities' filings for compliance, conduct research on emerging industry issues, and provide educational services.

Steps in a Colorado PUC Proceeding

The Colorado PUC has proceedings that are “quasi-legislative” and “quasi-judicial.” An example of a quasi-legislative proceeding is a rulemaking, in which comments are taken about what rules the PUC should have in place on a certain issue. Parties do not necessarily have to be represented by an attorney to participate. A quasi-judicial proceeding, such as a rate case, is litigated, and parties are represented by attorneys. They build an evidentiary record on which the judge and commissioners can make decisions. Often, an administrative law judge will manage these proceedings with final decisions up to the commissioners, although sometimes the commissioners may choose to directly manage important proceedings themselves.

A litigated proceeding at the PUC may take 6-7 months¹ and include the following general stages:

1. Application and Direct Testimony -- generally, a proceeding begins when a public utility files an application requesting a change to a customer program or a rate. The PUC must first confirm that the application is complete, and then publicly notice the ability to intervene.
2. Interventions -- state agencies (PUC Staff, the Office of Consumer Counsel,² and the Colorado Energy Office³) are called “intervenor of right,” meaning they will be granted the ability to participate in a proceeding if they ask for it. Other intervenors (called “permissive intervenors”) must demonstrate that the application impacts them in some way, often financially, in order to be granted the ability to participate. Local governments, large industrial customers (such as steel manufacturers or data centers), trade associations, and national or state environmental nonprofits may seek to intervene permissively. Usually, interventions must be filed within 30 days of the application being found complete.
3. Subsequent Testimony -- after interventions are granted, the parties have the opportunity to provide their own testimony. Generally, there are two phases: answer testimony from the parties responding to the utility’s direct testimony, and then another stage where the answering parties can cross-answer each other and the utility can rebut them. The parties may ask discovery questions of each other, in addition to filing testimony. PUC proceedings are somewhat unique because parties present most of their evidence through written testimony before the hearing.
4. Evidentiary Hearing -- parties have the opportunity to cross-examine each other’s witnesses at an evidentiary hearing, and may introduce additional evidence obtained

¹ Some proceedings, like electric resource plans, can have multiple phases and take longer.

² The Office of Consumer Counsel (“OCC”) is tasked with representing the interests of residents, small businesses, and agricultural consumers.

³ The Colorado Energy Office (“CEO”) is tasked with improving the effective and efficient use of all of Colorado’s energy resources.

through discovery. A hearing can last as little as a few hours or as long as two weeks. Sometimes proceedings settle and the hearing is canceled.

5. Statements of Position -- after the hearing, parties file statements of position, in which they summarize their key issues and recommendations for the PUC.
6. Decisions -- after the written record is complete, the judge (or commissioners) will issue a recommended decision as to how the proceeding should be resolved. For example, the judge might recommend dismissing the application due to lack of evidence, or approving the proceeding with some modifications because other parties presented good evidence on why it should be changed. Generally, parties have 1-2 opportunities to file exceptions or requests for rehearing to correct anything in the decisions that they think is incorrect, incomplete, or confusing. After the PUC issues a final decision, if the parties still disagree, they may sometimes challenge the PUC in district court, although this is rare.

There are, of course, variations on this process. A proceeding might have multiple phases with different hearings (e.g., an Electric Resource Plan). Intervenors might seek amicus status, where they only file legal briefs, instead of full party status. There may be repeated motions on evidentiary issues or more opportunities to file testimony. A rulemaking proceeding may last over a year and take multiple rounds of comments on different issues. However, a litigated proceeding will follow roughly this outline.

The Changing Regulatory Environment

PUCs have been operating in similar ways and with similar legal standards (such as the public interest) since the early 1900s. However, the regulatory environment is changing. The scope and complexity of proceedings has expanded due to retail choice⁴ as well as the creation of new entities like community choice aggregators.⁵ Solar and battery storage are providing customers with competitive options that challenge some conceptions of electric utility service as a natural monopoly. In the meantime, the number of stakeholders in PUC proceedings has also been steadily increasing. Some states now have proceedings with dozens of parties and thousands of pages of filings involving complex economic data and modeling outputs. Not all PUCs have the IT capabilities to manage all of that data so that it can be publicly accessible, and it may not be understandable to the public when it is. Moreover, like the utilities they regulate, PUCs nationwide are at risk of losing institutional knowledge due to impending retirements. In this context, utilities may find it challenging to modernize their grids to make them more reliable, or they may be discouraged from modifying their business models to more fully integrate distributed energy resources.

⁴ Customers in some states may choose which entity supplies their electric power, creating competition among electricity providers. This is legal in California, Texas, and Maryland, among other states, but not in Colorado.

⁵ Community choice aggregation (“CCA”) is legal in seven states and allows local governments to “aggregate” to purchase power on behalf of their residents and businesses, without forming a full municipal utility. CCAs are legal in Massachusetts, New York, Ohio, California, New Jersey, Rhode Island, and Illinois.