

A Review of the Public Service Commission

BACKGROUND

We were asked to conduct a performance audit of the Public Service Commission to determine whether the PSC was following due process requirements in cases before the commission. We were also asked to examine the issues of commissioner qualifications and agency structure.

Our audit objectives focused on determining the following:

- Whether the PSC had adequately administered the due process requirements for all persons or parties appearing before the commission.
- If the requirements to become a PSC commissioner should be modified.
- Whether the structure of the PSC was adequate to effectively serve its mission.



In our February 2003 audit of the Public Service Commission (PSC), we made seven recommendations to the General Assembly and two recommendations to the Public Service Commission. In February 2004 the General Assembly passed reforming legislation which made numerous changes to the operations of the Public Service Commission and addressed our recommendations. In our follow-up, we found that while the commission has addressed both recommendations, further procedures are necessary.

RECOMMENDATIONS MADE TO THE LEGISLATURE

Below we discuss the seven recommendations made to the General Assembly concerning the administration of the PSC. Primarily all of these recommendations were addressed in Act No. 175 signed by the Governor in February 2004.

- Consider amending §1-23-360 of the South Carolina Code of Laws to provide that any official, including Public Service Commissioners, receiving an ex parte communication during a contested case must note this on the record and allow all parties an opportunity to respond.

Although the General Assembly did not amend this code section, S.C. Code §58-3-260(E) was added, effective January 1, 2005, which requires any person to report on the record any ex parte communication as soon as it is known. Within ten days of the notice, any party may request an opportunity to rebut the contents of the communication.

- Consider making Public Service Commissioners bound by the Model Code of Judicial Conduct or ethics rules similar to those applicable to administrative law judges. If the General Assembly places the Public Service Commission under the Model Code of Judicial Conduct, then the General Assembly should clarify which authority should enforce these rules.

S.C. Code §58-3-30(B), which became effective in February of this year, states that commissioners and employees are bound by the Code of Judicial Conduct and state ethics rules. This section states that the State Ethics Commission must enforce and administer those rules. Commissioners and employees are also required by §58-3-30(C) to attend an annual workshop with six hours of training on ethics and the Administrative Procedures Act.

- Consider prohibiting Public Service Commissioners from meeting with parties or their representatives to discuss cases which are to be filed before the commission.

While S.C. Code §58-3-260(B) prohibits a commissioner or employee from communicating about an issue in a proceeding, this section does not prohibit a commissioner from discussing a case that has not yet been filed. However, §58-3-260(D), which becomes effective on January 1, 2005, requires a commissioner to report any ex parte communications that occurred before serving in a proceeding.

- Consider creating a separate Office of Public Staff out of the Public Service Commission to represent the public interest before the PSC.

S.C. Code §58-4-5 *et seq.* creates an Office of Regulatory Staff as a separate state agency. This office represents the public interest before the Public Service Commission. Most of these code sections take effect on July 1, 2004. However, the sections requiring the staff to participate in hearings and conduct audits and inspections do not take effect until January 1, 2005.

METHODOLOGY

We received information from the Public Service Commission regarding the implementation of the audit's recommendations. We reviewed this and other information, interviewed an official and verified evidence supporting the commission's information as appropriate.

FOR MORE INFORMATION

Our full report, its summary, and this document are published on the Internet at

www.state.sc.us/sclac

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- Consider increasing the minimum requirements to become a commissioner of the Public Service Commission.

In 2003, there were no minimum education or experience requirements to become a PSC Commissioner. State law now requires commissioners to have a bachelor's degree and an appropriate background. Although S.C. Code §58-3-20(A) took effect in February 2004, these minimum qualifications do not apply to current commissioners but to commissioners elected to terms beginning after June 30, 2006.

- Consider amending S.C. Code §58-3-20 to provide that Public Service Commissioners' four-year terms are staggered in two-year increments.

S.C. Code §58-3-20(D), which took effect in February of this year, staggers the terms of the commissioners. Commissioners from the even-numbered congressional districts have terms that expire on June 30, 2006, and commissioners from the odd-numbered districts have terms that expire on June 30, 2008.

- Consider extending the prohibition of service contained in S.C. Code §58-3-24 to immediate family members of the General Assembly.

This code section was changed effective February 2004, and has extended the prohibition of service on the Public Service Commission to immediate family members of the General Assembly. Immediate family members is defined by S.C. Code §58-3-5(2) as a child residing in the house, a spouse, or someone claimed as a dependent for income tax purposes.

RECOMMENDATIONS MADE TO PSC

EX PARTE COMMUNICATIONS TRAINING

In 2003, we found that the PSC had no procedures in place for training staff regarding ex parte communications. Ex parte occurs when one party communicates information with a decision-maker, such as a PSC Commissioner, to the exclusion of other parties. This is prohibited because it allows one party to obtain an unfair advantage over another. We found several e-mails which may have violated the prohibition on ex parte communications.

During our follow-up, a commission official reported that the State Ethics Commission has given a class on ex parte communications to all commissioners and legal staff, and that the legal staff is communicating this information to the rest of the PSC staff in small groups. According to this official, the agency continues to instruct employees, commissioners and utility company representatives regarding ex parte communications on an ongoing, regular basis.

REPORTING SUSPECTED EX PARTE COMMUNICATIONS

During our 2003 audit, in a survey of PSC employees, 45% of the respondents indicated they did not know to whom they should report suspected ex parte communications. We recommended that the PSC should implement a system for reporting suspected ex parte communications to the State Ethics Commission. In our follow-up, we found that while the agency has adopted procedures for reporting such violations by commissioners, no procedures are in place for commission employees.

According to an agency official, the agency adopted a Code of Conduct in March 2003 which includes a section on reporting violations concerning ex parte communications and requires the Commission Chairman to report in writing an improper communication to the State Ethics Commission. They have not yet developed a procedure for PSC employees, other than commissioners, to follow when reporting an ex parte communication since they are continuing to review the recent law changes in this area, according to this official. S.C. Code §58-3-140(B) requires that the commission develop and publish a policy manual setting forth guidelines for administration of the commission. According to an agency official, this manual will include policies and procedures addressing ex parte communications. Without adequate procedures for agency staff to follow in recognizing and reporting ex parte communications it is possible that improper communications will continue to occur.