

Nevada's Public Utilities Commission (PUC)—Steadily Becoming a Stealth, Dictatorial Agency

This first article in an ongoing series reveals how the PUC wasted Metro's time responding to a 'disruptive' video camera incident. The PUC sought to silence a four-year citizen attendee of its meetings, fearful that disclosure would reveal the irrefutable evidence of their inferior performance.

Few Nevadans know about the Public Utilities Commission's existence, what it does and how it is supposed to 'operate.'

Let's cover a few particulars about the PUC.

PUC Operating Practices

The utility rates you are charged every month by Southwest Gas and NV Energy were set by the PUC. Over 90% of the PUC's funding comes from an undisclosed 'mill' tax paid by utilities from your money based on utility company revenue. This tax is not mentioned on your bill break down.

Nevada statute (NRS 704.001) cites one especially important PUC duty: *to balance the interests of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates.*

How is 'fair and impartial' regulation possible when the PUC is heavily reliant upon rates and revenue for its financial existence?

The PUC has a long history of ignoring customer concerns when they adversely impact the PUC's interests in perpetuating its bureaucracy. When the PUC wants something, it summarily declares it to be 'in the public interest' without backing it up with facts and evidence. When pressed to define 'in the public interest,' the PUC offers no response.

When Warren Buffett's Mid-American Energy took over NV Energy almost two years ago, the public was told 'just and fair' rates would result. The PUC changed the approved return on investment from 10% to 9.75% for NV Energy. Can any of us earn this type of return from bank savings accounts or even long-term certificates of deposit? How can we be paying 'just and fair' rates under such onerous terms of service from a monopoly utility?

The PUC cavalierly spends ratepayers' money on subsidies benefitting few and paid for by all ratepayers, and disproportionately by poor ratepayers. How about \$8,000, ratepayer-subsidized, solar hot water heaters? Are such overpriced gadgets 'in the public interest?' When the calculated savings are in the mid \$70 per year?

Classified as a quasi-judicial body, even though it is part of state government's executive branch, the Governor unilaterally appoints or reappoints the three Commissioners. The temptation to pack the Commission with people who will do his/her bidding is great with no check and balance on these appointments.

Effective October 1, 2015, Governor Sandoval appointed Paul Thomsen as PUC Chair. Thomsen's experience has been heavily focused on political lobbying for the geothermal energy industry. Since 2013, Thomsen was Director of the Governor's Office of Energy. Thomsen replaced a highly-qualified Chair, Alaina Burtenshaw, who has held various PUC positions over the last 23 years.

For ratepayers, their only voice is the state Attorney General's Bureau of Consumer Protection (BCP) operating with a small fraction of the extensive resources bestowed upon the PUC.

The PUC operates with 96 employees, 17 of whom are attorneys. Even the attorneys have attorneys when a paralegal could be doing much of the work at much lower expense to ratepayers. In the non-government world most of us inhabit, paralegals do all the research, draft pleadings and prepare cases for trial. With the same routine dockets and concise statutes, it is time to trim the overstaffing and top-heavy management structure at the PUC.

Legislative Gymnastics

On April 30, 2014, the PUC Commissioners voted themselves a 19-20% pay increase. This action occurred amidst state and local government employees, including teachers taking pay cuts and unpaid furlough days. Fortunately, the legislature had the final word on their budget. The three Commissioners dropped their personal pay increase trying to secure increases up to 23% for one-quarter of the staff, but the legislature wisely voted this down.

When the PUC approached the 78th Legislature in February, 2015 for support of their new biennium budget with a 12% increase in employee compensation expense, it proclaimed it was an 'open and transparent' body. It further invoked plaintive, weak excuses of employee turnover, training time, an inability to find qualified people, and inferior employees are hired because they are all that are available in this current economy and job market. The PUC even went so far as to request no salary caps for any of their employees, but still wanted to participate in the state retirement plan.

Dismiss the Public

How convenient for the PUC to forget that they are public employees when it suits them. If the public asks for clarification of PUC orders issued to utilities, the PUC responds that the ratepayer should "hire an attorney."

When a utility makes its initial PUC filing, the public is allowed to request to be a commenter and file comments in the few instances when there are workshops or consumer sessions. The request is only good for that particular filing.

PUC compliance with the state's Open Meeting Law (OML) is mandatory. Public agencies must conduct their business in public, except for discussions about personnel issues, legal litigation or other confidential matters. Public comment can occur at agenda meetings, consumer sessions and workshops. Hearings with under-oath testimony and the production of formal evidence offer no public comment opportunities.

There are two types of PUC agenda meetings: utility and administrative. Both of these are video conferenced between Las Vegas and Carson City. Utility agendas usually deal with rule making twice a month. This meeting type is the only one broadcast live over the internet for a limited number of listener slots with just an audio feed, then posted to the agenda contents.

The administrative agenda addresses internal PUC operations and the Executive Director's report. This meeting type is also audio recorded, but the PUC does not tell the public this fact, nor that the audio tape is available, but only if someone knows to ask.

The OML says the PUC must have a minimum of two public comment opportunities in both utility and administrative agenda meetings. Before any item on the agenda is discussed, any individual can make three minutes of oral comments. A similar three minutes is available at the end of the meeting regarding anything within the PUC's jurisdiction.

Sounds fair and equitable, right? Wrong. Public comments are not allowed to be used when determining the outcome of agenda items. They are classified as 'anecdotal.'

State statute mandates consumer sessions when a dollar threshold of impact is involved, such as a rate case every four years and an annual, general consumer session. The annual consumer session must be held in Washoe and Clark counties and convenes at 1 p.m. and 6 p.m. on two different days. The public is allowed to come forward and discuss anything relative to the PUC and the utilities they regulate. PUC, BCP and utility company representatives are present. The sessions are recorded and the transcript is submitted to the Legislative Counsel Bureau. Much feigned concern is demonstrated by the PUC employees, with little change in the status quo, anti-consumer policy regularly emerging from the PUC.

Next time: Faux Transparency and Hidden, Unwanted Public Participation