

Ex Parte Communications Guidelines

Pursuant to state law, any communication with individual commissioners about imminent or current dockets may constitute ex parte communication and should be avoided. Ex parte communications rules apply to commissioners and their advisors; they do not apply to staff members of the commission.

Since ex parte communication applies by law to the commissioners, there is a bright-line division in the PUC between the three commissioners as the decision-makers, and their advisors versus the commission's staff. Read on to learn more about this separation of power dynamic, why it is important and the roles of different formal parties involved in a PUC docket.

Example of Parties to a PUC Docket and Their Roles

“Party #1” Utility Company	“Party #2” Commission Staff	“Judge” Commissioners + Advisor Support
While barred from communicating directly with commissioners, parties to the case or docket are free to meet with each other to talk, negotiate, and even settle or resolve an issue before and during a hearing or trial.	The commission's staff is the party that gathers facts and evidence to present to the commissioners on dockets. Commission staff members are able to discuss issues with anyone - in other words, any party but not a commissioner or an advisor to a commissioner - on all topics and dockets regardless of the timing or subject matter.	The three commissioners communicate individually with their three advisors on imminent and current docket matters and any topic over which a commissioner has decision-making or voting authority. As the fair and impartial decision-maker, commissioners cannot meet with either party independently. Furthermore, in the PUC's administrative framework, if the judge were to meet with the parties or one party, the meeting must be noticed, open to the public, and memorialized in the specific docket.

Ex Parte is a legal term and it's Latin-to-English translation means “for one party.”

About Commission Staff

Commission staff consists of six utility analysts, two staff attorneys, four Grain Warehouse Program employees, two Pipeline Safety Program employees, three Consumer Affairs Program employees and six other staff members who deal with docket management electronic filings, public communications, web services and budget management. The staff members are managed by the commission's executive director.

1-26-26. Ex parte communications by agency personnel in contested cases--Investigating officer disqualified from decision making--Authorized communications.

Unless required for the disposition of ex parte matters authorized by law, members of the governing board or officers or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or the party's representative, except upon notice and opportunity for all parties to participate. If one or more members of a board or commission or a member or employee of an agency, who is assigned to render a decision in a contested case, took part in an investigation upon which the contested case is based, the member or employee may not participate in the conduct of the hearing nor take part in rendering the decision on the contested case. However, the member or employee may appear as a witness and give advice as to procedure. If, because of the disqualification, there is no person assigned to conduct the hearing or render the decision, the agency shall appoint a person to fulfill those duties. A person assigned to render a decision:

- (1) May communicate with other members of the agency; and
- (2) May have the aid and advice of one or more personal assistants.

Source: SL 1966, ch 159, § 13; SL 1974, ch 16, § 9; SL 1975, ch 17, § 10; SL 2015, ch 4, § 2.