

Ex Parte Communication with the PUC

Pursuant to state law, direct communication with commissioners at the South Dakota Public Utilities Commission about dockets, whether pending or imminent, in which they will have to issue rulings is prohibited. This is referenced by law as *ex parte** communication.* Just like a judge or juror may not engage in communication regarding matters they will decide, commissioners have a legal duty to refrain from discussing pending commission matters off the record with any person, including members of the public, docket parties, or the media, for example.

How can I voice my concerns and opinions to the commissioners?

You may submit comments regarding a pending docket provided you are not a formal party or intervenor in that docket. These written comments must include the full name of the commenter, their full mailing address and email address. Comments are posted publicly in the docket with individual commentors' personal contact information redacted. See the **Informational Guide** for specific comment guidelines. Commissioners read each comment that is filed and may respond, with the response also being posted publicly in the docket. Comments should not be sent directly to a commissioner but should be directed to the PUC by emailing PUC@state.sd.us.**

Do commissioners read and consider my written comments?

The commissioners read each comment submitted for a pending docket. While comments are not evidence and are, therefore, not able to be the basis of a formal decision, comments received from members of the public are an important tool in helping the commissioners formulate questions they will ultimately ask of formal parties and witnesses during an evidentiary hearing. The written comments also help commissioners and commission staff understand issues that are important to members of the public. These comments are often addressed during evidentiary hearings and when developing permit conditions for dockets.

Can I ask questions or talk to someone at the PUC regarding pending dockets?

The PUC is separated into two groups – the commissioners and the commission staff. While the commissioners sit as judges on dockets and are subject to the *ex parte* laws, the commission staff is a party to each docket before the commission and staff members may discuss matters with other parties and members of the public. In addition, the PUC has a Consumer Affairs Program, and these staff members assist individuals with questions and concerns every day.

**** 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.

**** 20:10:01:02.01. Communications with commissioners.** *All correspondence with the commission shall be addressed to the commission's executive director at the commission's principal office. Correspondence with the commissioners shall not be addressed to an individual commissioner unless otherwise specifically authorized or directed by the commission.*

Source: 16 SDR 148, effective March 22, 1990. Law Implemented: SDCL 49-1-11.