

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: September 11, 2001**

**REGULAR**  **CONSENT**  **EFFECTIVE DATE** \_\_\_\_\_

**DATE:** September 4, 2001

**TO:** Commissioners Hemmingway, Smith, and Beyer

**FROM:** Tom Barkin, Rick Willis, Phil Nyegaard, and Paul Graham

**SUBJECT:** HB 3615 Collaborative

**SUMMARY RECOMMENDATION:**

The Commission should initiate at least two meetings with stakeholders during September and October. The purpose of the meetings is to seek consensus on recommendations for implementing the HB 3615 Task Force recommendations.

**DISCUSSION:**

As you are aware, the 1999 Legislative Assembly created the HB 3615 Task Force to study the structure of the Public Utility Commission. The Task Force issued its report in January 2001. Among its conclusions were that the Commission should be more visible and interactive and that the Commission should modify its procedures to improve the perception of fairness of its decision making process. The Task Force acknowledged that in some cases its recommendations might require funding additional positions and statutory changes.

At the February 20, 2001, public meeting, the Commission directed us to discuss with stakeholders the recommendations of the Task Force. One of the issues the Commission asked us to look into was the trade-offs that might be associated with adopting some of the Task Force's recommendations. On March 19, 2001, we sent invitations to 16 utility and customer stakeholders who participate in Commission proceedings.

From June 8 through August 8, 2001, we conducted interviews with representatives of energy and telecommunications utilities, customer groups, and the Commission Staff. (Appendix A.) We took detailed notes of our conversations with the stakeholders, and sent the notes to stakeholders asking them to confirm that the notes accurately represent their views. (Appendix B.)

After reviewing the notes, we found that the stakeholders hold a variety of sometimes-conflicting views on how the Commission should conduct its contested case proceedings. For example, some stakeholders believe the Commission should add staff to implement the Task Force's recommendations. Others believe current staffing is adequate. Others believe that the Commission needs to restructure so that it has more flexibility to meet changing needs.

Another example is whether the Commission should consider the recommendations on their individual merits or as a package. One party noted that the recommendations that the Commission can implement without legislation favor other stakeholders, while the recommendation that it favors requires legislation. It argued that the Commission should not implement any changes unless all recommendations are implemented. Others argued for immediate implementation of some recommendations.

Because of the range of responses, we are recommending that the Commission take one further step in the implementation process. We recommend that the Commission convene two workshops with the stakeholders so that they may discuss their different approaches among themselves and seek consensus on how the Commission should proceed. These workshops would take place during September and October.

Three specific issues should be addressed:

1. Recognizing the different views of stakeholders and the differences among regulated industries, what changes should the Commission make to its decision-making processes?
2. If the Commission agrees to exclude staff from the decision making process, are the stakeholders willing to support additional funds and positions for technical advisors to the Commissioners and Administrative Law Judges?
3. If the Commission agrees that staff should play a neutral role in Commission proceedings, are the stakeholders willing to support intervener funding for customer groups?
4. If the Commission agrees to process changes such as proposed orders, are the stakeholders willing to accept longer dockets to accommodate the changes?  
Are utilities willing to extend statutory deadlines to accommodate the changes?

#### **STAFF RECOMMENDATIONS:**

The Commission should initiate at least two meetings with stakeholders during September and October. The purpose of the meetings is to seek consensus on recommendations for implementing the HB 3615 Task Force recommendations.

## Participants in Stakeholder Interviews

Susan Ackerman and Gary Bauer  
**Northwest Natural Gas**

Ken Canon and Melinda Davidson  
**Industrial Customers of Northwest Utilities**

Fred Peterson  
**Telecommunications Ratepayers Association for Cost-Based and Equitable Rates**

Bruce Hellebuyck  
**PacifiCorp**

Bob Jenks and Jason Eisdorfer  
**Citizens' Utility Board**

Pamela Lesh, Mike Morgan, Jay Dudley  
**Portland General Electric Company**

Don Mason, Ginny Lang  
**Qwest Corporation**

Paula Pyron and Ed Finklea  
**Northwest Industrial Gas Users**

Mark Trincherro  
**Attorney who represents competitive local exchange carriers**

Brant Wolf  
**Oregon Telephone Association**

Glenn Harris  
**Sprint United**

Rebecca DeCook  
**AT&T Corporation**

Ed Busch, Bonnie Tatom, Cynthia Vanlanduyt, Lee Sparling, Jerry Murray, Jack Breen,  
Dave Booth, Bryan Conway, Marc Hellman, Lance Ball, Terry Lambeth.  
**Public Utility Commission Staff**

Allen Scott  
**Administrative Law Judge, Public Utility Commission**

**Collaborative to Implement the Recommendations of  
the House Bill 3615 Task Force**

**Comments from Stakeholders and Staff**

**Public Utility Commission of Oregon  
September 4, 2001**

**Appendix B**

June 8, 2001

Interview with Susan Ackerman and Gary Bauer, Northwest Natural Gas (Modified July 17, 2001)

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### **Visible and interactive**

- Commissioners should always have oral argument in major cases
- Commissioners are so distanced from cases, they don't know what is going on
- Parties want direct input, not through a filter
- Once schedules for Commission involvement are set, should not vary schedule
  - One of the advantages of the WUTC's requirement that commissioners attend cross-examination is that the cases don't get off schedule.
  - Limiting Commissioner involvement to oral argument may not have the same disciplining effect in Oregon.
- Not pressing for the Commissioners to appear at every hearing
- Should have oral argument at the beginning and the end of major cases, such as general rate cases, prudence in trackers, and restructuring cases

### **Perception of Fairness**

- Proposed orders with or without consultation with Commissioners a good idea
  - Should have briefs on exceptions
    - Page limits okay
    - One round sufficient
    - Grounds to limit the scope of exceptions okay
  - Recognize that adverse proposed order can affect bond rating; Trade-off okay with improved decision meeting process
  - Reluctant to agree to additional time for proposed order; rate cases already too long; in some cases, additional time may be necessary
  - Would consider proposed order with footnotes indicating staff contacts.
- Staff should not be in decision meetings; no confidence that Staff is neutral
  - Should be independent technical advice
  - PUC should have budget to hire consultants
  - Staff advice to decision maker in open meetings would be okay
- Open decision meetings
  - Disadvantages can be managed
  - However, would not favor open decision meetings if it would politicize the decision and would make them media events
- Willing to experiment over the next two years; have to look forward to build better understandings

### **Case manager**

- Need to have someone who has overall responsibility for determining that overall staff case (in total) is reasonable

- Need Staff case manager—currently, no one to negotiate with, each witness manages their own issue
- Newer Staff members do not understand Bill Warren's approach and why Bill made the decisions that he made.
- Seems to be confusion about roles of ERFA and Energy Divisions

June 1, 2001

Interview with Ken Canon and Melinda Davison, ICNU (Modified July 19, 2001)

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### **Overview**

- Customers are stacked against utilities with the utilities having great resources (funded by the customers).
- Utilities can initiate filings and can engage in pre-filing meetings with staff. Customers should be included in pre-filing meetings. Otherwise, customers are always behind regarding information needed to represent their interests.
- Want a process with increased perception and actual fairness
- Want more Commission involvement and visibility

### **Visible and interactive**

- Goal is for Commissioners to understand the complexity and nuance of the issues
- Want a process where Commissioners do not just rely on DOJ, ALJs, and Staff
- Commissioners should understand the full record and not just the Cliff Notes version
- Want Commissioners more involved
- Want more communication with Commissioners during proceeding so we can hear their thinking and what they are concerned about
- Need a dialogue earlier when it can have an impact
- At WUTC, commissioners show up at prehearing conferences in major proceedings
  - They lay out issues they are interested in
- Commission should be able to shape procedures to individual cases
  - Concerned that an informal, flexible process will be short-lived and driven by the utility desires
  - Commissioner involvement at the beginning of the case is less important in smaller proceedings
  - Participation at the prehearing conference is not necessary for smaller proceedings
- Having Commissioners participate during cross-examination is beneficial.
- Bench requests in the case can be useful.

### **Staff role**

- Do not think that Staff must present a range of options on every issue
- No, need a common sense approach

## Perception of fairness

- Okay if need more time in the case to implement additional process
  - Time should not be an impediment to a fair process leading to a good decision
- Ways of getting more balanced process
  - Page limits on briefs
  - Build in additional time at the beginning of the case
  - Need early discussion about the ground rules for the proceeding. Customer groups with limited resources find it very difficult to respond to last minute procedural changes
- Settlements
  - They drive the delays in many cases
  - PUC's bias for settlement seems to extend the time for party preparation
  - At WUTC, no settlement discussions during preparation time
  - Onerous when company asks for a settlement conference two days before testimony is due. Problem is that Staff agrees to the conferences. Need to have established procedures for settlement discussions. It is not productive to schedule settlements when the parties have not shared settlement proposals in advance.
- Aware of CUB's concerns about the disadvantages when there is more process. If the Commissioners are better informed, they will make better decisions.
- Support the PUC's need for separate staffs
  - Some flexibility in the report
  - If commissioners or ALJs need technical support from Staff, they can use telephone bridge lines or be provided separate advisory Staff or consultants
  - At WUTC, in minor cases, one staff person fields technical questions; subject to ex parte limitations; in major cases, agency hires consultants who participate at the hearing and ask questions; Commission has its own technical staff
  - Utah and California have two staffs
  - Utilities and customer groups need to formulate a plan with the PUC to secure necessary staff
  - ICNU is not interested in pulling staff off for procedural protections and reducing staff's ability to participate fully in a case
  - Would support increasing staff size to ensure fair process, if necessary
- Proposed orders
  - Should allow a week to respond, do not allow settlement conferences
  - Parties' comments should be narrowly defined
  - Parties should highlight key problem areas

- Commission should specify grounds:
  - Confusion, clarification, inaccuracy, error of law
  - Should be page limits
- Clarification needed on an important question: is staff neutral or an advocate?
  - PUC needs to support intervener funding if staff is neutral

### **Other issues**

- Customer groups have supported the OPUC and OPUC staff in the legislature, but still are treated as secondary parties (in comparison to the utilities).
- ICNU is frustrated when it supports staff and but gets shut out or is not consulted on procedural issues
- Concerned that utilities are bringing rate case issues to the Capitol
  - Utilities learned from NNG that if you want to influence staff and the PUC, you go to the Governor's office and the legislature
  - This is a new dynamic since 1996 when ICNU got involved in revenue requirement issues
  - Commission should make clear that rate case issues should not be politicized. Ex parte contact should not be rewarded by just putting it in the record. At that point the party that has ex parte has succeeded - they have gotten an issue before the Commissioners.
  - If we find that utilities are successful getting the PUC to change course by lobbying in the legislature, ICNU will be forced to follow suit - this is not our desire.
- Technology
  - PUC is behind
  - WUTC uses telephone bridge lines -- 10 to 15 ports to listen to hearings or public meetings
  - E-mail filings -- FERC and WUTC use this
- Service lists are too big, need to pare down at the beginning of the docket

June 1, 2001

Interview with Fred Peterson, TRACER (Modified July 17, 2001)

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### **Nature of the industry and regulation**

- Telecommunications is an important part of the large businesses and universities that comprise TRACER's membership
- There have been rapid changes in telecommunications because of technological advances
- Members want stability/consistency for planning—
  - Must live with the life cycle of new systems
  - Businesses cannot change rapidly because of the large investments in equipment and support, and implementation and training time
  - Typically, a five year life cycle is prudent; thus a five year or longer horizon on rates, with consistent direction, is helpful
  - PUC has been very consistent promoting competition within the legal framework we have
- Competition is spotty
  - Reasonable competition in broadband
  - Local exchange services not significantly competitive
  - We would assume that the less populated areas (away from the larger metropolitan areas) will be practically a monopoly for five years
- Eachus and Smith have been extraordinary in pursuing competitive structures
  - Phil Nyegaard has been willing to sit down with the industry and hear concerns

### **Visible and interactive**

- Cannot think of a bigger waste of time than for the Commissioners to sit through the extended hearings on specific issues
  - They need and get excellent documentation of the hearings and good summary information in the Briefs
  - Don't see where the benefit would be
  - They need to have a good understanding of the industry status and issues with the rate payers, and the rate payers need to have an understanding of the Commission's roles and issues, and confidence in the Commission.
  - Commissioners have an open door in Salem, but need to get around to the various areas of the State
  - Education on customer (telecom industry and consumers) needs more important than sitting at a hearing
  - The boss should not be at the working level doing everyone's business
- ALJs do an outstanding job providing the legal forum
  - Very professional legal work writing orders
  - Orders illuminate the issues

- No evidence of bias that we see
- Recalled that Commissioner Lobdell was upset when he proposed customer rates and then discovered the impact they would have on customers; at that time no organized way to get information from users on impacts. Input was heavily biased to the industry.
- If going to invest, invest in better communications with the people in the State
  - Speak with local communities
  - Provide feedback to and from staff
  - Create or sponsor forums
  - Speak to Chambers of Commerce
  - Going to smaller towns and trading centers (used Lakeview as an example) would be a good idea
  - Should get out of Fort Salem
- Behind every lawyer is a user. Must get beyond lawyers to clients. Let clients know that the lawyers are dominating the conversation
  - Technical managers tend not to get involved on issues or be advocates; need to be encouraged to participate
  - Need more informal processes to find out what customers and technical people are thinking, and where the difficulties are
  - Industrial groups should educate Staff on technical issues
- We are more comfortable dealing with the PUC than the legislature. Legislature is all over the place in their interest, knowledge, and understanding of telecommunications matters.
- Has a good relationship and interactions—does not see a need for open decision meetings or separate staff
- Likes the idea of drafting and circulating proposed orders.
  - Disarms view that decisions are being made behind closed doors
  - Worth the extra time
  - Be clear about expectation
    - Do not let process drag
    - Do not rehash old issues
    - Tell us if we made a mistake
- The PUC web site is well done. Continued expansion of communications of documents on line should be pursued
- Do not know what the issue is regarding distrust of staff:
  - Finds PUC employees very professional and knowledgeable
  - Staff arguments are good and provide healthy airing of the issues
- Decision meetings open to the public
  - Has not seen a problem
  - Orders explain how decisions are made
  - Decision meetings should not become circuses.

Other: There needs to be a more coherent planning process in the State. There seems to be agreements that better planning is needed to establish and meet long range objectives, but we are collectively struggling on how to organize that effort. Leadership is needed from our elected officials. Used North Carolina's

organizational structure for advancing telecommunications as an example of what can be done when there is a well-organized effort.

June 12, 2001

Interview with Bruce Hellebuyck, PacifiCorp (Modified July 20, 2001)

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### **Overview**

- Seen positive changes in the last 12 months
  - Check-in meetings in UE 115 & 116
  - Oral arguments

### **Staff role**

- In the last 15 years, seen staff go from a balanced position to consumer advocates
  - May need a separate consumer staff
- Would like to see changes on an incremental basis to see how they work
- He sees more consistent balance at management level than at the staff level. However, it appears no one is checking to see if the overall revenue requirement makes sense. As a result, the balance that exists at the management level is not reflected throughout the staff case.
- Staff expertise should be devoted to staff case management. If Commission does not have staff advice, that is too bad
- Staff doesn't check to make sure that totality of adjustments are reasonable.

### **Perception of fairness**

- Options for making sure orders are technically correct
  - Workshops and cross-examination with Commissioners
  - Witness summaries at hearings would be helpful to lay the groundwork and encourage questioning from Commissioners.
  - The more Commissioners are present, the more they will be informed
- Proposed orders a good idea
  - Schedule would have to be changed someplace else to keep within the statutory timelines
  - If there are technical issues, need a public process; would consider extending time to accommodate more process
  - Willing to live with potential adverse reaction from financial community; company needs to explain preliminary nature of proposed order with financial community
  - ALJs should have a sense of Commission views before issuing proposed orders
- Can live with procedural agreements at the beginning of the case, to address such issues as:
  - Extensions of deadlines
  - ALJ access to staff
  - Special master procedures
  - Commission participation

- If it really takes more technical staff to make it work, would consider supporting more money, but should try other things first
- Open decision meetings
  - Should be open
  - Company wants to know how Commission reached its decision
  - Not concerned about media at decision meetings

**Visible and interactive**

- Does not think there are dockets involving PacifiCorp that the Commission should not show up on

June 1, 2001

Interview with Bob Jenks and Jason Eisdorfer, representing CUB

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### **Overall impact of Task Force recommendations**

- Overall, recommendations are okay, BUT they must be seen as a whole. If the Commission not implement all the recommendations, it should do nothing. Only implementing those portions of the Task Force report that the Commission can do unilaterally will harm customer groups and hence, the perception of fairness.
- Major concern is that Task Force recommendations politicize and narrow the scope of staff.
- Must ask: For whom are we making this process fair? Utilities or customers.
- If we go back to old unbalanced process, it is better to have a 3-member elected Commission. The ballot measure creating the 3-persons Commission was adopted to prevent a ballot measure for an elected Commission.
- Some Staff members feel they cannot be advocates.

### **Perception of fairness**

- Commissioners should not be forced to attend hearings.
- Cannot focus on recommendations that weaken the staff role in helping customers and not on recommendations that help customers
  - PUC is focusing on the recommendations that it can implement without legislation. These recommendations make it harder for the Commission to do its job representing customers.
  - Must also implement Task Force recommendation to provide for intervener funding.
  - Should require changes that create potential parity, such as intervener funding, as a condition of implementing other Task Force recommendations. Without that, process seems rigged.
  - It is unfair to have an appointed Commission and no intervener funding.
- Task Force recommendation to create a separate staff is not far from CUB's perception of fairness. Okay to implement until intervener funding is approved.
  - However, PUC loses expertise of its most experienced people who understand the subtleties of CUB's position
  - It is important that the legislature provide, as the Task Force recommended, funds to implement the recommendations.
- Process is not fair now because of limited resources available to customers.
  - No office of consumer counsel
  - No intervener process
  - In the position it is taking, Staff may be responding to that lack of balance
- Increased process (proposed orders, oral arguments, etc) puts additional demands on CUB and Staff resources, making them less effective.

- Commission should convene stakeholder meetings that would result in recommendations for legislation providing intervenor funding, adding advisory staff, and extending timelines. CUB would not agree to incorporate procedures into any docket on the promise that the utilities provide the funding. Must have legislation.
- Settlements are one place where CUB can have an impact. Process should be encouraged. All this additional process leads us away from productive settlement conferences. Can make arguments at a settlement conference that cannot make on the record because requirement for documenting evidence is so burdensome. In settlements can cut through theoretical issues and get to the bottom line. Must be pragmatic and solve problems, not spend time with rhetoric.
- CUB is indifferent to whether Commissioners are more visible.

### **Staff role**

- The process has already been changed by virtue of the Task Force recommendations
- Staff is unclear whether it should be picking the mid-point or advocating for customers. Staff does not know its role.
- CUB testimony is not seen viewed in same light as voluminous testimony of company and staff. Isolating Staff that is putting in testimony from the decision cuts down on CUB access to the decision. Less context injures us.
- CUB likes having the ability to go to staff to raise issues that staff might have the resources to pursue.
- Separating party and advocacy staff would limit settlement discussions. Staff senior management are often dragged into settlement discussions. Under the Task Force recommendations, they would be disqualified from participating in the decision making process. Inexperienced party staff may not have confidence to cut a deal. In settlement conferences now, Staff is afraid to act because they do not know their role.
- If Staff does not feel they are protecting consumers and feel good about themselves, Commission will not keep good Staff.

### **Visible and interactive**

- No problem, if the Commission wants to do it
- However, there is a fundamental unfairness in Oregon due to lack of resources to represent residential customers.

### **Open decision meetings**

- Less problematic, but may lead to more litigation
- Would limit discussions
- Would encourage media coverage and put political pressure on Commissioners, thereby counter-balancing other Task Force recommendations.

- Would not be good policy, even if we could exploit it to our own advantage.
- Could live with it.
- Would keep important information from the Commission.

**Additional recommendation**

- It is important to get public input. Should put hearing notice in the bill.

June 8, 2001

Interview with Pam Lesh, Mike Morgan, Jay Dudley, Portland General Electric  
(Modified July 16, 2001)

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### **Overall**

- Should have annual meetings to discuss what is working and what is not working
- Would support intervener funding

### **Staff role**

- Because of ex parte, reluctant to talk to Commissioners, better to talk to Staff
- Most important: need leadership on Staff
  - These issues are coming up because there are no longstanding policies or precedents to guide negotiations. Examples are mergers, power cost adjustments; and energy efficiency
    - Nobody sees the forest for the trees; every staffer makes own adjustments
  - Staff is sending out legal work (making legal judgments) without having lawyers look at it
  - Sometimes cannot find policy principle guiding the Staff position.
    - Used to be able to predict staff positions or principles
    - Difficult to know who we are negotiating with
  - Staff needs to structure policy discussions so Commissioners can decide the case; need to present policy issues in detail
  - Staff sometimes presumes IT is the Commission
- Would support more staff; Commission should get PGE involved early to build legislative support for the budget
- If giving directions to staff, would say—
  - Commission need to deal with policy issues in areas where we do not understand the implications of decisions; must explore the intended and unintended effects of decisions on new issues
  - The goal isn't the lowest price or passing off the most risk; want rates that are just and reasonable;
  - Be very careful because the consequences of error (unreasonably low rates) could harm the utility's ability to serve the customers
- Positive issues: Commission decisions on deferrals and CUB's case

### **Perception of Fairness**

- By time an issue reaches the Commission, it is really a policy issue
  - Quantitative issues are settled
  - If Commission cannot make a decision on the record, need to reopen the record
- As long as Staff is involved in the decision making process, there will not be a perception of fairness;

- Cannot support staff participation at decision meetings; no one talks to the judge in Court.
- When statute says Commission must represent the customers, then Staff must represent the customers
- Staff needs to represent the long term interests of the customers; that includes the financial health of the company and the integrity of the system supplying the power
- Proposed order by ALJ will crystallize the issues
  - If need more time, can use interim rates and deferrals
  - Would be willing to try things like proposed orders with footnotes indicating Staff contacts with Commission or ALJ
    - Would want to know, who is there; what did the person say
    - Want disclosure of nonrecord communication
- Expertise to advise the Commission
  - Best staff people should be at the case level; need good quality people at the early part of the proceeding
  - Does not know if advisory staff is necessary, they would be unlikely to have expertise
  - If Commission needs an expert, should have resources to hire someone
  - Company would be willing to provide training to ALJs and Commissioners in electricity and regulatory issues
- Open decision meetings
  - They should not be open

**Visible and interactive**

- Helps to have Commissioners involved at an early stage

June 8, 2001

Interview with Don Mason, Ginny Lang, Qwest

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### **Visible and interactive**

- Commissioners should participate in major cases; a quorum in important cases
  - Don's experience with the Washington Commission convinced him that it is good to have Commissioners at evidentiary hearings.
  - Want more feedback from the Commission; flexible on how it is done
  - Dialogue and interaction would be useful
  - In the legislature, want to talk to the legislature, not staff
  - Not possible in all cases, but Commissioners should be present at major hearings, even if it is just for certain issues.
  - Company wants to know: do the Commissioners really know our position?
  - Company wants to know: what the Commissioners thinking on an issue?
  - Recommendations
    - Oral argument at the end of major cases
    - In dockets such as UM 823, Commissioners should hold periodic updates on status of the case
- Before adopting a rule, Commission should try some of the techniques mentioned in the Task Force report
- At WUTC, having both the Commissioners and ALJ seems to be a waste
- Utah used to require Commissioners in all hearings
- Iowa requires Commission participation, has public decision meetings, consumer group and advisory staff

### **Perception of Fairness**

- If additional time is necessary, the trade-off are minor
- Likes the arbitration process
  - Get quick decisions
  - Staff has not been a party
  - Comment stage after the proposed order has been helpful
- Proposed orders
  - Need depends on decision making process; if change the process, may need proposed order to make sure order is technically correct
    - Under current system, has not seen any orders where there have been technical errors
  - If Staff assists ALJ, need to know where Staff assists
  - Need to be clear in the proposed order on whether it is the Commission's or the ALJ's view
  - Draft order process should be fast
- Wants more openness at public decision meetings

- Qwest does not know what Commissioners are thinking regarding the issues
- Need for additional staff
  - PUC's problem is not the number of positions, but rather having staff members with the skills necessary for a particular case
  - Need flexibility to bring in people with right skills
- Not enthusiastic about raising the regulatory fee
  - Not sure how many cases Qwest will be involved in
  - Will have cost dockets and arbitrations
- Timeliness
  - Need fast turnaround, but 30 days is not a problem
- Segregating Staff
  - Need to be careful about cutting senior Staff out of settlements
  - Parties need to be able to talk to somebody
  - Disclosure helps, but should segregate
  - At WUTC, Qwest is not sure how much staff segregation really exists
  - Need physical separation, but not sure that is practical
  - Should not have staff members move back and forth between advisory and advocacy staff
  - Willing to risk a situation where advisory staff scuttles deal made with advocacy staff
  - This is not a huge issue for Qwest
    - Very nervous about inadequate staff support to make order adequate
    - Some move in the direction of more fairness and openness would help; additional disclosure would help; for example, proposed order with full disclosure—anything along the continuum to improve the perception of fairness

June 1, 2001

Interview with Paula Pyron and Ed Finklea, representing NWIGU (Modified July 19, 2001)

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### Visibility and interactivity

- Should focus Commission activity on “major” cases. This includes mergers, rate cases, declaratory rulings, and policy/generic proceedings.
- Commissioners should attend cross-examination of major witnesses. This may not be necessary in every proceeding. Benefits of Commission participation include:
  - Create a dialogue with questions from the bench. At WUTC, the default is that Commissioners will attend hearings. The Commission’s job is to attend hearings. The parties waive Commissioner participation. **They are not recommending that the Commission adopt that practice.** At the Nevada Commission, they appoint a lead Commissioner to the case and that Commissioner recommends decisions to other Commissioners. At FERC, ALJs write orders and the Commissioners do not attend.
- Recommendations:
  - Major cases—a majority of the Commission should either attend hearings or participate in, at least, a brief executive summary/oral argument session. This would be 20 minutes per party.
  - They are looking for the opportunity for dialogue.
  - They want interactions before briefing stage so they can focus on the issues the Commissioners are interested in. Or, supplement the record, if necessary.
  - Oral sessions should not be used as a substitute for briefs. However, the interactions were good.
  - They would like an executive briefing with each round of testimony (that precipitates a hearing) to describe the party positions and to receive bench requests if necessary.
  - Encourage interaction with experts, not just attorneys or information filtered through attorneys.
  - Important to retain flexibility to craft procedures to fit the needs of the particular case.
  - Commission should adopt a rule that provides alternative ways for Commission involvement. There should be a way a party can make a case why the Commissioners should attend.

## **Extensions of time**

- Open to extending timelines
- If there is better focus on the important issues prior to the hearing based on Commissioner interaction, it may be possible to tighten time lines.

## **Perception of Fairness**

- Should have separation of functions
- Bright line between decision-making and advocacy works better
  - Need technical staff on decision maker side of the fence.
  - Would support hiring more Staff.
- If Commissioners or ALJs need information, can issue bench requests. Requests for information should be on the record.
  - Would add time for bench requests.
- Proposed and draft orders are useful
  - ALJ should issue proposed order. Parties would get one chance to comment.
  - Should not take more than 30 days to get responses. Time is worth it.
  - If the ALJ issues a proposed order that affects stock price, this is something the company has to live with. Adverse party testimony or draft orders, etc, are part of the construct for regulating utilities and are all considered in the stock market.
  - ALJs should be able to consult with Commissioners and DOJ.
- Tape of consultations between ALJ and Staff, with opportunity to respond in a timely fashion would be okay.

## **Open decision meetings**

- Viable option, but not most desirable
- Makes dialogue harder. They respect desire of Commissioners to have off-the-record comments.
- Staff advocates should not be in decision meetings.

June 6 2001

Interview with Mark Trincherro, not representing the views of any particular client (Not available to review notes of the interview)

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### **Visible and interactive**

- Voluntary participation at hearings would be useful, but Commissioners should not be required to sit through hearings—rule requiring attendance not useful because Commissioners will be present in body, but not mind (based on experience in other states).
- Oral argument useful when a case requires a quick turnaround
- In some cases, arguments at public meetings have been useful to discuss the scope of the hearing; ALJs can inquire of the Commissioners when participation is best
- Every client thinks their case is a major case
- Anything with a statutory deadline is problematic for Commission involvement
- CLECs more concerned about speed of dockets than Commission involvement
  - With no timeline, ILEC could extend out the case
- Any rule should allow parties to argue about when and how Commissioner should participate
- Having Commissioners at prehearing conferences of policy dockets would be helpful.

### **Perception of fairness**

- Does not share concerns about the need to segregate staff
  - Can understand those concerns, however, if the Commission is considering implementing segregation, it may be better to have Staff a party than an advisor
  - Would slow down process, if ex parte rule applied to advocacy staff
  - Also, would be more expensive because would have to add additional staff
  - Marc's clients are not pushing this; timeliness is more important than additional efforts to address perception of fairness; parties can appeal if the process is unfair
  - Cost is also a concern to clients; many cannot afford to participate
    - If the Commission implemented an ex parte rule with current staffing, Commission would have to conduct mini-hearings when Commissioners and ALJs consult with staff
  - Appeared in Oregon, Washington, Idaho, California, Colorado, and Utah
    - California has the most separation, but that is okay if you have an agency the size of the California PUC; has public decision meetings, but decision is already written up; take comment from the public; Commissioners can lobby because they have more than

three Commissioners; do not get many appeals, because appeal is directly to the state supreme court

- WUTC has an advisory staff, but the line is blurry
- Oregon and Utah no line
- Colorado requires more hoops than other states
  - Commission decision meetings are public; transcribed (do not know if there is a transcript; no public comments; scheduling problems; occasional good exchange of ideas when Commissioners have not made up their minds; in larger cases, it is a public relations moment; if have proposed order, public decision meetings are not necessary
  - More motion practice than other states
  - Less flexibility once scope of the case is determined
- Proposed orders
  - Work well in other states
  - Should limit grounds for exceptions—confusion, clarification, accuracy
  - Page limits are important
  - In California—10 days for exceptions and 5 for replies
  - If allow comments on proposed order, does not matter if it is ALJ or Commission proposed order
    - Might be faster with ALJ proposed order
    - However, ALJ could miss the mark if does not consult with Commission
    - Best to retain flexibility to allow ALJ or Commission proposed order
  - No need for staff segregation, if have proposed order
- Would be useful to have a stipulated agreement at the outset of the proceeding of the procedures to be followed
  - A party could move for a change of procedures upon a showing of good cause

June 8, 2001

Interview with Brant Wolf, Oregon Telephone Association

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

**Overall**

- Never been through a docket; Not sure what the problem is
- Customers not concerned about the Commission being more visible and interactive
- Important for Commission to maintain communication
- Has not had problems and cannot figure out what the problem is
  - Staff and Commissioners are accessible
  -

**Perception of Fairness**

- Some members concerned that Staff involved in the proceeding gets access to the Commission and the company doesn't
- For smaller companies, this doesn't have much impact. Exceptions are:
  - UM 731
  - EAS
  - OCAF
- Commission could implement all the changes and not make complaints about perception of fairness go away

June 15, 2001

Interview with Glenn Harris, Sprint United (Modified July 13, 2001)

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### **Perception of fairness**

- Would be willing to accept delay for Commission involvement so that company can have more time to explain its views to the Commission; believes that kind of procedures discussed below would not extend the case too much
- Examples of where perception of fairness issue arises:
  - At public meetings, he has never seen a Staff recommendation rejected outright, especially where there is disagreement with the company
  - He has no objections to the current staff
  - Simon ffitch ruled in favor of the company and Staff went to a decision meeting to get the decision reversed
  - Sprint United thought that evidence of service quality standards in other states that were less stringent than Oregon's would be persuasive
- Does not believe there is undue influence by Staff, but over the years Staff unconsciously exercises a great deal of influence by virtue of its status as experts
- Decision meetings
  - Occasionally, meetings should be open where there is controversy
- Likes idea of prehearing conference agreements about Commission participation and ground rules for procedures such as proposed orders
- Proposed orders
  - Month extension for proposed order would be okay
  - Provides an opportunity to address inaccuracies in the order
  - Footnote identifying Commissioner and ALJ contacts with Staff would be okay
  - ALJ should issue
  - Do not have a problem with Staff reviewing ALJ proposed order
- Segregation
  - Do not see how it would be practical to have separate advisory and advocacy Staff
  - At WUTC, no real distinction between advisory and advocacy staffs; policy people need to educate themselves, so they talk to advocacy staff
- If the company has an opportunity to be heard, to respond to Staff if it disagrees, that is all they need
- Bench requests are not necessary—not in favor of complicating the process
- Current procedures and his proposals require a high degree of trust that staff will play the role it says it is playing

## Visibility and interactivity

- Wants more involvement by the Commissioners on substantive issues so the Commissioners themselves can hear from the parties
- HB 2988 procedures—major cases, quorum of Commissioners must attend oral argument at the request of one party
  - Prefers not to have a law, but these are the sorts of things he would like to see more of
  - Prefers more flexibility, do not need to lock procedures into law
  - Oral argument should not be an opportunity to reargue the entire case
- At WUTC, almost always at least one Commissioner present at case proceedings
  - Has 18 years of experience with WUTC and OPUC
  - Whether having Commissioners at hearings depends who the Commissioners are; at WUTC, worked well at times, but not always

June 15, 2001

Interview with Rebecca DeCook, AT&T

Attending: Tom Barkin, Phil Nyegaard, Rick Willis, Paul Graham

### **Visibility and interactivity**

- It would be good for the Commissioners to learn about the issues in a case by attending hearings; oral argument in front of the Commissioners is a good idea
- Commissioners in Colorado and Minnesota spend more time in the hearing room than Oregon Commissioners do
- ALJs could handle preliminary matters at the beginning of the case; Commissioners could preside during the evidentiary portion of the case
- Has not had experience with Commissioners attending hearings who are distracted by other matters;
- HB 2988
  - Oral argument is a good idea, but better at the end of the case; never had an oral argument at an early stage; early oral presentation in the right setting may be useful.
  - In Colorado and Minnesota, briefs precede oral argument

### **Perception of fairness**

- Did not perceive the Oregon PUC system as broke; not sure what precipitated the changes proposed by the Task Force;
- In Colorado, ALJs issue proposed orders which are reviewed by Commissioners. The Commissioners will schedule oral argument if necessary.
- In Minnesota, there is an oral argument in cases in which the ALJ issues a proposed order
- One of the risks of having ALJs preside over hearings is that the Commissioners do not get involved early
- There are other ways for the Commissioners to learn about the issues
  - Having sound piped into the Commission office
  - Commissioners can attend the hearing even when ALJs preside
- Open decision meetings
  - Colorado (3 Commissioners) and Minnesota (5 Commissioners) have open decision meetings;
    - In Minnesota, oral arguments precede deliberations;
    - In Colorado, Commissioners appear to deliberate behind the scenes and announce their decisions in open meetings; parties cannot speak
  - Like open decision meetings; gives public an idea of the Commissioners reasoning
  - Occasionally press appears

- Likes idea of separate policy staff advising the Commissioners; like Colorado system—used to be case-by-case decision on who would be advisory and who would be advocacy staff; now separate staffs on separate floors
  - Does not know cost of the staff
    - 4 advisory staff and 12 party staff
    - Colorado also has an Office of Consumer Counsel
  - Recognizes that it is difficult to avoid communication between party and advisory staff, especially if one person requires information only available from another staff member; should try to limit to information, not advocacy; parameters are important
  - Should set aspirational goals; that is the best you can do
- Proposed orders
  - Response to idea about disclosing Staff contacts with footnotes
    - Better to have an advisory staff
    - Disclosure of ex parte does not give much information about the contact
    - In a disclosure statement cannot fully describe conversation
    - It is possible requests for information lead to substance
    - Creates more problems than it solves
    - To the extent Commission adopts a system of disclosure, it is important to have an email or other document memorializing the communication
- Oregon process for deciding cases is pretty long
  - Workshops are not conducted in other states
  - More time with trier of fact in other states
  - Hard to imagine that people in Oregon want more procedures thrust into the process
  - There are instances where settlement conferences should be terminated—there is no benefit because the party positions are so isolated; may be instances where the workshops allow Staff to learn more about the case
- In many instances, the Commission's final product is a function of staff technical knowledge
- Colorado and Minnesota staffs do a pretty good job handling the issues
- Colorado and Minnesota both have Offices of Consumer Counsel; in Colorado, the Office is separately funded
- Panels are a more interesting and useful way for learning about the issues than cross-examining individual witnesses. Panels can include witnesses from both sides who can ask each other questions, then attorneys can ask questions.

August 8, 2001

Interview with Ed Busch, Bonnie Tatom, Cynthia Vanlanduyt, Lee Sparling, Jerry Murray, Jack Breen, Dave Booth, Bryan Conway, Marc Hellman. Written comments from Lance Ball, Terry Lambeth, Commission Staff; Allen Scott, Administrative Law Judge

(The comments below are a compilation of ideas from Staff members attending the interview. They are not a statement of an overall Staff position.)

Attending: Tom Barkin, Phil Nyegaard, and Rick Willis

### **Visible and interactive**

- Commissioners should participate more widely in evidentiary and public comment hearings
  - An example is EAS hearings in which customers raise ancillary issues, such as service quality
  - The public wants the Commission to know about the problems they are facing and often are not pleased that Commissioners do not attend EAS hearings
  - Would be in a better position to make truly independent decisions on a case rather than relying on Staff or the ALJ. But Commissioners would have great difficulty reading all the material in all major cases. This would require Staff to prepare detailed memoranda.
- Oral argument
  - Parts of oral argument in UE 115/116 were useful; but the Commission needs strict rules on new arguments and facts. Parties should be prohibited from adding facts and arguments or there should be an opportunity to respond. This additional step could add a month or more to the proceeding.
  - Oral argument should be after the briefs are filed; another round of testimony and briefs would be useful
  - Oral argument should be limited to issues Commission identifies.
- Prehearing conferences and workshops to identify issues
  - These would be more useful in a policy docket; often do not know what the issues are in a rate case until Staff completes its review of the filing.
  - It may be useful to have Commissioners attend workshops and informal discussions in policy/legislative style dockets
  - Workshops and special public meetings may be a better alternative than prehearing conferences that are usually devoted to scheduling
  - It is most helpful to the parties if the Commissioners provide feedback
- There is a danger to parties trying to obtain hints as the issues the Commissioners feel are important. They could guess wrong and miss an important issue that does not become important to the Commission until later in the case.
- Rulemakings
  - Commissioners should be more actively involved

- Potential unfairness because ex parte rules do not apply
  - Workshops let everyone address the Commission
- For Commissioners to be more visible and interactive, they will need additional Staff support to write questions and provide oral briefings
- If Commissioners get involved in contested cases, they would have to be fully involved. In some cases, it would be difficult to pick and choose between issues and witness without creating a perception of unfairness
- It is not possible to have a proposed order and oral argument within the statutory time limit of nine months

### **Perception of fairness**

- The problem of needing additional time to implement procedural enhancements may not be a problem at all. The proposed order process may be about the same amount of time as internal circulation of the order.
- Additional time for Staff advice also may not be a problem. If Staff and the parties know that there will not be an opportunity to fix mistakes, they will be more careful in preparing testimony.
- All parties should be encouraged to offer options.
  - Too often parties are offering extreme positions providing the Commission and ALJ little flexibility
- Processes are fair and balanced, but the Commission is not perceived of as being balanced because it appears remote from the problems that ordinary customers face on a daily basis
  - Commission presence seen when larger corporate and ratepayer interests are at stake, but not in the more parochial and individual matters
  - This is of particular concern in rural areas, where Commission is seen as reacting when circumstances dictate
  - If the Commissioners are seen as more proactive and visible on rural issues, it would be perceived as being more effective, especially with the rural public and rural legislators
- Some Staff members believe a proposed order with restrictions would be helpful, others do not
  - Some Staff members believe proposed orders would create the opportunity for mischief. Parties can ask for rehearing or reconsideration.
- If proposed orders are issued:
  - The ALJ could issue a summary of positions and the parties could review for accuracy
  - Proposed orders could impinge on the schedule; need more than 30 days for a proposed order
  - Need an opportunity to respond to comments from others
  - Might be more appeals if the Commission changes positions after the issuance of the proposed order.
  - It should come from the Commission and not the ALJ
  - It would make the process appear political.
- What is Staff's role in a contested case?

- On whose behalf is Staff acting? Customers, public interest, truth and beauty?
- Staff role in decision meetings
  - Make sure information is accurate and consistent with the record
  - Answer questions
  - Staff could answer technical questions through bench requests
  - If Staff cannot advise the Commissioners during the decision making process, need more staff; cannot come out of existing staff
  - Could have a Court reporter at decision meetings who would make a transcript of questions and answers between Commissioners and staff

**Other**

- Need to review the Internal Operating Guidelines
  - There are ambiguities that need clarification, such as the directive that Staff provide options in all cases
- A requirement to negotiate the decision process at the outset of the hearing (such as whether to have a proposed order) would put additional pressure on Staff to give up time it needs to do an effective job.