

Regulatory Compact

A state may, through legislation, enter into a contract with an independent organization that provides the independent organization with the right to provide a public service for the state. In exchange for the right to provide a public service, the independent organization is bound by the terms of the contract as established in statute. This type of agreement is called a regulatory compact. Regulatory compacts are often used to engage the services of public utility companies and can result in a sort of state-sponsored monopoly. While some of the terms of Utah's contracts with these public utilities are in statute, Utah, like many states, created a Public Service Commission (PSC) to regulate public utilities and the services they provide to the state.

Statutory Purpose & Role

Utah Code Title 54

The PSC was created by the Legislature in 1917 and is authorized as a regulatory, independent agency through various statutes in Title 54, Public Utilities Code; additionally, Title R746 of Utah Administrative Code serves to specify the PSC's duties. The PSC's statutory language includes the general powers described in Sections 54-1-1, 54-1-2, 54-1-2.5, 54-4-1, and 54-4-4. Recent legislation has typically provided more detailed guidance on how the PSC should carry out those general mandates in specific situations. 2016 S.B. 115, Sustainable Transportation and Energy Plan Act, and 2019 H.B. 411, Community Renewable Energy Act, are examples of this.

The PSC balances lack of market competition produced by state-certificated monopoly providers of electricity, natural gas, water, sewer, and telecommunications by regulating utility rates and services. Specifically, the PSC promotes and protects the public interest by ensuring that public utility service is adequate in quality and reliability and is available to everyone at just and reasonable prices. Organizationally, the PSC consists of a three-member commission, with each commissioner appointed by the governor to a six-year term with the consent of the Senate. No more than two members of the commission can belong to the same political party. The governor designates the commission chair.

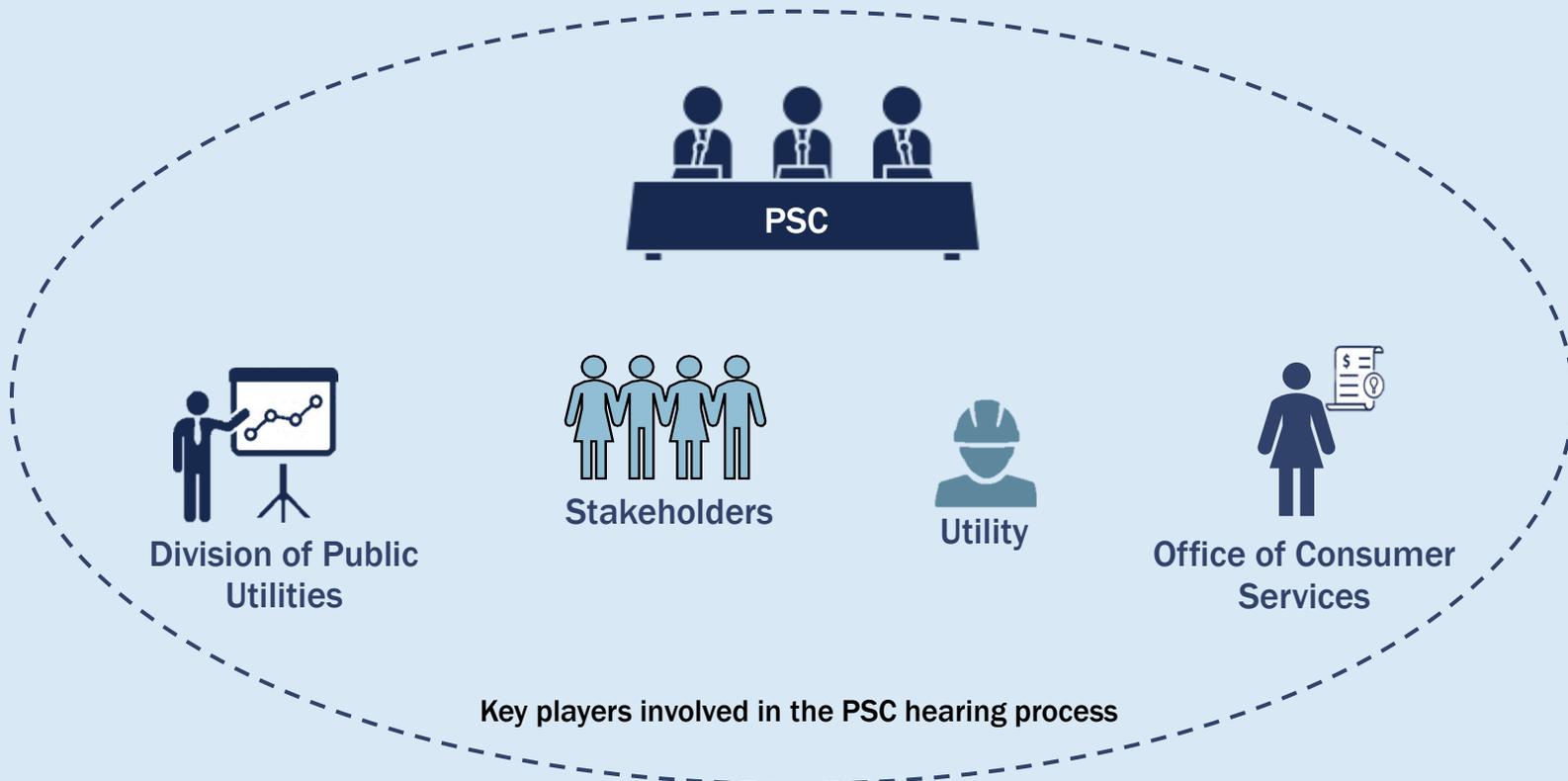
How the PSC Works¹

The PSC has been delegated legislative authority to act as a regulatory decision-making body. A PSC regulatory decision is reached quasi-judicially – that is to say, the decision must be based on evidence of record gathered and shared in open public hearings during docketed proceedings. These hearings address issues of law, economics, accounting, finance, engineering, and service quality. The PSC's task is to reach a decision that balances the often-competing interests of concerned parties in pursuit of outcomes that protect and promote the overall public interest. These decisions, reviewed by the Utah Supreme Court, must be drawn directly from the evidentiary record created in the hearings or filed on the public record.

¹Taken from 2018 Annual Report: Public Service Commission of Utah, page 8: <https://psc.utah.gov/wp-content/uploads/sites/35/2018/12/2018-Annual-ReportFinal12-5-2018.pdf>

All hearings are scheduled close together, with the timing governed by the due process rights of parties. In the course of a hearing, participants may include the subject public utility, the Division of Public Utilities (DPU), and the Office of Consumer Services (OCS). Parties present the sworn testimony and evidence of expert witnesses on matters at issue and witnesses are cross-examined by the attorneys assisting each party.

In high stakes cases involving tens of millions of dollars or important regulatory policy issues, several other groups may intervene. These intervenors may represent interests as diverse as low-income customers, environmental groups, and large industrial customers. Intervenors also employ expert witnesses and attorneys. Groups who intervene may directly experience the PSC's regulatory decisions as gains or losses.



Legislature – PSC Nexus

Legislative Engagement

The PSC is created by statute without any distinct constitutional authority. As a statutorily designated independent agency, the PSC receives its direction from sections of the Utah Code specific to the PSC and from general code sections such as Title 63G, Chapter 4, Administrative Procedures Act, and Title 63G, Chapter 3, Utah Administrative Rulemaking Act. The PSC engages with the Legislature on Public Utilities, Energy, and Technology study items that relate to its jurisdiction, and provides background or presentations as requested.

Commentary on Legislation and Policy

The PSC is bound by enacted statute. It provides insight and data on the implementation and regulation of particular programs subject to its oversight. Because the PSC usually plays an adjudicative role interpreting legislation after it has been enacted, the commission typically attempts to preserve its neutrality by

refraining from advocating for or against specific bills or policies. The PSC is committed to providing appropriate background and information to help inform the legislative process.

PSC Jurisdiction²

The PSC regulates the following utilities:

Electricity

- Investor-owned utilities such as Rocky Mountain Power
- Wholesale and distribution electric cooperatives such as Deseret Power, Garkane Energy, Moon Lake Electric, Dixie-Escalante Rural Electric (rate changes only)
- Electric service districts, such as Strawberry Water Users Association and Ticaboo Utility Improvement District

Natural Gas

- Dominion Energy Utah
- Wendover Gas Company

Telecommunications

- Incumbent Local Exchange Telecommunications Carriers (ILECs):
 - Legacy phone companies with an obligation to serve such as CenturyLink, Utah Rural Telecom Association members
- Competitive Local Exchange Telecommunications Companies (CLECs):
 - Competitive carriers of CenturyLink such as AT&T, Comcast, Bresnan
- Utah's Universal Public Telecommunications Service Support Fund (UUSF) and Lifeline program

Water and Sewer

- Private Water Companies such as Bridgerland Water Company, Mountain Sewer Corporation

Railroads

- All Railroads: BNSF, Union Pacific, Utah Railway Company, and Salt Lake Garfield & Western Railway Company

Services & Utilities *NOT* Regulated by the PSC

The following are not regulated by the PSC, but may be regulated by federal or local agencies:

- Cable Television
- Wireless Phone Service and Pager Services; Interstate Long Distance Telephone Carriers
- Satellite Services
- Internet Service Providers, DSL (Except Service Quality), Cable and Wireless Internet Connected Services, Voice Over Internet Protocol
- Culinary Municipal Water systems, Quasi-Governmental Special Improvement Districts, Water Districts, Irrigation Cooperatives
- Municipal/Interlocal Utilities (utilities with interlocal agreements with local governments)

²Taken from Utah Code 54-2-201 & 202, Division of Public Utilities webpage: <https://publicutilities.utah.gov/index.html>, and 2018 Annual Report: *Public Service Commission of Utah*