



#622
August 21, 2018

Report to the Mississippi Legislature

Public Utility Regulation: Mississippi and Other States' Structures

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms, with one Senator and one Representative appointed from each of the U.S. Congressional Districts and three at-large members appointed from each house. Committee officers are elected by the membership, with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues that may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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The Mississippi Legislature

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Honorable Phil Bryant, Governor
Honorable Tate Reeves, Lieutenant Governor
Honorable Philip Gunn, Speaker of the House
Members of the Mississippi State Legislature

On August 21, 2018, the PEER Committee authorized release of the report titled ***Public Utility Regulation: Mississippi and Other States' Structures.***

A handwritten signature in cursive script that reads "Videt Carmichael".

Senator Videt Carmichael, Chair

This report does not recommend increased funding or additional staff.

Public Utility Regulation: Mississippi and Other States' Structures

Executive Summary

Introduction

Questions often arise as to whether Mississippi's public utility regulatory structure comports with best practices for utility regulatory bodies. In 2009 the PEER Committee released *Regulation of Public Utilities in Mississippi* (December 8, 2009, Report #531) in response to a legislative mandate to study allocation of responsibilities between the Mississippi Public Service Commission and the Public Utilities Staff.

In the 2018 legislative session, bills were filed that would have combined the Public Utilities Staff with the Public Service Commission (S.B. 2838, Regular Session, 2018) or limited the Public Utilities Staff's discretion in carrying out its functions (H.B. 1179, Regular Session, 2018). Although both bills that would have accomplished this reorganization died in their respective houses, questions concerning the best organizational structure for utility regulation linger.

Background

Following an 1876 United States Supreme Court decision, states began to adopt legislation empowering state agencies to regulate rates and services of private industries "affected with a deep public interest." Today public service commissions typically regulate the following services:

- electric power,
- gas,
- telephone, and
- water and sewerage.

Generally, these agencies are charged with ensuring fair and reasonable rates for utilities under their jurisdiction, and currently all U.S. states have an agency or agencies that carry out such regulation.

Mississippi separates utility regulatory functions between the Public Service Commission and Public Utilities Staff. At present, the commission oversees gas, water, sewer, telephone (limited), and electric utilities as included in the definition of a public utility in MISS. CODE ANN. Section 77-3-3 (1972).

In 1983 the Legislature created within the Public Service Commission an organizational unit known as the Public Utilities

Staff, which became independent of the commission in 1990. Public Staff has been given the legal responsibility to provide advisory support to the Public Service Commission in its decision-making activities and is responsible for filing complaints before the commission when management believes the best interests of the public will be advanced by such action.

In 1990 the Legislature passed Chapter 530, Laws of 1990, which mandated considerable structural reform in Mississippi's utility regulatory agency. Provisions within the chapter collectively made clear that the Public Service Commission is to function as an adjudicator and rulemaker, with the Public Utilities Staff providing technical and professional advice and carrying out advocacy functions that advance the broad interests of the state.

How do other states, including contiguous states, structure and empower their public utility regulatory agencies?

None of the states contiguous to Mississippi organize their public utility regulatory agencies as Mississippi does. Staff members involved in the regulation of utilities work in the same organization with the commissioners who carry out quasi-legislative and judicial functions.

Beyond the contiguous states, other models of regulation appear. Several bear similarity to the model of regulation in Mississippi in that, within them, certain functions are moved away from the state public service commission and placed under other agencies. The "other agency" may be a separate agency established specifically to carry out certain aspects of utility regulation or may be an agency of government with broad powers extending beyond utility regulation, e.g., Office of the Attorney General.

Do utility professional organizations recommend best practices that suggest a preferred structure and assignment of duties?

States take different approaches to the structure of regulatory bodies. Mississippi, like several states, chooses to place staff in separate entities. Although the states contiguous to Mississippi tend to use a more traditional structure of placing all regulatory activities in one agency, others do not.

A review of literature shows that there is no "best practice" with respect to the structure of a public utility regulatory body. Although there are best practices for utility regulatory bodies, none address the issue of structure and assignment of duties to regulators.

In 2009, PEER reported on a general lack of best practices that could guide the structure and assignment of duties to utility regulators.¹ The National Regulatory Research Institute (NRRI) has since developed some best practices. In 2017 the NRRI completed an extensive review titled "Evaluation of Public Regulation

¹PEER Report #531, *Regulation of Public Utilities in Mississippi* (December 8, 2009).

Commission Staffing and Budget Allocation.” The study focused on certain aspects of commission staffing. The report takes no position on whether separation or combination of staffs into a single agency should be considered a best practice, and none of its best practices addressing the conditions necessary for a regulatory body to be effective at carrying out its mission are specifically directed toward a particular legal or organizational structure.

For more information or clarification, contact:

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