

Additional Allowable Ex Parte Briefing Guidelines

Pursuant to Section 58-3-260 of the 1976 South Carolina Code of Laws, a Public Service Commissioner, hearing officer, or Commission employee cannot communicate, directly or indirectly, on any issue that is the subject of a proceeding (or that can be reasonably expected to become the subject in a proceeding) without notice and opportunity for all parties to participate in the communication. Likewise, no person can communicate, directly or indirectly, on any issue (currently the subject of a proceeding or reasonably expected to become one) with any Commissioner, hearing officer, or Commission employee without notice and opportunity for all parties to participate. However, communication with the Commissioners, hearing officers, or Commission employees is allowed pursuant to allowable ex parte briefing procedures as outlined in S.C. Code § 58-3-260.

An allowable ex parte briefing is permitted by South Carolina law to anyone wishing to present information to the Public Service Commission of South Carolina (“the Commission”). This document sets forth requirements and helpful information for allowable ex parte briefings.

1. It is imperative that the statute governing allowable ex parte briefings, S.C. Code §58-3-260, is read and understood.
2. Any person who willfully violates the statute governing allowable ex parte briefings is guilty of a misdemeanor and must be fined no more than \$250 or imprisoned up to six months.
3. ORS is required to monitor all allowable ex parte briefings and certify the briefing was lawfully conducted. The ORS Executive Director typically assigns an ORS attorney to monitor the briefing and administer the certification.
4. The required ORS certification and all documents related to the briefing must be hand delivered by ORS to the Commission no later than three business days (72 business hours) after the allowable ex parte briefing began.
5. The allowable ex parte briefing is a public hearing. It is open to everyone.
6. Use a court reporter. Request a transcript. If no transcript is requested, every person, including the presenter, Commissioners, Commission employees, ORS employees in attendance, and public attendees must summarize in writing the discussions held during the allowable ex parte briefing.
7. Public attendees may not speak or ask questions during the briefing. Only the person, group or entity that requested the allowable ex parte briefing may provide information to the Commission. The Commissioners may ask questions during the briefing.

8. The presenter may not request that the Commission take any action or suggest a course of action for the Commission to take. This is illegal.
9. The Commission may not state an action it will take or indicate how it will or would rule on a matter.
10. Every person in attendance, including the presenter, Commissioners, Commission employees, ORS employees, and public attendees must sign a form stating whether or not a request was made of the Commission and whether or not the Commission indicated how it would or will rule on a matter.
11. ORS is required to deliver to the Commission documents and materials **you** utilize, reference or distribute during the briefing no later than 72 business hours after the briefing begins. These documents and materials are then posted on the Public Service Commission of South Carolina's website within 24 hours. These deadlines are by statute and cannot be waived.
12. "You" is defined as each party, person, Commissioner, and Commission employee present at the allowable ex parte briefing.
13. You are responsible for providing **ALL** materials to ORS.
14. Do not reference confidential information. This is a public briefing.
15. Do not reference confidential documents. As stated above, this is a public briefing. Further, all documents you mention during the briefing must be provided and will be posted on the Commission's website. There is no exception.
16. If you know you will be referencing written materials, provide them prior to the hearing.
17. In lieu of providing a hard copy of the written materials, a weblink may be provided to ORS. See the opinion letter issued by the Public Utilities Review Committee's legal counsel. An easy option is to insert the weblink to the documents or materials in handouts or in the slide where the document/written material will be discussed. If you are not able to insert a weblink prior to the briefing, you may e-mail it to ORS after the briefing.
18. Any documents or written materials you have available prior to the presentation, including slide presentations, are requested to be sent to ORS at least 4 business hours before the presentation.

19. After the allowable ex parte briefing, documents and written materials you utilized, distributed or referenced are expected to be provided to ORS immediately with your certification. S.C. Code Ann. § 58-3-260(C)(6)(a)(ii) must be complied with. It states:

each party, person, commissioner, and commission employee present files a written, certified statement with the Executive Director of the Office of Regulatory Staff within forty-eight hours of the briefing accurately summarizing the discussions in full and attaching copies of any written materials utilized, referenced, or distributed;

It is **your** duty to provide to ORS copies or weblinks of all written materials you utilized, referenced or distributed. ORS will not provide you a list of items needed.

20. In order to meet the statutory deadlines and help ensure your briefing is certified as lawful, **you** are required by law to provide all written materials utilized, referenced or distributed to the ORS designee no later than 48 business hours after the allowable ex parte briefing. ORS business hours are 8:30am-5pm, M-F.

Example

- Allowable Ex Parte Briefing time: Wednesday at 10:30am
- Your deadline for providing materials to ORS: Friday at 10:30am
- ORS deadline for submitting materials to the Commission:
Monday at 10:30am (72 business hours after Wednesday, 10:30am)

21. **You** must request a transcript to prevent all attendees from having to summarize the discussions.) As noted above, it is your responsibility to provide all documents to ORS as soon as possible and no later than 48 business hours after the briefing. Failure to provide documents to ORS will result in ORS filing a statement that the briefing violated the allowable ex parte briefing rules.

22. If documents are scanned and e-mailed to ORS, be cognizant of their size. E-mails should not contain attachments collectively totaling more than 10 MB. E-mails containing documents totaling more than 10MB will likely not be received by ORS.