The Rule-Making Procedure of the Wisconsin Public Service Commission

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I. INTRODUCTION AND TERMINOLOGY

FREEDOM to exercise discretion in individual cases, it is submitted, is the essence of the administrative process. But it is the exercise of such discretion "especially where it is not in the hands of experts, operating under quasi-judicial procedures, into which arbitrariness may creep, and which may furnish a cover for favoritism or even personal spite. In this view the rule-making power may be regarded as the reintroduction of the rule of law at the administrative level. If administrative authorities concretize by more specific regulations the legislative abstractions they are to apply, they canalize their own discretion in individual cases, and minimize the chances of arbitrary discrimination that inheres in such discretion. At the same time they furnish that ability to discount the future that is the principal advantage of the rule of law." 1

But the rule-making power itself may be exercised arbitrarily. A principal safeguard against this possibility, however, lies in the requirement of appropriate rule-making procedures. 2 How are such procedures to be formulated? Some clues for the solution of this problem may be expected in a study of the procedures of well established administrative agencies. With this conviction the present paper, purporting to be a "physiological analysis" of the rule-making procedure of the Wisconsin Public Service Commission, has been undertaken. 3

In the exercise of its supervisory and regulatory powers the Commission is authorized in specified cases to issue quasi-legislative rules

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2 Cf. footnote 12 below.
3 Unless it is expressly otherwise indicated all references to statutes contemplate the Wisconsin Statutes of 1937, as amended by the Session Laws through the year 1939. References to the Commission's "Rules of Procedure and Practice," as amended on July 6, 1939, are indicated by the letter "R" followed by the appropriate rule number.
and regulations, that is, discretionary rules of conduct of general prospective applicability and legal effect.\(^{3a}\)

For present purposes two distinct categories of such rules and regulations must be recognized, since the procedure of the Commission in formulating and promulgating those which fall in the one category differs quite distinctly from its procedure in relation to those in the other. In the one category are included rules and regulations which relate to and affect the substantive interests of the persons within the general classes to which they apply. Rules and regulations of this type are designated in Commission parlance as “general orders.” In the other category are included those rules and regulations: (1) which prescribe the procedure to be followed by the Commission and members of the public in the conduct of their official relations with one another (referred to in the Commission parlance as “rules”),\(^{4}\) and (2) those which prescribe the procedure to be followed by Commission staff members in their official, but purely intra-Commission functions and activities (referred to in Commission parlance as “instructions”).

II. Procedure Relating to General Orders\(^{5}\)

a. Scope of the Commission’s Authority: The Commission is authorized by express statutory provision to issue general orders, i.e., rules of a substantive nature, for a number of specified purposes.\(^{6}\)

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\(^{3a}\) See footnote 6, below.

\(^{4}\) Some confusion enters here due to the fact that Commission rules are promulgated by general orders, for example, the Rules of Procedure and Practice were promulgated in General Order No. 2.


\(^{6}\) Namely, for the purpose of establishing or prescribing: the maximum length of railroad cars [Wis. STAT. (1939) § 192.14]; suitable partitions for railroad cars used in the shipment of mixed livestock (§ 192.19); reasonable conditions of employment for, and numbers of employees in, railroad switching crews (§§ 192.26, 195.03.21); the location of whistles on locomotives so as to prevent injury to the hearing of men in the cabs (§ 192.265); the safe constructions of railroad “tell tales” (§ 192.31); the installation and use of air brakes in certain classes of street and interurban railway cars (§ 192.29); markings to identify the several classes of motor carriers (§ 194.09); routes and times of operation for common motor carriers so as to avoid congestion of highways (§ 194.18-2) and to insure adequate service and prevent unnecessary duplication (§ 194.18-5); hours of labor for common motor carrier drivers (§ 194.18-5); hours of labor for common motor carrier drivers (§ 194.18-8); a uniform system of accounts for common motor carriers (§ 194.30); routes and times of operation for contract motor carriers so as to avoid congestion of highways (§ 194.36-2); safety regulations, including regulations concerning the hours of labor for drivers of contract motor carriers (§ 194.36-6); routes and times of operation for private motor carriers (§ 194.43); safety regulations for private motor carriers (§ 194.43); a uniform system of accounts for railroads to conform as nearly as practicable to that prescribed by Federal authority for interstate railroads (§ 195.03-11); free transportation of attendants for railroad livestock shipments (§ 195.03-14); adequate railroad car service for shippers (§ 195.03-16); standards for railroad safety devices and measures (§ 195.03-18); reasonable transfer practices by street and interurban railroads (§ 195.05-7); service classifications for public utilities
As of July 6, 1939 a total of 36 general orders had been promulgated and were in effect. Each order according to its recitals had been issued pursuant to one or more of the above cited express statutory authorizations. None of them were predicated simply upon implied authority or upon the Commission’s general supervisory or regulatory powers.7

b. The Nature of the Procedure: With one or two exceptions, where it is provided in the broadest terms that general orders governing specified subjects may be issued after an “investigation” or “hearing,” no statutory provisions prescribe the procedure to be followed by the Commission in formulating or issuing general orders.8

(§ 196.06, 196.10); standard commercial units for public utility products or services (§ 196.15); standards of measurement of quality, pressure, etc., of the products or services of utilities and for the accurate measurement thereof (§196.16); conditions under which utilities may make loans to their own officers, or directors, or make loans to or investments in the securities of holding companies (§ 196.525).

7 A distinguished authority lists the following as requisites of a valid delegation of legislative power. The delegating legislature must:
1. itself have power in the premises to regulate.
2. definitely limit the delegation.
3. require, in the case of contingent legislation, a finding.
4. delegate the power to public officers or authorities, not to private persons or groups.
5. itself provide any penal sanction for violation of resulting rules.”

8 On the question of whether the Fourteenth Amendment requires that hearings be held as a condition precedent to the issuance of an order of this type see Bi-Metallic Investment Co. v. State Board of Equalization of Colorado, 239 U.S. 441, in which it is said:
“Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.”
See also Chicago & N. W. Ry. Co. v. Railroad Commission, 188 Wis. 232, 205 N.W. 932, 937 (1925).

Hearings, however are frequently required by statute, “Where the statute so requires, it should be taken, unless it specifies otherwise, to mean a legislative hearing analogous to the congressional committee hearings, rather than a quasi-judicial hearing. Cf. Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294 (1933), and The Assigned Car Cases, 274 U.S. 564 (1926), with L. & N. R. R. v. Interstate Commerce Commission, 227 U.S. 88 (1913), and Morgan v. United States, 298 U.S. 465 (1936), 304 U.S. 1, 23 (1939). Note especially this statement by Mr. Justice Brandeis in The Assigned Car Cases: ‘In the case at bar, the function exercised by the Commission is wholly legislative. Its authority to legislate is limited to establishing a reasonable rule. But in establishing a rule of general application, it is not a condition of its validity that there be adduced evidence of its appropriateness in respect to every railroad to which it will be applicable. In this connection, the Commission, like other legislators, may reason from the particular to the general.’ In other words, it is never possible to furnish by evidence judicial proof of a universal proposition.” Hart, J., Some Aspects of Delegated Rule-Making, 25 VA. L. Rev. 810, 819 (1939).
Similarly, no such procedure has been formally outlined by the Commission in its *Rules of Procedure and Practice*, or elsewhere. Thus in a sense the Commission's practice in these matters is purely informal and voluntary, yet it is not entirely liquid. On the contrary a fairly rigid and uniform procedure has been established in practice and what follows is a description of that procedure based on an examination of the Commission's general order files plus discussions with staff members.

c. The Instigation of Proceedings: No agency within the Commission's organization is set apart or designated to suggest, consider, or draft proposed general orders. Rather all members of the staff are encouraged to call to the attention of the Commission, through its secretary, in written memorandum form, any suggestions in this respect which he or she may have. This apparently artless device is in fact designed to encourage the interest of each staff member in the functions of the Commission as well as to secure for the use of the Commission the experience garnered by the staff in its day-to-day official contacts with the outside world. The effectiveness of this procedure is indicated in the fact that six or eight suggestions are submitted in this manner each month and that about 85 per cent of all general orders originate in such suggestions.  

The greater part of the remainder of the general orders which the Commission issues originate, ostensibly at least, on the initiative of the Commission itself, though even here there can be no doubt that informal suggestions both from the staff and outside are important.

Finally, but relatively seldom, formal suggestions from persons outside the Commission's organization are responsible for the initiation of the remaining proceedings which result in the issuance of general orders.

4. Investigations and Methods of Proceeding Thereafter: Whatever the source, if upon perusal a suggestion is found by the Commission to justify serious consideration, it is routed for investigation to a staff member within whose particular province the matter lies. The investigator in each case, having been selected on the basis of his particular qualifications to handle the matters in hand, is ordinarily ex-

9 See following footnote.

10 An examination of the files on all of the public utility and railroad general orders in effect as of a recent date did not disclose sufficient material to warrant the presentation of figures in respect to the origin of proceedings which culminate in the issuance of general orders. Estimates by staff members of considerable experience indicate that about 85 per cent of the Commission's general orders originate on the initiative of the staff, 10 per cent on the initiative of the Commission and the remainder on the initiative of persons on the outside. It is, of course, clear that there is a great amount of cross-fertilization between these three classes which defies calculation.
pected to draw heavily upon his own expert knowledge and experience as well as upon such information as may be available in the Commission's files and records. He is likewise expected to consult with his colleagues in those aspects of the problem which fall in their respective fields.

Finally, careful study is made in almost every case of the practices of agencies in other jurisdictions having regulatory powers corresponding to those of the Commission. This has been found to be one of the most fruitful sources of information available and is constantly relied upon.

Though investigations of this kind purport to be purely *ex parte*, it happens not infrequently that consultations are held with outside experts, especially those representing the larger companies and the utility, or other association whose members might be within the purview of the contemplated order. Aside from such associations there are no established representative, advisory bodies whose assistance might be sought.

Upon the conclusion of the investigation a written memorandum embodying the results thereof, together with a draft order where that is feasible, is submitted to the Commission, which thereupon considers the same usually in consultation with members of its legal and technical staffs. Then, unless the entire matter is found to be unworthy of further action, either one of three (or possibly four) courses of procedure may be pursued as follows:

In relatively simple cases where little or no opposition is anticipated, the draft order, which in such cases will have been prepared by the investigating staff member, subject, of course, to approval by the Commission, is forthwith promulgated as a final and effective order of the Commission. Out of a total of 17 general orders of the Commission only 3 were issued in this manner without hearing.\(^{11}\)

One of these three required certain telephone companies to secure Commission approval before installing any telephone exchange switch-
board, or before entering into any call-switching agreement; another altered certain provisions of the Commission's accounting rules relative to construction overhead costs; and the third required that full accounting records be kept of all disbursements, in excess of ten dollars, by certain utilities. Incidentally, the order relating to overhead construction costs was issued only after a conference on the matter had been held between representatives of the Accounting Committee of the Wisconsin Utilities Association and the Commission's chief accountant.

Where the matter involved is more difficult, but where it is fairly certain that some form of order is ultimately to be issued, a draft order, having been drawn up by the investigating staff member, subject to the approval of the Commission, is sent by registered mail to all interested parties together with notice of the time and place of a hearing to be held for the purpose of receiving criticisms and suggestions thereon. Of the 17 general order proceedings which were examined 8 were handled in this manner.

One general order, apparently an exception, was treated in a hybrid manner which incorporated some of the elements of each of the foregoing methods of procedure. In this case an order was issued without hearing, but subject to the express proviso that it should not become effective until twenty days after issuance and not then, if any interested person should in the interim have filed a petition for a hearing, in which event the effective date was automatically stayed until final determination after due notice and hearing. One petition for hearing was received, but it was tempered by a request for an informal conference with Commission staff experts together with the suggestion that such a conference might well obviate the necessity of a hearing. A conference was held, the order was revised and thereupon issued as an effective Commission order, strangely enough, without notice and hearing on the revisions which had been made.

The 5 remaining orders out of the 17 which were examined were issued after hearings held not only to consider what form the ultimate order in each case should take, but also whether or not any order should be issued. In these cases no draft orders were prepared by the Commission for consideration at the hearings, though in one instance such a draft was submitted by an interested party.12

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12 Professor Hart suggests the following pre-natal procedural safeguards in connection with the exercise of delegated legislative powers:

1. the advisory committee
2. notice and formal hearing
3. publication of draft regulations
4. informal contact with groups affected
5. progression from voluntary to mandatory standards**

e. Notice of, and Parties to, General Order Hearings: In all cases where general order hearings are held notice of the time and place thereof is given to all interested persons. An examination of the notices which were issued in the 13 proceedings in which hearings were held reveals that the average period of time between notice and the date on which the hearing was scheduled to open was 18.5 days. The shortest notice given in any case was 10 days.

So too, as has already been indicated, notice of all hearings is published weekly in the official state newspaper.

The term "interested persons" as used in this connection includes all persons, partnerships, or corporations subject to the Commission's jurisdiction and conducting the kind of business which falls within the general class to which the proposed order, if it were to become effective, would apply, together with such other persons as the Commission might believe would be substantially interested therein. Thus, for example, in the instance of a hearing on a draft order, by the terms of which gas companies were required to secure from the Commission a certificate of authorization before the construction and installation of any additional plant facilities, notice was sent to every gas utility in the state subject to the Commission's jurisdiction, to the Wisconsin Utilities Association, and to a number of other persons whose exact interest in the matter the writer was unable to ascertain.

The same lenient practice with respect to intervenors that applies in rate and service hearings applies as well in general order hearings. That is, any person having a legitimate interest in the subject matter, however indirect, may intervene in the proceeding at any stage before the record is closed and will thereupon be accorded a status of full equality with all other parties.

In the 13 hearings to which reference has already been made an average of 15 appearances per hearing were entered, the maximum and minimum intervenors being respectively 45 and 4.

f. The Conduct of the Hearings: All of the rules and procedures pertaining to the conduct of the hearing, the use and selection of examiners, the functions of Commission counsel and staff members, the recording of proceedings, the the process of proof, the submitting of briefs and argument, the mechanics of formulating the final order and the granting of reopenings and rehearings which apply in rate and service hearings are applicable \textit{pari passu} to the conduct of general order hearings.\textsuperscript{12a} But hearings in the two types of cases differ considerably in spirit and purpose, this difference being apparent particu-

\textsuperscript{12a} For a description of the procedure of the Commission in rate and service hearings see Mendelson, Wallace, \textit{The Public Service Commission of Wisconsin: A Study in Administrative Procedure}, 1940 Wis. L. Rev. 503 (1940).
larly in the matter of the process of proof. In this respect the rules and procedure referred to are more applicable than applied. Thus parties, being incidentally more numerous than in other hearings, appear in general order hearings primarily, it would seem, to present their views and recommendations in the matter at hand and not to offer evidence directed toward the exploration of more or less specific issues. Little effort is made to establish, by the introduction of evidence, facts material to the problems involved and what testimony there is tends to be exclusively of the expert opinion variety. In short, hearings on proposed general orders are in fact conferences of experts conducted for the purpose of airing opinions and reconciling, as nearly as may be, by discussion and compromise the differences which necessarily exist between those who must issue rules and those who must abide by them. The conference-like nature of general order hearings is exemplified in a recent case where the parties being too numerous to proceed expeditiously *en masse*, appointed representatives to meet with staff members of the Commission for the purpose of working out in committee a draft order to be submitted for adoption by the Commission. Though admittedly this proceeding was exceptional, it epitomizes the spirit which seems to prevail in all general order proceedings.

But the crucial difference between hearings on proposed general orders and hearings on other matters is not in essence a matter of procedure. It lies in the fact that in the former the Commission does not feel obligated, as it does in the latter, to confine itself in formulating its ultimate order to the evidence contained in the formal record of the hearing. In short the evidence and arguments of the parties to general order hearings are regarded simply as advisory, to be considered in whole, in part, or not at all, in the discretion of the Commission. To complete the picture it must be said that a comparison of the draft orders prepared by the Commission as a basis for discussion at hearings with the orders ultimately promulgated discloses the fact that changes predicated on evidence and arguments of record were made in every case.

Some of the Commission's general orders are supported by rather elaborate findings of fact, others with only the most general findings stated in the terms of the statute pursuant to which they are issued.  

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13 As to the necessity of findings of fact see *Pacific States Box & Basket Co. v. White*, 296 U.S. 176 (1935) in which it is said:

"It is contended that the order is void because the administrative body made no special findings of fact. But the statute did not require special findings doubtless because the regulation authorized was general legislation, not an administrative order in the nature of a judgment directed against an individual concern. Compare *Wichita Railroad & Light Co. v. Public Utilities Commission*, 260 U.S. 48, 59-59.**"  

Examination of the records made in connection with the 13 hearings on proposed general orders relating to utilities and railroads throws further light on the nature of general order hearings. In 10 cases the hearings were concluded on the same day on which they were begun, while in the remaining 3 cases they were opened and closed within the period of 2 days. The average number of pages per record transcript was 72.3, the maximum and minimum being respectively 217 and 11. The number of days elapsing between the close of the hearing and the promulgation of the order was on the average 74.6, the three shortest intervening periods being respectively 1, 2, and 5 days. The average period of time between the date on which notice of the hearing was issued and the date on which the order was promulgated was 100.9 days, the maximum and minimum being respectively 304 and 13 days.

The Revision and Cancellation of Orders: For purposes of the procedure in relation to their origin, formulation and issuance no distinction whatsoever is drawn between original orders on the one hand and revisory, or cancelling orders on the other. That is, the procedure which has already been described applies as much to the latter as to the former. It follows that the Commission, having no agency specifically designated to suggest, consider or draft new orders, has none to examine existing orders, periodically or otherwise, with a view to possible revision or cancellation. But both of these functions are simply aspects of the problem of keeping general orders “up to date” which is largely solved, or obviated, in Commission procedure by the practice, already indicated, of encouraging staff members to submit for Commission consideration any suggestions which they may have, based on their day-to-day experience in the performance of their duties.

Another method of “revising” orders is that of retaining jurisdiction after the promulgation of an order for the purpose of making “reasonable changes upon proper application and a showing of good cause.” This device was used in one case where a rather elaborate order fixing standard guarantee and deposit rules and disconnect procedure for gas, electric and water utilities was issued. Although the order in that case made no express provision for it, on two occasions applications were made by groups of two and three utilities, respec-

14 These figures do not take into account one exceptional case in which a period of more than three years elapsed between the close of the hearing and the issuance of the order, the delay in this case being due simply to indecision as to whether an order ought to be issued.

15 See footnote next preceding. The fact that the average period of notice plus the average hearing time, plus the average period elapsing between the close of the hearing and the issuance of the order do not quite equal the average total period between notice and order is due to the fact that in two instances hearings were adjourned and then resumed after an interval.
tively, for special permission to be exempted from a part of the provisions of the order and without hearing or notice to other parties exemptions were granted to the applicants alone.

h. The Promulgation of Orders: General orders are promulgated by sending notice of the effective date of each order by registered mail to all persons, partnerships and corporations within the class to which it applies, as well as to all other parties who appeared at any hearing which may have been held thereon. Each notice is accompanied by a copy of the order to which it relates, the copy being either in typewritten, mimeographed or printed form according to the size of the class to which it applies. There is no formal publication of orders in anything corresponding to the Federal Register, though every effort is made by the Publicity Section to secure as much newspaper publicity as possible. Finally, the subject matter and docket numbers of each effective order are listed in the successive editions of the Commission's Rules of Procedure and Practice, and copies of all orders are made available upon request at the Commission's main office.

Ordinarily, orders do not become effective until after the expiration of a fixed period of time subsequent to the dates of their respective notices, the duration of such period in each case depending upon the nature of the order in question.

Revisory and cancelling orders receive like treatment, of course, in all respects.

III. Procedure Relating to Rules

a. Scope of the Commission's Authority: As we have already seen, in Commission nomenclature the term "rules" is reserved for that class of quasi-legislative rules and regulations which prescribe the procedure to be followed by the Commission and members of the public in the conduct of their official relations with one another. The Commission's power to issue such rules is predicated upon the express statutory provisions which authorize it to prescribe the form of applications for common motor carrier certificates and contract motor carrier licenses [Wis. Stat. (1939) §§ 194.24, 194.35], "to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings" [§195.03-(1)], to issue rules concerning the reporting of railroad accidents [§195.34], "to adopt reasonable rules and regulations relative to all inspections, tests, audits and investigations" [§196.02-(3)], and to prescribe rules to govern applications for rehearings in utility rate and service proceedings [§196.405].

16 Many of the numerous statutory provisions which require the submission to the Commission of various types of information authorize the Commission to prescribe the form in which such information shall be submitted and the manner and time of submitting it. As of July 6, 1939 this jurisdiction had been exercised by the Commission only once.
All rules in effect as of July 6, 1939 were issued, according to the recitals in the orders by which they were promulgated, pursuant to that statutory provision just quoted which authorizes the Commission "to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings." In fact it would seem that this provision is comprehensive enough to justify the statement that any rule which the Commission might adopt could be said to be predicated on express statutory authority.

b. **The Formulation of Rules:** No statutory provision prescribes the procedure to be followed by the Commission in formulating and issuing rules and prior to 1938 no such procedure had been established in practice, since before then rules had been issued on only two occasions, once in 1908 and once in 1932, the procedure used in each instance being purely *ad hoc.* In 1938, however, on the instigation of its then newly appointed secretary a procedure was established for formulating rules and continuously scrutinizing them with a view toward revision where that might be found advisable in the light of new experience or altered circumstances. Pursuant to the new procedure the Commission's *Rules of Procedure and Practice* were issued on January 26, 1938 and revised on July 6, 1939.

Although it has been nowhere explicitly formulated, the outlines of the new procedure for the making of rules are quite clear and may be described as follows. As in the case of the formulation of general orders, all staff members are encouraged to submit suggestions in memorandum form for the improvement of existing practice. For the purpose of considering such suggestions the Commissioners, the Commission's secretary and assistant-secretary meet periodically with the department chiefs, section supervisors and examiners. Such meetings, referred to as "procedure meetings," are called by the Commission's secretary whenever he has reason to believe on the basis of memoranda received that there is sufficient business at hand to warrant the calling thereof. Until the issuance of the revisory rules of July 6, 1939 procedure meetings were held about once a month; since then they have occurred less frequently.

During the course of a meeting on the basis of an *agenda* prepared in advance by the Commission's secretary the suggestions from the staff, together with those which may have been received from outside, either formally or informally, are discussed in some detail. Where more thorough consideration is necessary to dispose of any matter so raised a staff member may be appointed to make an investigation and submit the results thereof, together with his recommendations, at a subsequent

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27 The rules of 1908 were comprehensive in nature, but they were never revised and by 1932 had long since been abandoned in practice, if not in theory. Those of 1932 related only to applications for rehearing.
meeting. So, too, staff members who do not regularly attend procedure meetings but whose functions or experience may be expected to qualify them as experts on the matter in hand may be called upon to attend particular meetings to consult with the regular attendants.

On occasion, criticisms and suggestions from interested persons on the outside are solicited for consideration at procedure meetings. For example, after the *Rules of Procedure and Practice* of January 26, 1938 had been in effect for a little more than a year examiners who had conducted proceedings thereunder were asked to prepare a list of the names of all lawyers who had participated in such proceedings. Form letters requesting advice as to the manner in which those rules might be improved were then sent to all the lawyers so listed. The responses received together with suggestions from staff members were the foundation for the revised rules of July 6, 1939.

An interesting example of how procedure meetings work may be seen in the origin of the Commission's Rule 10b which provides in respect to hearings that "Before appearances are entered the presiding commissioner or examiner shall make a concise statement of the scope and purpose of the hearing." In this instance the Commission's assistant-secretary, being well aware of the difficulties resulting from the absence in Commission procedure of any machinery for clarifying the issue to be "tried" at Commission hearings, noticed a newspaper article which indicated that a similar problem had been solved by a regulatory agency in another jurisdiction through the device of an opening statement by the presiding official. The matter was immediately brought up for discussion at a procedure meeting, where it was decided that the device ought to be tried in a few hearings before any definite action was taken thereon. This was done and the results, incidentally having proven tremendously successful, were reported back at a subsequent procedure meeting where it was resolved that an opening statement by examiners ought to be adopted as part of the Commission's regular procedure for the purpose of delineating the issues to be dealt with at hearings.

c. The Promulgation of Rules: It is, of course, clear that the participants in procedure meetings as such have no power to issue legally effective rules. They simply make recommendations in resolution form to be accepted or rejected by the Commission in its discretion. It goes without saying, however, that since the Commissioners actively participate in all procedure meetings, the recommendations resulting therefrom are as a matter of course always adopted by the Commission.

As has been indicated, Commission rules are promulgated by the issuance of a "general order," copies of which are sent to all lawyers who the Commission files indicate have participated in Commission
proceedings in the preceding year or so, and to libraries and other institutions which might be interested therein. Copies of the Supplemental Order of July 6, 1939 which revised the Rules of Procedure and Practice of about eighteen months earlier, for example, were sent to one hundred and fifteen persons and institutions.

Printed copies of all effective rules are also made available upon request at the Commission's main office in much the same manner as are rules of judicial courts of record.

IV. Procedure Relating to Instruction

a. Scope of the Commission's Authority: No statutory provision has been found which in express terms authorizes the Commission to issue instructions, i.e., rules of conduct prescribing the procedure to be followed by staff members in their official, but purely intra-Commission, activities. This matter, however, need not long detain us, since it must be perfectly clear that the Commission has ample authority in this respect by implication in conjunction with the extensive powers which have been granted it by express statutory provision.

b. The Formulation and Issuance of Instructions: In addition to suggestions relating to rules, suggestions relating to instructions are also received and considered at procedure meetings. In fact, the procedure in respect to the one is in all respects identical with that in respect to the other except in the matter of issuance. The difference in the latter regard lies in the fact that instructions are issued on the authority of the participants in procedure meetings as such and are not formally acted upon by the Commission as a separate entity. Thus, at the close of procedure meetings any instructions which may have been adopted are put into mimeographed form and distributed to all staff members who may be effected thereby.