

Subchapter E. PLEADINGS AND OTHER DOCUMENTS.

§22.71. Filing of Pleadings, Documents, and Other Materials.

- (a) **Applicability.** This section applies to all pleadings as defined in §22.2 of this title (relating to Definitions) and the following documents:
 - (1) All documents filed relating to a rulemaking proceeding.
 - (2) Applications filed pursuant to the Public Utility Regulatory Act (PURA) or the commission's substantive rules in Chapter 25 and 26 of this title.
 - (3) Letters or memoranda relating to any item with a control number.
 - (4) Reports pursuant to PURA, commission rules or request of the commission.
 - (5) Discovery requests and responses.

- (b) **File with the commission filing clerk.** All pleadings and documents required to be filed with the commission shall be filed with the commission filing clerk, and shall state the control number on the heading, if known.

- (c) **Number of items to be filed.** Unless otherwise provided by this chapter or ordered by the presiding officer, the number of copies to be filed, including the original, are as follows:
 - (1) applications, petitions, and complaints: ten copies;
 - (2) applications for expanded local calling: seven copies;
 - (3) applications for certificates of operating authority (COAs) or service provider certificates of operating authority (SPCOA), amendments to COA or SPCOA applications, and all pleadings or documents related to the applications for COAs or SPCOAs: seven copies;
 - (4) applications for certification of retail electric providers or for registration of power generation companies, self-generators or aggregators: seven copies;
 - (5) tariffs:
 - (A) for review under §22.33 of this title (relating to Tariff Filings), including discovery responses for tariffs filed under §22.33 of this title: six copies;
 - (B) related to docketed proceedings: ten copies; and
 - (C) related to discovery responses in docketed proceedings: four copies;
 - (6) exceptions, replies, interim appeals, requests for oral argument, and other documents addressed to the commissioners: 19 copies;
 - (7) testimony and briefs: 11 copies, except that in contested cases transferred to the State Office of Administrative Hearings, parties must file 13 copies of testimony and briefs;
 - (8) rate, fuel factor, and fuel reconciliation filing packages: 11 copies;
 - (9) applications for certificates of convenience and necessity for transmission lines or boundary changes, certificate of convenience and necessity exemptions, and service area exceptions: seven copies;
 - (10) discovery requests: five copies;
 - (11) discovery responses: four copies;
 - (12) reports filed pursuant to the Public Utility Regulatory Act or the commission's Substantive Rules: four;
 - (13) comments to proposed rulemakings: 16; and
 - (14) other pleadings and documents: ten copies, except that in contested cases transferred to the State Office of Administrative Hearings (SOAH), parties must file 12 copies of other pleadings and documents.

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(d) Confidential material:

(1) A party providing materials designated as confidential shall deliver them to Central Records in an enclosed, sealed and labeled envelope ("confidential envelope"). The confidential envelope shall not include any non-confidential materials unless directly related to and essential for clarity of the confidential material. Each copy of confidential material shall be provided in a separate sealed and labeled envelope. Parties shall notify the Central Records' filing clerk prior to submission of any documents to be file-stamped whether the submission includes any confidential material. If the confidential envelope does not meet the requirements of subparagraph (A)(i) - (vii) of this paragraph, both the envelope and any document directly related to the confidential material will be immediately returned to the submitting party without being filed-stamped. If the confidential envelope meets the requirements of subparagraph (A)(i) - (vii) of this paragraph, Central Records shall accept it on a provisional basis. The confidential documents manager for the Legal Division shall review the confidential envelope and documents for compliance with subparagraphs (A) - (C) of this paragraph. Any envelope and/or documents that do not meet the requirements of these subparagraphs will be returned to the submitting party by the confidential documents manager. The submitting party shall be required to bring the envelope and/or materials into compliance with this section and resubmit the envelope and materials through Central Records. Parties shall resubmit any documents returned by either the filing clerk or the confidential documents manager no later than 3:00 p.m. the next working day after notification of the deficiency. Any issue regarding timeliness of the filing shall be addressed by the administrative law judge assigned to the proceeding. No submitting party shall deliver any confidential materials directly to commission staff. Confidential documents related to settlement negotiations shall be submitted pursuant to paragraph (4) of this subsection. Confidential documents submitted for *in camera* review shall be submitted pursuant to paragraph (5) of this subsection.

(A) The confidential envelope shall contain confidential material related only to a single proceeding. All confidential material, including that submitted in diskette or CD-rom format, shall be provided in a 10 X 13 inch manila clasp envelope. A larger envelope shall be permitted only when necessary as a result of the document's size pursuant to §22.72(b)(2) of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). All envelopes shall be identified with a label containing the information required in clauses (i) - (viii) of this subparagraph:

- (i) the word "CONFIDENTIAL" in bold print at least one-half inch in size;
- (ii) the control number, if available;
- (iii) the style of the proceeding;
- (iv) the name of the submitting party;
- (v) Brief description of contents, i.e., "Response to {Name of RFI requestor}'s First RFI No. 1-1";
- (vi) Bate Stamped or consecutive page number range of documents enclosed;
- (vii) Number and quantity of envelopes, i.e., one of one or one of two, two of two (If the confidential material fits into one envelope, each copy would be marked "one of one." If the confidential material requires two envelopes, each copy would be marked "one of two, two of two"); and
- (viii) any other markings as required by the individual protective orders in each proceeding.

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- (B) The submitting party's label shall substantially conform to the following form, with changes as necessary to comply with any individual protective order applicable to the proceeding, and shall be securely taped or adhered only to the front of the confidential envelope:

CONFIDENTIAL

DOCKET NO. _____

STYLE: _____

SUBMITTING PARTY: _____

BRIEF DESCRIPTION OF CONTENTS: _____

BATE STAMP OR SEQUENTIAL PAGE NUMBER RANGE:

_____ TO _____

ENVELOPE # _____ OF _____

ADDITIONAL INFORMATION REQUIRED BY PROTECTIVE ORDER:

DATE SUBMITTED TO COMMISSION: _____

- (C) The confidential materials shall:
- (i) have each page of the confidential material marked "confidential" or as required by the individual protective orders in each proceeding;
 - (ii) meet the requirements of §22.72(g) of this title;
 - (iii) have each page, including any cover letters or divider pages, sequentially numbered and the sequential numbers shall be easily distinguishable from any other numbering the submitting party uses for internal purposes;
 - (iv) be stapled or secured in a pressboard letter folder or binder, and not loose, rubber banded, paper clipped or in a three-ring binder.

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- (D) Unless otherwise provided by this chapter or the presiding officer, confidential material submitted as evidence at hearings shall follow the procedures set forth in this paragraph.
- (2) Unless otherwise provided by this chapter or order of the presiding officer the number of copies of confidential material delivered to the commission shall be as follows:
 - (A) related to arbitrations: two copies;
 - (B) related to discovery: two copies;
 - (C) related to contested cases transferred to the SOAH: two copies to Central Records and one copy delivered directly to SOAH;
 - (D) related to any other proceeding: two copies; and
 - (E) related to request for proposal for goods and/or services: one copy
- (3) Unless otherwise provided by this chapter or order of the presiding officer, all confidential material shall be delivered to Central Records. All commission employees receiving confidential materials through Central Records, or otherwise handling or routing confidential materials for any purpose, shall sign an agreement not to open any sealed containers marked pursuant to paragraph (1) of this subsection. Confidential materials shall not be filed with the commission electronically unless specific arrangements are made and agreed to by the parties involved on a case-by-case basis.
 - (A) Materials related to arbitrations. Central Records will route one copy to the commission's Policy Development Division for the appeals file and one copy to the commission's Legal Division. Commission staff who have signed an agreement to abide by the protective order in the proceeding may view the copy of the confidential material maintained by the Legal Division.
 - (B) Material related to contested cases transferred to SOAH and other docketed proceedings. Central Records will maintain one file copy that is not accessible to the public or commission staff. Central Records will route the additional copy to the commission's Legal Division. Commission staff who have signed an agreement to abide by the protective order in the proceeding may view the copy of the confidential material maintained by the commission's Legal Division. The party who provides the confidential material will be responsible for delivering one copy of confidential materials not related to discovery to SOAH.
 - (C) Request for proposal for goods and/or services. Confidential material related to a request for proposal for goods and/or services will be delivered to the commission's General Counsel or the General Counsel's authorized representative.
- (4) **Settlement negotiations.** Confidential materials related to settlement negotiations shall be delivered to the commission's Mail Room. Confidential materials related to settlement negotiations shall not be considered part of the official record and shall not be logged into the commission's agency information system (AIS). The party submitting confidential materials for settlement negotiations is responsible for ensuring that the materials are properly labeled pursuant to subparagraphs (A) and (B) of this paragraph. Confidential materials that are not properly labeled will not be accepted by the Mail Room. The Mail Room will ensure that the materials are delivered to the staff person identified on the label.
 - (A) Confidential material related to settlement negotiations shall be delivered in a sealed envelope identified with a label containing the information in clauses (i) - (v) of this subparagraph:
 - (i) the words "SETTLEMENT NEGOTIATIONS" and "CONFIDENTIAL" in bold print at least one-half inch in size;
 - (ii) the control number;
 - (iii) the style of the proceeding;
 - (iv) name of submitting party; and

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- (v) name of the staff person assigned to the proceeding who is to receive the confidential material.

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- (B) The submitting party's label shall substantially conform to the following form and shall be securely taped or adhered only to the front of the confidential envelope:

SETTLEMENT
NEGOTIATIONS
CONFIDENTIAL

DOCKET NO. _____

STYLE: _____

SUBMITTING PARTY: _____

COMMISSION STAFF PERSON TO RECEIVE MATERIAL:

DATE SUBMITTED TO COMMISSION: _____

- (5) ***In camera* review.** One copy of confidential materials related to *in camera* review shall be delivered to the commission's Mail Room. Confidential materials related to *in camera* review shall not be considered part of the official record and shall not be logged into the commission's agency information system (AIS). The party submitting confidential materials for *in camera* review is responsible for ensuring that the materials are properly labeled pursuant to subparagraphs (A) and (B) of this paragraph. Confidential materials that are not properly labeled will not be accepted by the Mail Room. The Mail Room will ensure that the materials are delivered to the administrative law judge or arbitrator assigned to the proceeding.

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§22.71(d)(5) continued

- (A) Confidential material related to *in camera* review shall be delivered in a sealed envelope identified with a label containing the information in clauses (i) - (v) of this subparagraph:
 - (i) the words "IN CAMERA REVIEW" and "CONFIDENTIAL" in bold print at least one-half inch in size;
 - (ii) the control number;
 - (iii) the style of the proceeding;
 - (iv) name of submitting party; and
 - (v) name of the administrative law judge or arbitrator assigned to the proceeding.
- (B) The submitting party's label shall substantially conform to the following form and shall be securely taped or adhered only to the front of the confidential envelope:

**IN CAMERA
REVIEW
CONFIDENTIAL**

DOCKET NO. _____

STYLE: _____

SUBMITTING PARTY: _____

ADMINISTRATIVE LAW JUDGE or ARBITRATOR: _____

DATE SUBMITTED TO COMMISSION: _____

- (6) Working copies of confidential material shall be maintained, destroyed, or returned to the providing party pursuant to the individual protective orders in each proceeding. Record copies of confidential material shall be maintained or destroyed pursuant to the commission's Records Retention Schedule as approved by the Texas State Library and Archives Commission.

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- (e) **Receipt by the commission.** Pleadings and any other documents shall be deemed filed when the required number of copies and the electronic copy, if required, in conformance with §22.72 of this title are presented to the commission filing clerk for filing. The commission filing clerk shall accept pleadings and documents if the person seeking to make the filing is in line by the time the pleading or document is required to be filed.

- (f) **No filing fee.** No filing fee is required to file any pleading or document with the commission.

- (g) **Office hours of Central Records and the commission filing clerk.**
 - (1) The office hours of Central Records are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days, except on Fridays, when Central Records will close for all purposes from noon to 1:00 p.m.
 - (2) With the exception of open meeting days, for the purpose of filing documents, the office hours of the commission filing clerk are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days.
 - (3) On open meeting days, the commissioners and the Policy Development Division may file items related to the open meeting on behalf of the commissioners between the hours of 8:00 a.m. and 9:00 a.m. The commissioners and the Policy Development Division shall provide the filing clerk with an extra copy of all documents filed pursuant to this paragraph for public access.
 - (4) Central Records will open at 8:00 a.m. on open meeting days. With the exception of paragraph (3) of this subsection, no filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m.

- (h) **Filing a copy or facsimile copy in lieu of an original.** Subject to the requirements of subsection (c) of this section and §22.72 of this title, a copy of an original document or pleading, including a copy that has been transmitted through a facsimile machine, may be filed, so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding.

- (i) **Filing deadline.** All documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.

- (j) **Filing deadlines for documents addressed to the commissioners.**
 - (1) Except as provided in paragraph (2) of this subsection, all documents from parties addressed to the commissioners relating to any proceeding that has been placed on the agenda of an open meeting shall be filed with the commission filing clerk no later than seven days prior to the open meeting at which the proceeding will be considered provided that no party is prejudiced by the timing of the filing of the documents. Documents that are not filed before the deadline and do not meet one of the exceptions in paragraph (2) of this subsection, will be considered untimely filed, and may not be reviewed by the commissioners in their open meeting preparations.

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- (2) The deadline established in paragraph (1) of this subsection does not apply if:
 - (A) The documents have been specifically requested by one of the commissioners;
 - (B) The parties are negotiating and such negotiation requires the late filing of documents;
or
 - (C) Good cause for the late filing exists. Good cause must clearly appear from specific facts shown by written pleading that compliance with the deadline was not reasonably possible and that failure to meet the deadline was not the result of the negligence of the party. The finding of good cause lies within the discretion of the commission.
- (3) Documents filed under paragraph (2) of this subsection shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.