

# PROCEDURAL RULES

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*Note: Subchapter P. Dispute Resolution; Subchapter Q. Post-Interconnection Agreement Dispute Resolution; and Subchapter R. Approval of Amendments to Existing Interconnection Agreements and Agreements Adopting Terms and Conditions Pursuant to FTA96 §252(i) have been repealed as a result of the adoption of new Chapter 21, Interconnection Agreements for Telecommunications Service Providers, effective March 1, 2004.*

## **Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.**

### **§22.1. Purpose and Scope.**

- (a) **Purpose.** The purpose of this chapter is to provide a system of procedures for practice before the Public Utility Commission of Texas that will promote the just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to attain these objectives.
- (b) **Scope.**
  - (1) This chapter shall govern the initiation, conduct, and determination of proceedings required or permitted by law, including proceedings referred to SOAH, whether instituted by order of the commission or by the filing of an application, complaint, petition, or any other pleading.
  - (2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the commission staff, or the substantive rights of any person.
  - (3) To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.

## Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.

### §22.2. Definitions.

The following terms, when used in this chapter, shall have the following meanings, unless the context or specific language of a section clearly indicates otherwise:

- (1) **Administrative law judge** — The person designated to preside over a hearing.
- (2) **APA** — The Administrative Procedure Act, Chapter 2001, Government Code, as it may be amended from time to time.
- (3) **Administrative review** — Process under which an application may be approved without a formal hearing.
- (4) **Affected person** — The definition of affected person is that definition given in the Public Utility Regulatory Act, §11.003(1).
- (5) **Applicant** — A person, including commission staff, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.
- (6) **Application** — A written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.
- (7) **Arbitration** — A form of dispute resolution in which each party presents its position on any unresolved issues to an impartial third person(s) who renders a decision on the basis of the information and arguments submitted.
- (8) **Arbitration hearing** — The hearing conducted by an arbitrator to resolve any issue submitted to the arbitrator. An arbitration hearing is not a contested case under the Administrative Procedure Act, Texas Government Code §§2001.001, *et. seq.*
- (9) **Arbitrator** — The commission, any commissioner, any commission employee, or any SOAH administrative law judge selected to serve as the presiding officer in a compulsory arbitration hearing.
- (10) **Authorized representative** — A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise to participate, in a proceeding. The appearance may be entered in person or by subscribing the representative's name upon any pleading filed on behalf of the party or person seeking to be a party or otherwise to participate in the proceeding. The authorized representative shall be considered to remain a representative of record unless a statement or pleading to the contrary is filed or stated in the record.
- (11) **Chairman** — The commissioner designated by the Governor to serve as chairman.
- (12) **Commission** — The Public Utility Commission of Texas.
- (13) **Commissioner** — One of the members of the Public Utility Commission of Texas.
- (14) **Complainant** — A person, including commission staff or the Office of Public Utility Counsel, who files a complaint intended to initiate a proceeding with the commission regarding any act or omission by the commission or any person subject to the commission's jurisdiction.
- (15) **Compulsory arbitration** — The arbitration proceeding conducted by the commission or its designated arbitrator pursuant to the commission's authority under FTA96 §252.
- (16) **Contested case** — A proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.
- (17) **Control number** — Number assigned by the commission's Central Records to a docket, project, or tariff.
- (18) **Days** — Calendar days, not working days, unless otherwise specified by this chapter or the commission's substantive rules.
- (19) **Docket** — A proceeding handled as a contested case under APA.

## Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.

- (20) **FTA96** — The federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Stat. 56 (1996), (to be codified at 47 U.S.C. §§151 et seq.).
- (21) **Final order** — The whole or part of the final disposition by the commission of the issues before the commission in a proceeding, rendered in compliance with §22.263 of this title (relating to Final Orders).
- (22) **Financial interest** — Any legal or equitable interest, or any relationship as officer, director, trustee, advisor, or other active participant in the affairs of a party. An interest as a taxpayer, utility ratepayer, or cooperative member is not a financial interest. An interest a person holds indirectly by ownership of an interest in a retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of that person's control is not a financial interest.
- (23) **Hearing** — Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.
- (24) **Hearing day** — A day of hearing when the merits of a proceeding are considered at the hearing on the merits, a final order meeting, or a regional hearing.
- (25) **Intervenor** — A person, other than the applicant, respondent, or the commission staff representing the public interest, who is permitted by this chapter or by ruling of the presiding officer, to become a party to a proceeding.
- (26) **Licensing proceeding** — Any proceeding respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, including a proceeding regarding a notice of intent to build a new electric generating unit.
- (27) **Major rate proceeding** — Any proceeding filed pursuant to PURA, §§36.101 - 36.111, 36.201-36.203 and 36.205 or §§51.009, 53.101 - 53.113, 53.201 and 53.202 involving an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2.5%. In addition, a major rate proceeding is any rate proceeding initiated pursuant to PURA, §§36.151 - 36.156 or §53.151 and §53.152 in which the respondent utility is directed to file a rate filing package.
- (28) **Mediation** — A voluntary form of dispute resolution in which an impartial person facilitates communication between parties to promote negotiation and settlement of disputed issues.
- (29) **Municipality** — A city, incorporated village, or town, existing, created, or organized under the general, home-rule, or special laws of Texas. A municipality is a "person" as defined in this section.
- (30) **Party** — A party under Subchapter F of this chapter (relating to Parties).
- (31) **Person** — An individual, partnership, corporation, association, governmental subdivision, entity, or public or private organization.
- (32) **Pleading** — A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.
- (33) **Prehearing conference** — Any conference or meeting of the parties, prior to the hearing on the merits, on the record and presided over by the presiding officer.
- (34) **Presiding officer** — The commission, any commissioner, or any hearings examiner or administrative law judge presiding over a proceeding or any portion thereof.
- (35) **Proceeding** — Any hearing, investigation, inquiry or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint, conducted by the commission or the utility division of SOAH.
- (36) **Project** — A rulemaking or other proceeding that is not a docket or a tariff.
- (37) **Protestor** — A person who is not a party to the case who submits oral or written comments. A person classified as a protestor does not have rights to participate in a proceeding other than by providing oral or written comments.



## **Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.**

- (38) **PURA** — The Public Utility Regulatory Act, Texas Utilities Code, Title 2, as it may be amended from time to time.
- (39) **Relative** — An individual (or spouse of an individual) who is related to the individual in issue (or the spouse of the individual in issue) within the second degree of consanguinity or relationship according to the civil law system.
- (40) **Respondent** — A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.
- (41) **Rulemaking** — A proceeding pursuant to APA, Texas Government Code, Chapter 2001, Subchapter B conducted to adopt, amend, or repeal a commission rule.
- (42) **SOAH** — The State Office of Administrative Hearings.
- (43) **Unprotested case** — A contested case in which a hearing is not necessary.
- (44) **Working day** — A day on which the commission is open for the conduct of business.

## Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.

### §22.3. Standards of Conduct.

(a) **Standards of Conduct for Parties.**

- (1) Every person appearing in any proceeding shall comport himself or herself with dignity, courtesy, and respect for the commission, the presiding officer and all other persons participating in the proceeding. Professional representatives shall observe and practice the standard of ethical and professional conduct prescribed for their professions.
- (2) Upon a finding of a violation of paragraph (1) of this subsection, any party, witness, attorney, or other representative may be excluded by the presiding officer from any proceeding for such period and upon such conditions as are just, or may be subject to other just, reasonable, and lawful disciplinary action as the commission may prescribe.

(b) **Communications.**

- (1) **Personal Communications.** Communications in person by public utilities, their affiliates or representatives, or any person with the commission or any employee of the commission shall be governed by the APA, §2001.061. Records shall be kept of all such communications and shall be available to the public on a monthly basis. The records of communications shall contain the following information:
  - (A) name and address of the person contacting the commission;
  - (B) name and address of the party or business entity represented;
  - (C) case, proceeding, or application, if available;
  - (D) subject matter of communication;
  - (E) the date of the communication;
  - (F) the action, if any, requested of the commission; and,
  - (G) whether the person has received, or expects to receive, a financial benefit in return for making the communication.
- (2) **Ex parte communications.** Unless required for the disposition of ex parte matters authorized by law, members of the commission or administrative law judges assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of law or fact with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. Members of the commission or administrative law judges assigned to render a decision or to make findings of fact or conclusions of law in a contested case may communicate ex parte with employees of the commission who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence.
- (3) **Communications with SOAH administrative law judges.** Communications between SOAH administrative law judges and employees of the commission who have not participated in any hearing in the case shall be in writing or be recorded. Written communication should be the primary and preferred format. All oral communications shall be recorded, and a table of contents maintained for each recording. All such communication submitted to or considered by the administrative law judge shall be made available as public records when the proposal for decision is issued. Number running procedures conducted pursuant to written commission policy by employees of the commission who have participated in any hearing in the case do not constitute impermissible ex parte communications, provided memoranda memorializing such procedures are preserved and made available to all parties of record in the proceeding to which the number running procedures relate.

## **Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.**

- (c) **Standards for Recusal of Administrative Law Judges.** An administrative law judge shall disqualify himself or herself or shall recuse himself or herself on the same grounds and under the same circumstances as specified in Rule 18b of the Texas Rules of Civil Procedure.
- (d) **Standards for Recusal of Commissioners.** A commissioner shall recuse himself or herself from sitting in a proceeding, or from deciding one or more issues in a proceeding, in which any one or more of the following circumstances exist:
  - (1) the commissioner in fact lacks impartiality, or the commissioner's impartiality has been reasonably questioned;
  - (2) the commissioner, or any relative of the commissioner, is a party or has a financial interest in the subject matter of the issue or in one of the parties, or the commissioner has any other interest that could be substantially affected by the determination of the issue; or
  - (3) the commissioner or a relative of the commissioner has participated as counsel, advisor, or witness in the proceeding or matter in controversy.
- (e) **Motions for Disqualification or Recusal of an Administrative Law Judge.**
  - (1) Any party may move for disqualification or recusal of an administrative law judge stating with particularity the grounds why the administrative law judge should not sit. The grounds may include any disability or matter, not limited to those set forth in subsection (c) of this section. The motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.
  - (2) The motion shall be filed within ten working days after the facts that are the basis of the motion become known to the party, or within 15 working days of the commencement of the proceeding, whichever is later. The motion shall be served on all parties by hand delivery, facsimile transmittal, or overnight courier delivery.
  - (3) Written responses to motions for disqualification or recusal shall be filed within three working days after the receipt of the motion. The administrative law judge may require that responses be made orally at a prehearing conference or hearing.
  - (4) The administrative law judge shall rule on the motion for disqualification or recusal within six working days of the filing of the motion.
  - (5) The administrative law judge shall not rule on any issues that are the subject of a pending motion for recusal or disqualification. SOAH shall appoint another administrative law judge to preside on all matters that are the subject of the motion for recusal until the issue of disqualification is resolved.
  - (6) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.
  - (7) If the administrative law judge determines that a motion for disqualification or recusal was frivolous or capricious, or filed for purposes of delaying the proceeding, the movant may be sanctioned in accordance with §22.161 of this title (relating to Sanctions).
  - (8) Disqualification or recusal of an administrative law judge, in and of itself, has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.
- (f) **Motion for Disqualification or Recusal of a Commissioner.**
  - (1) Any party may move for disqualification or recusal of a commissioner stating with particularity grounds why the commissioner should not sit. Such a motion must be filed prior to the date the commission is scheduled to consider the matter unless the information upon which the motion is based was not known or discoverable with reasonable effort prior to that time. The grounds may include any disability or matter not limited to those set forth in subsection (d) of this section. The motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.

**Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.**

- (2) Subject to the provisions of paragraph (1) of this subsection the motion shall be filed within ten working days after the facts that are the basis of the motion become known to the party or within 15 days of the commencement of the proceeding, whichever is later. The motion shall be served on all parties by hand delivery, facsimile transmission, or overnight courier delivery.
- (3) Parties may file written responses to the motion within seven working days from the date of filing the motion. The commission may require that responses be made orally at an open meeting.
- (4) The commissioner sought to be disqualified shall issue a decision as to whether he or she agrees that recusal or disqualification is appropriate or required before the commission is scheduled to act on the matter for which recusal is sought, or within 15 days after filing of the motion, whichever occurs first.
- (5) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.
- (6) Recusal or disqualification of a commissioner in and of itself, has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.

## **Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.**

### **§22.4. Computation of Time.**

- (a) **Counting Days.** In computing any period of time prescribed or allowed by this chapter, by order of the commission or any administrative law judge, or by any applicable statute, the period shall begin on the day after the act, event, or default in question. The period shall conclude on the last day of the designated period unless that day is a day the commission is not open for business, in which event the designated period runs until the end of the next day on which the commission is open for business.
- (b) **Extensions.** Unless otherwise provided by statute, the time for filing any documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion.

**Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.**

**§22.5. Suspension of Rules and Commission-Prescribed Forms.**

- (a) **Suspension.** The commission may suspend the operation of one or more of the sections in this chapter if there exists a public emergency or imperative public necessity and the commission ascertains that suspension will best serve the public interest and will not prejudice the rights of any party.
- (b) **Good Cause Exception.** Notwithstanding any other provision of this chapter, the presiding officer may grant exceptions to any requirement in this chapter or in a commission-prescribed form for good cause.

**Subchapter B. THE ORGANIZATION OF THE COMMISSION.**

**§22.21. Meetings.**

- (a) The commission shall meet at times and places to be determined either by the chairman of the commission or by agreement of any two of the commissioners.
- (b) The chairman of the commission shall preside over any proceeding or meeting of the commission, unless some other commissioner is designated by the chairman to preside.
- (c) Notice of all commission meetings shall be provided in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, as amended, and the Administrative Procedure Act.

## **Subchapter B. THE ORGANIZATION OF THE COMMISSION.**

### **§22.22. Service on the Commission.**

- (a) The commission's Executive Director, or the Executive Director's authorized representative, shall have the authority to accept service of all papers or other legal documents served on the commission or any of its members if served in their official capacity and not individually. Pursuant to Texas Government Code §2001.176(b)(2), for a petition initiating judicial review, the commission shall be served a copy of the actual petition.
  - (1) **Preferred method of service.** Delivery to the Executive Director, or the authorized representative, in person, a true copy of the citation with a copy of the petition attached.
  - (2) **Alternative method of service.** Mailing to the Executive Director, by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached.
- (b) For appeals filed pursuant to the Public Utility Regulatory Act §39.001(f), parties shall provide a courtesy copy of the appeal to the commission's Executive Director, simultaneous to completing legal service pursuant to the Texas Rules of Appellate Procedure.



**Subchapter C. CLASSIFICATION OF APPLICATIONS OR OTHER DOCUMENTS  
INITIATING A PROCEEDING.**

**§22.31. Classification in General.**

- (a) **Classification and assignment of control number.** Central Records shall determine whether an application or other document initiating a proceeding should be designated as a docket, tariff, or project. Central Records shall assign an appropriate control number to each docket, tariff, or project.
- (b) **Control numbering system.** Central Records shall establish and maintain a control numbering system.
- (c) **Control number log.** Central Records shall maintain a record or log of all applications or other documents assigned a control number, which shall include the style, the date the application or other document was filed or the proceeding initiated, the nature of the proceeding, and the presiding officer assigned to the proceeding, if any. The log shall be accessible to the public.

**Subchapter C. CLASSIFICATION OF APPLICATIONS OR OTHER DOCUMENTS INITIATING A PROCEEDING.**

**§22.32. Administrative Review.**

- (a) **Applications qualified for administrative review.** An application, other than a major rate proceeding, may be approved by an administrative law judge without a hearing or action by the commission, under the following conditions:
  - (1) the commission has referred the application to SOAH for processing;
  - (2) at least 30 days have passed since the completion of all notice requirements;
  - (3) the matter has been fully stipulated so that there are no issues of fact or law disputed by any party; and
  - (4) the administrative law judge finds that no hearing or commission action is necessary and that administrative review is warranted.
  
- (b) **Administrative law judge's order.** If an application qualifies for administrative review, the administrative law judge shall issue an order with proposed findings of fact and conclusions of law as soon as is reasonably practicable. The order shall be served upon each commissioner and all parties.
  
- (c) **Finality of order.** At the request of any commissioner, the order shall be placed on the agenda to be considered in open meeting. The commission may approve the order of the administrative law judge, vacate the order of the administrative law judge and remand the docket for hearing or additional proceedings, or modify the order with the agreement of the parties. If, within 20 days after issuance of the administrative law judge's order, the commission has not scheduled the application to be considered in open meeting, the order is deemed approved and becomes final.
  
- (d) **Notice requirements.** Nothing in this section shall be construed to alter any notice requirement imposed on any proceeding by statute, rule, or order.
  
- (e) **Time limits.** Nothing in this section shall be construed to alter any time limit imposed on any proceeding by a statute, rule, or order.
  
- (f) **Exceptions to administrative law judge's order.** Nothing in this section shall be construed to preclude any party from filing exceptions to the administrative law judge's order, provided such exceptions are filed with the commission within 15 days after the issuance of the administrative law judge's order.

## Subchapter C. CLASSIFICATION OF APPLICATIONS OR OTHER DOCUMENTS INITIATING A PROCEEDING.

### §22.33. Tariff Filings.

- (a) **Applicability and classification.** This section shall apply to undocketed applications by utilities to change their tariffs. Such tariff filings shall be classified as "electric tariff filings," "regular telephone tariff filings," or "special telephone tariff filings." Electric tariff filings shall be those applications filed pursuant to §25.241 of this title (relating to Form and Filing of Tariffs). Regular telephone tariff filings shall be those applications filed pursuant to §26.207 of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Provisions). Special telephone tariff filings shall be those applications filed by telecommunications utilities pursuant to §26.212 of this title (relating to Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)), §26.209 of this title (relating to New and Experimental Services), §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), and §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services) or PURA, §§53.251, 53.252, 53.301 - 53.308 or 55.004. This section shall apply unless it is inconsistent with Chapters 25 or 26 of this title, or PURA.
- (b) **Standards for docketing.** Tariff filings, other than a tariff filing made in compliance with a rule or final order of the commission, shall be docketed under the following circumstances:
- (1) if an electric or regular telephone tariff filing would change the revenues received by the utility for an existing service;
  - (2) if an electric or regular telephone tariff filing would allow the utility to begin charging for a service previously available but for which there was not a separate charge;
  - (3) if an electric or regular telephone tariff filing would eliminate an existing service to which one or more customers actually subscribe;
  - (4) if an electric or regular telephone tariff filing would increase a customer's bill even though the rate for a particular service is not being changed;
  - (5) if the commission's staff recommends disapproval or approval with modification and the utility requests a hearing; or
  - (6) if the commission receives a request to intervene.
- (c) **Effective date.** Except for tariffs required to be filed pursuant to a commission rule specifying the effective date of such tariffs and for tariffs filed in compliance with a final order of the commission, no electric or regular telephone tariff filing may take effect prior to 35 days after filing unless approved by the presiding officer. The requested effective date will be assumed to be 35 days after filing unless the applicant requests a different date in its application. The presiding officer may suspend the operation of the electric or regular telephone tariff filing for 150 days beyond the effective date, or, with the agreement of the applicant, to a later date.
- (d) **Duties of presiding officer.** The presiding officer may establish reasonable deadlines for comments or recommendations, may issue other orders as necessary to facilitate the processing of the tariff filing, and shall issue a notice of approval, approval with modification, denial, or docketing.
- (e) **Appeal of interim orders and notices of docketing.** Interim orders and notices of docketing regarding tariff filings shall be appealable to the commission pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).
- (f) **Effect of notices of approval, approval with modification, and denial.** A notice of approval, approval with modification, or denial of a tariff filing shall be the final determination of the commission regarding the tariff filing, and shall be subject to motions for rehearing pursuant to §22.264 of this title (relating to Rehearing).

**Subchapter C. CLASSIFICATION OF APPLICATIONS OR OTHER DOCUMENTS INITIATING A PROCEEDING.**

**§22.34. Consolidation and Severance.**

- (a) **Consolidation.** A motion for consolidation of proceedings shall be in writing. With prior notice to the parties, the presiding officer may order the consolidation of proceedings on his or her own initiative. Proceedings may be consolidated if the presiding officer finds that: the proceedings involve common questions of law or fact; consolidation would serve the interest of efficiency or prevent unwarranted expense and delay; and, the applicant's ability to present its case and other parties' ability to respond to the applicant's case are not unduly prejudiced. Proceedings shall be consolidated if requested based on the agreement of all parties, and if such consolidation would not unreasonably curtail the time available to process one or more of the proceedings proposed for consolidation.
  
- (b) **Severance.** A motion for severance of a proceeding or issue within a proceeding shall be in writing. With prior notice to the parties, the presiding officer may order the severance of proceedings on his or her own initiative. Proceedings or issues may be severed if the presiding officer finds that severance would serve the interest of efficiency or prevent unwarranted expense and delay; and the applicant's ability to present its case and other parties' ability to respond to the applicant's case would not be unduly prejudiced. Proceedings or issues within a proceeding shall be severed if requested based on the agreement of all parties.

**Subchapter C. CLASSIFICATION OF APPLICATIONS OR OTHER DOCUMENTS INITIATING A PROCEEDING.**

**§22.35. Informal Disposition.**

- (a) **Applications qualified for informal disposition.** An application, other than a major rate proceeding, may be approved by the commission without a hearing under the following conditions:
  - (1) at least 15 days have passed since the completion of all notice requirements;
  - (2) the decision is not adverse to any party other than the commission staff; and
  - (3) the commission finds that no hearing is necessary.
  
- (b) **Methods of disposition.**
  - (1) **Notice of approval.** Upon delegation by the commission, certain uncontested applications may be approved by the presiding officer through a notice of approval without consideration by the commission at open meeting. The commission shall maintain a list of the types of applications eligible for disposition by notice of approval.
  - (2) **Proposed order.** For all other applications, the presiding officer shall prepare a proposed order which shall be served on all parties no less than 20 days before the commission is scheduled to consider the application in open meeting.
  
- (c) **Corrections and exceptions.**
  - (1) **Corrections to notice of approval.** Parties may file suggested corrections to a notice of approval within 15 days of the issuance of such notice. Corrections may be made at the discretion of the presiding officer.
  - (2) **Exceptions to proposed order.** Parties may file exceptions or suggested corrections to the proposed order, no less than seven days before the commission is scheduled to consider the application in an open meeting.
  
- (d) **Rehearing.** Nothing in this section shall be construed to alter a party's ability to request rehearing pursuant to §22.264 of this title (relating to Rehearing).
  
- (e) **Notice requirements.** Nothing in this section shall be construed to alter any notice requirement imposed on any proceeding by statute, rule, or order.
  
- (f) **Time limits.** Nothing in this section shall be construed to alter any time limit imposed on any proceeding by a statute, rule, or order.

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### §22.51. Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C - E; Chapter 51, §51.009; and Chapter 53, Subchapters C - E, Proceedings.

- (a) **Notice in a proceeding seeking a rate increase.** In proceedings under PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E involving the commission's original jurisdiction over a utility's proposed increase in rates, the applicant shall give notice in the following manner:
- (1) **Publication of notice.** The applicant shall publish notice of its statement of intent to change rates in a conspicuous form and place at least once a week for four consecutive weeks prior to the effective date of the proposed rate change, in a newspaper having general circulation in each county containing territory affected by the proposed rate change. The published notice shall contain the following information:
    - (A) the effect the proposed change is expected to have on the revenues of the company for major rate proceedings, the change must be expressed as an annual dollar increase over adjusted test year revenues and as a percent increase over adjusted test year revenues;
    - (B) the effective date of the proposed rate change;
    - (C) the classes and numbers of utility customers affected by the rate change;
    - (D) a description of the service for which a change is requested;
    - (E) whenever possible, the established intervention deadline; and
    - (F) the following language: "Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas (commission) as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission."
  - (2) **Notice by mail.** The applicant shall mail notice of its statement of intent to change rates to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language shall be printed in prominent lettering: "Notice of Rate Change Request." The notice must meet the requirements of paragraph (1) of this subsection. Whenever possible, the established intervention deadline shall be included in the notice.
  - (3) **Notice to municipalities.** The applicant shall mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate change.
- (b) **Notice in PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E proceeding seeking a rate decrease.** In proceedings initiated pursuant to PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E in which a rate reduction that does not involve a rate increase for any customer is sought, the applicant shall give notice in the following manner:
- (1) **Publication not required.** The applicant may not be required to publish notice of its statement of intent to change rates in any newspaper when the utility is seeking to reduce rates for all affected customers.
  - (2) **Notice by mail to affected customers.** The applicant shall mail notice of the proposed rate decrease to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language shall be printed

## Subchapter D. NOTICE.

in prominent lettering: "Notice of Rate Decrease Request." The notice shall contain the following information:

- (A) the effect the proposed change is expected to have on the revenues of the applicant, expressed as an annual dollar decrease from adjusted test year revenues and as a percent decrease from adjusted test year revenues;
  - (B) the effective date of the proposed rate decrease;
  - (C) the classes and numbers of utility customers affected by the rate decrease;
  - (D) a description of the service for which a rate change is requested;
  - (E) whenever possible, the established intervention deadline; and
  - (F) the following language: "Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas (commission) as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission."
- (3) **Notice to municipalities.** The applicant shall mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate decrease.
- (c) **Notice in PURA, Chapter 36, Subchapter D; or Chapter 53, Subchapter D rate investigation.** In an investigation into a utility's rates pursuant to PURA, Chapter 36, Subchapter D; or Chapter 53, Subchapter D, the presiding officer may require the utility under investigation to provide reasonable notice to its customers and affected municipalities. Reasonable notice may include notice of the type set forth in subsection (a) of this section.
- (d) **Affidavits regarding notice.** The applicant shall submit affidavits attesting to the provision of the notice required or ordered pursuant to this section within a reasonable time and by such date as may be established by the presiding officer.
- (1) **Publisher's affidavits.** Proof of publication of notice shall be made in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published.
  - (2) **Affidavit for notice to affected customers.** If notice to affected customers has been provided, an affidavit attesting to the provision of notice to affected customers shall specify the dates of the provision of such notice; the means by which such notice was provided; and the affected customer classes to which such notice was provided.
  - (3) **Affidavit for notice to municipality.** An affidavit attesting to the provision of notice to municipalities shall specify the dates of the provision of notice and the identity of the individual cities to which such notice was provided.

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### §22.52. Notice in Licensing Proceedings.

- (a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant shall give notice in the following ways:
- (1) Applicant shall publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice shall identify the commission's docket number and the style assigned to the case by the Central Records Division. In electric transmission line cases, the applicant shall obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project.
    - (A) The notice shall include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice shall state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an application for certificate of convenience and necessity filed pursuant to the Public Utility Regulatory Act §39.203(e)) and that a letter requesting intervention should be received by the commission by that date.
    - (B) The notice shall further describe in clear, precise language the geographic area for which the certificate is being requested and the location of all preferred and alternative routes of the proposed facility. This description shall refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.
    - (C) The notice shall state a location where a map may be reviewed and from whom a copy of the map may be obtained. The map shall clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the preferred locations and alternative locations of the proposed facility, and shall reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.
    - (D) Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published, the county or counties in which the newspaper(s) is or are of general circulation, the dates upon which the notice was published, and a copy of the notice as published. Proof of publication shall be submitted to the commission as soon as available.
  - (2) Applicant shall, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, and the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. The notice shall contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, and counties shall specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification



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which have not previously received notice. The notice of modification shall state such entities will have 20 days to intervene.

- (3) Applicant shall, on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate, including the preferred location and any alternative location of the proposed facility. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.
  - (A) The notice must contain all information required in paragraph (1) of this subsection and shall include all the information required by the standard notice letter to landowners prescribed by the commission. The commission's docket number pertaining to the application must be stated in all notices. The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission.
  - (B) The notice must include a map as described in paragraph (1)(C) of this subsection.
  - (C) Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under subparagraphs (A) and (B) of this paragraph to all directly affected landowners who have not already received such notice.
  - (D) Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). The proof of notice shall include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice shall be filed with the commission no later than 20 days after the filing of the application.
  - (E) Upon the filing of proof of notice as described in subparagraph (D) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it shall immediately advise the commission by written pleading and shall provide notice to such landowner(s) by priority mail, with delivery confirmation, in the same form described in subparagraphs (A) and (B) of this paragraph, except that the notice shall state that the person has fifteen days from the date of delivery to intervene. The utility shall immediately file a supplemental affidavit of notice with the commission.
- (4) The utility shall hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting shall be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.
- (5) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.
- (6) Upon entry of a final, appealable order by the commission approving an application, the utility shall provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection shall be provided to the commission's staff.
  - (A) If the owner's land is directly affected by the approved route, the notice shall consist of a copy of the final order.

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- (B) If the owner's land is not directly affected by the approved route, the notice shall consist of a brief statement that the land is no longer the subject of a pending proceeding and will not be directly affected by the facility.
- (b) **Notice in telephone licensing proceedings.** In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant shall give notice in the following ways:
- (1) Applicants shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice shall be in the form of a publisher's affidavit, which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.
  - (2) Applicant shall also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments shall be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.
  - (3) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention.

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**§22.53. Notice of Regional Hearings.**

The presiding officer may require the utility that is the subject of a proceeding to publish conspicuous notice of a regional hearing in newspapers of general circulation in the general area of the hearing and to provide other reasonable notice to customers and affected municipalities.

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**§22.54. Notice to Be Provided by the Commission.**

- (a) **Notice in original or appellate jurisdiction proceedings.** In any proceeding, other than a petition for rulemaking, invoking the commission's original or appellate jurisdiction, the commission shall provide notice in accordance with APA in addition to any other notice required by law. Ten days notice shall be given of the initial prehearing conference in a proceeding. After the initial prehearing conference, reasonable notice of subsequent prehearing conferences may be provided on the record in a prehearing conference or by written notice to the parties.
- (b) **Notice in rulemaking proceedings.** The commission shall provide notice of the proposed adoption of any rule pursuant to APA, §§2001.021 - §2001.037.

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**§22.55. Notice in Other Proceedings.**

In proceedings other than those governed by §§22.51–22.53, of this title (relating to Notice), the presiding officer may require a party to provide reasonable notice to affected persons.

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**§22.56. Notice of Unclaimed Funds.**

The applicant shall notify the Comptroller of Public Accounts of proceedings in which there may be a specific amount of money to be refunded to ratepayers who may need to be located. This rule shall not apply in fuel refund proceedings.

## 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.
  
- (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

## Subchapter E. PLEADINGS AND OTHER DOCUMENTS.

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.
- (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



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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.
- (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

## Subchapter E. PLEADINGS AND OTHER DOCUMENTS.

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.
- (7B) 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
    - (v) name of the staff person assigned to the proceeding who is to receive the confidential material.
  - (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.
- (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

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# 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.
- (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

## Subchapter E. PLEADINGS AND OTHER DOCUMENTS.

- 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.
- (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.

## Subchapter E. PLEADINGS AND OTHER DOCUMENTS.

### §22.72. Formal Requisites of Pleadings and Documents to be Filed with the Commission.

- (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 proceedings;
  - (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, however, the following reports are exempt from the requirements of subsections (c), (d), (e), (f) and (h) of this section:
    - (A) Reports filed on commission prescribed forms;
    - (B) Reports prepared for other agencies and filed as information only with the commission. These reports will be accepted by the commission as filed with the other agency; and
    - (C) Reports filed pursuant to §25.73(a)(3) of this title (relating to Financial and Operating Reports) and §26.73(a)(2) of this title (relating to Financial and Operating Reports);
  - (5) Discovery requests and responses, however, any portion of discovery responses that are copies of documents not generated for the purpose of responding to the discovery request, are exempt from the requirements of subsections (c), (d), (e), (f) and (h) of this section.
- (b) **Requirements of form.**
- (1) Unless otherwise authorized or required by the presiding officer or this chapter, documents shall include the style and number of the docket or project in which they are submitted, if available; shall identify by heading the nature of the document submitted and the name of the party submitting the same; and shall be signed by the party or the party's representative.
  - (2) Whenever possible, all documents should be provided on 8.5 by 11 inch paper. However, any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in subsection (g) of this section, if it cannot be provided legibly on letter-size paper. The document must be able to be folded to a size no larger than 8.5 by 11 inches. Documents that can not be folded may not be accepted.
- (c) **Format.** Any filing with the commission must:
- (1) have double-spaced or one and one-half times spaced print with left margins not less than one inch wide, except that any letter, tariff filing, rate filing, or proposed findings of fact and conclusions of law may be single-spaced;
  - (2) indent and single-space any quotation which exceeds 50 words; and
  - (3) be printed or formatted in not less than 10-point type.
- (d) **Citation form.** Any filing with the commission should comply with the rules of citation, set forth, in the following order of preference, by the commission's "Citation Guide," the most current edition of the "Texas Rules of Form," published by the University of Texas Law Review Association (for Texas authorities), and the most current edition of "A Uniform System of Citation," published by The Harvard Law Review Association' (for all other authorities). Neither Rule 1.1 of the Uniform System nor the comparable portion of the "Texas Rules of Form" shall be applicable in proceedings.
- (e) **Signature.** Every pleading and document shall be signed by the party or the party's authorized representative, and shall include the party's address, telephone number, and, if available, facsimile machine number. If the person signing the pleading or document is an attorney licensed in Texas, the attorney's State bar number shall be provided.

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- (f) **Page limits.** In major rate proceedings, proceedings initiated pursuant to PURA Chapter 36, Subchapter D or Chapter 53, Subchapter D, fuel reconciliations, petitions to declare a market subject to significant competition, and applications for licensing of new generating plant, except for testimony and rate filing packages, no document shall exceed 100 pages in length, including attachments. In all other dockets, no document shall exceed 50 pages in length, including attachments. The page limitation shall not apply to courtesy copies of legal authorities cited in the pleading. A presiding officer may establish a larger or smaller page limit. In establishing larger or smaller page limits, the presiding officer shall consider such factors as which party has the burden of proof and the extent of opposition to a party's position that would need to be addressed in the document. The page limitations in this subsection do not apply to discovery responses.
- (g) **Hard copy filing standards.** Hard copies of each document shall be filed with the commission in accordance with the requirements set forth in paragraphs (1)-(7) of this subsection.
- (1) Each document shall be typed or printed on paper measuring 8.5 by 11 inches. Oversized documents being filed on larger paper pursuant to subsection (b)(2) of this section shall be filed as separate referenced attachments. No single document shall consist of more than one paper size.
  - (2) One copy of each document, that is not the original file copy, shall be filed without bindings, staples, tabs or separators.
    - (A) This copy shall be printed on both sides of the paper or, if it can not be printed on both sides of the paper, every page of the copy shall be single sided.
    - (B) All pages of the copy filed pursuant to this paragraph, starting with the first page of the table of contents, shall be consecutively numbered through the last page of the document, including attachments, if any.
  - (3) For documents for which an electronic filing is required, all non-native figures, illustrations, or objects shall be filed as referenced attachments. No non-native figures, illustrations, or objects shall be embedded in the text of the document. "Non-native figures" means tables, graphs, charts, spreadsheets, illustrations, drawings and other objects which are not electronically integrated into the text portions of a document.
  - (4) No cover letter shall be attached to any document, except tariff sheets. The cover letter for tariff sheets shall state the control number, if available, the name of the party submitting the tariff sheets, sufficient detail to identify the tariff sheets, and shall be signed by the party or the party's representative.
  - (5) Whenever possible, all documents and copies shall be printed on both sides of the paper.
- (h) **Electronic filing standards.** Any document may be filed, and all documents containing more than ten pages shall be filed, electronically in accordance with the requirements of paragraphs (1)-(8) of this subsection. Electronic filings are registered by submission of the relevant electronic documents via diskette or the internet, in accordance with transfer standards available in the commission's central records office or on the commission's World Wide Web site, and the submission of the required number of paper copies to the filing clerk under the provisions of this section and §22.71 of this title (relating to Filing of Pleadings, Documents and Other materials).
- (1) All non-native figures, illustrations or objects must be filed as referenced attachments. No non-native figures, illustrations, or objects shall be imbedded in the text of the document. "Non-native figures" means tables, graphs, charts, spreadsheets, illustrations, drawings and other objects which are not electronically integrated into the text portions of a document.
  - (2) Oversized documents shall not be filed in electronic media, but shall be filed as referenced attachments.
  - (3) Each document that has five or more headings and/or subheadings shall have a table of contents that lists the major sections of the document, the page numbers for each major section and the

## **Subchapter E. PLEADINGS AND OTHER DOCUMENTS.**

name of the electronic file that contains each major section of the document. Discovery responses are exempt from this paragraph.

- (4) Each document shall have a list of file names that are included in the filing and shall be referenced in an ASCII text file.
  - (5) The table of contents and list of file names shall be placed at the beginning of the document.
  - (6) Each diskette shall be labeled with the control number, if known, and the name of the person submitting the document.
  - (7) Any information submitted under claim of confidentiality should not be submitted in electronic format.
- (i) **Disk format standards.** Each document that is submitted to the filing clerk on diskette shall be submitted as set forth in paragraphs (1)-(3) of this subsection.
- (1) 3.5 inch diskette.
  - (2) 1.44 M double sided, high density storage capacity.
  - (3) IBM format.
- (j) **File format standards.**
- (1) Electronic filings shall be made in accordance with the current list of preferred file formats available in the commission's central records office and on the commission's World Wide Web site.
  - (2) Electronic filings that are submitted in a format other than that required by paragraph (1) of this subsection will not be accepted until after successful conversion of the file to a commission standard.



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### **§22.73. General Requirements for Applications.**

In addition to the requirements of form specified in §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission), all applications shall contain the following, unless otherwise required by statute or commission rule:

- (1) a statement of the jurisdiction of the commission over the parties and subject matter;
- (2) a list of all the known parties, classes of customers, and territories, if applicable, which would be affected if the requested relief were granted;
- (3) the name and address of each party against whom specific relief is sought;
- (4) a concise statement of the facts relied upon by the pleading party;
- (5) a concise statement of the specific relief, action, or order desired by the pleading party;
- (6) any other matter required by statute or rule; and
- (7) a certificate of service.

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### §22.74. Service of Pleadings and Documents.

- (a) **Pleadings and Documents submitted to a presiding officer.** At or before the time any document or pleading regarding a proceeding is submitted by a party to a presiding officer, a copy of such document or pleading shall be filed with the commission filing clerk and served on all parties. These requirements do not apply to documents which are offered into evidence during a hearing or which are submitted to a presiding officer for in camera inspection; provided, however, that the party submitting documents for in camera inspection shall file and serve notice of the submission upon the other parties to the proceeding. Pleadings and documents submitted to a presiding officer during a hearing, prehearing conference, or open meeting shall be filed with the commission filing clerk as soon as is practicable. These requirements apply to all documents and pleadings submitted in a proceeding under §22.33 of this title (relating to Tariff Filings); service shall be made on all persons who previously submitted a pleading or document to the presiding officer in that proceeding.
- (b) **Methods of service.** Except as otherwise expressly provided by order, rule, or other applicable law, service on a party may be made by delivery of a copy of the pleading or document to the party's authorized representative or attorney of record either in person; by agent; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; or by registered mail to such party's address of record, or by facsimile transmission to the recipient's current facsimile machine.
  - (1) Service by mail shall be complete upon deposit of the document, enclosed in a wrapper properly addressed, stamped and sealed, in a post office or official depository of the United States Postal Service, except for state agencies. For state agencies, mailing shall be complete upon deposit of the document with the General Services Commission.
  - (2) Service by agent or by courier receipted delivery shall be complete upon delivery to the agent or courier.
  - (3) Service by facsimile transmission shall be complete upon actual receipt by the recipient's facsimile machine.
- (c) **Evidence of service.** A return receipt or affidavit of any person having personal knowledge of the facts shall be prima facie evidence of the facts shown thereon relating to service. A party may present other evidence to demonstrate facts relating to service.
- (d) **Certificate of service.** Every document required to be served on all parties pursuant to subsection (a) of this section shall contain the following or similar certificate of service: "I, (name) (title) certify that a copy of this document was served on all parties of record in this proceeding on (date) in the following manner: (specify method). Signed, (signature)." The list of the names and addresses of the parties on whom the document was served, should not be appended to the document.

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**§22.75. Examination and Correction of Pleadings and Documents.**

- (a) **Construction of pleadings and documents.** All documents shall be construed so as to do substantial justice.
- (b) **Procedural sufficiency of pleadings and documents.**
- (1) Except for motions for rehearing and replies to motions for rehearing, the filing clerk shall not accept documents that do not comply with §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).
  - (2) All pleadings and documents that do not comply in all material respects with other sections of this chapter, shall be conditionally accepted for filing. Upon notification by the presiding officer of a deficiency in a pleading or document, the responsible party shall correct or complete the pleading or document in accordance with the notification. If the responsible party fails to correct the deficiency, the pleading or document may be stricken from the record.
- (c) **Notice of material deficiencies in rate change applications.** This subsection applies to applications for rate changes filed pursuant to PURA, Chapter 36, Subchapter C or Chapter 53, Subchapter C.
- (1) Motions to find a rate change application materially deficient shall be filed no later than 21 days after an application is filed. Such motions shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find a rate change application materially deficient shall be filed no later than five working days after such motion is received.
  - (2) If within 35 days after filing of a rate change application, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.
  - (3) If the presiding officer determines that material deficiencies exist in an application, the presiding officer shall issue a written order within 35 days of the filing of the application specifying a time within which the applicant shall amend its application and correct the deficiency. The effective date of the proposed rate change will be 35 days after the filing of a sufficient application. The statutory deadlines shall be calculated based on the date of filing the sufficient application.
- (d) **Notice of material deficiencies in applications for certificates of convenience and necessity for transmission lines.**
- (1) Motions to find an application for certificate of convenience and necessity for transmission line materially deficient shall be filed no later than 21 days after an application is filed. Such motions shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application for certificate of convenience and necessity for transmission line materially deficient shall be filed no later than five working days after such motion is received.
  - (2) If, within 35 days after filing of an application for certificate of convenience and necessity for transmission line, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.
  - (3) If the presiding officer determines that a material deficiency exists in an application, the presiding officer shall issue a written order within 35 days of the filing of the application specifying a time within which the applicant shall amend its application and correct the deficiency. Any statutory deadlines shall be calculated based on the date of filing the sufficient application.

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- (4) For an application for certificate of convenience and necessity filed pursuant to Public Utility Regulatory Act §39.203(e), a pleading alleging a material deficiency in the application shall be filed no later than 14 days after the application is filed, and shall be served on the applicant by hand delivery, facsimile transmission, or overnight courier delivery and on the other parties pursuant to §22.74(b) of this title (relating to Service of Pleadings and Documents). The applicant shall reply to a pleading alleging a material deficiency no later than seven days after it is received. If the presiding officer determines that a material deficiency exists in an application, the presiding officer shall issue a written order within 28 days of the filing of the application ordering the applicant to amend its application and correct the deficiency within seven days. This order shall be served on the applicant by hand delivery, facsimile transmission, or overnight courier delivery and on the other parties pursuant to §22.74(b) of this title. If the applicant does not timely amend its application and correct the deficiency, the presiding officer shall dismiss the application without prejudice.
- (e) **Additional requirements.** Additional requirements as set forth in §22.76 of this title (relating to Amended Pleadings) apply.

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### **§22.76. Amended Pleadings.**

(a) **Filing amended pleadings.**

- (1) Any pleading may be amended at any time before notice of the docket as required by §22.51 of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapter C-E, Proceedings and §22.52 of this title (relating to Notice in Licensing Proceedings is given.
- (2) After notice of a proceeding has been provided, a pleading may be amended with leave of the presiding officer, provided that the amended pleading is served upon all parties, is filed at least seven days before the hearing on the merits, and does not seek relief for which notice in accordance with this chapter has not been provided.
- (3) If an amended pleading seeks a new type of relief for which notice in accordance with this chapter has not been provided, the presiding officer may sever the issue from the proceeding.
- (4) Any amended pleading offered for filing within seven days of the date of hearing or thereafter will be considered by the presiding officer only if there is a showing of good cause for such filing and that consideration of such filing will not unduly delay the proceeding by injecting issues to which the remaining parties may be entitled to respond. If additional notice is required or additional time needed for opposing parties to respond to the proposed pleading, the presiding officer may order such additional notice or time as is reasonable under the circumstances.

- (b) **Amendments to conform to issues tried at hearing without objection.** When issues not raised by the pleadings are tried or otherwise heard or argued at hearing by express or implied consent of the parties, upon a determination by the presiding officer that no prejudice to any of the parties will occur, the issues shall be treated in all respects as if they had been raised in the pleadings. Amendment of the pleadings to conform them to the evidence may be made with leave of the presiding officer upon any party's motion until the close of evidence, but failure to so amend shall not affect whether the issues may be properly considered by the presiding officer.

## **Subchapter E. PLEADINGS AND OTHER DOCUMENTS.**

### **§22.77. Motions.**

- (a) **General requirements.** A motion shall be in writing, unless the motion is made on the record at a prehearing conference or hearing. It shall state the relief sought and the specific grounds supporting a grant of relief. If the motion is based upon alleged facts that are not a matter of record, the motion shall be supported by an affidavit. Written motions shall be served on all parties in accordance with §22.74 of this title (relating to Service of Pleadings and Documents).
- (b) **Time for response.** The time for responding to motions is governed by §22.78 of this title (relating to Responsive Pleadings and Emergency Action), unless otherwise provided by the presiding officer, commission rule, or statute.
- (c) **Rulings on motions.** The presiding officer shall serve orders ruling on motions upon all parties, unless the ruling is made on the record in a hearing or prehearing conference open to the public.

## **Subchapter E. PLEADINGS AND OTHER DOCUMENTS.**

### **§22.78. Responsive Pleadings and Emergency Action.**

- (a) **General rule.** Unless otherwise specified by statute, by this chapter, or by order of the presiding officer, a responsive pleading, if made, shall be filed by a party within five working days after receipt of the pleading to which the response is made. Responsive pleadings shall state the date of receipt of the pleading to which response is made. Unless the presiding officer is advised otherwise, it shall be presumed that all pleadings are received within five days of the filing date.
- (b) **Responses to complaints.** Unless otherwise specified by statute, by this chapter, or by order of the presiding officer, responsive pleadings to complaints filed to initiate a proceeding shall be filed within 21 days of the receipt of the complaint. This subsection does not apply to complaints filed pursuant to PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D.
- (c) **Emergency action.** Unless otherwise precluded by law or this chapter, the presiding officer may take action on a pleading before the deadline for filing responsive pleadings when necessary to prevent or mitigate imminent harm or injury to persons or to real or personal property. Harm or injury shall also include items affecting the ability of any provider to compete. Action taken pursuant to this subsection is subject to modification based on a timely responsive pleading.
- (d) **PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D Investigations or Complaints.** In a complaint proceeding filed pursuant to PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D, the presiding officer shall determine the scope of the response that the electric or telecommunications utility shall be required to file, up to and including the filing of a full rate filing package. The presiding officer shall also set an appropriate deadline for the electric or telecommunications utility's response.

## **Subchapter E. PLEADINGS AND OTHER DOCUMENTS.**

### **§22.79. Continuances.**

Unless otherwise ordered by the presiding officer, motions for continuance of the hearing on the merits shall be in writing and shall be filed not less than five days prior to the hearing. Motions for continuance shall set forth the specific grounds for which the moving party seeks continuance and shall make reference to all other motions for continuance filed by the moving party in the proceeding. The moving party shall attempt to contact all other parties and shall state in the motion each party that was contacted and whether that party objects to the relief requested. The moving party shall have the burden of proof with respect to the need for the continuance at issue. Continuances will not be granted based on the need for discovery if the party seeking the continuance previously had the opportunity to obtain discovery from the person from whom discovery is sought, except when necessary due to surprise or discovery of facts or evidence which could not have been discovered previously through reasonably diligent effort by the moving party. The presiding officer shall grant continuances agreed to by all parties provided that any applicable statutory deadlines are extended as may be necessary. Motions for Continuances agreed to by all parties may be filed within five days of the hearing on the merits, and shall state suggested dates for rescheduling of the hearing.



## **Subchapter E. PLEADINGS AND OTHER DOCUMENTS.**

### **§22.80. Commission Prescribed Forms.**

The commission may require that certain reports and applications be submitted on standard forms. The commission filing clerk shall maintain a complete index to and set of all commission forms. All documents that are the subject of an official form shall contain all matters designated in the official form and shall conform substantially to the official form. Prior to the implementation of any new form or significant change to an existing form, the change or new form shall be referenced in the "In Addition" section of the Texas Register for public comment. For good cause, new forms or significant changes to existing forms may be implemented without publication on an interim basis for a period not to exceed 180 days.

## Subchapter F. PARTIES.

### §22.101. Representative Appearances.

- (a) **Generally.** Any person may appear before the commission or in a hearing in person or by authorized representative. The presiding officer may require a representative to submit proof of his or her authority to appear on behalf of another person. The authorized representative of a party shall specify the particular persons or classes of persons the representative is representing in the proceeding.
- (b) **Change in authorized representative.** Any person appearing through an authorized representative shall provide written notification to the commission and all parties to the proceeding of any change in that person's authorized representative. The required number of copies of the notification shall be filed in Central Records under the control number(s) for each affected proceeding and shall include the authorized representative's name, address, telephone number and facsimile number.
- (c) **Lead counsel.** A party represented by more than one attorney or authorized representative in a matter before the commission may be required to designate a lead counsel who is authorized to act on behalf of all of the party's representatives, but all other attorneys or authorized representatives for the party may take part in the proceeding in an orderly manner, as ordered by the presiding officer.
- (d) **Change in information required for notification or service.** Any person or authorized representative appearing before the commission in any proceeding shall provide written notification to the commission and all parties to the proceeding of any change in their address, telephone number or facsimile number. The required number of copies of the notification shall be filed in Central Records under the control number(s) for each affected proceeding.

## **Subchapter F. PARTIES.**

### **§22.102. Classification of Parties.**

- (a) **Parties.** Parties to proceedings before the commission shall be classified into the following categories:
  - (1) applicants, or complainants;
  - (2) respondents;
  - (3) intervenors; and
  - (4) commission staff representing the public interest.
  
- (b) **Rights of parties.** Subject to the alignment of parties pursuant to §22.105 of this title (relating to Alignment of Parties), parties to proceedings have the right to present a direct case, cross-examine all witnesses, conduct discovery, make oral or written legal arguments, and otherwise fully participate in any proceeding. Commission staff shall have no right to seek judicial review of any commission decision.
  
- (c) **Protestors.** Any person that has not intervened in a proceeding, or who has been denied permission to intervene, shall not be considered a party. The presiding officer may allow oral or written comments to be made by protestors.

## **Subchapter F. PARTIES.**

### **§22.103. Standing to Intervene.**

- (a) **Commission staff representing the public interest.** The commission staff representing the public interest shall have standing in all proceedings before the commission, and need not file a motion to intervene.
- (b) **Standing to intervene.** Persons desiring to intervene must file a motion to intervene and be recognized as a party under §22.104 of this title (relating to Motions to Intervene) in order to participate as a party in a proceeding. Any association or organized group must include in its motion to intervene a list of the members of the association or group that are persons other than individuals that will be represented by the association or organized group in the proceedings. The group or association shall supplement the list of members represented in the motion at any time a member is added or deleted from the list of members represented. A person has standing to intervene if that person:
  - (1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or
  - (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.
- (c) **Dispute resolution pursuant to the Federal Telecommunications Act of 1996 (FTA96).** Standing to intervene in proceedings concerning dispute resolution and approval of agreements pursuant to the commission's authority under FTA96 is subject to the requirements of Subchapter P of this chapter (relating to Dispute Resolution).

## Subchapter F. PARTIES.

### §22.104. Motions to Intervene.

- (a) **Necessity for filing motion to intervene.** Applicants, complainants, and respondents, as defined in §22.2 of this title (relating to Definitions), are necessary parties to proceedings which they have initiated or which have been initiated against them, and need not file motions to intervene in order to participate as parties in such proceedings.
- (b) **Time for filing motion.** Motions to intervene shall be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule, or order of the presiding officer. For an application for certificate of convenience and necessity filed pursuant to Public Utility Regulatory Act §39.203(e), motions to intervene shall be filed within 30 days from the date the application is filed with the commission. The motion shall be served upon all parties to the proceeding and upon all persons that have pending motions to intervene.
- (c) **Rights of persons with pending motions to intervene.** Persons who have filed motions to intervene shall have all the rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.
- (d) **Late intervention.**
  - (1) A motion to intervene that was not timely filed may be granted. In acting on a late filed motion to intervene, the presiding officer shall consider:
    - (A) any objections that are filed;
    - (B) whether the movant had good cause for failing to file the motion within the time prescribed;
    - (C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention;
    - (D) whether any disruption of the proceeding might result from permitting late intervention; and
    - (E) whether the public interest is likely to be served by allowing the intervention.
  - (2) The presiding officer may impose limitations on the participation of an intervenor to avoid delay and prejudice to the other parties.
  - (3) Except as otherwise ordered, an intervenor shall accept the procedural schedule and the record of the proceeding as it existed at the time of filing the motion to intervene.
  - (4) In an electric licensing proceeding in which a utility did not provide direct notice to an owner of land directly affected by the requested certificate, late intervention shall be granted as a matter of right to such a person, provided that the person files a motion to intervene within 15 days of actually receiving the notice. Such a person should be afforded sufficient time to prepare for and participate in the proceeding.
  - (5) Late intervention after Proposal for Decision (PFD) or Proposed Order (PO) issued. For late interventions, other than those pursuant to paragraph (4) of this subsection, the procedures in subparagraphs (A) - (B) of this paragraph apply:
    - (A) **Agenda ballot.** Upon receipt of a motion to intervene after the PFD or PO has been issued, the Policy Development Division shall send separate ballots to each commissioner to determine whether the motion to intervene will be considered at an open meeting. The Policy Development Division shall notify the parties by letter whether a commissioner by individual ballot has added the motion to intervene to an open meeting agenda, but will not identify the requesting commissioner(s).
    - (B) **Denial.** If after five working days of the filing of a motion to intervene, which has been filed after the PFD or PO has been issued, no commissioner has by agenda ballot, placed the motion on the agenda of an open meeting, the motion is deemed denied. If any commissioner has balloted in favor of considering the motion, it

**Subchapter F. PARTIES.**

shall be placed on the agenda of the next regularly scheduled open meeting or such other meeting as the commissioners may direct by the agenda ballot. In the event two or more commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots. The time for ruling on the motion shall expire three days after the date of the open meeting, unless extended by action of the commission.

## **Subchapter F. PARTIES.**

### **§22.105. Alignment of Parties.**

Parties, except for the Office of Public Utility Counsel and the commission staff representing the public interest, may be aligned for the purposes of participating in a hearing or portions of a hearing if the parties have the same positions on issues of fact or law. To the extent alignment is determined to be necessary, the presiding officer shall order alignment of the parties at the earliest reasonable opportunity so as to avoid unnecessary duplication of effort and to allow aligned parties an adequate opportunity to prepare for hearing. The presiding officer may limit the number of representatives of aligned parties who conduct cross-examination of any particular witness during the hearing on the merits.

**Subchapter G. PREHEARING PROCEEDINGS.**

**§22.121. Prehearing conferences.** The presiding officer shall schedule prehearing conferences as necessary for the efficient management of the proceeding. The presiding officer shall conduct prehearing conferences for any appropriate purpose, including consideration of the following:

- (1) motions and other preliminary matters related to the proceeding, including notice, discovery, and procedural schedules;
- (2) settlement of the case, or clarification and simplification of the issues;
- (3) the necessity or desirability of amended pleadings;
- (4) the possibility of obtaining stipulations that would avoid the unnecessary introduction of evidence;
- (5) evidentiary matters, including a request for interim relief;
- (6) the specific procedures to be followed at the hearing;
- (7) the scheduling of the hearing on the merits; and
- (8) any other matters as may assist in the disposition of the proceeding in a fair and efficient manner.



**Subchapter G. PREHEARING PROCEEDINGS.**

**§22.122. Interim Orders.**

- (a) **In General.** The presiding officer shall issue interim orders covering procedural and discovery matters, requests for interim relief, and such other matters as may aid in the conduct of the hearing and the efficient and fair disposition of the proceeding. Interim orders shall be written or stated orally on the record.
- (b) **Interim and bonded rates.** Interim and bonded rates are governed not by this section, but by §22.125 and §22.126 of this title (relating to Interim Rate Relief; Bonded Rates).

## Subchapter G. PREHEARING PROCEEDINGS.

### §22.123. Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission.

(a) **Appeal of an interim order.**

- (1) **Availability of appeal.** Appeals are available for any order of the presiding officer that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Interim orders shall not be subject to exceptions or application for rehearing prior to issuance of a proposal for decision.
- (2) **Procedure for appeal.** If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer shall so indicate on the record at the time of the oral ruling and shall promptly issue the written order. Any appeal to the commission from an interim order shall be filed within ten days of the issuance of the written order or the appealable oral ruling when no written order is to be issued. The appeal shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.
- (3) **Contents.** An appeal shall specify the reasons why the interim order is unjustified, improper, or immediately prejudices a substantial or material right of a party or materially affects the course of the hearing.
- (4) **Responses.** Any response to an appeal shall be filed within five working days of the filing of the appeal.
- (5) **Motion for stay.** Pending a ruling by the commissioners, the presiding officer may, upon motion, grant a stay of the interim order. A motion for a stay shall specify the basis for a stay. Good cause shall be shown for granting a stay. The mere filing of an appeal shall not stay the interim order or the procedural schedule.
- (6) **Agenda ballot.** Upon filing of an appeal, the Policy Development Division shall send separate ballots to each commissioner to determine whether they will consider the appeal at an open meeting. The Policy Development Division shall notify the parties by letter whether a commissioner by individual ballot has added the appeal to an open meeting agenda, but will not identify the requesting commissioner(s).
- (7) **Denial or granting of appeal.**
  - (A) If after ten days of the filing of an appeal, no commissioner has, by agenda ballot, placed the appeal on the agenda of an open meeting, the appeal is deemed denied.
  - (B) If any commissioner has balloted in favor of considering the appeal, it shall be placed on the agenda of the next regularly scheduled open meeting or such other meeting as the commissioner may direct by the agenda ballot. In the event two or more commissioners vote to consider the appeal, but differ as to the date the appeal shall be heard, the appeal shall be placed on the latest of the dates specified by the ballots. The time for ruling on the appeal shall expire three days after the date of the meeting, unless extended by action of the commission.
- (8) **Reconsideration of appeal by presiding officer.** The presiding officer may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal prior to a commission decision on the appeal. The presiding officer shall notify the commission of its decision to treat the appeal as a motion for reconsideration.

(b) **Motion for reconsideration of interim order issued by the commission.**

- (1) **Availability of motion for reconsideration.** Motions are available for any interim order of the commission that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Interim orders shall not be subject to exceptions prior to issuance of a proposal for decision or motions for rehearing prior to the issuance of a final order.

## **Subchapter G. PREHEARING PROCEEDINGS.**

- (2) **Procedure for motion for reconsideration.** If the commission does not intend to reduce an oral ruling to a written order, the commission shall so indicate on the record at the time of the oral ruling. A motion for reconsideration of an interim order issued by the commission shall be filed within five working days of the issuance of the written interim order or the oral interim ruling. The motion for reconsideration shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.
- (3) **Content.** A motion for reconsideration shall specify the reasons why the interim order is unjustified or improper.
- (4) **Responses.** Any response to a motion for reconsideration shall be filed within three working days of the filing of the motion.
- (5) **Agenda ballot.** Upon filing a motion for reconsideration, the Policy Development Division shall send separate ballots to each commissioner to determine whether they will consider the motion at an open meeting. The Policy Development Division shall notify the parties by letter whether a commissioner by individual ballot has added the motion to an open meeting agenda, but will not identify the requesting commissioner(s).
- (6) **Denial or granting of motion.**
  - (A) If after five working days of the filing of a motion no commissioner has, by agenda ballot, placed the motion on the agenda for an open meeting, the motion is deemed denied.
  - (B) If any commissioner has balloted in favor of considering the motion, it shall be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the commissioner may direct by the agenda ballot. In the event two or more commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots. The time for ruling on the motion shall expire three days after the open meeting, unless extended by action of the commission.

**Subchapter G. PREHEARING PROCEEDINGS.**

**§22.124. Statements of Position.**

- (a) **Statements of position required.** Each party that has not prefiled direct testimony and, insofar as its prefiled direct testimony does not address issues that a party intends to litigate, each party that has prefiled direct testimony shall file a statement of position no later than three working days before the start of a hearing unless the presiding officer determines that such a requirement would add unjustified burden and expense to the proceeding, or that a different deadline should be imposed. Pursuant to §22.161 of this title (relating to Sanctions), the presiding officer may sanction any party who fails to comply with the requirement that a statement of position be filed.
  
- (b) **Contents of Statement of Position.** Unless otherwise provided by order of the presiding officer, the statement of position shall contain the following information:
  - (1) a concise statement of the party's position in the proceeding;
  - (2) a concise statement of each question of fact, law, or policy the party considers at issue;
  - (3) a concise statement of the party's position on each issue identified pursuant to paragraph (2) of this subsection.

## Subchapter G. PREHEARING PROCEEDINGS.

### §22.125. Interim Relief.

- (a) **Availability.** Interim relief is not available for tariff filings unless the tariff filing has been docketed.
- (b) **Requests for interim relief.** A request for interim relief shall be filed no later than 30 days before the interim relief is proposed to take effect, unless all parties agree to a later filing date.
- (c) **Consideration of request for interim relief.** Interim relief may be granted based on the agreement of all parties. The presiding officer may, after notice and opportunity for hearing, grant a contested request for interim relief only on a showing of good cause. In determining whether good cause exists, the presiding officer shall take into account:
  - (1) The utility's ability to anticipate the need for and obtain final approval of relief prior to the time relief is reasonably needed;
  - (2) other remedies available under law;
  - (3) changed circumstances;
  - (4) the effect of granting the request on the parties and the public interest;
  - (5) whether interim relief is necessary to effect uniform system-wide rates; and
  - (6) any other relevant factors as determined by the presiding officer.
- (d) **Standard and burden of proof.** Pursuant to PURA §36.006 or §53.006, in any proceeding involving a proposed interim change in rates, the burden of proof to show that the change proposed by the utility or existing rate is just and reasonable shall be on the utility.
- (e) **Refunds and surcharges.** Interim rates shall be subject to refund or surcharge to the extent the rates ultimately established differ from the interim rates.

## **Subchapter G. PREHEARING PROCEEDINGS.**

### **§22.126. Bonded Rates.**

During the pendency of its rate proceeding, a utility seeking to implement rates under bond pursuant to PURA §36.110 or §53.110 shall file the required number of copies of its application for approval of bond at least two weeks prior to the date the bonded rates are to be effective. The application shall conform to the requirements of Subchapter E, of this chapter (relating to Pleadings). The bond shall be in an amount equal to or greater than one-sixth of the annual difference between the utility's current rates and the bonded rates. The bond must be approved by the Policy Development Division as to sufficiency based on the commission staff's review of the utility's application. Any decision by the Policy Development Division either approving or disapproving a bond is appealable to the commission pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

**Subchapter G. PREHEARING PROCEEDINGS.**

**§22.127. Certification of an Issue to the Commission.**

- (a) **Certification.** The presiding officer may certify to the commission an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law.
- (b) **Issues eligible for certification.** The following types of issues are appropriate for certification:
  - (1) the commission's interpretation of its rules and applicable statutes;
  - (2) which rules or statutes are applicable to a proceeding; or
  - (3) whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.
- (c) **Procedure for certification.** The presiding officer shall submit the certified issue to the Policy Development Division. The Policy Development Division shall place the certified issue on the commission's agenda to be considered at the earliest time practicable that is not earlier than 20 days after its submission. Parties may file briefs on the certified issue within 13 days of its submission. The presiding officer may abate the proceeding while a certified issue is pending.
- (d) **Commission action.** The commission shall issue a written decision on the certified issue within thirty days of its submission. A commission decision on a certified issue is not subject to motion for rehearing.

## **Subchapter H. DISCOVERY PROCEDURES.**

### **§22.141. Forms and Scope of Discovery.**

- (a) **Scope.** Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding. Discoverable matters include the existence, description, nature, custody, condition, location and contents of any documents, including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, and any other data compilations from which information can be obtained and translated, if necessary, by the person from whom information is sought, into reasonably usable form, and any other tangible things which constitute or contain matters relevant to the subject matter in the action, and the identity and location of persons having any knowledge of any discoverable matter. Discovery is not limited to tangible things, but may extend to knowledge, mental impressions, and opinions of persons who will testify; explanations of documents or tangible things, or information contained therein; and other relevant information within the knowledge or control of the entity from whom discovery is sought. A person is not required to produce a document or tangible thing unless it is within that person's constructive or actual possession, custody, or control. A person has possession, custody or control of a document or tangible thing as long as the person has a superior right to compel the production from a third party and can obtain possession of the document or tangible thing with reasonable effort.
- (b) **Discovery methods.** Parties may obtain discovery by requests for information, which include requests for inspection or production of documents or things, requests for admissions, and depositions by oral examination.
- (c) **Stipulations regarding discovery procedure.** The parties may, by written agreement:
  - (1) provide that depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions;
  - (2) agree to extensions of time in which to respond to or object to a discovery request; and
  - (3) modify the procedures provided by this chapter for other methods of discovery.



## Subchapter H. DISCOVERY PROCEDURES.

### §22.142. Limitations on Discovery and Protective Orders.

- (a) **Limitation of discovery requests.** The presiding officer may limit discovery, by order, to protect a party against unreasonable or unwarranted discovery requests.
- (1) The presiding officer may issue an order limiting discovery requests for good cause, including the following purposes:
    - (A) Prevention of undue delay in the proceeding;
    - (B) Protection from a request to provide information which is readily available to the requesting party at a reasonable cost;
    - (C) Protection from unreasonably cumulative or duplicative discovery requests; or
    - (D) Protection of a party or other person from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights.
  - (2) Any person from whom discovery is sought may file a motion for a protective order, specifying the grounds on which a protective order is justified. Motions or responses shall include affidavits, discovery pleadings, or other pertinent documents to support the allegations made therein.
  - (3) The presiding officer may order that:
    - (A) Specific discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified;
    - (B) Discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the presiding officer;
    - (C) For good cause shown, results of discovery be sealed or otherwise adequately protected, that its distribution be limited, or that its disclosure be restricted;
    - (D) Information or material be protected by any means consistent with the intent of this chapter; or
    - (E) Information or material be protected in the interest of justice if necessary to protect the party from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights.
  - (4) The presiding officer may limit requests for information (RFIs) as set out in subsection (d) of this section.
- (b) **Denial of right to discovery requests.** The presiding officer may deny a party the right to continue discovery, by order, upon proof and a finding that the party abused the discovery process.
- (c) **Protection of confidential or proprietary information.** The presiding officer may issue a protective order governing the production of confidential or proprietary information as is appropriate in each proceeding before the commission. The order shall be in the form adopted by the commission as the standard protective order. In addition, the parties may enter into agreements regarding protection of confidential or proprietary information. Entry of a protective order is not a determination that any documents produced under the protective order are proprietary or confidential.
- (d) **Limitations on requests for information.**
- (1) Before setting limitations on RFIs, the presiding officer shall consider the factors set out in subparagraphs (A)-(K) of this paragraph.
    - (A) The type of proceeding.
    - (B) The number and complexity of the issues in the proceeding.
    - (C) The cost of alternative forms of discovery for the party seeking discovery.
    - (D) The comprehensiveness of the information provided in the application.
    - (E) Any material deficiencies in the application.
    - (F) The number of issues that the party seeking discovery is expected to address.

**Subchapter H. DISCOVERY PROCEDURES.**

- (G) The novelty of the issues in the proceeding.
  - (H) The number of answers required by requests, including subparts, propounded in similar proceedings.
  - (I) Whether the number of questions is limited in other forms of discovery.
  - (J) Whether the hearing on the merits will be shortened by virtue of questions that are answered.
  - (K) Any jurisdictional deadlines.
- (2) For purposes of calculating the number of RFIs, each answer shall be considered a separate request for information.
  - (3) If a party is not required to answer a question, that question may not be included in the calculation of whether the propounding party has reached its limit. However, if the presiding officer determines that a party is intentionally propounding frivolous, irrelevant, or otherwise objectionable requests, the question shall be included in the calculation of a propounding party's limit.
  - (4) To discourage duplicate RFIs, any party that does not use its entire allotment of RFIs directed toward another party may transfer, by written notice to the presiding officer, that portion of its allotment to any other party in the proceeding. The requirements of this paragraph do not apply to RFIs originating from the Office of Regulatory Affairs or directed to the Office of Regulatory Affairs.
  - (5) The presiding officer may use discretion in determining whether to limit the number of RFIs that may be propounded upon the Office of Regulatory Affairs or the Office of Public Utility Counsel by another party. In making this determination, the presiding officer shall consider the limited resources available to each agency, and specifically that the Office of Regulatory Affairs is required by law to represent the public interest in all proceedings before the commission.
  - (6) The presiding officer may limit or expand the number of RFIs that the Office of Regulatory Affairs may propound upon any other party, and shall consider that the Office of Regulatory Affairs is required by law to represent the public interest in all proceedings before the commission, and thus may require more questions than other parties to ensure that it adequately explores all of the issues presented in the case.

## **Subchapter H. DISCOVERY PROCEDURES.**

### **§22.143. Depositions.**

- (a) **Governing statute.** The taking and use of depositions in any proceeding shall be governed by APA. A request to issue a commission for deposition shall be filed no later than five working days before the date of the deposition. Issuance of a commission for deposition is a ministerial act and does not preclude requests for issuance of a protective order pursuant to §22.142 of this title (relating to Limitations on Discovery and Protective Orders).
- (b) **Deposition by agreement.** Upon agreement of the parties, parties may waive the requirement of issuance of a commission. All parties shall be given no less than three working days notice of depositions, including the person to be deposed, the date, time, and place of the deposition, and the subject of the deposition.
- (c) **Copy to be provided.** Upon receipt of a transcript of the deposition by the party, the party conducting the deposition shall provide a copy of the transcript to commission staff.
- (d) **Agreements.** An agreement affecting a deposition upon oral examination is also enforceable if the agreement is recorded in the deposition transcript.

## Subchapter H. DISCOVERY PROCEDURES.

### §22.144. Requests for Information and Requests for Admission of Facts.

- (a) **Availability.** At any time after an application is filed, and subject to the provisions of §22.141 of this title (relating to Forms and Scope of Discovery), any party may serve upon any other party written requests for information and requests for admission of fact.
- (b) **Making requests for information.**
  - (1) **Contents.** A request under this section shall identify with reasonable particularity the information, documents or material sought. A request seeking inspection of documents or property shall describe with reasonable particularity the documents to be produced or the property to which access is requested, and shall set forth the items to be inspected by individual item or by category.
  - (2) **Service.** A copy of each request for information shall be served upon all parties to the proceeding. Requests for information may be served by facsimile transmittal on the recipient of the request if the recipient has a facsimile machine available for use in the proceeding. Requests for information that are received after 3:00 p.m. shall be deemed to have been received the following business day. Responses to requests for information shall be served on the requesting party and any party that has requested, in writing, to be served.
- (c) **Responding to requests for information.**
  - (1) **Time for response.** The party upon whom a request is served shall serve a full written response to the request within 20 days after receipt of the request. The presiding officer, on motion and for good cause shown, may extend or shorten the time for providing responses.
  - (2) **Requirements of response.**
    - (A) Each response to discovery under this subsection shall identify the preparer or person under whose direct supervision the response was prepared, and the sponsoring witness, if any.
    - (B) Each request for information shall be answered separately. Responses to requests for information shall be preceded by the request to which the answer pertains.
    - (C) Responses to requests for production of documents, property, or other items, shall state, for each item or category of items for which an objection has not been raised, that inspection or other requested action will be permitted at a mutually convenient time at the location where the documents, property, or other items are maintained. If compliance with the request is impossible, a written response shall be filed stating the reasons for the unavailability of the information.
    - (D) Where the response to a request for information may be derived or ascertained from local public records, the responding party shall not be obligated to produce the documents for the requesting party. It shall be sufficient answer to identify with particularity the public records that contain the requested information.
    - (E) Where a request may be answered by production of or reference to information that currently exists in the form of a document, computer record, or other existing tangible thing that is voluminous, as defined in subsection (h) of this section, it is a sufficient answer to the request to specify the records from which the answer may be derived or ascertained and to afford a reasonable opportunity to the requesting party to examine, to audit or to inspect such records and to allow the requesting party to make copies, compilations, abstracts or summaries from such records. The specification of records provided shall include sufficient detail to permit the requesting party to locate and to identify, as readily as can the responding party, the records from which the answers may be ascertained.

## Subchapter H. DISCOVERY PROCEDURES.

- (F) Responses to requests for information shall be filed under oath, unless the responding party stipulates in writing that responses to requests for information can be treated by all parties as if the answers were filed under oath.
- (d) **Objections to requests for information.** Parties shall negotiate diligently and in good faith concerning any discovery dispute prior to filing an objection. The objections shall include a statement that negotiations were conducted diligently and in good faith. If negotiation fails, objections to requests for information, if any, shall be filed within ten calendar days of receipt of the request for information. The objections shall state the date the request for information was received.
- (1) The objections shall be a separate pleading and entitled "Objections of (name of objecting party) to (style of RFI objected to)." The request for information to which an objection is being filed shall be stated and the specific grounds for the objection shall be separately listed for each question. If an objection pertains only to a part of a question, that part shall be clearly identified. All arguments upon which the objecting party relies shall be presented in full in the objection.
  - (2) If the objection is founded upon a claim of privilege or exemption under the Texas Rules of Civil Procedure, the objecting party shall file within two working days of the filing of the objections, an index that lists, for each document: the date and title of the document; the preparer or custodian of the information; to whom the document was sent and from whom it was received; and the privilege(s) or exemption(s) that is claimed. A full and complete explanation of the claimed privilege or exemption shall be provided. The index shall be sufficiently detailed to enable the presiding officer to identify the documents from the list provided. The index and explanations shall be public documents and shall be served on all parties who are entitled to receive copies of responses to requests for information under subsection (b)(2) of this section. If a document is to be provided pursuant to the terms of a protective order, the responding party need not comply with the procedures of this paragraph.
  - (3) A party raising objections on the grounds of relevance as well as grounds of privilege or exemption is not required to file an index to the privileged or exempt documents at the time the objections are filed. A party may instead include an objection to the filing of the index. The objections shall show good cause for postponement of the filing of the index. An index to the privileged or exempt documents shall be due within five working days of receipt of an order denying the relevance objection or overruling the objection to the filing of an index.
  - (4) The requirement to respond to those requests, or portions thereof, to which objection is made shall be postponed until the objections are ruled upon and for such additional time thereafter as the presiding officer may direct.
  - (5) In the interests of narrowing discovery disputes, the responding party may agree to provide certain information sought by a request while objecting to the provision of other information sought by the request.
- (e) **Motions to compel.** The party seeking discovery shall file a motion to compel no later than five working days after the objection is received. Absence of a motion to compel will be construed as an indication that the parties have resolved their dispute. The presiding officer may rule on the motion to compel based on written pleadings without allowing additional argument.
- (f) **Responses to motions to compel.** Responses to a motion to compel shall be filed within five working days after receipt of the motion, and shall include all factual and legal arguments the respondent wants to present regarding the motion.
- (g) **In camera inspection.** If an objection is founded on a claim of privilege or an exemption under the Texas Rules of Civil Procedure, the burden is on the objecting party to request an in camera inspection and to provide the documents for review. Any request shall be filed within three working days of the receipt of

## **Subchapter H. DISCOVERY PROCEDURES.**

the motion to compel. The request shall contain the factual and legal basis to support the claimed exemption or privilege. The objecting party shall review the documents and note with specificity any portions to which the claimed privilege or exemption claim does not apply. The objecting party shall provide the documents to the presiding officer, under seal, no later than one working day after it requests an in camera inspection. Documents submitted for in camera review shall not be filed with the commission filing clerk. Documents submitted for in camera review shall be submitted to the presiding officer and enclosed in a sealed and labeled container accompanied by an explanatory cover letter. The cover letter shall identify the control number and style of the proceeding and explain the nature of the sealed materials. The container shall identify the control number, style of the case, name of the submitting party, and be marked "IN CAMERA REVIEW" in bold print at least one inch in size. Each page for which a privilege is asserted shall be marked "privileged."

- (h) **Production of voluminous material.** The following procedures shall apply to production of voluminous materials:
- (1) Responses to particular questions that consist of less than 100 pages are not voluminous and shall be filed in full.
  - (2) Subject to paragraph (3) of this subsection, the responding party shall make available all voluminous material provided in response to a request for information at a designated location in Austin.
  - (3) A party will be released from its obligation to make available the requested voluminous material at a designated location in Austin, only if the volume of the material exceeds eight linear feet. In that event, the party shall make the material available where the material is located.
  - (4) The party providing the voluminous material shall file with its response a detailed index of the voluminous material responsive to a particular question and shall organize the responses and material to enable parties to efficiently review the material, including labeling of material by request for information number and subparts and sequentially numbering the material responsive to a particular question. The index shall include:
    - (A) information sufficient to locate each individual document by page number, file number, and box number;
    - (B) the date of each document;
    - (C) the title of the document, or, if none exists, a description of the document;
    - (D) the name of the preparer of each document; and
    - (E) the length of each document.
- (i) **Duty to supplement.** A responding party is under a continuing duty to supplement its discovery responses if that party acquires information upon the basis of which the party knows or should know that the response was incorrect or incomplete when made, or though correct or complete when made, is materially incorrect or incomplete. The responding party shall amend its prior response within five working days of acquiring the information.
- (j) **Requests for admission of facts.** Requests for admission of facts shall be made in accordance with the Texas Rules of Civil Procedure.
- (k) **Modifications of deadlines.** Modification of the deadlines for responses, objections, and motions to compel may be modified by agreement of the affected parties, by filing a letter or other document evidencing the agreement.

## **Subchapter H. DISCOVERY PROCEDURES.**

### **§22.145.Subpoenas.**

- (a) **Issuance.** Pursuant to APA, §2001.089, the presiding officer may issue a subpoena for the attendance of a witness or for the production of books, records, papers, or other objects. Motions for subpoenas to compel the production of books, records, papers, or other objects shall describe with reasonable particularity the objects desired and the material and relevant facts sought to be proved by them.
- (b) **Service and return.** A subpoena may be addressed to the sheriff or any constable, who may serve the subpoena in any manner authorized by the Texas Rules of Civil Procedure; and service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena, or by any other method authorized by the Texas Rules of Civil Procedure.
- (c) **Fees.** Subpoenas shall be issued by the presiding officer only after sums have been deposited to ensure payment of expense fees incident to the subpoenas. Payment of any such fees or expenses shall be made in the manner prescribed in APA, §2001.089 and §2001.103.
- (d) **Motions to quash.** Motions to quash subpoenas shall be filed at least three working days before the date the witness is ordered to appear or the documents or other objects are ordered to be produced, unless the party ordered to respond to the subpoena shows that it was justifiably unable to file objections at that time.

## Subchapter I. SANCTIONS.

### §22.161. Sanctions.

- (a) **Enforcement of subpoenas or commissions for depositions.** If a person fails to comply with the subpoena or commission for deposition issued by the presiding officer, the commission or the party requesting the subpoena or commission for deposition may seek enforcement pursuant to APA.
- (b) **Causes for imposition of sanctions.** An administrative law judge, on the administrative law judge's own motion or on the motion of a party, after notice and an opportunity for a hearing, may impose appropriate sanctions against a party or its representative for:
  - (1) filing a motion or pleading that was brought in bad faith, for the purpose of harassment, or for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;
  - (2) abusing the discovery process in seeking, making or resisting discovery;
  - (3) failing to obey an order of an administrative law judge or the commission.
- (c) **Types of sanctions.** A sanction imposed under subsection (b) of this section may include, as appropriate and justified, issuance of an order:
  - (1) disallowing further discovery of any kind or a particular kind by the disobedient party;
  - (2) charging all or any part of the expenses of discovery against the offending party or its representative;
  - (3) holding that designated facts be deemed admitted for purposes of the proceeding;
  - (4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;
  - (5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of such requests;
  - (6) punishing the offending party or its representative for contempt to the same extent as a district court;
  - (7) requiring the offending party or its representative to pay, at the time ordered by the administrative law judge, the reasonable expenses, including attorney's fees, incurred by other parties because of the sanctionable behavior; and
  - (8) striking pleadings or testimony, or both, in whole or in part, or staying further proceedings until the order is obeyed.
- (d) **Imposition of sanctions by the commission.** In addition to the sanctions listed in subsection (c) of this section that may be imposed by an administrative law judge, except for Subsection (c)(6), any other presiding officer including the commission, after notice and opportunity for hearing, may impose sanctions including:
  - (1) disallow the disobedient party's rights to participate in the proceeding;
  - (2) dismiss the application with or without prejudice;
  - (3) institute civil action; or
  - (4) impose any other sanction available to the commission by law.
- (e) **Procedure.** A motion for sanctions may be filed at any time during the proceeding or may be initiated *sua sponte* by the presiding officer. A motion to compel discovery is not a prerequisite to the filing of a motion for sanctions. A motion should contain all factual allegations necessary to apprise the parties and the presiding officer of the conduct at issue, should request specific relief, and shall be verified by affidavit. A motion shall be served on all parties. Upon receipt of the motion, a hearing shall be held on the motion. Any order regarding sanctions issued by a presiding officer shall be appealable pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim



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Order Issued by the Commission). Any sanction imposed by the presiding officer shall be automatically stayed to allow the party to appeal the imposition of the sanction to the commission.

## Subchapter J. SUMMARY PROCEEDINGS.

### §22.181. Dismissal of a Proceeding.

(a) **Motions for dismissal.**

- (1) Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding without an evidentiary hearing, for any of the following reasons:
  - (A) lack of jurisdiction;
  - (B) moot questions or obsolete petitions;
  - (C) res judicata;
  - (D) collateral estoppel;
  - (E) unnecessary duplication of proceedings;
  - (F) failure to prosecute;
  - (G) failure to state a claim for which relief can be granted; or
  - (H) other good cause shown.
- (2) The party that initiated the proceeding shall have 20 days from the date of receipt to respond to a motion to dismiss. If a hearing on the motion to dismiss is held, that hearing shall be confined to the issues raised by the motion to dismiss.
- (3) If the presiding officer determines that the proceeding should be dismissed, the presiding officer may prepare a Proposal for Decision to that effect, or issue an order dismissing the proceeding. The commission shall consider the Proposal for Decision as soon as is practicable.
- (4) An order dismissing a proceeding under paragraph (3) of this subsection may be appealed pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

- (b) **Withdrawal of application.** A party that initiated a proceeding may withdraw its application, petition, or complaint, without prejudice to refiling of same, at any time before that party has presented its direct case. After the presentation of its direct case, but prior to the signing of a final order thereon by the commission, a party may withdraw its application, petition, or complaint, without prejudice to refiling of same, only upon a finding of good cause by the presiding officer. If an application is authorized to be withdrawn, the presiding officer shall issue an order of dismissal without prejudice.

## Subchapter J. SUMMARY PROCEEDINGS.

### §22.182. Summary Decision.

- (a) **Motion for summary decision.** The presiding officer may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.
- (b) **Filing and contents of motion.** Any party to a proceeding may move for summary decision on any or all of the issues. The motion may be filed at any time before the close of the hearing on the merits. The party filing the motion shall demonstrate that the issue or issues may be resolved by summary decision in accordance with the standard set forth in subsection (a) of this section. Affidavits in support of the motion shall be based on personal knowledge and shall set forth such facts as would be admissible in evidence. A motion for summary decision shall specifically describe the facts upon which the request for summary decision is based, the information and materials which demonstrate those facts, and the laws or legal theories that entitle the movant to summary decision.
- (c) **Response to motion.** Any response to a motion for summary decision shall be filed within the time set by the presiding officer. A party opposing the motion shall show, by affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record, that there is a genuine issue of material fact for determination at the hearing, or that summary decision is inappropriate as a matter of law.
- (d) **Hearing on the motion.** If appropriate, the presiding officer shall set the motion for hearing.
- (e) **No further hearing.** No further evidentiary hearing shall be held on issues for which summary decision has been granted. The presiding officer will issue a Proposal for Decision or interim order on the issues recommended to be resolved by summary decision. Parties may file exceptions and replies to exceptions to a Proposal for Decision recommending resolution of issues by summary decision. An order granting or denying partial summary decision is appealable to the commission.

## Subchapter J. SUMMARY PROCEEDINGS.

### §22.183. Failure to Attend Hearing and Disposition by Default.

- (a) **Disposition by default.** If a party who does not have the burden of proof fails to appear for hearing, the presiding officer may proceed in that party's absence on a default basis. In the proposal for decision or final order, the factual allegations listed in the notice of hearing will be deemed admitted.
- (b) **Notice of default proceeding.** Any default proceeding under this section requires adequate proof of the following:
  - (1) Proof that proper notice of hearing was provided to the defaulting party pursuant to Tex. Gov't Code, Chapter 2001. Such notice must have included a disclosure in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default if the defaulting party fails to appear at the hearing; or
  - (2) If it is not possible to prove actual receipt of notice, a hearing may proceed on a default basis if there is credible evidence that:
    - (A) the notice of hearing was sent by certified mail, return receipt requested to the last known address in the commission's records, if the party has a license, certificate, or registration approved by the commission; and
    - (B) the notice of hearing was sent by certified mail, return receipt requested to the registered agent for process for the party on file with the Secretary of State, if the party is registered with the Secretary of State.
- (c) **Admission of evidence.** The party with the burden of proof shall submit evidence to the presiding officer in accordance with the requirements of this section.
- (d) **Motion to set aside a default.** Not later than 10 days after the hearing has concluded, if a dismissal, proposal for decision, or a proposed final order has not been issued, a party may file a motion to set aside a default and reopen the record. The presiding officer may grant the motion, set aside the default and reopen the record for good cause shown.
- (e) **Default proposal for decision or order.** Upon the failure of the defaulting party to appear at the hearing, the presiding officer may issue a default proposal for decision or final order, as applicable. Parties may file exceptions and replies to exceptions to a default proposal for decision pursuant to § 22.261 of this title (relating to Proposals for Decision) and may file a motion for rehearing to a default final order pursuant to § 22.264 of this title (relating to Rehearing).

**Subchapter K. HEARINGS.**

**§22.201 Place and Nature of Hearings.**

All evidentiary hearings shall be held in Austin, unless the commission determines that it is in the public interest to hold a hearing elsewhere. The commission may, when it is in the public interest, hold regional hearings to obtain public comment.

## Subchapter K. HEARINGS.

### §22.202 Presiding Officer.

- (a) **Presiding officer to conduct hearings.** Hearings in contested cases shall be conducted by one or more presiding officers. The presiding officer has the decision making authority set out in the commission rules, Government Code, APA, and PURA.
- (b) **Commission may preside over any hearing.** The commission has the authority to conduct any prehearing conference and hearing on any proceeding. The commission may conduct the entire hearing, or it may preside over a hearing in progress, in which case the commissioners shall read the record established to that date. Rulemaking hearings may be conducted by the commission or its designee.
- (c) **Authority of presiding officer.** The presiding officer has broad discretion in conducting the course, conduct, and scope of the hearing. The presiding officer's authority includes, but is not limited to, the power to administer oaths and affirmations; call and examine witnesses; receive evidence and testimony; rule upon the admissibility of evidence and amendments to pleadings; issue subpoenas; issue discovery, procedural, and scheduling orders; impose sanctions; compel the attendance of witnesses and the production of documents; authorize the taking of depositions; re-open the record, prior to the issuance of a proposal for decision, for additional evidence where it is necessary to make the record correct, accurate, and complete; make proposed findings of fact and conclusions of law; make proposed orders; issue interim orders; recess any hearing from time-to-time; abate a proceeding, and take any other action not prohibited by law or by commission rule which is necessary for an efficient and fair hearing.
- (d) **Conduct of hearing.** The presiding officer shall rule expeditiously on all motions and objections made at the hearing. The presiding officer shall conduct the hearing in such a manner to secure fairness in administration, eliminate unjustifiable delay, and promote the development of the record consistent with the applicable laws. The presiding officer shall endeavor to limit the presentation of evidence that creates an unfair prejudice, confuses the issues, or causes undue delay or needless presentation of cumulative evidence, and may:
  - (1) set reasonable times for a party to present evidence, including oral testimony of its own witnesses and cross-examination of other party's witnesses;
  - (2) establish the order in which parties will present evidence and conduct cross-examination;
  - (3) limit the number of witnesses to avoid cumulative or repetitious testimony;
  - (4) limit the time allowed for cross-examination; and
  - (5) order the presentation of cumulative evidence discontinued.
- (e) **Replacement.** If at any time a SOAH administrative law judge is unable to continue presiding over a case, SOAH may appoint a substitute administrative law judge who shall perform any function remaining to be performed without the necessity of repeating any previous proceedings. The substitute administrative law judge shall read the record of the proceedings that occurred prior to his or her appointment before issuing a Proposal for Decision or recommended findings of fact and conclusions of law.

## Subchapter K. HEARINGS.

### §22.203. Order of Procedure.

- (a) **Opening the evidentiary hearing.** The presiding officer shall open the hearing by making a concise statement of its scope and purposes and by taking appearances of each party or the party's authorized representative.
- (b) **Order of procedure in evidentiary hearings.**
  - (1) The party with the burden of proof on the whole proceeding shall be entitled to open and to close. Parties shall be allowed to make opening statements. Following opening statements, if any, the party with the burden of proof shall be allowed to proceed with its direct case. Opposing parties shall be allowed to cross-examine each witness, consistent with any order aligning parties. Each party shall then present its case and witnesses will be subjected to cross-examination. Unless otherwise ordered by the presiding officer for good cause, the commission staff representing the public interest shall be the last party to present a direct case.
  - (2) Redirect or recross examination will be limited to matters raised in the round of examination immediately preceding the redirect or recross examination.
  - (3) The party with the burden of proof may rebut evidence presented by opposing parties after all parties have presented their direct cases. Rebuttal may be afforded other parties at the presiding officer's discretion, provided that the party with the burden of proof shall be entitled to make the closing presentation, which may include surrebuttal.
  - (4) The presiding officer may allow supplemental rebuttal only to the extent that the party with the burden of proof could not have reasonably anticipated the need for such evidence in time to file it with the party's main rebuttal case. Oral supplemental rebuttal may be allowed, provided that the testimony is in response to matters first brought up in cross examination of a nonapplicant witness and only to the extent that the applicant could not have reasonably anticipated the need for such evidence in time to file it in written form. If a party intends to present supplemental rebuttal, it shall state in writing or on the record at the beginning of the presentation of its rebuttal case which witnesses will be presenting supplemental rebuttal, the general subject of the supplemental rebuttal, the evidence which the supplemental rebuttal is intended to rebut, and which rebuttal, if any, will be oral rather than written. Written supplemental rebuttal, if allowed, shall be filed no later than five working days after the date the evidence being rebutted was admitted. Oral supplemental rebuttal shall be limited to evidence offered to rebut evidence admitted less than five working days before the oral supplemental rebuttal is offered. Any exhibits offered during oral supplemental rebuttal shall be distributed to the presiding officer and the parties at the beginning of the applicant's rebuttal case, unless otherwise ordered by the presiding officer. A party may be exempted from the requirements of this subparagraph only upon a showing that compliance is not feasible.
  - (5) After parties have completed the presentation of evidence, and have been afforded the opportunity to cross-examine the other parties' witnesses, closing statements shall be allowed. Such statements shall be made either in writing or orally at the presiding officer's discretion.
  - (6) The presiding officer may question any witness testifying in a case. A party may raise an evidentiary objection to any question asked by the presiding officer, and the presiding officer shall rule on any such objection.
  - (7) Subject to the requirements of APA, the presiding officer may call upon any party for further material or relevant evidence on any issue before issuing a proposal for decision. The additional evidence shall not be admitted without an opportunity for inspection, objection, and cross-examination by all parties, and rebuttal by the party with the burden of proof on the whole proceeding.

## **Subchapter K. HEARINGS.**

### **§22.204 Transcript and Record.**

- (a) **Preparation of transcript.** When requested by any party to a proceeding, a stenographic record of all proceedings before a presiding officer in any prehearing conference or hearing, including all evidence and argument, shall be made by an official reporter appointed by the commission. It is the responsibility of the party desiring the stenographic record to arrange for the official reporter to be present.
- (b) **Purchase of copies.** A party may purchase a copy of the transcript from the official reporter at rates set by the commission.
- (c) **Corrections to transcript.** Proposed written corrections of purported errors in a transcript shall be filed and served on each party of record, the official reporter, and the presiding officer within a reasonable time after the discovery of the error. The presiding officer may establish time limits for proposing corrections. If no party objects to the proposed corrections within 12 days after filing, the presiding officer may direct that the official reporter correct the transcript as appropriate. In the event that the presiding officer or a party disagrees on suggested corrections, the presiding officer may hold a posthearing conference and take evidence and argument to determine whether, and in what manner, the record shall be changed.
- (d) **Filing of transcript and exhibits.** The court reporter shall serve the transcript and exhibits in a proceeding on the presiding officer at the time the transcript is provided to the requesting party. The presiding officer shall maintain the transcript and exhibits until they are filed with the commission filing clerk. If no court reporter is requested by a party, the presiding officer shall maintain the official record and exhibits until they are filed with the commission filing clerk. The original record and exhibits shall be filed with the commission filing clerk promptly after issuance of a proposal for decision.
- (e) **Contents of record.** The record in a contested case comprises those items specified in APA.



**Subchapter K. HEARINGS.**

**§22.205 Briefs.**

Briefs shall conform, where practicable, to the requirements set forth for formatting pleadings in this chapter. Briefs in excess of ten pages shall contain a table of contents with page numbers stated. The presiding officer may require parties to address certain issues, or address issues in a specific order or format. If the legal authority cited in the briefs is not contained in the commission library, a copy of the legal authority shall be provided at the time the brief is filed.

## **Subchapter K. HEARINGS.**

### **§22.206 Consideration of Contested Settlements.**

Where some of the parties have reached a settlement of some or all of the issues, each party in the proceeding shall have the right to have a full hearing before a presiding officer on issues that remain in dispute and judicial review of issues that remain in dispute. An issue of fact raised by a nonsettling party cannot be waived by a settlement or stipulation of the other parties, and the nonsettling party may use the issue of fact raised by that party as the basis for judicial review.

## **Subchapter K. HEARINGS.**

### **§22.207 Referral to State Office of Administrative Hearings.**

The utility division of the State of Office of Administrative Hearings shall conduct hearings related to contested cases before the commission, other than a hearing conducted by one or more commissioners. At the time SOAH receives jurisdiction of a proceeding, the commission shall provide to the administrative law judge a list of issues or areas that must be addressed. In addition, the commission may identify and provide to the administrative law judge at any time additional issues or areas that must be addressed. The commission shall send a request for setting or hearing, or request for assignment of administrative law judge to SOAH in sufficient time to allow resolution of the proceeding prior to the expiration of any jurisdictional deadline. In order to give the commission sufficient time to consider a proposal for decision, the commission may specify the length of time prior to the expiration of a jurisdictional deadline by which the administrative law judge shall issue a proposal for decision.

**Subchapter L. EVIDENCE AND EXHIBITS IN CONTESTED CASES.**

**§22.221. Rules of Evidence in Contested Cases.**

- (a) **Rules of civil evidence apply.** The Texas Rules of Civil Evidence as applied in nonjury civil cases in the courts of Texas shall be followed in contested cases. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, evidence not admissible under those rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- (b) **Rules of privilege and exemption.** The rules of privilege and exemption recognized by Texas law shall apply.
- (c) **Objections.** Objections to evidentiary offers may be made, shall be ruled upon, and shall be noted in the record. Failure to object to evidence at the time it is offered constitutes a waiver of all objections to the evidence.
- (d) **Formal exceptions not required.** Formal exceptions to rulings made by the presiding officer during a hearing are not required. It shall be sufficient that the party notified the presiding officer of the grounds for the objection and desired ruling.
- (e) **Public comment.** Public comment is not part of the evidentiary record of a contested case.

**Subchapter L. EVIDENCE AND EXHIBITS IN CONTESTED CASES.**

**§22.222. Official Notice.**

- (a) **Facts noticeable.** Official notice may be taken of judicially cognizable facts not subject to reasonable dispute in that they are generally known within the jurisdiction of the commission or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. In addition, official notice may be taken of generally recognized facts within the area of the commission's specialized knowledge.
- (b) **Motions for official notice and opportunity to respond.** If a party intends to rely on matters officially noticed as part of that party's direct case, the motion for official notice shall be made by the deadline established for that party to prefile direct testimony or as directed by the presiding officer. Otherwise, a party's motion for official notice shall be made prior to the conclusion of the evidentiary hearing unless made pursuant to §22.226(d) of this title (relating to Exhibits). Motions for official notice may be written or oral. The motion shall state with specificity the facts, material, records, or documents of which official notice is requested, and copies of such materials, records, or documents shall be provided to the presiding officer and all parties, unless otherwise ordered by the presiding officer on a showing of good cause. A party who opposes the motion shall have the opportunity to contest the requested action.
- (c) **Notification of materials proposed to be noticed.** The presiding officer may take official notice of facts, material, records or documents authorized by APA, §2001.090. The parties shall be notified of the facts, material, records or documents proposed to be officially noticed and shall be given the opportunity to contest the proposed action.
- (d) **Judicial and administrative decisions, commission orders, proposals for decision, and presiding officer's orders.** Official notice shall not be taken of judicial and administrative decisions, commission orders, proposals for decision, and presiding officer's orders for the purpose of citing such documents as precedent or as legal support for a position. A party may cite any part of such decisions, orders and reports in its pleadings. Official notice may be taken of judicial and administrative decisions, commission orders, proposals for decision, and presiding officer's orders for evidentiary purposes.

**Subchapter L. EVIDENCE AND EXHIBITS IN CONTESTED CASES.**

**§22.223. Witnesses to Be Sworn.**

Oral testimony in contested cases shall be presented under oath or affirmation administered by the presiding officer or an official reporter.

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**§22.224. Documentary Evidence.**

A copy of a document may be admitted as evidence if authenticity is not questioned or is established by competent evidence. On request, parties shall have the opportunity to compare the copy with the original, unless it is not practicable or reasonable to do so. When numerous documents of a similar nature are offered, the presiding officer may limit those admitted to a number of documents which are representative, provided no party's rights are prejudiced thereby. The presiding officer may require a party to abstract or summarize data from documents and to present the abstract or summary in exhibit form. All parties shall have the opportunity to examine the documents from which the abstract or summary is prepared. Such abstract or summary shall be admitted into evidence in lieu of the documents from which it was prepared only if all parties agree that the abstract or summary is accurate.

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### **§22.225. Written Testimony and Accompanying Exhibits.**

#### **(a) Prefiling of testimony, exhibits, and objections.**

- (1) Unless otherwise ordered by the presiding officer upon a showing of good cause, the written direct and rebuttal testimony and accompanying exhibits of each witness shall be prefiled. Deposition testimony and responses to requests for information by an opposing party that a party plans to introduce as part of its direct case shall be filed at the time the party files its written direct testimony. The presiding officer shall establish a date for filing of deposition testimony and requests for information that an applicant plans to introduce as part of its direct case.
- (2) Deposition testimony and responses to requests for information that a party plans to introduce in support of its rebuttal case shall be filed at the time the party files its written rebuttal testimony.
- (3) A party is not required to prefile documents it intends to use during cross-examination except that the presiding officer may require parties to identify documents that may be used during cross examination if it is necessary for the orderly conduct of the hearing.
- (4) Objections to prefiled direct testimony and exhibits, including deposition testimony and responses to requests for information, shall be filed on dates established by the presiding officer and shall be ruled upon before or at the time the prefiled testimony and accompanying exhibits are offered. Objections to prefiled rebuttal testimony shall be filed pursuant to the schedule ordered by the presiding officer.
- (5) Nothing in this section shall preclude a party from using discovery responses in its direct or rebuttal case even if such responses were not received prior to the applicable deadline for prefiling written testimony and exhibits.
- (6) The testimony pre-filing schedule in a major Public Utility Regulatory Act, Chapter 36, Subchapter C or E, or Chapter 53, Subchapter C or E rate proceeding shall be established as set out in this subsection.
  - (A) Any utility filing an application to change its rates in a major rate proceeding shall file the written testimony and exhibits supporting its direct case on the same date that such statement of intent to change its rates is filed with the commission. As set forth in §22.243(b) of this title (relating to Rate Change Proceedings), the prefiled written testimony and exhibits shall be included in the rate filing package filed with the application.
  - (B) Other parties in the proceeding shall prefile written testimony and exhibits according to the schedule set forth by the presiding officer. Except for good cause shown or upon agreement of the parties, the commission staff representing the public interest may not be required to file earlier than seven days prior to hearing.
  - (C) The presiding officer shall establish dates for filing of rebuttal testimony.
- (7) The presiding officer shall establish a pre-filing schedule for Public Utility Regulatory Act, Chapter 36, Subchapter D or Chapter 53, Subchapter D rate cases and for cases other than major rate proceedings. In proceedings that are not major rate proceedings, notice of intent proceedings, applications for certificates of convenience and necessity for new generating plant, or applications for fuel reconciliations, the applicant is not required to prefile written testimony and exhibits at the time the filing is made unless otherwise required by statute or rule.
- (8) Utilities filing an application for construction of a transmission facility that has been designated by the Electric Reliability Council of Texas (ERCOT) independent system operator as critical to the reliability of the ERCOT system and to be considered on an expedited basis, shall file written testimony and exhibits supporting its direct case on the same date that the application is filed with the commission. This requirement shall also apply to transmission lines located in other reliability councils or administered by other independent system operators provided such councils have a process for designation of critical transmission lines.
- (9) The times for pre-filing set out in this section may be modified upon a showing of good cause.
- (10) Late-filed testimony may be admitted into evidence if the testimony is necessary for a full disclosure of the facts and admission of the testimony into evidence would not be unduly



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prejudicial to the legal rights of any party. A party that intends to offer late-filed testimony into evidence shall, at the earliest opportunity, inform the presiding officer, who shall establish reasonable procedures and deadlines regarding such testimony.

- (b) **Admission of prefiled testimony.** Unless otherwise ordered by the presiding officer, direct and rebuttal testimony shall be received in written form. The written testimony of a witness on direct examination or rebuttal, either in narrative or question and answer form, may be received as an exhibit and incorporated into the record without the written testimony being read into the record. A witness who is offering written testimony shall be sworn and shall be asked whether the written testimony is a true and accurate representation of what the testimony would be if the testimony were to be given orally at the time the written testimony is offered into evidence. The witness shall submit to cross-examination, clarifying questions, redirect examination, and recross-examination. The presiding officer may allow voir dire examination where appropriate. Written testimony shall be subject to the same evidentiary objections as oral testimony. Timely prefiling of written testimony and exhibits, if required under this section or by order of the presiding officer, is a prerequisite for admission into evidence.
- (c) **Supplementation of prefiled testimony and exhibits.** Oral or written supplementation of prefiled testimony and exhibits may be allowed prior to or during the hearing provided that the witness is available for cross-examination. The presiding officer may exclude such testimony if there is a showing that the supplemental testimony raises new issues or unreasonably deprives opposing parties of the opportunity to respond to the supplemental testimony. The presiding officer may admit the supplemental testimony and grant the parties time to respond.
- (d) **Tender and service.** On or before the date the prefiled written testimony and exhibits are due, parties shall file the number of copies required by §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials), or other commission rule or order, of the testimony and exhibits with the commission filing clerk and shall serve a copy upon each party.
- (e) **Withdrawal of evidence.** Any exhibit offered and admitted in evidence may not be withdrawn except with the agreement of all parties and approval of the presiding officer.

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**§22.226. Exhibits.**

- (a) **Form.** Exhibits to be offered in evidence at a hearing shall be of a size which will not unduly encumber the record. Whenever practicable, exhibits shall conform to the size requirements established by §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). The pages of each exhibit shall be consecutively numbered.
- (b) **Marking and exchanging exhibits.** Each exhibit offered in evidence shall be marked for identification by the presiding officer or official reporter, if one is present. Copies of the exhibit shall be furnished to the presiding officer and distributed to each party present at the hearing no later than the time the exhibit is offered in evidence, or at an earlier time if ordered by the presiding officer for the orderly conduct of the hearing.
- (c) **Excluded exhibits.** If the party offering an exhibit that has been identified, objected to and excluded wishes to withdraw the offer, the presiding officer shall permit the return of the exhibit to the party.
- (d) **Late exhibits.** Except as may otherwise be agreed to by the parties on the record prior to the close of the hearing, no exhibit shall be received in evidence in any proceeding after the hearing has been concluded except on the motion of the presiding officer or for good cause shown on written motion of the party offering the evidence. If the admission into evidence of a late-filed exhibit is proposed, copies shall be served on all parties of record. Parties shall file pleadings in opposition to admission of late-filed exhibits within five working days of the receipt of the motion requesting admission of the exhibit.

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**§22.227. Offers of Proof.**

When the presiding officer excludes testimony or documentary evidence, the party offering the excluded material shall be permitted to make an offer of proof prior to the close of the hearing. The party may make the offer by dictating into the record or submitting in writing the substance of the proposed testimony or by tendering the documentary evidence for inclusion in the record. Except for cross examination concerning matters relating to the admissibility of the testimony or documentary evidence, cross examination on offers of proof shall be deferred until such time, if any, that the testimony is admitted into evidence. The presiding officer may direct that offers of proof be transcribed separately. Failure to make an offer of proof may constitute a waiver of any objection to the exclusion of the testimony or documentary evidence in question.

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**§22.228. Stipulation of Facts.**

No stipulation of facts between the parties or their authorized representatives shall be admitted into evidence unless it has been reduced to writing and signed by the parties or their authorized representatives or, upon leave of the presiding officer, dictated into the record during a prehearing conference or hearing at which all parties to the agreement are present, have waived the right to be present, or have received reasonable notice that the settlement will be read into the record at that prehearing conference or hearing.

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**§22.241. Investigations.**

- (a) **Commission investigations.**
  - (1) The commission may at any time institute formal investigations on its own motion, or the motion of the commission's staff. Orders and pleadings initiating investigations shall specify the matters to be investigated, and shall be served upon the person being investigated.
  - (2) Notice of commission-instituted investigations of specific persons subject to commission regulation and investigative proceedings affecting such persons as a class will be served upon all affected persons under investigation. The commission shall post notice with the *Texas Register* of prehearing conferences and hearings. The presiding officer may require additional notice.
- (b) **Show cause orders in complaint proceeding.** The presiding officer, either upon his or her own motion or upon receipt of written complaint, may at any time after appropriate notice has been given, summon any person within the commission's jurisdiction to appear in a public hearing and show cause why such person should not be compelled to comply with any applicable statute, rule, regulation, or general order with which the person is allegedly not in compliance. All hearings in such show cause proceedings shall be conducted in accordance with the provisions of this chapter.
- (c) **No limitations.** Nothing in this section shall be construed to limit the commission's authority to investigate persons subject to the commission's jurisdiction.

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**§22.242. Complaints.**

- (a) **Records of complaints.** Any affected person may complain to the commission, either in writing or by telephone, setting forth any act or thing done or omitted to be done by any electric utility or telecommunications utility in violation or claimed violation of any law which the commission has jurisdiction to administer or of any order, ordinance, rule, or regulation of the commission. The commission staff may request a complaint made by telephone be put in writing if necessary to complete investigation of the complaint. The commission shall keep information about each complaint filed with the commission. The commission shall retain the information pursuant to the agency's records retention schedule as approved by the Texas State Library and Archives Commission. The information shall include:
- (1) the date the complaint is received;
  - (2) the name of the complainant;
  - (3) the subject matter of the complaint;
  - (4) a record of all persons contacted in relation to the complaint;
  - (5) a summary of the results of the review or investigation of the complaint; and
  - (6) for complaints for which the commission took no action, an explanation of the reason the complaint was closed without action.
- (b) **Access to complaint records.** The commission shall keep a file about each written complaint filed with the commission that the commission has the authority to resolve. The commission shall provide to the person filing the complaint and to the persons or entities complained about the commission's policies and procedures pertaining to complaint investigation and resolution. The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person or entity complained of about the status of the complaint unless the notice would jeopardize an undercover investigation.
- (c) **Informal resolution required in certain cases.** A person who is aggrieved by the conduct of an electric utility or telecommunications utility or other person must present a complaint to the commission for informal resolution before presenting the complaint to the commission.
- (1) **Exceptions.** A complainant may present a formal complaint to the commission, without first referring the complaint for informal resolution, if:
    - (A) the complainant is commission staff, the Office of Public Utility Counsel, or any city;
    - (B) the complaint is filed by a qualifying facility and concerns rates paid by an electric utility for power provided by the qualifying facility, the terms and conditions for the purchase of such power, or any other matter that affects the relations between an electric utility and a qualifying facility;
    - (C) the complaint is filed by a person alleging that an electric utility or a telecommunications utility has engaged in anti-competitive practices; or
    - (D) the complaint has been the subject of a complaint proceeding conducted by a city.
  - (2) For any complaint that is not listed in paragraph (1) of this subsection, the complainant may submit to the commission a written request for waiver of the requirement for attempted informal resolution. The complainant shall clearly state the reasons informal resolution is not appropriate. The commission staff may grant the request for good cause.
- (d) **Termination of informal resolution.** The commission staff shall attempt to informally resolve all complaints within 35 days of the date of receipt of the complaint. The commission staff shall notify, in writing, the complainant and the person against whom the complainant is seeking relief of the status of the dispute at the end of the 35-day period. If the dispute has not been resolved to the complainant's satisfaction within 35 days, the complainant may present the complaint to the commission. The

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commission staff shall notify the complainant of the procedures for formally presenting a complaint to the commission.

- (e) **Formal Complaint.** If an attempt at informal resolution fails, or is not required under subsection (c) of this section, the complainant may present a formal complaint to the commission.
  - (1) **Requirement to present complaint concerning electric utility to a city.** If a person receives electric utility service or has applied to receive electric utility service within the limits of a city that has original jurisdiction over the electric utility providing service or requested to provide service, the person must present any complaint concerning the electric utility to the city before presenting the complaint to the commission.
    - (A) The person may present the complaint to the commission after:
      - (i) the city issues a decision on the complaint; or
      - (ii) the city issues a statement that it will not consider the complaint or a class of complaints that includes the person's complaint.
    - (B) If the city does not act on the complaint within 30 days, the commission may send the city a letter requesting that the city act on the complaint. If the city does not respond or act within 30 days from the date of the letter, the complaint shall be deemed denied by the city and the commission shall consider the complaint.
  - (2) The commission staff may permit a complainant to cure any deficiencies under this subsection and may waive any of the requirements of this subsection for good cause, if the waiver will not materially affect the rights of any other party. A formal complaint shall include the following information:
    - (A) the name of the complainant or complainants;
    - (B) the name of the complainant's representative, if any;
    - (C) the address, telephone number, and facsimile transmission number, if available, of the complainant or the complainant's representative;
    - (D) the name of the electric utility or telecommunications utility or other person against whom the complainant is seeking relief;
    - (E) if the complainant is seeking relief against an electric utility, a statement of whether the complaint relates to service that the complainant is receiving within the limits of a city;
    - (F) if the complainant is seeking relief against an electric utility within the limits of a city, a description of any complaint proceedings conducted by the city, including the outcome of those proceedings;
    - (G) a statement of whether the complainant has attempted informal resolution through the commission staff and the date on which the informal resolution was completed or the time for attempting the informal resolution elapsed;
    - (H) a description of the facts that gave rise to the complaint; and
    - (I) a statement of the relief that the complainant is seeking.
- (f) **Copies to be provided.** A complainant shall file the required number of copies of the formal complaint, pursuant to §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). A complainant shall provide a copy of the formal complaint to the person from whom relief is sought.
- (g) **Docketing of complaints.** Any complaint that substantially complies with the requirements of this section shall be docketed.
- (h) **Continuation of service during processing of complaint.** In any case in which a formal complaint has been filed and an allegation is made that an electric utility or a telecommunications utility or other person is threatening to discontinue a customer's service, the presiding officer may, after notice and opportunity for hearing, issue an order requiring the electric utility or telecommunications utility or other person to

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continue to provide service during the processing of the complaint. The presiding officer may issue such an order for good cause, on such terms as may be reasonable to preserve the rights of the parties during the processing of the complaint.

- (i) **List of cities without regulatory authority.** The commission shall maintain and make available to the public a list of the municipalities that do not have exclusive original jurisdiction over all electric rates, operations, and services provided by an electric utility within its city or town limits.



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**§22.243. Rate Change Proceedings.**

- (a) **Statements of intent.** No electric utility or public utility, other than an electric cooperative that has elected to be exempt from rate regulation under the Public Utility Regulatory Act, Chapter 36, may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the electric utility or public utility, the effective date of the proposed rate change, the classes and numbers of utility ratepayers affected, and a description of the service for which a change is requested. For major rate proceedings, the expected change in revenues must be expressed as an annual dollar increase over adjusted test year revenues and as a percent increase over adjusted test year revenues.
- (b) **Rate filing package.** Any electric utility or public utility filing a statement of intent to change its rates in a major rate proceeding under the Public Utility Regulatory Act (PURA), Chapter 36, Subchapter C or Chapter 53, Subchapter C shall file a rate filing package and supporting workpapers as required by the commission's current rate filing package at the same time it files a statement of intent. The rate filing package shall be securely bound under cover, and shall include all information required by the commission's rate filing package form in the format specified. Examination for sufficiency and correction of deficiencies in rate filing packages are governed by §22.75 of this title (relating to Examination and Correction of Pleadings and Documents).
- (c) **Uncontested applications subject to administrative review.** If no motion to intervene is filed by the deadline for filing motions to intervene, the application may be considered pursuant to the procedure set forth in §22.32 of this title (relating to Administrative Review).

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**§22.244. Review of Municipal Rate Actions.**

- (a) **Contents of petitions.** In addition to any information required by statute, petitions for review of municipal rate actions filed pursuant to the Public Utility Regulatory Act (PURA) §33.052 or §§33.101 – 33.104 shall contain the original petition for review with the required signatures and following additional information.
- (1) Each signature page of a petition shall contain in legible form above the signatures the following:
    - (A) A statement that the petition is an appeal of a specific rate action of the municipality in question;
    - (B) The date of and a concise description of that rate action;
    - (C) A statement designating a specific individual, group of individuals, or organization as the signatories' authorized representative; and
    - (D) A statement that the designated representative is authorized to represent the signatories in all proceedings before the commission and appropriate courts of law and to do all things necessary to represent the signatories in those proceedings.
  - (2) The printed or typed name, telephone number, street or rural route address, and facsimile transmission number, if available, of each signatory shall be provided. Post office box numbers are not sufficient. In appeals relating to PURA §§33.101 – 33.104, the petition shall list the address of the location where service is received if the address differs from the residential address of the signatory.
- (b) **Signatures.** A signature shall be counted only once, regardless of the number of bills the signatory receives. The signature shall be of the person in whose name service is provided or such person's spouse. The signature shall be accompanied by a statement indicating whether the signatory is appealing the municipal rate action as a qualified voter of that municipality under PURA §33.052, or as a customer of the municipality served outside the municipal limits under PURA §§33.101 – 33.104.
- (c) **Validity of petition and correction of deficiencies.** The petition shall include all of the information required by this section, legibly written, for each signature in order for the signature to be deemed valid. The presiding officer may allow the petitioner a reasonable time of up to 30 days from the date any deficiencies are identified to cure any defects in the petition.
- (d) **Verification of petition.** Unless otherwise provided by order of the presiding officer, the following procedures shall be followed to verify petitions appealing municipal rate actions filed pursuant to PURA §33.052 and §§33.101 – 33.104.
- (1) Within 15 days of the filing of an appeal of a municipal rate action, the Policy Development Division shall send a copy of the petition to the respondent municipality with a directive that the municipality verify the signatures on the petition.
  - (2) Within 30 days after receipt of the petition from the Policy Development Division, the municipality shall file with the commission a statement of review, together with a supporting written affidavit sworn to by a municipal official.
  - (3) The period for the municipality's review of the signatures on the petition may be extended by the presiding officer for good cause.
  - (4) Failure of the municipality to timely submit the statement of review shall result in all signatures being deemed valid, unless any signature is otherwise shown to be invalid or is invalid on its face.
  - (5) Objections by the municipality to the authenticity of signatures shall be set out in its statement of review and shall be resolved by the presiding officer.
- (e) **Disputes.** Any dispute over the sufficiency or legibility of a petition shall be resolved by the presiding officer by interim order.

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**§22.246. Administrative Penalties.**

- (a) **Scope.** This section is intended to address enforcement actions related to administrative penalties only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:
- (1) **Executive director** — The executive director of the commission or the executive director's designee.
  - (2) **Person** — Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.
  - (3) **Violation** — Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), commission rule or commission order.
  - (4) **Continuing violation** — Except for a violation of PURA Chapter 17, 55, or 64, and commission rules or commission orders pursuant to those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.
- (c) **Amount of penalty.**
- (1) Each day a violation continues or occurs is a separate violation for which a penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.
  - (2) The penalty for each separate violation may be in an amount not to exceed \$25,000 per day, provided that a penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.
  - (3) The amount of the penalty shall be based on:
    - (A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
    - (B) the economic harm to property or the environment caused by the violation;
    - (C) the history of previous violations;
    - (D) the amount necessary to deter future violations;
    - (E) efforts to correct the violation; and
    - (F) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.
- (d) **Initiation of investigation.** Upon receiving an allegation of a violation or of a continuing violation, the executive director shall determine whether an investigation should be initiated.
- (e) **Report of violation or continuing violation.** If, based on the investigation undertaken pursuant to subsection (d) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.
- (1) **Contents of the report.** The report shall state the facts on which the determination is based and a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.
  - (2) **Notice of report.** Within 14 days after the report is issued, the executive director shall, by certified mail, return receipt requested, give written notice of the report to the person who is

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alleged to have committed the violation or continuing violation which is the subject of the report.

The notice must include:

- (A) a brief summary of the alleged violation or continuing violation;
- (B) a statement of the amount of the recommended penalty;
- (C) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty;
- (D) a copy of the report issued to the commission pursuant to this subsection; and
- (E) a copy of this section, §22.246 of this title (relating to Administrative Penalties).

(f) **Options for response to notice of violation or continuing violation.**

(1) **Opportunity to remedy.**

- (A) This paragraph does not apply to a violation of PURA Chapters 17, 55, or 64, or of a commission rule or commission order pursuant to those chapters.
- (B) Within 40 days of the date of receipt of a notice of violation set out in subsection (e)(2) of this section, the person against whom the penalty may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent shall be evidenced in writing, under oath, and supported by necessary documentation.
- (C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no penalty will be assessed against the person who is alleged to have committed the violation.
- (D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director shall make a determination as to what further proceedings are necessary.
- (E) If the executive director determines that the alleged violation is a continuing violation, the executive director shall institute further proceedings, including referral of the matter for hearing pursuant to subsection (h) of this section.

(2) **Payment of penalty.** Within 30 days after the date the person receives the notice set out in subsection (e)(2) of this section, the person may accept the determination and recommended penalty through a written statement sent to the executive director. If this option is selected, the person shall take all corrective action required by the commission. The commission by written order shall approve the determination and impose the recommended penalty.

(3) **Request for hearing.** Not later than the 20th day after the date the person receives the notice set out in subsection (e)(2) of this section, the person may submit to the executive director a written request for a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty.

(g) **Settlement conference.** A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the penalty, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

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- (1) If a settlement is reached:
    - (A) the parties shall file a report with the executive director setting forth the factual basis for the settlement;
    - (B) the executive director shall issue the report of settlement to the commission; and
    - (C) the commission by written order will approve the settlement.
  - (2) If a settlement is reached after the matter has been referred to SOAH, the matter shall be returned to the commission. If the settlement is approved, the commission shall issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.
- (h) **Hearing.** If a person requests a hearing under subsection (f)(3) of this section, or fails to respond timely to the notice of the report of violation or continuing violation provided pursuant to subsection (e)(2) of this section, or if the executive director determines that further proceedings are necessary, the executive director shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH pursuant to §22.207 of this title (relating to Referral to State Office of Administrative Hearings). The case shall then proceed as set forth in paragraphs (1)-(5) of this subsection.
- (1) The commission shall provide the SOAH administrative law judge a list of issues or areas that must be addressed.
  - (2) The hearing shall be conducted in accordance with the provisions of this chapter.
  - (3) The SOAH administrative law judge shall promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:
    - (A) the occurrence of the alleged violation or continuing violation;
    - (B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA Chapters 17, 55, or 64, or of a commission rule or commission order pursuant to those chapters; and
    - (C) the amount of the proposed penalty.
  - (4) Based on the SOAH administrative law judge's proposal for decision, the commission may:
    - (A) determine that a violation or continuing violation has occurred and impose a penalty;
    - (B) determine that a violation occurred but that, pursuant to subsection (f)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no penalty will be imposed; or
    - (C) determine that no violation or continuing violation has occurred.
  - (5) Notice of the commission's order issued pursuant to paragraph (4) of this subsection shall be provided under the Government Code, Chapter 2001 and §22.263 of this title (relating to Final Orders) and shall include a statement that the person has a right to judicial review of the order.

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**§22.251. Review of Electric Reliability Council of Texas (ERCOT) Conduct.**

- (a) **Purpose.** This section prescribes the procedure by which an entity, including the commission staff and the Office of Public Utility Counsel, may appeal a decision made by ERCOT or any successor in interest to ERCOT.
- (b) **Scope of complaints.** Any affected entity may complain to the commission in writing, setting forth any conduct that is in violation or claimed violation of any law that the commission has jurisdiction to administer, of any order or rule of the commission, or of any protocol or procedure adopted by ERCOT pursuant to any law that the commission has jurisdiction to administer. For the purpose of this section, the term "conduct" includes a decision or an act done or omitted to be done. The scope of permitted complaints includes ERCOT's performance as an independent organization under the PURA including, but not limited to, ERCOT's promulgation and enforcement of procedures relating to reliability, transmission access, customer registration, and accounting for the production and delivery of electricity among generators and other market participants.
- (c) **Requirement of compliance with ERCOT Protocols.** An entity must use Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures, or ADR), or Section 21 of the Protocols (Process for Protocol Revision), or other Applicable ERCOT Procedures, before presenting a complaint to the commission. For the purpose of this section, the term "Applicable ERCOT Procedures" refers to Sections 20 and 21 of the ERCOT Protocols and other applicable sections of the ERCOT protocols that are available to challenge or modify ERCOT conduct, including participation in the protocol revision process. If a complainant fails to use the Applicable ERCOT Procedures, the presiding official may dismiss the complaint or abate it to give the complainant an opportunity to use the Applicable ERCOT Procedures.
  - (1) A complainant may present a formal complaint to the commission, without first using the Applicable ERCOT Procedures, if:
    - (A) the complainant is the commission staff or the Office of Public Utility Counsel;
    - (B) the complainant is not required to comply with the Applicable ERCOT Procedures; or
    - (C) the complainant seeks emergency relief necessary to resolve health or safety issues or where compliance with the Applicable ERCOT Procedures would inhibit the ability of the affected entity to provide continuous and adequate service.
  - (2) For any complaint that is not addressed by paragraph (1) of this subsection, the complainant may submit to the commission a written request for waiver of the requirement for using the Applicable ERCOT Procedures. The complainant shall clearly state the reasons why the Applicable ERCOT Procedures are not appropriate. The commission may grant the request for good cause.
  - (3) For complaints for which ADR proceedings have not been conducted at ERCOT, the presiding officer may require informal dispute resolution.
- (d) **Formal complaint.** A formal complaint shall be filed within 35 days of the ERCOT conduct complained of, except as otherwise provided in this subsection. When an ERCOT ADR procedure has been timely commenced, a complaint concerning the conduct or decision that is the subject of the ADR procedure shall be filed no later than 35 days after the completion of the ERCOT ADR procedure. The presiding officer may extend the deadline, upon a showing of good cause, including the parties' agreement to extend the deadline to accommodate ongoing efforts to resolve the matter informally, and the complainant's failure to timely discover through reasonable efforts the injury giving rise to the complaint.
  - (1) The complaint shall include the following information:
    - (A) a complete list of all complainants and the entities against whom the complainant seeks relief and the addresses, and facsimile transmission numbers and e-mail addresses, if available, of the parties' counsel or other representatives;

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- (B) a statement of the case that ordinarily should not exceed two pages and should not discuss the facts. The statement must contain the following:
    - (i) a concise description of any underlying proceeding or any prior or pending related proceedings;
    - (ii) the identity of all entities or classes of entities who would be directly affected by the commission's decision, to the extent such entities or classes of entities can reasonably be identified;
    - (iii) a concise description of the conduct from which the complainant seeks relief;
    - (iv) a statement of the ERCOT procedures, protocols, by-laws, articles of incorporation, or law applicable to resolution of the dispute and whether the complainant has used the Applicable ERCOT Procedures for challenging or modifying the complained of ERCOT conduct or decision (as described in subsection (c) of this section) and, if not, the provision of subsection (c) of this section upon which the complainant relies to excuse its failure to use the Applicable ERCOT Procedures;
    - (v) a statement of whether the complainant seeks a suspension of the conduct or implementation of the decision complained of; and
    - (vi) a statement without argument of the basis of the commission's jurisdiction.
  - (C) a detailed and specific statement of all issues or points presented for commission review;
  - (D) a concise statement without argument of the pertinent facts. Each fact shall be supported by references to the record, if any;
  - (E) a clear and concise argument for the contentions made, with appropriate citation to authorities and to the record, if any;
  - (F) a statement of all questions of fact, if any, that the complainant contends require an evidentiary hearing;
  - (G) a short conclusion that states the nature of the relief sought; and
  - (H) a record consisting of a certified or sworn copy of any document constituting or evidencing the matter complained of. The record may also contain any other item pertinent to the issues or points presented for review, including affidavits or other evidence on which the complainant relies.
- (2) If the complainant seeks to suspend the conduct or the implementation of the decision complained of while the complaint is pending and all entities against whom the complainant seeks relief do not agree to the suspension, the complaint shall include a statement of the harm that is likely to result to the complainant if enforcement is not suspended. Harm may include deprivation of an entity's ability to obtain meaningful or timely relief if a suspension is not entered. A request for suspension of the conduct or enforcement of a decision shall be reviewed in accordance with subsection (i) of this section.
- (3) All factual statements in the complaint shall be verified by affidavit made on personal knowledge by an affiant who is competent to testify to the matters stated.
- (4) A complainant shall file the required number of copies of the formal complaint, pursuant to §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). A complainant shall serve copies of the complaint and other documents, in accordance with §22.74 of this title (relating to Service of Pleadings and Documents), and in particular shall serve a copy of the complaint on ERCOT's General Counsel, every other entity from whom relief is sought, the Office of Public Utility Counsel, and any other party.
- (e) **Notice.** Within 14 days of receipt of the complaint, ERCOT shall provide notice of the complaint by email to all qualified scheduling entities and, at ERCOT's discretion, all relevant ERCOT committees and subcommittees. Notice shall consist of an attached electronic copy of the complaint, including the docket number, but may exclude the record required by subsection (d)(1)(H) of this section.

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- (f) **Response to complaint.** A response to a complaint shall be due within 28 days after receipt of the complaint and shall conform to the requirements for the complaint set forth in subsection (d) of this section except that:
- (1) the list of parties and counsel is not required unless necessary to supplement or correct the list contained in the complaint;
  - (2) the response need not include a statement of the case, a statement of the issues or points presented for commission review, or a statement of the facts, unless the respondent contests that portion of the complaint;
  - (3) a statement of jurisdiction should be omitted unless the complaint fails to assert valid grounds for jurisdiction, in which case the reasons why the commission lacks jurisdiction shall be concisely stated;
  - (4) the argument shall be confined to the issues or points raised in the complaint;
  - (5) the record need not include any item already contained in a record filed by another party; and
  - (6) if the complainant seeks a suspension of the conduct or implementation of the decision complained of, the response shall state whether the respondent opposes the suspension and, if so, the basis for the opposition, specifically stating the harm likely to result if a suspension is ordered.
- (g) **Comments by commission staff and motions to intervene.** Commission staff representing the public interest shall file comments within 45 days after the date on which the complaint was filed. In addition, any party desiring to intervene pursuant to §22.103 of this title (relating to Standing to Intervene) shall file a motion to intervene within 45 days after the date on which the complaint was filed. A motion to intervene shall be accompanied by a response to the complaint.
- (h) **Reply.** The complainant may file a reply addressing any matter in a party's response or commission staff's comments. A reply, if any, must be filed within 55 days after the date on which the complaint was filed. However, the commission may consider and decide the matter before a reply is filed.
- (i) **Suspension of enforcement.** The ERCOT conduct complained of shall remain in effect until and unless the presiding officer or the commission issues an order suspending the conduct or decision. If the complainant seeks to suspend the conduct or implementation of the decision complained of while the complaint is pending and all entities against whom the complainant seeks relief do not agree to the suspension, the complainant must demonstrate that there is good cause for suspension. The good cause determination required by this subsection shall be based on an assessment of the harm that is likely to result to the complainant if a suspension is not ordered, the harm that is likely to result to others if a suspension is ordered, the likelihood of the complainant's success on the merits of the complaint, and any other relevant factors as determined by the commission or the presiding officer.
- (1) The presiding officer may issue an order, for good cause, on such terms as may be reasonable to preserve the rights and protect the interests of the parties during the processing of the complaint, including requiring the complainant to provide reasonable security, assurances, or to take certain actions, as a condition for granting the requested suspension.
  - (2) A party may appeal a decision of a presiding officer granting or denying a request for a suspension, pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Orders Issued by the Commission).
- (j) **Oral argument.** If the facts are such that the commission may decide the matter without an evidentiary hearing on the merits, a party desiring oral argument shall comply with the procedures set forth in §22.262(d) of this title (relating to Commission Action After a Proposal for Decision). In its discretion, the commission may decide a case without oral argument if the argument would not significantly aid the commission in determining the legal and factual issues presented in the complaint.



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- (k) **Extension or shortening of time limits.** The time limits established by this section are intended to facilitate the expeditious resolution of complaints brought pursuant to this section.
- (1) The presiding officer may grant a request to extend or shorten the time periods established by this rule for good cause shown. Any request or motion to extend or shorten the schedule must be filed prior to the date on which any affected filing would otherwise be due. A request to modify the schedule shall include a representation of whether all other parties agree with the request, and a proposed schedule.
  - (2) For cases to be determined after the making of factual determinations or through commission ADR as provided for in subsection (n) of this section, the presiding officer shall issue a procedural schedule.
- (l) **Standard for review.** If the factual determinations supporting the conduct complained of have not been made in a manner that meets the procedural standards specified in this subsection, or if factual determinations necessary to the resolution of the matter have not been made, the commission will resolve any factual issues on a *de novo* basis. If the factual determinations supporting the conduct complained have been made in a manner that meets the procedural standards specified in this subsection, the commission will reverse a factual finding only if it is not supported by substantial evidence or is arbitrary and capricious. The procedural standards in this subsection require that facts be determined:
- (1) In a proceeding to which the parties have voluntarily agreed to participate; and
  - (2) By an impartial third party under circumstances that are consistent with the guarantees of due process inherent in the procedures described in the Texas Government Code Chapter 2001 (Administrative Procedure Act).
- (m) **Referral to the State Office of Administrative Hearings.** If resolution of a complaint does not require determination of any factual issues, the commission may decide the issues raised by the complaint on the basis of the complaint and the comments and responses. If factual determinations must be made to resolve a complaint brought under this section, and the parties do not agree to the making of all such determinations pursuant to a procedure described in subsection (n) of this section, the matter may be referred to the State Office of Administrative Hearings for the making of all necessary factual determinations and the preparation of a proposal for decision, including findings of fact and conclusions of law, unless the commission or a commissioner serves as the finder of facts.
- (n) **Availability of alternative dispute resolution.** Pursuant to Texas Government Code Chapter 2009 (Governmental Dispute Resolution Act), the commission shall make available to the parties alternative dispute resolution procedures described by Civil Practices and Remedies Code Chapter 154, as well as combinations of those procedures. The use of these procedures before the commission for complaints brought under this section shall be by agreement of the parties only.
- (o) **Granting of relief.** Where the commission finds merit in a complaint and that corrective action is required by ERCOT, the commission shall issue an order granting the relief the commission deems appropriate, including, but not limited to:
- (1) Entering an order suspending the conduct or implementation of the decision complained of;
  - (2) Ordering that appropriate protocol revisions be developed;
  - (3) Providing guidance to ERCOT for further action, including guidance on the development and implementation of protocol revisions; and
  - (4) Ordering ERCOT to promptly develop protocols revisions for commission approval.
- (p) **Notice of proceedings affecting ERCOT.** Within seven days of ERCOT receiving a pleading instituting a lawsuit against it concerning ERCOT's conduct as described in subsection (b) of this section, ERCOT shall

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notify the commission of the lawsuit by filing with the commission, in the commission project number designated by the commission for such filings, a copy of the pleading instituting the lawsuit. In addition, within seven days of receiving notice of a proceeding at the Federal Energy Regulatory Commission in which relief is sought against ERCOT, ERCOT shall notify the commission by filing with the commission, in the commission project number designated by the commission for such filings, a copy of the notice received by ERCOT.

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**§22.252. Procedures for Approval of ERCOT Fees and Rates.**

- (a) **Procedures.** Except to the extent modified in this section, the commission's procedural rules concerning contested cases will govern the conduct of hearings, discovery, burden of proof, and resolution of disputes relating to Electric Reliability Council of Texas (ERCOT) fees and rates.
- (b) **Interim approval.** ERCOT may request interim approval of a fee or rate, or a change in a fee or rate, based on a showing of good cause. A request for interim relief shall be filed no later than 60 days before the interim relief is proposed to take effect. A fee or rate charged on an interim basis shall be subject to refund if it exceeds the final fee or rate set by the commission, unless a refund would harm ERCOT's ability to efficiently perform its required functions.
- (c) **Filing package.** The fee and rate application shall be in substantial compliance with a fee-filing package approved by the commission.
- (d) **ERCOT notice.** Once a docket number has been assigned to the fee and rate application, ERCOT shall provide notice of the application to all entities subject to the fees and rates (as identified through the current information available to ERCOT) and to all parties that intervened in its most recent fee and rate application docket. This notice may be made by electronic mail. ERCOT will also post the notice and a copy of its fee and rate application on its web site. ERCOT shall file an affidavit to evidence that notice has been provided in accordance with this subsection. The notice shall contain the following information:
  - (1) the docket number of the fee and rate application;
  - (2) in dollars per megawatt hour, the amount of the current fee and rate, the amount of the proposed fee and rate increase or decrease, and the total fee and rate amount after the increase or decrease goes into effect;
  - (3) the effect the proposed fee and rate is expected to have on ERCOT's revenues;
  - (4) the effective date of the proposed fee and rate;
  - (5) a description of the entities affected by the proposed fee and rate;
  - (6) a brief explanation of the need for the proposed fee and rate;
  - (7) the deadline for intervention in the proceeding; and
  - (8) the following language: "Persons who wish to intervene in or comment in this proceeding should notify the Public Utility Commission of Texas within 30 days of the date of this notice. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. A request to intervene shall include a statement of position containing a concise statement of the requestor's position on the application, a concise statement of each question of fact, law, or policy that the requestor considers at issue and a concise statement of the requestor's position on each issue identified."
- (e) **Commission notice.** The commission shall publish notice of the fee and rate application in the *Texas Register*. This notice shall contain the same information required in subsection (d) of this section.
- (f) **Schedule.** If ERCOT seeks to change its fees and rates, it shall file an application not less than 120 days before the new rate and fee is to become effective. The deadline for parties to intervene in a fee and rate application proceeding shall be 30 days after the date notice is issued by ERCOT pursuant to subsection (d) of this section.
- (g) **Processing of the application.** If no motion to intervene is filed by the intervention deadline, and no statement of position objecting to the fee and rate application is filed by the commission staff, the fee and rate application shall be presented to the commission for consideration of approval.

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- (1) If a motion to intervene objecting to the fee and rate application is filed, the commission shall review the motion to determine whether it raises any disputed issues of fact, law or policy. If the motion does not raise factual issues, the commission may resolve any disputed issues of law or policy on the basis of briefing, if briefing is requested by the commission.
  - (2) If factual issues must be resolved, the matter shall be referred to the State Office of Administrative Hearings for the making of all necessary factual determinations and the preparation of a proposal for decision, including findings of fact and conclusions of law, unless the commission or a commissioner serves as the finder of facts.
  - (3) The commission shall endeavor to render a final decision approving or denying a fee application under this section within 120 days of the date of filing of the application, unless, for good cause, the commission or the administrative law judge extends the date for final decision. If the commission does not rule regarding a fee application before the date for final decision, the fee application shall be deemed denied. No fee or rate change shall be effective until approved by the commission.
- (h) **Review of fees based on a complaint.** On its own initiative, or upon complaint by an affected person, the commission may enter an order changing the fees and rates charged by ERCOT, after reasonable notice and hearing, if it finds that the existing fees and rates are unreasonable, are not competitively neutral, are insufficient to cover ERCOT's costs, or are in violation of law. The presiding officer shall establish the procedures for processing such complaints in accordance with the commission's procedural rules.

## Subchapter N. DECISION AND ORDERS.

### §22.261. Proposals for Decision.

- (a) **Requirement and Contents of Proposal for Decision.** In a contested case, if a majority of the commissioners has not heard the case or read the record, the commission may not issue a final order, if adverse to a party other than the Commission, until a proposal for decision is served on all parties. The proposal for decision shall be prepared by the presiding officer(s) who conducted the hearing or who have read the record. The proposal for decision shall include a proposed final order, a statement of the reasons for the proposed decision, and proposed findings of fact and conclusions of law in support of the proposed final order. Any party may file exceptions to the proposed decision in accordance with subsection (d) of this section. The presiding officer may supplement or amend a proposal for decision in response to the exceptions or replies submitted by the parties or upon the presiding officer's own motion. Making corrections or minor revisions of a proposal for decision is not considered issuance of an amended or supplemental proposal for decision.
- (b) **Procedures Regarding Proposed Orders.** If the presiding officer's recommendation is not adverse to any party, the recommendation may be made through a proposed order containing findings of fact and conclusions of law. The proposed order shall be served on all parties, and the presiding officer shall establish a deadline for submitting proposed corrections or clarifications.
- (c) **Findings and Conclusions.** The presiding officer may direct or authorize the parties to draft and submit proposed findings of fact and conclusions of law. The commission is not required to rule on findings of fact and conclusions of law that are not required or authorized.
- (d) **Exceptions and Replies.**
  - (1) **Who may file.** Any party may file exceptions to the Proposal for Decision within the time period specified by the presiding officer. If any party files exceptions, the opportunity shall be afforded to all parties to respond within a time period set by the presiding officer.
  - (2) **Presentation.** The presiding officer may require that issues be addressed in a specified order or according to a specified format. Proposed findings and conclusions may be submitted in conjunction with exceptions and replies. The evidence and law relied upon shall be stated with particularity, and any evidence or arguments relied upon shall be grouped under the exceptions or replies to which they relate.
  - (3) **Request for Extension.** A request for extension of time within which to file exceptions or replies shall be filed with the commission filing clerk and served on all parties. The presiding officer may allow additional time for good cause shown. If additional time is allowed for exceptions, reasonable additional time shall be allowed for replies.

## Subchapter N. DECISION AND ORDERS.

### §22.262. Commission Action After a Proposal for Decision.

- (a) **Commission Action.** The commission may change a finding of fact or conclusion of law made by the administrative law judge or vacate or modify an order issued by the administrative law judge only if the commission:
  - (1) determines that the administrative law judge:
    - (A) did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions; or
    - (B) issued a finding of fact that is not supported by a preponderance of the evidence; or
  - (2) determines that a commission policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.
- (b) **Reasons to Be in Writing.** The commission shall state in writing the specific reason and legal basis for its determination under subsection (a) of this section.
- (c) **Remand.** The commission may remand the proceeding for further consideration.
  - (1) The commission may direct that further consideration by an administrative law judge be accomplished with or without reopening the hearing and may limit the issues to be considered.
  - (2) If, on remand, additional evidence is admitted that results in a substantial revision of the proposed decision or the underlying facts, an amended or supplemental proposal for decision or proposed order shall be prepared. If an amended or supplemental proposal for decision is prepared, the provisions of §22.261(d) of this title (relating to Proposal for Decision) apply. Exceptions and replies shall be limited to discussions, proposals, and recommendations in the supplemental proposal for decision.
- (d) **Oral Argument Before the Commission.**
  - (1) Any party may request oral argument before the commission prior to the final disposition of any proceeding.
  - (2) Oral argument shall be allowed at the discretion of the commission. The commission may limit the scope and duration of oral argument. The party bearing the burden of proof has the right to open and close oral argument.
  - (3) A request for oral argument shall be made in a separate written pleading, filed with the commission's filing clerk. The request shall be filed no later than 3:00 p.m. on the seventh working day preceding the date upon which the commission is scheduled to consider the case.
  - (4) Upon the filing of a motion for oral argument, the Policy Development Division shall send separate ballots to each commissioner to determine whether the commission will hear oral argument at an open meeting. An affirmative vote by one commissioner is required to grant oral argument. Not more than two days before the commission is scheduled to consider the case, the parties may contact the Policy Development Division to determine whether a request for oral argument has been granted.
  - (5) The absence or denial of a request for oral argument shall not preclude the commissioners from asking questions of any party present at the open meeting.
- (e) **Commission Not Limited.** This section does not limit the commission in the conduct of its meetings to the specific types of action outlined in this section.

**Subchapter N. DECISION AND ORDERS.**

**§22.263. Final Orders.**

- (a) **Form and Content.**
  - (1) A final order of the commission shall be in writing and signed by a majority of the commissioners.
  - (2) A final order shall include findings of fact and conclusions of law separately stated and may incorporate findings of fact and conclusions of law proposed within a proposal for decision.
  - (3) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
  - (4) The final order shall comply with the requirements of §22.262(b) of this title (relating to Commission Action After a Proposal for Decision).
- (b) **Notice.** Parties shall be notified of the commission's final order pursuant to the requirements of APA.
- (c) **Effective Date of Order.** Unless otherwise stated, the date a final order is signed is the effective date of that order, and such date shall be stated therein.
- (d) **Reciprocity of Final Orders Between States.** After reviewing the facts and the issues presented, a final order may be adopted by the commission even though it is inconsistent with the commission's procedural or substantive rules provided that the final order, or the portion thereof that is inconsistent with commission rules, is a final order, or a part thereof, rendered by a regulatory agency of some state other than the State of Texas and provided further that the number of customers in Texas affected by the final order is no more than the lesser of either 1,000 customers or 10% of the total number of customers of the affected utility.

**Subchapter N. DECISION AND ORDERS.**

**§22.264. Rehearing.**

- (a) Motions for rehearing, replies thereto, and commission action on motions for rehearing shall be governed by APA. Only a party who has been granted intervenor status may file a motion for rehearing.
- (b) All motions for rehearing shall state the claimed error with specificity. If an ultimate finding of fact stated in statutory language is claimed to be in error, the motion for rehearing shall state all underlying or basic findings of fact claimed to be in error and shall cite specific evidence which is relied upon as support for the claim of error.
- (c) Upon the filing of a motion for rehearing, the Policy Development Division shall send separate ballots to each commissioner to determine whether they will consider the motion at an open meeting. An affirmative vote by one commissioner is required for consideration of the motion at an open meeting.



## Subchapter O. RULEMAKING.

### §22.281. Initiation of Rulemaking.

- (a) **Petition for Rulemaking.** Any interested person may petition the commission requesting the adoption of a new rule or the amendment of an existing rule.
  - (1) The petition shall be in writing and shall include a brief explanation of the rule, the reason(s) the new or amended rule should be adopted, the statutory authority for such a rule or amendment, and complete proposed text for the rule. The proposed text for the rule shall indicate by striking through the words, if any, to be deleted from the current rule and by underlining the words, if any, to be added to the current rule.
  - (2) Upon receipt of a petition for rulemaking, the commission shall submit a notice for publication in the "In Addition" section of the *Texas Register*. The notice shall include a summary of the petition, the name of the individual, organization or entity that submitted the petition, and notification that a copy of the petition will be available for review and copying in the commission's central records. Comments on the petition shall be due 21 days from the date of publication of the notice. Failure to publish a notice of a petition for rulemaking in the *Texas Register* shall not invalidate any commission action on the petition for rulemaking.
  - (3) Within 60 days after submission of a petition, the commission either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings.
- (b) **Commission Initiated Rulemaking.** The commission may initiate rulemaking proceedings on its own motion. Nothing in this section shall preclude the commission general counsel or commission staff from consideration or development of new rules or amendments to existing rules without express direction from the commission.

## Subchapter O. RULEMAKING.

### §22.282. Notice and Public Participation in Rulemaking Procedures.

- (a) **Initial Comments.** Prior to publishing a proposed rule or initiating a major amendment to an existing rule, the commission may solicit comments on the need for a rule and potential scope of the rule by publication of a notice of rulemaking project in the "In Addition" section of the Texas Register. A notice filed pursuant to this section shall contain a brief description and statement of the intended objective of the proposed rule and indicate if a draft of the proposed rule is available for review by interested persons. Unless otherwise prescribed by the commission, any comments concerning the rulemaking project shall be due within 30 days from the date of publication of the notice. The commission may hold workshops and/or public hearings on the rulemaking project.
- (b) **Notice.** The commission may initiate a rulemaking project by publishing notice of the proposed rule in accordance with APA, §2001.021 - 2001.037.
- (c) **Public Comments.** Prior to the adoption of any rule, the commission shall afford all interested persons reasonable opportunity to submit data, views, or arguments in writing. Written comments must be filed within 30 days of the date the proposed rule is published in the *Texas Register* unless the commission establishes a different date for submission of comments. The commission may also establish a schedule for reply comments if it determines that additional comments would be appropriate or helpful in reaching a decision on the proposed rule.
- (d) **Public Hearing.** The commission may schedule workshops or public hearings on the proposed rule. An opportunity for public hearing shall be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. The request for public hearing must be made no later than 30 days after the date the proposed rule is published in the *Texas Register*, unless the commission establishes a different date for requesting a public hearing.
- (e) **Staff Recommendation.** Staff's final recommendation shall be submitted to the commission and filed in central records at least seven days prior to the date on which the commission is scheduled to consider the matter, unless some other date is specified by the commission. Staff will notify all persons who have filed comments concerning the proposed rule of the filing of staff's final recommendation.
- (f) **Final Adoption.** Following consideration of comments, the commission will issue an order adopting, adopting as amended, or withdrawing the rule within six months after the date of publication of the proposed rule or the rule is automatically withdrawn.

## **Subchapter O. RULEMAKING.**

### **§22.283. Emergency Adoption.**

Notwithstanding any other provision of these rules, if the commission finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30-days notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The commission shall set forth the requisite finding in the preamble to the rule. An emergency rule adopted under the provisions of this section, and the commission's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register. All of the requirements of APA, §2001.024 apply to this section.

**Subchapter O. RULEMAKING.**

**§22.284. Informal Information Gathering.**

- (a) The commission, or the commission staff may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons concerning a contemplated rulemaking.
- (b) The commission may create committees of employees, non-employees, or both to advise it with respect to any contemplated rulemaking or other issues of interest to the commission, utilities, ratepayers, or other members of the public. Powers of these committees are advisory only.

