

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.
- (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

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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.