

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 If an application is authorized to be withdrawn, the presiding officer shall issue an order of dismissal without prejudice.