

The Public Utility Commission of Texas (commission) proposes amendments to various sections of the commission's Procedural Rules in Chapter 22, Subchapters A - O. Project Number 22870 is assigned to this rulemaking.

Amendments are proposed for: §22.1, Purpose and Scope; §22.2, Definitions; §22.22, Service on the Commission; §22.33, Tariff Filings; §22.35, Informal Disposition; §22.51, Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E, Proceedings; §22.52, Notice in Licensing Proceedings; §22.71, Filing of Pleadings, Documents, and Other Materials; §22.72, Formal Requisites of Pleadings and Documents to be Filed with the Commission; §22.75, Examination and Correction of Pleadings and Documents; §22.101, Representative Appearances; §22.102, Classification of Parties; §22.103, Standing to Intervene; §22.104, Motions to Intervene; §22.105, Alignment of Parties; §22.123, Appeal of an Interim Order; §22.126, Bonded Rates; §22.127, Certification of an Issue to the Commission; §22.143, Depositions; §22.161, Sanctions; §22.181, Dismissal of a Proceeding; §22.203, Order of Procedure; §22.225, Written Testimony and Accompanying Exhibits; §22.226, Exhibits; §22.241, Investigations; §22.242, Complaints; §22.243 Rate Change Proceedings; §22.244, Review of Municipal Rate Actions; §22.262, Commission Action After a Proposal for Decision; §22.264 Rehearing; and §22.281 Initiation of Rulemaking. Project Number 22870 has been assigned to this proceeding.

The proposed amendments are necessary to:

- (1) Remove references to the position of "general counsel" as was required prior to September 1, 1999 by the Public Utility Regulatory Act (PURA) §12.101(2). The statutory requirement for a general counsel was removed from the Public Utility Regulatory Act (PURA) by Acts 1999, 76th Legislature, chapter 405, §61(1), effective September 1, 1999. Any references to "general counsel" in the Procedural Rules as proposed now refer to the General Counsel who oversees the administrative functions of the agency, not the statutory functions as previously required by PURA;
- (2) Modify procedures relating to service on the commission;
- (3) Clarify procedures regarding informal disposition in uncontested proceedings;
- (4) Modify the number of copies needed for applications for certificates of operating authority and service provider certificates of operating authority, and establish the number of copies required for certification of retail electric providers and for registration of power generation companies, self-generators or aggregators. The number of copies required is proposed at seven copies to enable the Customer Protection Division (CPD) to also receive a copy for review so that they can timely file their recommendation. The forms for each of these applications will be modified accordingly;
- (5) Clarify procedures for receipt by the commission of confidential material;
- (6) Clarify procedures for changing an authorized representative and information regarding notification or service;

- (7) Modify procedures for late intervention to manage recurring late filings with the commission;
- (8) Establish procedures for motions for reconsideration of interim orders issued by the commission;
- (9) Clarify procedures for motions for rehearing;
- (10) Modify procedures so that an affirmative vote is needed by only one commissioner to add any motion for rehearing, motion for reconsideration, appeal, or request for oral argument to an open meeting agenda ballot; and
- (11) Clarify and correct references to other statutes, rules, and divisions within the commission and other minor non-substantive changes.

Tammy Cooper, Director, Docket Management, Policy Development Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Cooper has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing these sections will be clearer, more efficient rules of practice and procedure before the commission. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Cooper has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 22870.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.1. Purpose and Scope.

(a) (No change.)

(b) **Scope.**

(1) (No change.)

(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) (No change.)

§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) - (4) (No change.)

(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) - (13) (No change.)

(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) - (22) (No change.)

(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.
- (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.

§22.22. Service on the Commission.

- (a) The commission's General Counsel, or the General Counsel'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 General Counsel, 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 General Counsel, 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 General Counsel, simultaneous to completing legal service pursuant to the Texas Rules of Appellate Procedure.

§22.33. Tariff Filings.

- (a) - (d) (No change.)

(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) (No change.)

§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) (No change.)

(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.

§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) - (E) (No change.)

- (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's Customer Protection **Division** 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) - (3) (No 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) (No change.)

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

(A) - (E) (No change.)

(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's Customer Protection **Division** 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) (No change.)

(c) - (d) (No change.)

§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 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, once each week for two consecutive weeks beginning with the week after the application is filed with the commission. This notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project.

(A) The notice shall also include the following statement in the first paragraph:

"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 of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's (commission) Customer Protection **Division** 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 45 days after the date the application was filed with the commission) and a letter requesting intervention should be received by the commission by that date."

(B) - (D) (No change.)

(2) (No change.)

(3) Applicant shall, upon filing 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 would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 200 feet of the proposed facility.

(A) The notice must contain all information required in paragraph (1) of this subsection and contain the following statement in the first paragraph of the notice printed in bold-face type: "Your land may be directly affected in this proceeding. If the preferred route or one of the alternative routes requested under the certificate is approved by the Public Utility Commission of Texas, the utility will have the right to build a facility which may directly affect your land. This proceeding will not determine the value of your land or the value of an easement if one is needed by the utility to build the facility. If you have questions about this project, you should contact (name of utility contact) at (utility contact telephone number). If you wish to participate in this proceeding by becoming a party or to comment upon action sought, you should contact the Public Utility

Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's (commission) Customer Protection **Division** 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. If you wish to participate in this proceeding by becoming a party, the deadline for intervention in the proceeding is (date 45 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."

(B) - (E) (No change.)

(4) - (5) (No change.)

(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) - (B) (No change.)

(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's (commission) Customer Protection **Division** 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) - (3) (No change.)

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

(a) - (b) (No change.)

(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) - (2) (No change.)

(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 filing materials made confidential by law shall file them in an enclosed, 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 proceeding, and name of the submitting party, and be marked "CONFIDENTIAL & UNDER SEAL" in bold print at least one inch in size and include any other markings as required by the individual protective orders in each proceeding. Each page of the confidential material shall be marked "confidential".
- (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: one copy;
 - (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 will be delivered to the commission's Central Records. Confidential material 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) Material related to arbitrations. Central Records will route the one copy to the commission's Policy Development Division.

(B) Material related to contested cases transferred to SOAH and other docketed proceedings. Central Records will maintain one file copy, that is not accessible to the public or commission staff. Central Records will route the additional copy to the commission's Legal Division. Commission staff who have signed an agreement to abide by the protective order in the proceeding may view the copy of the confidential material maintained by the commission's Legal Division. The party who provides the confidential material will be responsible for delivering one copy of confidential materials not related to discovery to SOAH.

(C) Request for proposal for goods and/or services. Confidential material related to a request for proposal for goods and/or services will be delivered to the commission's General Counsel or the General Counsel's authorized representative.

(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 (relating to Formal Requisites of Pleadings and Documents to be

Filed with the Commission) 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 the commission filing clerk.** 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.
 - (1) On open meeting days, the commissioners and the Policy Development **Division** may file items related to the open meeting on behalf of the commissioners between the hours of 8:00 a.m. and 9:00 a.m. The commissioners and the Policy Development **Division** shall provide the filing clerk with an extra copy of all documents filed pursuant to this paragraph for public access.
 - (2) Central Records will open at 8:00 a.m. on open meeting days. With the exception of paragraph (1) 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.

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

- (a) - (c) (No change.)
- (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) - (j) (No change.)

§22.75. Examination and Correction of Pleadings and Documents.

(a) - (d) (No change.)

(e) **Additional requirements.** Additional requirements as set forth in §22.76 of this title (relating to Amended Pleadings) apply.

§22.101. Representative Appearances.

(a) (No change.)

(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.

§22.102. Classification of Parties.

(a) **Parties.** Parties to proceedings before the commission shall be classified into the following categories:

(1) - (3) (No change.)

(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**.

§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) - (c) (No change.)

§22.104. Motions to Intervene.

(a) - (c) (No change.)

(d) **Late intervention.**

(1) - (4) (No change.)

(5) Late intervention after Proposal for Decision (PFD) or Proposed Order (PO) issued.

(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.

(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, a commissioner has not, by agenda ballot, placed the motion on the agenda of an open meeting, the motion is deemed denied. If a commissioner has balloted in favor of considering the motion, it shall be placed on 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 meeting, unless extended by action of the commission.

§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.

§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. 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 or improper.
- (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 that a **commissioner** by individual ballot has added the appeal to an open meeting agenda.

(7) **Denial or granting of appeal.**

(A) If after ten days of the filing of an appeal, a commissioner has not, by agenda ballot, placed the appeal on the agenda of an open meeting, the appeal is deemed denied.

(B) If a commissioner has balloted in favor of considering the appeal, it shall be placed on 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 or application for rehearing prior to issuance of a proposal for decision.

- (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 that a commissioner by individual ballot has added the motion to an open meeting agenda.
- (6) **Denial or granting of motion.**

- (A) If after five working days of the filing of a motion a commissioner has not, by agenda ballot, placed the motion on the agenda for an open meeting, the motion is deemed denied.
- (B) If a commissioner has balloted in favor of considering the motion, it shall be placed on 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.

§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**).

§22.127. Certification of an Issue to the Commission.

(a) - (b) (No change.)

(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) (No change.)

§22.143. Depositions.

(a) - (b) (No change.)

- (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) (No change.)

§22.161. Sanctions.

- (a) - (d) (No change.)
- (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 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.

§22.181. Dismissal of a Proceeding.

(a) **Motions for dismissal.**

(1) - (3) (No change.)

(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) (No change.)

§22.203. Order of Procedure.

(a) (No change.)

(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) - (7) (No change.)

§22.225. Written Testimony and Accompanying Exhibits.

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

(1) - (5) (No change.)

(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) (No change.)

(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) (No change.)

(7) - (9) (No change.)

(b) - (c) (No change.)

(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) (No change.)

§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) - (d) (No change.)

§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) - (c) (No change.)

§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) - (6) (No change.)

(b) (No change.)

(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 Customer Protection **Division** 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) - (D) (No change.)

(2) For any complaint that is not listed in paragraph (1) of this subsection, the complainant may submit to the Customer Protection **Division** 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 **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) (No change.)
 - (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) - (F) (No change.)

(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) - (I) (No change.)

(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) (No change.)

(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.

§22.243. Rate Change Proceedings.

- (a) (No change.)
- (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) (No change.)

§22.244. Review of Municipal Rate Actions.

- (a) - (c) (No change.)

(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) - (5) (No change.)

(e) (No change.)

§22.262. Commission Action After a Proposal for Decision.

(a) - (c) (No change.)

(d) **Oral Argument Before the Commission.**

(1) - (3) (No change.)

(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) (No change.)

(e) (No change.)

§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) (No change.)

(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.

§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) (No change.)

(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) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 24th DAY OF OCTOBER 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**