

PROJECT NO. 45116

PROJECT TO AMEND CHAPTER 22 -	§	PUBLIC UTILITY COMMISSION
SERVICE PROCEDURE UPDATES;	§	
PHASE II OF WATER/SEWER	§	OF TEXAS
UTILITIES; FILING TECHNOLOGY	§	
UPDATES; APA UPDATES; LIMITED	§	
PROCEDURAL PRACTICE UPDATES;	§	
COMMISSION ORGANIZATION	§	
UPDATES	§	

PROPOSAL FOR PUBLICATION OF NEW §22.106 AND AMENDMENTS TO §22.2, §22.31, §22.32, §22.33, §22.52, §22.71, §22.72, §22.73, §22.74, §22.75, §22.76, §22.78, §22.101, §22.103, §22.104, §22.125, §22.126, §22.127, §22.141, §22.183, §22.225, §22.226, §22.242, §22.243, §22.244, §22.246, §22.263, AND §22.264 AS APPROVED AT THE JUNE 9, 2016 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes new §22.106, relating to Statement of No Access, and amendments to §22.2, relating to Definitions; §22.31, relating to Classification in General; §22.32, relating to Administrative Review; §22.33, relating to Tariff Filings; §22.52, relating to Notice in Licensing Proceedings; §22.71, relating to Filing of Pleadings, Documents, and Other Materials; §22.72, relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission; §22.73, relating to General Requirements for Applications; §22.74, relating to Service of Pleadings and Documents; §22.75, relating to Examination and Correction of Pleadings and Documents; §22.76, relating to Amended Pleadings; §22.78, relating to Responsive Pleadings and Emergency Action; §22.101, relating to Representative Appearances; §22.103, relating to Standing to Intervene; §22.104, relating to Motions to Intervene; §22.125, relating to Interim Relief; §22.126, relating to Bonded Rates; §22.127, relating to Certification of an Issue to the Commission; §22.141, relating to Forms and Scope of Discovery; §22.183, relating to Disposition by Default; §22.225, relating to Written Testimony and Accompanying Exhibits; §22.226, relating to Exhibits; §22.242, relating to

Complaints; §22.243, relating to Rate Change Proceedings; §22.244, relating to Review of Municipal Rate Actions; §22.246, relating to Administrative Penalties; §22.263, relating to Final Orders; and §22.264, relating to Rehearing. The proposed new rule and amendments will update the commission's service procedures for all industries regulated by the commission; further address the application of the commission's procedural rules to proceedings involving water and sewer utilities; update the commission's filing procedures to streamline filing of routine reports, clarify filing requirements for maps and digital mapping data, and make other minor changes to the commission's filing practices; address recent changes to the Administrative Procedure Act (APA), Texas Government Code Chapter 2001; make limited updates to the commission's procedural practices for all industries regulated by the commission; and reflect changes to the commission's rules and internal organizational structure. Project Number 45116 is assigned to this proceeding.

Tammy Benter, Division Director of the Water Utility Regulation 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 section.

Ms. Benter has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of enforcing the sections will be compliance with the APA, modernized service procedures, clearer applicability of the commission's procedural rules to water and sewer utilities, a simplified filing process for reports, clearer procedural guidelines for filing maps and digital mapping data, improvements to the commission's filing procedures, and streamlined commission procedural practices. There will be no adverse economic

effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Benter 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 the APA, Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, August 3, 2016. The request for a public hearing must be received by Monday, July 25, 2016.

Comments on the proposed new section and amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by 3:00 PM on Monday, July 25, 2016. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by 3:00 PM on Monday, August 8, 2016. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt and amend the identified sections. All comments should refer to Project Number 45116.

The new section and amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2015) (PURA) and under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provide 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 and TWC §13.041(b).

§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)-(3) (No change.)

(4) **Affected person** -- For a matter involving an entity that provides electric or telecommunications service, the~~The~~ definition of affected person is that definition given in PURA~~the Public Utility Regulatory Act~~, §11.003(1). For a matter involving an entity that provides water or sewer service, the definition of affected person is that definition given in TWC §13.002(1).

(5)-(26) (No change.)

(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. For water and sewer utilities, a rate filing package filed under TWC §13.187 is a major rate proceeding.

(28)-(38) (No change.)

(39) **PWS -- Public Water System.**

~~(40)~~~~(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.

~~(41)~~~~(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.

~~(42)~~ **Retail Public Utility** -- Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

~~(43)~~~~(41)~~ **Rulemaking** -- A proceeding pursuant to APA, Texas Government Code, Chapter 2001, Subchapter B conducted to adopt, amend, or repeal a commission rule.

~~(44)~~~~(42)~~ **SOAH** -- The State Office of Administrative Hearings.

~~(45)~~ **TCEQ** -- The Texas Commission on Environmental Quality.

~~(46)~~ **TWC** -- The Texas Water Code, as it may be amended from time to time.

~~(47)~~~~(43)~~ **Unprotested case** -- A contested case in which a hearing is not requested~~necessary~~.

~~(48)~~ **WQ** -- Water Quality discharge permit.

~~(49)~~~~(44)~~ **Working day** -- A day on which the commission is open for the conduct of business.

§22.31. Classification in General.

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

(d) **Control Number Assignment.** A control number will be assigned to a docket only at the time of filing an application unless otherwise required by rule or on approval of the director of the Commission Advising and Docket Management Division or the director's designee.

(e) **Closing Unused Control Numbers.** Any control number assigned to a docket before the filing of an application will be closed if the application is not filed within 25 days of assignment of the control number unless otherwise directed by the director of the Commission Advising and Docket Management Division or the director's designee.

§22.32. Administrative Review.

(a) (No change.)

(b) TWC applications without notice requirements. An administrative law judge, without a hearing or action by the commission, may approve an application filed under the TWC that does not require a notice or hearing.

(c)(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.

(d)(e) Finality of order. At the request of any commissioner or the administrative law judge, the order shall be placed on the agenda to be considered in open meeting. On such request, the Commission Advising and Docket Management Division shall provide notice to the parties that the order will be considered by the commission at open meeting and the open meeting at which the order will be considered. 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. ~~The~~ 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 20 days after issuance by the administrative

law judge unless before the 20th day the administrative law judge or a commissioner has requested that the order be considered by the commission at open meeting, in which case the order may become final only after action by the commission in open meeting.

~~(e)(d)~~ **Notice requirements.** Nothing in this section shall be construed to alter any notice requirement imposed on any proceeding by statute, rule, or order.

~~(f)(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.

~~(g)(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.

§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," or "water or sewer retail public utility filings (other than a municipality, district, or county)." 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. Filings made by a water or sewer retail public utility (other than a municipality, district, or county) shall be those applications filed pursuant to §24.21 of this title (relating to Form and Filing of Tariffs). This section shall apply unless it is inconsistent with Chapters 24, 25, or 26 of this title, or PURA or the TWC.
- (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, or water or sewer utility tariff filing would change the revenues received by the utility for an existing service;
 - (2) if an electric, ~~or~~ regular telephone, or water or sewer utility tariff filing would allow the utility to begin charging for a service previously available but for which there was not a separate charge;
 - (3) (No change.)
 - (4) if an electric, ~~or~~ regular telephone, or water or sewer utility tariff filing would increase a customer's bill even though the rate for a particular service is not being changed;
 - (5)-(6) (No change.)
- (c) **Effective date.**
- (1) 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, TWC §13.187, or TWC §13.1871 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.
 - (2) For Class A water or sewer utilities, the presiding officer may suspend the operation of the water or sewer tariff filing for 150 days beyond the effective date, or, with the agreement of the applicant, to a later date. For Class B water or sewer utilities and Class C water or

sewer utilities filing as Class B utilities pursuant to TWC §13.1872(c)(2), the presiding officer may suspend the operation of the water or sewer tariff filing for 265 days beyond the effective date, or with the agreement of the applicant, to a later date. For Class C water or sewer utilities, the effective date shall be established in the commission's order and shall be at least 30 days after the notice to ratepayers.

(d)-(f) (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 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. The notice shall describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(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 ~~PURA~~~~the Public Utility Regulatory Act~~ §39.203(e)) and that a letter requesting intervention should be received by the commission by that date.

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

(2)-(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) If the owner's land is directly affected by the approved route, the notice shall consist of a copy of the final order.

(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.

(7) (No change.)

(b) (No change.)

§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) (No change.)
 - (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)-(5) (No change.)
- (b) **File with the commission filing clerk.** Except as provided in §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission), all ~~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)-(11) (No change.)
 - (12) reports filed pursuant to PURA, the TWC,~~the Public Utility Regulatory Act~~ or the commission's Substantive Rules: four copies;
 - (13) comments to proposed rulemakings: 16 copies; and
 - (14) (No change.)

(d) **Confidential material:**

- (1) A party providing materials designated as confidential shall deliver them to Central Records in an enclosed, sealed and labeled envelope ("confidential envelope"). The confidential envelope shall not include any non-confidential materials unless directly related to and essential for clarity of the confidential material. Each copy of confidential material shall be provided in a separate sealed and labeled envelope. Parties shall notify the Central Records' filing clerk at the time of~~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) - (D) (No change.)

(2) (No change.)

(3) Unless otherwise provided by this chapter or order of the presiding officer, all confidential material shall be delivered to Central Records. All commission employees receiving confidential materials through Central Records, or otherwise handling or routing confidential materials for any purpose, shall sign an agreement not to open any sealed containers marked pursuant to paragraph (1) of this subsection. Confidential materials shall not be filed with the commission electronically unless specific arrangements are made and agreed to by the parties involved on a case-by-case basis.

(A) Materials related to arbitrations. Central Records will maintain one file copy that is not accessible to the public or commission staff and one copy that may be viewed by parties who have signed an agreement to abide by the protective order in the proceeding~~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.~~ The party who provides the confidential material must deliver one copy of confidential materials not related to discovery to the commission's arbitrators assigned to the matter.

- (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 and one copy that may be viewed by parties who have signed an agreement to abide by the protective order in the proceeding~~Central Records will route the additional copy to the commission's Legal Division.~~ Parties~~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 Central Records~~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 Agency~~General~~ Counsel or the Agency~~General~~ Counsel's authorized representative.
- (D) Notwithstanding subparagraphs (A)-(C) of this paragraph, commission employees in the Commission Advising and Docket Management Division and in the commissioners' offices shall sign one confidentiality and non-disclosure agreement applicable to all proceedings. Employees in the

Commission Advising and Docket Management Division that are assigned to a matter and employees in the commissioners' offices may view and check out confidential material for that matter maintained by the Central Records Division and may disclose such information to other employees in the Commission Advising and Docket Management Division that are assigned to the matter and to employees in the commissioners' offices.

(4)-(6) (No change.)

- (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. Reports that are exempt from being filed with the commission filing clerk under §22.72 of this title shall be deemed received when a record containing the data from the report is created in the system used by the commission to store the report. 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 change.)

- (g) **Office hours of Central Records and the commission filing clerk.**

(4) —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 and open meeting days. 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, Central Records will open at 8:00 a.m., and the commissioners and the Commission Advising and Docket Management 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. No other filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m. The commissioners and the Commission Advising and Docket Management 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 (e) 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.~~
- (h)(i) **Filing deadline.** All documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.

~~(i)~~ **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) **Applicability.** This section applies to all pleadings as defined in §22.2 of this title (relating to Definitions) and the following documents:

(1) (No change.)

(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) (No change.)

(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) (No change.)

(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 §24.73 of this title (relating to Water and Sewer Utilities Annual Reports), §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); and

(D) Reports that are submitted directly to the commission using the commission's website, pursuant to subsection (j) of this section.

(5) (No change.)

(b)-(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 and Style 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 Association¹ (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. In addition, every pleading and document shall include an electronic mail address, unless the party or the party's authorized representative has filed a statement under §22.106 of this title (relating to Statement of No Access). If the person signing the pleading or document is an attorney licensed in Texas, the attorney's state ~~State~~-bar number shall be provided.
- (f) (No change.)
- (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)-(3) (No change.)

- (4) A cover letter may be attached to any document filed with the commission, and must be included with tariff-sheet filings. 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) (No change.)
- (6) If the document contains a barcode, the barcode shall be covered or redacted.
- (7) If the document contains personally identifiable information such as social security numbers or bank account numbers, either the information must be covered or redacted, or the document shall be filed confidentially pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other materials).
- (h) **Electronic filing standards.** In addition to the hard copy filings required by subsection (g) of this section, anyAny document may be filed, and all documents containing more than ten pages shall be filed, electronically in accordance with the requirements of paragraphs (1)-(3)~~(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 ~~website~~.~~World Wide Web site~~; Alternatively, electronic filings may be registered by submission of a physical medium that is acceptable to the commission, is prepared in accordance with submission standards available in the commission's central records office or on the commission's website, and contains the relevant electronic documents. The commission

~~will maintain a list of acceptable physical media on its website 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) (No change.)

~~(2) Oversized documents shall not be filed in electronic media, but shall be filed as referenced attachments.~~

~~(2)(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 number(s)~~numbers~~ for each major section and the 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.~~

~~(3)(7)~~ Any information submitted under claim of confidentiality shall~~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.~~

~~(i)(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 shall be made using the native file format used to create and edit the file, unless the native file format is not on the current list of preferred file formats maintained by the commission pursuant to paragraph (1) of this subsection. Microsoft Excel spreadsheets shall have active links and formulas that were used to create and manipulate the data in the spreadsheet. An application that fails to include the native file filings is materially deficient.

~~(3)(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.

(j) **Electronic reports.** The commission may allow reports to be submitted on the commission's website.

(1) If a report is submitted on the commission's website pursuant to this subsection, it is exempt from §22.71(b) of this title and therefore does not have to be filed with the commission's filing clerk.

(2) The commission will maintain a list of reports that may be submitted on the commission's website pursuant to this subsection. This list will be available on the commission's website.

(3) A report submitted pursuant to this subsection shall be formatted and submitted in accordance with the standards and procedures applicable to that report, as listed on the commission's website.

(k) Map filing standards.

(1) If a hard copy of a map is filed in response to a requirement contained in Chapter 24 of this title, it shall be filed in its original size. It shall not be reduced or enlarged.

(2) If digital mapping data is filed, it shall be filed using an industry standard file format acceptable to the commission containing feature class subcomponents of a geodatabase and capable of being manipulated by commission mapping staff. The commission will maintain a list of acceptable formats on its website.

(3) Digital mapping data shall be filed electronically pursuant to subsection (h) of this section and shall be submitted on a physical medium capable of holding digital data and acceptable to the commission. The commission will maintain a list of acceptable media on its website. The physical medium described in this paragraph shall contain digital mapping data that conforms with the requirements of paragraph (2) of this subsection and graphic versions of any hard copy maps filed pursuant to paragraph (1) of this subsection.

(4) Copies of physical maps and physical media containing digital mapping data shall be filed in conformance with §22.71(c) of this title.

§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)-(5) (No change.)

(6) any other matter required by statute or rule; ~~and~~

(7) a certificate of service; and

(8) the name of a person upon whom service may be had and, unless such person has filed a statement under §22.106 of this title (relating to Statement of No Access), an electronic mail address at which the person can be served.

§22.74. Service of Pleadings and Documents.

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

(c) **Alternative methods of service.** On motion of a party or the presiding officer's own motion, the presiding officer may require service by electronic mail or service by filing with or without notice, or a combination of service by either or both of those methods and any method specified in subsection (b) of this section. On joint or separate motion of all parties to a proceeding, the presiding officer shall require service by electronic mail or service by notice of filing.

(1) If a person has filed a statement of no access under §22.106 of this title (relating to Statement of No Access), the presiding officer shall require service on such person(s) by a method specified in subsection (b) of this section.

(2) A party or representative of a party that has filed a statement of no access but that is required by §22.106(b) of this title to subsequently provide an electronic mail address will thereafter be subject to service by an alternative method if the presiding officer has required service by an alternative method.

(3) Upon motion and for good cause shown, the presiding officer may require service by a method specified in subsection (b) of this section for any party in a proceeding.

(4) Service by electronic mail shall be complete upon sending an electronic mail message with the pleading or document attached to the message to the electronic mail address provided by the party being served.

(5) Service by filing with notice shall be complete upon sending an electronic mail message that contains a link to the electronic copy of the pleading or document that is accessible through the interchange on the commission's website to the electronic mail address provided by the party being served.

(6) Service by filing without notice shall be complete upon filing with the Central Records Division. If this method of service is chosen, the presiding officer shall encourage parties to sign up with the commission's Filings Notification System on its website to receive automatic notifications of filings in the docket.

(d)(e) 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.

(e)(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(s) ~~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.

§22.75. Examination and Correction of Pleadings and Documents.

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

(d) **Notice of material deficiencies in applications for certificates of convenience and necessity for electric transmission lines.**

- (1) Motions to find an application for certificate of convenience and necessity for electric 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 electric 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 electric 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) (No change.)
- (4) For an application for certificate of convenience and necessity filed pursuant to ~~PURAPublic 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) (No change.)

§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)-(4) (No change.)

(b) (No change.)

§22.78. Responsive Pleadings and Emergency Action.

- (a) (No change.)
- (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, or for a complaint filed pursuant to TWC §13.004 (relating to Jurisdiction of Utility Commission Over Certain Water Supply or Sewer Service Corporations).
- (c)-(d) (No change.)

§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, and, unless the authorized representative has filed a statement under §22.106 of this title (relating to Statement of No Access), an electronic mail address.
- (c)-(d) (No change.)

§22.103. Standing to Intervene.

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

(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 D of Chapter 21 of this title~~Subchapter P of this chapter~~ (relating to Dispute Resolution).

(d) By requesting to intervene in a proceeding, a person agrees to accept delivery by electronic mail from the commission of any motions for rehearing and replies to motions for rehearing, unless he or she has filed a statement under §22.106 of this title (relating to Statement of No Access).

§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.

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 Commission Advising and Docket Management~~Policy Development~~ Division shall send separate ballots to each commissioner to determine whether the motion to intervene will be considered at an open meeting. An affirmative vote by one commissioner is required for consideration of a motion to intervene at an open meeting. The Commission Advising and Docket Management~~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) (No change.)

§22.106. Statement of No Access.

(a) Statement of no access. If a person or representative of a person has no access to the internet or to electronic mail, his or her motion to intervene shall include a signed statement that:

(1) he or she has no access to the internet or to electronic mail; and

(2) if circumstances change such that the person or representative gains access to the internet or to electronic mail, he or she agrees to:

(A) promptly notify the commission in writing;

(B) provide the commission with his or her electronic mail address; and

(C) become subject to the commission rules governing service by electronic mail for those who have not provided a statement of no access.

(b) Subsequent access. If a person who has provided the commission with a statement of no access pursuant to subsection (a) of this section subsequently obtains access to the internet or to electronic mail, he or she must provide an electronic mail address to the commission and will become subject to the commission rules governing service by electronic mail for those who have not provided a statement of no access.

§22.125. Interim Relief.

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

(d) **Standard and burden of proof.** ~~In 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) (No change.)

§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 or pursuant to TWC §13.187 or §13.1871 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 Commission Advising and Docket Management~~Policy Development~~ Division as to sufficiency based on the commission staff's review of the utility's application. Any decision by the Commission Advising and Docket Management~~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 Commission Advising and Docket Management~~Policy Development~~ Division. The Commission Advising and Docket Management~~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.)

§22.141. 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, maps, electronic mail, audioelectronic or videovideotape 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)-(c) (No change.)

§22.183. Disposition by Default.

(a) **Default.** A default occurs when a party who does not have the burden of proof fails to appear for a hearing or request a hearing within 30 days after service of notice of an opportunity for a hearing.

(b)-(e) (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 rate proceeding~~Public Utility Regulatory Act, Chapter 36, Subchapter C or E, or Chapter 53, Subchapter C or E~~ shall be established as set out in this subsection.

(A)-(C) (No change.)

(7) For electric and telecommunication rate proceedings,~~the~~The presiding officer shall establish a pre-filing schedule for PURA~~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) For all water and sewer matters filed pursuant to TWC Chapters 12 or 13, except for a major rate proceeding, the presiding officer shall establish a pre-filing schedule. 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.

(9)~~(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.

~~(10)~~(9) The times for pre-filing set out in this section may be modified upon a showing of good cause.

~~(11)~~(40) 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 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)-(e) (No change.)

§22.226. Exhibits.

- (a) **Form.** Exhibits, other than maps, 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.)

§22.242. 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 person under the jurisdiction of the commission~~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 a person under the jurisdiction of the commission~~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)-(B) (No change.)

- (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;
- (E) the complaint is filed by a person alleging that a water or sewer utility has abandoned the service of the utility; or
- (F) the complaint is filed by a person alleging that a wholesale water or sewer provider has discontinued, reduced, or impaired its wholesale water or sewer service to its customers for reasons other than those specified in §24.88 of this title (relating to Discontinuance of Service).

(2) (No change.)

(d) (No change.)

(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, water, or sewer utility to a city.** If a person receives electric, water, or sewer utility service or has applied to receive electric, water, or sewer utility service within the limits of a city that has original jurisdiction over the electric, water, or sewer utility providing service or requested to provide service, the person must present any complaint concerning the

electric, water, or sewer utility to the city before presenting the complaint to the commission.

(A)-(B) (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)-(B) (No change.)

(C) the address, telephone number, and facsimile transmission number, if available, and, unless the person has filed a statement under §22.106 of this title (relating to Statement of No Access), the electronic mail address of the complainant or the complainant's representative;

(D) the name of the person under the jurisdiction of the commission~~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, water, or sewer 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, water, or sewer utility within the limits of a city, a description of any complaint proceedings conducted by the city, including the outcome of those proceedings;

(G)-(I) (No change.)

(f)-(g) (No change.)

(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 a person under the jurisdiction of the commission~~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 person under the jurisdiction of the commission~~electric utility or telecommunications utility~~ or other person to 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 and a list of the municipalities that have surrendered to the commission original jurisdiction over the rates charged by a utility for retail water or sewer service within the corporate boundaries of the municipality.

§22.243. Electric or Telecommunication 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 PURA~~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 PURA~~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 ~~is~~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 Electric Rate Actions.

(a) **Contents of petitions.** In addition to any information required by statute, petitions for review of municipal rate actions filed pursuant to PURA~~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)-(2) (No change.)

(b)-(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 Commission Advising and Docket Management~~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 Commission Advising and Docket Management~~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).

§22.246. Administrative Penalties.

- (a) (No change.)
- (b) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:
- (1)-(4) (No change.)
- (5) **Violation** -- Any activity or conduct prohibited by PURA, the TWC~~the Public Utility Regulatory Act (PURA)~~, commission rule, or commission order.
- (6) (No change.)
- (c) **Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.**
- (1)-(3) (No change.)
- (d) **Amount of administrative penalty for violations of the TWC or a rule or order adopted under Chapter 13 of the TWC.**
- (1) Each day a violation continues may be considered a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.
- (2) The administrative penalty for each separate violation may be in an amount not to exceed \$5,000 per day.
- (3) The amount of the penalty shall be based on:

- (A) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;
- (B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
- (C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;
- (D) any economic benefit gained through the violations;
- (E) the amount necessary to deter future violations; and
- (F) any other matters that justice requires.

~~(e)(4)~~ **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.

~~(f)(e)~~ **Report of violation or continuing violation.** If, based on the investigation undertaken pursuant to subsection ~~(e)(4)~~ 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) (No change.)

(2) **Notice of report.**

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

(B) For violations of the TWC or a rule or order adopted under Chapter 13 of the TWC, within ten 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 alleged to have committed the violation or continuing violation which is the subject of the report.

(C) The notice must include:

(i)~~(A)~~ a brief summary of the alleged violation or continuing violation;

(ii)~~(B)~~ a statement of the amount of the recommended administrative penalty;

(iii)~~(C)~~ a statement recommending disgorgement of excess revenue, if applicable, pursuant to §25.503 of this title;

(iv)~~(D)~~ 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 administrative penalty, or both the occurrence of the violation or continuing violation and the amount of the administrative penalty;

(v)~~(E)~~ a copy of the report issued to the commission pursuant to this subsection; and

(vi)~~(F)~~ a copy of this section, §22.246 of this title (relating to Administrative Penalties).

~~(g)(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 Chapter 13 of the TWC, 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 ~~(f)(2)(e)(2)~~ of this section, the person against whom the administrative penalty or disgorgement 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)-(D) (No change.)
- (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 ~~(i)(h)~~ of this section.

- (2) **Payment of administrative penalty and/or disgorged excess revenue.** Within ~~2030~~ days after the date the person receives the notice set out in subsection ~~(f)(2)(e)(2)~~ of this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged 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 administrative penalty and, if applicable, recommended disgorged excess revenue.
- (3) **Request for hearing.** Not later than the 20th day after the date the person receives the notice set out in subsection ~~(f)(2)(e)(2)~~ of this section, the person may submit to the executive director a written request for a hearing on any or all of the following:
- (A)-(C) (No change.)

~~(h)(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 administrative penalty, disgorged excess revenue, if applicable, 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.

(1)-(2) (No change.)

~~(i)(h)~~ **Hearing.** If a person requests a hearing under subsection ~~(g)(3)(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 ~~(f)(2)(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). For violations of the TWC or a rule or order adopted under Chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order shall assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing or the executive director sets a hearing, the case shall then proceed as set forth in paragraphs (1)-(5) of this subsection.

(1)-(2) (No change.)

(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) (No change.)

(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; or of Chapter 13 of the TWC;~~ and

(C) (No change.)

(4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) (No change.)

(B) if applicable, determine that a violation occurred but that, pursuant to subsection ~~(g)(1)(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 administrative penalty will be imposed; or

(C) (No change.)

(5) (No change.)

~~(j)(i)~~ **Parties to a proceeding.** The parties to a proceeding under Subchapter A of Chapter 15 of PURA relating to administrative penalties or disgorgement of excess revenue shall be limited to the person who is alleged to have committed the violation or continuing violation and the commission, including the independent market monitor. This does not apply to a subsequent proceeding under subsection ~~(k)(i)~~ of this section.

~~(k)(i)~~ **Distribution of Disgorged Excess Revenues.** Disgorged excess revenues shall be remitted to an independent organization, as defined in PURA §39.151. The independent organization shall distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred to be used to reduce costs or fees incurred by retail electric customers. The load of any market participants that are no longer active at the time of the distribution shall be removed prior to calculating the load proportions of the affected wholesale electric market participants that are still active. However, if the commission determines other wholesale electric market participants are affected or a different distribution method is appropriate, the

commission may direct commission staff to open a subsequent proceeding to address those issues.

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

§22.263. Final Orders.

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

(d) Date That an Order is Signed. An order is signed on the date shown on the order. If a sworn motion filed under APA §2001.142(c) is granted, with or without commission action, then, regardless of the date shown on the order, the date that the commission's order is considered to be signed shall be the date specified in that sworn motion as the date that the movant received the order or obtained actual knowledge of the order. If more than one sworn motion is granted, then the date that the commission's order is considered to be signed is the latest date specified in any such granted motions.

(e)(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.

§22.264. Rehearing.

- (a) Motions for rehearing, replies thereto, and commission action on motions for rehearing shall be governed by APA. Only a party to a proceeding before the commission~~who has been granted intervenor status~~ may file a motion for rehearing.
- (b) (No change.)
- (c) A motion for rehearing or a reply to a motion for rehearing is untimely if it is not filed by the deadlines specified in APA §2001.146 or, if the commission extends the time to file such motion or reply or approves a time agreed to by the parties, the date specified in the order of the commission extending time or approving the time.
- (d) A motion by a party to extend time related to a motion for rehearing must be filed no less than ten days before the end of the time period that the party seeks to extend or it is untimely. Such motion must state with specificity the reasons the extension is justified.
- (e)(e) Upon the filing of a timely motion for rehearing or a timely motion to extend time, the Commission Advising and Docket Management~~Policy Development~~ Division shall send separate ballots to each commissioner to determine whether they will consider the motion at an open meeting. Untimely motions shall not be balloted. An affirmative vote by one commissioner is required for consideration of the motion for rehearing or a motion to extend time at an open meeting. If no commissioner votes to add a timely motion to extend

time to an open meeting for consideration, the motion is overruled ten days after the motion is filed.

(f) If the commission extends time to act on a motion for rehearing, the Commission Advising and Docket Management Division shall send separate ballots to each commissioner to determine whether they will consider the motion for rehearing at a subsequent open meeting. An affirmative vote by one commissioner is required to place the motion for rehearing on an open meeting agenda.

(g) A party that files a motion for rehearing or a reply to a motion for rehearing shall deliver a copy of the motion or reply to every other party in the case.

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

**ISSUED IN AUSTIN, TEXAS ON THE 9th DAY OF JUNE 2016 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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