

PROJECT NO. 46199

**RULEMAKING TO AMEND 16 TEXAS § PUBLIC UTILITY COMMISSION
ADMINISTRATIVE CODE §§ 22.181 §
AND 22.182 § OF TEXAS**

**PROPOSAL FOR PUBLICATION
OF REPEAL OF §22.181, NEW §22.181 AND AMENDMENT TO §22.182
AS APPROVED AT THE SEPTEMBER 8, 2016 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes the repeal of §22.181, relating to Dismissal of a Proceeding, new §22.181, relating to Dismissal of a Proceeding, and amendment to §22.182, relating to Summary Decision. The proposed repeal, new, and amended sections will clarify the procedures that apply to motions to dismiss and motions for summary decision. Project Number 46199 is assigned to this proceeding.

Stephen Journey, Director of the Commission Advising and Docket Management 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.

Mr. Journey 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 the sections will be clarified procedures for motions to dismiss and motions for summary decision. 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.

Mr. Journeay 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 (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, 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 October 19, 2016. The request for a public hearing must be received by October 14, 2016.

Comments on the proposed 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 October 14, 2016. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rules. 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 46199.

The repealed, new, and amended sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2016) (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: PURA §14.002 and §14.052.

§22.181. Dismissal of a Proceeding. (REPEALED)**§22.181. Dismissal of a Proceeding.**

- (a) **Dismissal of a proceeding.** Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding for any reason specified in this section.
- (b) **Dismissal of issues within a proceeding.** Upon the motion of the presiding officer or the motion of any party, the presiding officer may dismiss or may recommend that the commission dismiss, with or without prejudice, one or more issues within a proceeding for any reason specified in this section.
- (c) **Dismissal without hearing.** A dismissal under this section requires a hearing unless the facts necessary to support the dismissal are uncontested or are established as a matter of law.
- (d) **Reasons for dismissal.** Dismissal of a proceeding or issues within a proceeding may be based on one or more of the following reasons:
- (1) lack of jurisdiction;
 - (2) moot questions or obsolete petitions;
 - (3) res judicata;
 - (4) collateral estoppel;
 - (5) unnecessary duplication of proceedings;
 - (6) failure to prosecute;

- (7) failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient;
- (8) failure to state a claim for which relief can be granted;
- (9) gross abuse of discovery;
- (10) proper withdrawal of an application; or
- (11) other good cause shown.

(e) **Motion for dismissal, responses, and replies.** Dismissal may be made upon the motion of the presiding officer or the motion of any party.

(1) A party's motion for dismissal must specify at least one of the grounds for dismissal identified in subsection (d) of this section. The motion must include a statement that explains the basis for the dismissal and if necessary:

(A) A statement that sets forth all material facts that support the motion; and

(B) An affidavit that supports the motion and that includes evidence that is not found in the then-existing record.

(2) A presiding officer's motion shall be provided by written order or stated in the record and must specify one or more grounds for dismissal identified in subsection (d) of this section and a clear and concise statement of the facts supporting the dismissal.

(3) The party that initiated the proceeding shall have 20 days from the date of receipt to respond to a motion to dismiss. The response must contain a statement of reasons the party contends the motion to dismiss should not be granted, and if necessary:

- (A) A statement that refers to each material fact identified in the motion to dismiss as uncontested that the responding party contends is contested; and
- (B) An affidavit that supports the response to the motion to dismiss and that includes evidence that is not found in the then-existing record.
- (4) Replies to a response to a motion to dismiss may be made only by leave of and as directed by the presiding officer.
- (f) Action on a motion to dismiss.** Action on a motion to dismiss shall conform to this subsection.

 - (1) If a hearing on the motion to dismiss is held, that hearing shall be confined to the issues raised by the motion to dismiss.
 - (2) If the presiding officer determines that all issues within a the proceeding should be dismissed, the presiding officer must may prepare a proposal for decision in accordance with §22.261 of this title (relating to Proposals for Decision) to that effect, unless the reason for dismissal is solely the proper withdrawal of an application under subsection (d)(10) of this section, in which case the presiding officer may or issue an order dismissing the proceeding. The commission shall consider the proposal for decision as soon as is practicable.
 - (3) If the presiding officer determines that one or more issues within a proceeding should be dismissed, the presiding officer may issue a proposal for decision or an interim order dismissing such issues. If the partial dismissal is made by the presiding officer's interim order, the order may be appealed under §22.123 of this

title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

(4) An order of the presiding officer dismissing a proceeding under paragraph (2) of this subsection is the final order of the commission and is subject to motions for rehearing under §22.264 of this title (relating to Rehearing).

(g) **Withdrawal of application.** An application may be withdrawn in accordance with this subsection.

(1) A party that initiated a proceeding may withdraw its application without prejudice to refile of same, at any time before that party has presented its direct case.

(2) After the presentation of its direct case, but prior to the issuance of a proposed order or proposal for decision or after the matter has otherwise been set on an open meeting agenda, a party may request to withdraw its application with or without prejudice to refile of same, and withdrawal may be granted only upon a finding of good cause by the presiding officer.

(3) A request to withdraw an application after a proposed order or proposal for decision has been issued or after the matter has otherwise been set on an open meeting agenda requires a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

(4) If an application is authorized to be withdrawn, the presiding officer shall issue an order of dismissal stating whether the dismissal is with or without prejudice. Such order must, if applicable, specify the facts on which good cause is based and

the basis of the dismissal and is the final order of the commission subject to motions for rehearing under §22.264 of this title.

§22.182. Summary Decision.

- (a) **Motion for summary decision.** The presiding officer, on motion by any party, may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed in accordance with §22.222 of this title (relating to Official Notice), or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.
- (b) **Filing and contents of motion.** Any party to a proceeding may move for summary decision on any or all of the issues. The motion ~~must~~may be filed ~~at any time~~ before the close of the hearing on the merits or before the issuance of a proposal for decision or proposed order if no hearing is held, unless the time to file is extended by order of the presiding officer. The party filing the motion shall demonstrate that the issue or issues may be resolved by summary decision in accordance with the standard set forth in subsection (a) of this section. Affidavits in support of the motion shall be based on personal knowledge and shall set forth such facts as would be admissible in evidence. A motion for summary decision shall specifically describe the facts upon which the request for summary decision is based, the information and materials which demonstrate those facts, and the laws or legal theories that entitle the movant to summary decision.
- (c)-(d) (No change.)

- (e) **No further hearing.** No further evidentiary hearing shall be held on issues for which summary decision has been granted.—~~The presiding officer will issue a Proposal for Decision or interim order on the issues recommended to be resolved by summary decision. Parties may file exceptions and replies to exceptions to a Proposal for Decision recommending resolution of issues by summary decision. An order granting or denying partial summary decision is appealable to the commission.~~
- (f) **Action on the motion.** The presiding officer must issue a proposal for decision if all issues will be resolved by summary decision. The presiding officer may issue an interim order or a proposal for decision if not all issues will resolved by summary decision. Such a partial summary decision may result if the motion for summary decision does not include all issues or, if the motion does include all issues, the presiding officer denies summary decision on some issues. Parties may file exceptions and replies to exceptions to a proposal for decision recommending resolution of issues by summary decision. An interim order granting partial summary decision may be appealed to the commission under §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

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 8TH DAY OF SEPTEMBER 2016 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**