

PROJECT NO. 39316

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| RULEMAKING PROCEEDING TO | § | PUBLIC UTILITY COMMISSION |
| AMEND PUC PROC. R. 22.183, | § | |
| FAILURE TO ATTEND HEARING | § | OF TEXAS |
| AND DISPOSITION BY DEFAULT | § | |

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §22.183
AS APPROVED AT THE JUNE 17, 2011 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §22.183, relating to Failure to Attend Hearing and Disposition by Default. The proposed amendment will allow the presiding officer to issue a default order if the party that does not bear the burden of proof fails to respond to the notice for an opportunity for hearing. Currently, §22.183 allows disposition by default only if a hearing is held and the party fails to appear for the hearing. Project Number 39316 is assigned to this proceeding.

Jason Haas, Legal Division, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Mr. Haas has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be more efficient processing of proceedings before the commission. Currently, the commission must hold a hearing, and only if the party fails to attend the hearing can the presiding officer issue a default order. The amendment will allow the presiding officer to issue a default order if the party fails to respond to the notice that the party has the opportunity for a hearing, reducing the administrative burden before issuing a default order. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required.

There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Mr. Haas has also determined that for each year of the first five years the amendment is 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. The request for a public hearing must be received by August 1, 2011 (31 days after publication).

Initial comments on the amendment 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 August 1, 2011 (31 days after publication). Sixteen copies of comments on the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by August 15, 2011 (45 days after publication). Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amended rule. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 39316.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 2007 and Supp. 2010) (PURA) and Administrative Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 & Supp. 2010), which require the commission to adopt procedural rules.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and 14.052, and APA §2001.004.

§22.183. ~~Failure to Attend Hearing and~~ **Disposition by Default.**

(a) **Default.** A default occurs when a party who does not have the burden of proof fails to request a hearing within 30 days after service of notice of an opportunity for a hearing. ~~Disposition by default. If a party who does not have the burden of proof fails to appear for hearing, the presiding officer may proceed in that party's absence on a default basis. In the proposal for decision or final order, the factual allegations listed in the notice of hearing will be deemed admitted.~~

(b) **Default order.** Upon default, the presiding officer may issue a default order - either a proposal for decision or a final order - disposing of the proceeding without a hearing. A default order requires adequate proof that ~~Notice of default proceeding. Any default proceeding under this section requires adequate proof of the following:~~

- (1) The notice of the opportunity for a hearing ~~Proof that proper notice of hearing was provided to the defaulting party pursuant to Tex. Gov't Code, Chapter 2001. Such notice must have~~ included a disclosure in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default, if the defaulting party fails to timely request appear at the hearing; ~~and~~
- (2) The notice of opportunity for a hearing was sent by certified mail to ~~If it is not possible to prove actual receipt of notice, a hearing may proceed on a default basis if there is credible evidence that:~~

- (A) ~~the notice of hearing was sent by certified mail, return receipt requested to the party's~~ last known address in the commission's records, if the party has a license, certificate, or registration approved by the commission; ~~and~~
- (B) ~~the notice of hearing was sent by certified mail, return receipt requested to the registered agent for process for the party on file with the Secretary of State, if the party~~ does not have a license, certificate, or registration approved by the commission and is registered with the Secretary of State; or
- (C) an address for the party identified after reasonable investigation, if subparagraphs (A) and (B) of this paragraph do not apply.

(c) Exceptions and replies Any party may file exceptions to a default proposal for decision and replies to exceptions pursuant to §22.261(d) of this title (relating to Proposals for Decision). ~~Admission of evidence.~~ The party with the burden of proof shall submit evidence to the presiding officer in accordance with the requirements of this section.

(d) Motions for rehearing. Any party may file a motion for rehearing to a default final order pursuant to §22.264 of this title (relating to Rehearing). ~~Motion to set aside a default.~~ Not later than 10 days after the hearing has concluded, if a dismissal, proposal for decision, or a proposed final order has not been issued, a party may file a motion to set aside a default and reopen the record. The presiding officer may grant the motion, set aside the default and reopen the record for good cause shown.

(e) **Late hearing request.** If a party requests a hearing after the deadline to request a hearing, but before a default order has become final, the presiding officer may grant the request for good cause shown.~~**Default proposal for decision or order.** Upon the failure of the defaulting party to appear at the hearing, the presiding officer may issue a default proposal for decision or final order, as applicable. Parties may file exceptions and replies to exceptions to a default proposal for decision pursuant to §22.261 of this title (relating to Proposals for Decision) and may file a motion for rehearing to a default final order pursuant to §22.264 of this title (relating to Rehearing).~~

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 17th DAY OF JUNE 2011 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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