

PROJECT NUMBER 22870

RULEMAKING TO AMEND	§	PUBLIC UTILITY COMMISSION
PROCEDURAL RULES,	§	OF TEXAS
SUBCHAPTERS A - O	§	

**ORDER ADOPTING AMENDMENTS TO
PROCEDURAL RULES, SUBCHAPTERS A - O**

The Public Utility Commission of Texas (commission) adopts amendments to various sections of the commission's Procedural Rules in Chapter 22, Subchapters A - O as published in the November 10, 2000 *Texas Register* (25 TexReg 11201). These amendments are adopted under Project Number 22870.

These sections are adopted with changes to the text as proposed: §22.51, Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E, Proceedings; §22.52, Notice in Licensing Proceedings; §22.71, Filing of Pleadings, Documents, and Other Materials; §22.104, Motions to Intervene; §22.123, Appeal of an Interim Order; and §22.242, Complaints.

These sections are adopted with no changes to the text as proposed: §22.1, Purpose and Scope; §22.2, Definitions; §22.22, Service on the Commission; §22.33, Tariff Filings; §22.35, Informal Disposition; §22.72, Formal Requisites of Pleadings and Documents to be Filed with the Commission; §22.75, Examination and Correction of Pleadings and Documents; §22.101, Representative Appearances; §22.102, Classification of Parties; §22.103, Standing to Intervene;

§22.105, Alignment of Parties; §22.126, Bonded Rates; §22.127, Certification of an Issue to the Commission; §22.143, Depositions; §22.161, Sanctions; §22.181, Dismissal of a Proceeding; §22.203, Order of Procedure; §22.226, Exhibits; §22.241, Investigations; §22.243 Rate Change Proceedings; §22.244, Review of Municipal Rate Actions; §22.262, Commission Action After a Proposal for Decision; §22.264 Rehearing; and §22.281 Initiation of Rulemaking.

The amendments are necessary to maintain clear, efficient rules of practice and procedure before the commission and include modifications to:

- (1) Remove references to the position of "general counsel" as was required prior to September 1, 1999 by the Public Utility Regulatory Act (PURA) §12.101(2). The statutory requirement for a general counsel was removed from the Public Utility Regulatory Act (PURA) by Acts 1999, 76th Legislature, chapter 405, §61(1), effective September 1, 1999. Any references to "general counsel" in the Procedural Rules as proposed now refer to the General Counsel who oversees the administrative functions of the agency, not the statutory functions as previously required by PURA;
- (2) Modify procedures relating to service on the commission;
- (3) Clarify procedures regarding informal disposition in uncontested proceedings;
- (4) Modify the number of copies needed for applications for certificates of operating authority and service provider certificates of operating authority, and establish the number of copies required for certification of retail electric providers and for registration of power generation companies, self-generators or aggregators. The number of copies required is proposed at

seven copies to enable the Customer Protection Division (CPD) to also receive a copy for review so that they can timely file their recommendation. The forms for each of these applications will be modified accordingly;

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

The commission received comments on the proposed amendments from Entergy Gulf States, Inc. (EGSI), TXU Electric Company (TXU), the AEP Texas Utilities (AEP), and Reliant Energy, Inc. (Reliant).

§22.35(b)(1) Methods of Disposition, Notice of Approval

AEP commented that the commission should provide additional clarity as to the types of proceedings that can be delegated, or at a minimum, the process by which a category is added to the list and where the list is to be found. Further, AEP requested that the commission should state in this adoption preamble the legal authority upon which it relies to make the delegation to administratively approve certain proceedings. AEP argued that with disclosure of this information, all parties will be informed and aware of the type of proceeding that may be applied to a particular application.

The commission relies on the Public Utility Regulatory Act (PURA) §14.001, Power to Regulate and Supervise, for its authority to delegate administrative approval of certain uncontested proceedings. PURA §14.001 states that "The commission has the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction." The delegation of authority to approve certain types of cases administratively is limited to those cases in which there are no contested issues of facts of law. The commission finds that delegating its authority to process cases administratively results in no harm to any party. Further, such delegation improves the administrative efficiency of the agency and it is in the public interest to dispose of these cases in an expeditious manner. In addition, simply because a case is eligible for administrative approval does not guarantee that it will be processed that way. Upon

request of any party, or on the administrative law judge's own motion, the case may be presented to the commission via proposed order. Delegation of the types of cases subject to administrative approval is made by the commission in open meeting. As provided in the rule, a list of the type of cases the commission has delegated shall be kept on the commission's web site at www.puc.state.tx.us. The commission finds that the rule language is clear as written and makes no changes to §22.35.

§22.51(a)(1)(F) and 22.51(b)(2)(F); §22.52(a)(1)(A), 22.52(a)(3)(A), and 22.52(b)(1)

TXU commented that the commission should delete all references to either the "Office of Customer Protection" or the proposed revision, to "Customer Protection Division" entirely. Specifically, TXU proposed that the sentence read "Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477." TXU stated that listing the phone numbers to the commission is adequate, and that deleting the department name would lessen the need for future revisions to the procedural rules.

The commission agrees and has made the suggested revisions.

§22.71(d), Confidential material

EGSI commented that it believes the potential benefits of the proposed amendment to §22.71(d), requiring confidential information to be routed through Central Records, are significantly outweighed by both its burdens and inherent risks. EGSI states that: (1) Central Records would have to create a separate filing system to segregate confidential materials from non-confidential materials (AEP supports this issue); (2) the burden would be placed on the commission to determine whether "a person's privacy or property interests" (*i.e.*, in fuel reconciliation proceedings) are implicated in any open records request made of the agency and the requirement to notify those persons pursuant to Texas Government Code §552.305; (3) the proposal would needlessly increase the risk of inadvertent disclosure of protected materials by increasing the risk of human error; (4) that proposed amendment should not apply to confidential materials considered "highly sensitive"; and (5) that if adopted, the proposed amendment should apply only to dockets initiated after the effective date of the adopted rule.

The commission disagrees with EGSI that both its burdens and inherent risks significantly outweigh the potential benefits of the proposed amendment. The new procedures will increase the safety and control of confidential material by ensuring that the materials are delivered to a central location, properly logged in and tracked throughout the entire proceeding. Central Records has already established a procedure to segregate confidential material from non-confidential material. The fact that materials designated as confidential are delivered to Central Records instead of any other division in the commission in no way alters the commission's responsibilities under Texas Government Code, Chapter 552. The commission's obligations under Chapter 552 remain the

same regardless of who receives the material on behalf of the commission. Materials designated as "highly sensitive" are considered a subset of confidential materials and shall be provided to the commission in the same manner as other confidential material. The extra protections for highly sensitive material are established in the protective orders for each proceeding. The commission has modified §22.71 to clarify that confidential material are not "filed" in the sense that they are subject to the commission's other filing requirements. The confidential materials are not kept in Central Records, but are moved to locked and secured areas on the seventh and eighth floors of the commission's offices. Once the amendment to §22.71 becomes effective, all confidential materials shall be provided to the commission pursuant to the current rule, regardless of whether the proceeding was initiated prior to the effective date of the rule.

Reliant and AEP filed comments requesting that the proposed rule be modified to codify the commission's policy that a limited number of commission staff will handle the confidential material and that each staff person will sign an agreement not to open the sealed containers of confidential information. Reliant also provided a copy of the amended protective order in Docket Number 22355, *Application of Reliant Energy Incorporated for Approval of Unbundled Cost of Service Rate Pursuant to PURA §39.201 and Public Utility Commission Substantive Rule §25.344*. Reliant noted that it and the commission's Legal Division requested an amendment to the protective order in that proceeding to be consistent with the proposed practice. Reliant and AEP suggested that a similar protective order be adopted in future cases so that there will be continuity between the protective orders and the amended procedural rule.

Although the commission does not believe it is necessary to codify internal management or organization in its procedural rules, it understands the parties' need for assurance that confidential material is being handled with the utmost care. The commission agrees to include language that staff who handle the delivery and securing of confidential material shall sign an agreement not to open the sealed containers, as long as the containers are properly marked pursuant to §22.71(d)(1). The commission appreciates Reliant's efforts in providing a modified protective order to assist with the transition in the commission's procedures for confidential material and finds that the protective order in Docket Number 22355 meets parties concerns as well as the amended requirements of §22.71. The commission supports using a similar protective order in other proceedings.

TXU commented that the term "filing materials made confidential by law" should be revised to "making available materials designated as confidential." TXU states that the types of materials that may be designated as confidential are addressed in the commission's substantive rules and protective orders and should not be defined in this rule. TXU stated that any discussion concerning the appropriateness of the "confidential" designation should be properly handled within the docketed proceeding. TXU further suggested that the term "filing" should not be used when referring to confidential information as it implies that the commission's other "filing" requirements apply to confidential information and suggested alternative language.

The commission agrees and has modified the rule accordingly.

TXU commented that confidential materials are provided to the commission in at least two different situations: (1) in response to a discovery request, and (2) in accordance with commission filing package requirements prior to a control number being assigned. TXU stated that the proposed rule does not contemplate the second category and suggested that the language in paragraph (1) be modified to take this into consideration and to include a process to obtain a control number at the time of filing, so that the confidential materials may be clearly marked at the time they are provided to Central Records. TXU also requested clarification of whether the "cover letter" would be available to the public or remain with the confidential material.

The cover letters are kept in the file in Central Records and are available to the public. The cover letter helps to ensure a complete list of filings that have been made. Due to the volume of filings, a number can not be assigned immediately while the parties are waiting in line. Parties need to ensure that cover letters and containers for new applications are clearly marked with the identity of the filing party and the style of the proceeding. Central Records will fill in the control number as soon as it is available. The rule has been modified accordingly.

TXU suggested that the requirement to mark each page as "confidential" be modified so as to require each page be marked confidential "or in such a manner as is in accordance with the applicable protective order."

The commission agrees that some flexibility is needed in this area and has amended the rule to require the materials to have each page marked confidential "...or as required by the individual protective orders in each proceeding."

AEP commented that consideration should be made to designate a person in Central Records to be the recipient of confidential information and to formalize the process of handing off documents to the Legal Division to reduce the chances of error. AEP also commented that the commission should consider a separate procedure for information classified as "highly sensitive confidential information." AEP also requested clarification of the storage requirements for confidential material and that procedures for document retention and disposal should be thoroughly described.

Confidential material will be received by the filing clerk and turned over to the director of Central Records, or in the director's absence, the director's designee trained in the handling and management of confidential material. All confidential materials are stored in locked and secured areas on the seventh and eight floors. The commission finds that it is not necessary to add language to this effect in the rule. As previously stated, the commission finds that "highly sensitive confidential material" is a subset of confidential material and any additional requirements for protecting this material are found in the protective orders for each proceeding. Language has been added to §22.71 to clarify that confidential information shall be maintained and returned pursuant to

the protective orders in each proceeding and/or the commission's records retention schedule as approved by the Texas State Library and Archives Commission.

§22.104(d)(5), Motions to intervene

AEP commented that to avoid potential conflict between paragraphs (4) and (5), paragraph (5) should be limited to those circumstances not covered in paragraph (4).

The commission agrees and has modified the rule accordingly.

§22.123, Appeal of an Interim Order and Motions for Reconsideration of Interim Orders Issued by the Commission.

AEP believes this section could be improved by not only requiring the party to show the reasons why an order is unjustified or improper, but also show how the threshold issues in subsection (b)(1) are met. AEP also suggested language to clarify that interim orders are not subject to motions for rehearing prior to the issuance of a final order.

The commission agrees with AEP's suggested changes and has modified the proposed rule.

TXU suggested that subsection (b)(2) clarify the timing for filing a motion for consideration of an oral interim order by adding the language "...when no written order is to be issued."

The commission agrees and has made the change.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these sections, the commission makes other minor grammatical and sentence structure modifications for the purpose of clarifying its intent and non-substantive modifications to conform to the proposed amendments to the Procedural Rules, Subchapters P, Q, and R.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998 & Supplement 2001) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

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

§22.1. Purpose and Scope.

- (a) **Purpose.** The purpose of this chapter is to provide a system of procedures for practice before the Public Utility Commission of Texas that will promote the just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to attain these objectives.
- (b) **Scope.**
- (1) This chapter shall govern the initiation, conduct, and determination of proceedings required or permitted by law, including proceedings referred to SOAH, whether instituted by order of the commission or by the filing of an application, complaint, petition, or any other pleading.
 - (2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the commission staff, or the substantive rights of any person.
 - (3) To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.

§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) **Administrative law judge** — The person designated to preside over a hearing.
- (2) **APA** — The Administrative Procedure Act, Chapter 2001, Government Code, as it may be amended from time to time.
- (3) **Administrative review** — Process under which an application may be approved without a formal hearing.
- (4) **Affected person** — The definition of affected person is that definition given in the Public Utility Regulatory Act, §11.003(1).
- (5) **Applicant** — A person, including commission staff, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.
- (6) **Application** — A written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.
- (7) **Arbitration** — A form of dispute resolution in which each party presents its position on any unresolved issues to an impartial third person(s) who renders a decision on the basis of the information and arguments submitted.
- (8) **Arbitration hearing** — The hearing conducted by an arbitrator to resolve any issue submitted to the arbitrator. An arbitration hearing is not a contested case

under the Administrative Procedure Act, Texas Government Code §§2001.001, *et. seq.*

- (9) **Arbitrator** — The commission, any commissioner, any commission employee, or any SOAH administrative law judge selected to serve as the presiding officer in a compulsory arbitration hearing.
- (10) **Authorized representative** — A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise to participate, in a proceeding. The appearance may be entered in person or by subscribing the representative's name upon any pleading filed on behalf of the party or person seeking to be a party or otherwise to participate in the proceeding. The authorized representative shall be considered to remain a representative of record unless a statement or pleading to the contrary is filed or stated in the record.
- (11) **Chairman** — The commissioner designated by the Governor to serve as chairman.
- (12) **Commission** — The Public Utility Commission of Texas.
- (13) **Commissioner** — One of the members of the Public Utility Commission of Texas.
- (14) **Complainant** — A person, including commission staff or the Office of Public Utility Counsel, who files a complaint intended to initiate a proceeding with the commission regarding any act or omission by the commission or any person subject to the commission's jurisdiction.

- (15) **Compulsory arbitration** — The arbitration proceeding conducted by the commission or its designated arbitrator pursuant to the commission's authority under FTA96 §252.
- (16) **Contested case** — A proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.
- (17) **Control number** — Number assigned by the commission's Central Records to a docket, project, or tariff.
- (18) **Days** — Calendar days, not working days, unless otherwise specified by this chapter or the commission's substantive rules.
- (19) **Docket** — A proceeding handled as a contested case under APA.
- (20) **FTA96** — The federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Stat. 56 (1996), (to be codified at 47 U.S.C. §§151 et seq.).
- (21) **Final order** — The whole or part of the final disposition by the commission of the issues before the commission in a proceeding, rendered in compliance with §22.263 of this title (relating to Final Orders).
- (22) **Financial interest** — Any legal or equitable interest, or any relationship as officer, director, trustee, advisor, or other active participant in the affairs of a party. An interest as a taxpayer, utility ratepayer, or cooperative member is not a financial interest. An interest a person holds indirectly by ownership of an interest in a

retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of that person's control is not a financial interest.

- (23) **Hearing** — Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.
- (24) **Hearing day** — A day of hearing when the merits of a proceeding are considered at the hearing on the merits, a final order meeting, or a regional hearing.
- (25) **Intervenor** — A person, other than the applicant, respondent, or the commission staff representing the public interest, who is permitted by this chapter or by ruling of the presiding officer, to become a party to a proceeding.
- (26) **Licensing proceeding** — Any proceeding respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, including a proceeding regarding a notice of intent to build a new electric generating unit.
- (27) **Major rate proceeding** — Any proceeding filed pursuant to PURA, §§36.101 - 36.111, 36.201-36.203 and 36.205 or §§51.009, 53.101 - 53.113, 53.201 and 53.202 involving an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2.5%. In addition, a major rate proceeding is any rate proceeding initiated pursuant to PURA, §§36.151 - 36.156 or §53.151 and §53.152 in which the respondent utility is directed to file a rate filing package.

- (28) **Mediation** — A voluntary form of dispute resolution in which an impartial person facilitates communication between parties to promote negotiation and settlement of disputed issues.
- (29) **Municipality** — A city, incorporated village, or town, existing, created, or organized under the general, home-rule, or special laws of Texas. A municipality is a "person" as defined in this section.
- (30) **Party** — A party under Subchapter F of this chapter (relating to Parties).
- (31) **Person** — An individual, partnership, corporation, association, governmental subdivision, entity, or public or private organization.
- (32) **Pleading** — A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.
- (33) **Prehearing conference** — Any conference or meeting of the parties, prior to the hearing on the merits, on the record and presided over by the presiding officer.
- (34) **Presiding officer** — The commission, any commissioner, or any hearings examiner or administrative law judge presiding over a proceeding or any portion thereof.
- (35) **Proceeding** — Any hearing, investigation, inquiry or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint, conducted by the commission or the utility division of SOAH.
- (36) **Project** — A rulemaking or other proceeding that is not a docket or a tariff.

- (37) **Protestor** — A person who is not a party to the case who submits oral or written comments. A person classified as a protestor does not have rights to participate in a proceeding other than by providing oral or written comments.
- (38) **PURA** — The Public Utility Regulatory Act, Texas Utilities Code, Title 2, as it may be amended from time to time.
- (39) **Relative** — An individual (or spouse of an individual) who is related to the individual in issue (or the spouse of the individual in issue) within the second degree of consanguinity or relationship according to the civil law system.
- (40) **Respondent** — A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.
- (41) **Rulemaking** — A proceeding pursuant to APA, Texas Government Code, Chapter 2001, Subchapter B conducted to adopt, amend, or repeal a commission rule.
- (42) **SOAH** — The State Office of Administrative Hearings.
- (43) **Unprotested case** — A contested case in which a hearing is not necessary.
- (44) **Working day** — A day on which the commission is open for the conduct of business.

§22.22. Service on the Commission.

- (a) The commission's General Counsel, or the General Counsel's authorized representative, shall have the authority to accept service of all papers or other legal documents served on the commission or any of its members if served in their official capacity and not individually. Pursuant to Texas Government Code §2001.176(b)(2), for a petition initiating judicial review, the commission shall be served a copy of the actual petition.
- (1) **Preferred method of service.** Delivery to the General Counsel, or the authorized representative, in person, a true copy of the citation with a copy of the petition attached.
 - (2) **Alternative method of service.** Mailing to the General Counsel, by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached.
- (b) For appeals filed pursuant to the Public Utility Regulatory Act §39.001(f), parties shall provide a courtesy copy of the appeal to the commission's General Counsel, simultaneous to completing legal service pursuant to the Texas Rules of Appellate Procedure.

§22.33. Tariff Filings.

- (a) **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." 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. This section shall apply unless it is inconsistent with Chapters 25 or 26 of this title, or PURA.
- (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 tariff filing would change the revenues received by the utility for an existing service;

- (2) if an electric or regular telephone tariff filing would allow the utility to begin charging for a service previously available but for which there was not a separate charge;
 - (3) if an electric or regular telephone tariff filing would eliminate an existing service to which one or more customers actually subscribe;
 - (4) if an electric or regular telephone tariff filing would increase a customer's bill even though the rate for a particular service is not being changed;
 - (5) if the commission's staff recommends disapproval or approval with modification and the utility requests a hearing; or
 - (6) if the commission receives a request to intervene.
- (c) **Effective date.** 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 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.
- (d) **Duties of presiding officer.** The presiding officer may establish reasonable deadlines for comments or recommendations, may issue other orders as necessary to facilitate the

processing of the tariff filing, and shall issue a notice of approval, approval with modification, denial, or docketing.

- (e) **Appeal of interim orders and notices of docketing.** Interim orders and notices of docketing regarding tariff filings shall be appealable to the commission pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

- (f) **Effect of notices of approval, approval with modification, and denial.** A notice of approval, approval with modification, or denial of a tariff filing shall be the final determination of the commission regarding the tariff filing, and shall be subject to motions for rehearing pursuant to §22.264 of this title (relating to Rehearing).

§22.35. Informal Disposition.

- (a) **Applications qualified for informal disposition.** An application, other than a major rate proceeding, may be approved by the commission without a hearing under the following conditions:
 - (1) at least 15 days have passed since the completion of all notice requirements;
 - (2) the decision is not adverse to any party other than the commission staff; and

- (3) the commission finds that no hearing is necessary.

(b) **Methods of disposition.**

- (1) **Notice of approval.** Upon delegation by the commission, certain uncontested applications may be approved by the presiding officer through a notice of approval without consideration by the commission at open meeting. The commission shall maintain a list of the types of applications eligible for disposition by notice of approval.
- (2) **Proposed order.** For all other applications, the presiding officer shall prepare a proposed order which shall be served on all parties no less than 20 days before the commission is scheduled to consider the application in open meeting.

(c) **Corrections and exceptions.**

- (1) **Corrections to notice of approval.** Parties may file suggested corrections to a notice of approval within 15 days of the issuance of such notice. Corrections may be made at the discretion of the presiding officer.
- (2) **Exceptions to proposed order.** Parties may file exceptions or suggested corrections to the proposed order, no less than seven days before the commission is scheduled to consider the application in an open meeting.

- (d) **Rehearing.** Nothing in this section shall be construed to alter a party's ability to request rehearing pursuant to §22.264 of this title (relating to Rehearing).
- (e) **Notice requirements.** Nothing in this section shall be construed to alter any notice requirement imposed on any proceeding by statute, rule, or order.
- (f) **Time limits.** Nothing in this section shall be construed to alter any time limit imposed on any proceeding by a statute, rule, or order.

§22.51. Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C - E; Chapter 51, §51.009; and Chapter 53, Subchapters C - E, Proceedings.

- (a) **Notice in a proceeding seeking a rate increase.** In proceedings under PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E involving the commission's original jurisdiction over a utility's proposed increase in rates, the applicant shall give notice in the following manner:
 - (1) **Publication of notice.** The applicant shall publish notice of its statement of intent to change rates in a conspicuous form and place at least once a week for four consecutive weeks prior to the effective date of the proposed rate change, in a newspaper having general circulation in each county containing territory affected by

the proposed rate change. The published notice shall contain the following information:

- (A) the effect the proposed change is expected to have on the revenues of the company for major rate proceedings, the change must be expressed as an annual dollar increase over adjusted test year revenues and as a percent increase over adjusted test year revenues;
- (B) the effective date of the proposed rate change;
- (C) the classes and numbers of utility customers affected by the rate change;
- (D) a description of the service for which a change is requested;
- (E) whenever possible, the established intervention deadline; and
- (F) the following language: "Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas (commission) as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission."

- (2) **Notice by mail.** The applicant shall mail notice of its statement of intent to change rates to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language shall be printed in prominent lettering: "Notice of Rate Change Request." The notice must meet the requirements of paragraph(1) of this subsection. Whenever possible, the established intervention deadline shall be included in the notice.
 - (3) **Notice to municipalities.** The applicant shall mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate change.
- (b) **Notice in PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E proceeding seeking a rate decrease.** In proceedings initiated pursuant to PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E in which a rate reduction that does not involve a rate increase for any customer is sought, the applicant shall give notice in the following manner:
- (1) **Publication not required.** The applicant may not be required to publish notice of its statement of intent to change rates in any newspaper when the utility is seeking to reduce rates for all affected customers.

- (2) **Notice by mail to affected customers.** The applicant shall mail notice of the proposed rate decrease to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language shall be printed in prominent lettering: "Notice of Rate Decrease Request." The notice shall contain the following information:
- (A) the effect the proposed change is expected to have on the revenues of the applicant, expressed as an annual dollar decrease from adjusted test year revenues and as a percent decrease from adjusted test year revenues;
 - (B) the effective date of the proposed rate decrease;
 - (C) the classes and numbers of utility customers affected by the rate decrease;
 - (D) a description of the service for which a rate change is requested;
 - (E) whenever possible, the established intervention deadline; and
 - (F) the following language: "Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas (commission) as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention

in the proceeding is 45 days after the date the application was filed with the commission."

- (3) **Notice to municipalities.** The applicant shall mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate decrease.
- (c) **Notice in PURA, Chapter 36, Subchapter D; or Chapter 53, Subchapter D rate investigation.** In an investigation into a utility's rates pursuant to PURA, Chapter 36, Subchapter D; or Chapter 53, Subchapter D, the presiding officer may require the utility under investigation to provide reasonable notice to its customers and affected municipalities. Reasonable notice may include notice of the type set forth in subsection (a) of this section.
- (d) **Affidavits regarding notice.** The applicant shall submit affidavits attesting to the provision of the notice required or ordered pursuant to this section within a reasonable time and by such date as may be established by the presiding officer.
 - (1) **Publisher's affidavits.** Proof of publication of notice shall be made in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published.

- (2) **Affidavit for notice to affected customers.** If notice to affected customers has been provided, an affidavit attesting to the provision of notice to affected customers shall specify the dates of the provision of such notice; the means by which such notice was provided; and the affected customer classes to which such notice was provided.
- (3) **Affidavit for notice to municipality.** An affidavit attesting to the provision of notice to municipalities shall specify the dates of the provision of notice and the identity of the individual cities to which such notice was provided.

§22.52. Notice in Licensing Proceedings.

- (a) **Notice in electric licensing proceedings.** In all electric licensing proceedings except minor boundary changes, the applicant shall give notice in the following ways:
 - (1) Applicant shall publish notice of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the application is filed with the commission. This notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project.

- (A) The notice shall also include the following statement in the first paragraph:
- "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 45 days after the date the application was filed with the commission) and a letter requesting intervention should be received by the commission by that date."
- (B) The notice shall further describe in clear, precise language the geographic area for which the certificate is being requested and the location of all preferred and alternative routes of the proposed facility. This description shall refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.
- (C) The notice shall state a location where a map may be reviewed and from whom a copy of the map may be obtained. The map shall clearly and conspicuously illustrate the location of the area for which the certificate is

being requested including the preferred location and any alternative locations of the proposed facility, and shall reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

- (D) Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published, the county or counties in which the newspaper(s) is or are of general circulation the dates upon which the notice was published, and a copy of the notice as published. Proof of publication shall be submitted to the commission as soon as available.
- (2) Applicant shall, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, and the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. The notice shall contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, and counties shall specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such

notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to municipalities, utilities and counties affected by the modification which have not previously received notice. The notice of modification shall state such entities will have 20 days to intervene.

(3) Applicant shall, upon filing an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate, including the preferred location and any alternative location of the proposed facility. For purposes of this paragraph, land is directly affected if an easement would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 200 feet of the proposed facility.

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

contact (name of utility contact) at (utility contact telephone number). If you wish to participate in this proceeding by becoming a party or to comment upon action sought, you should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. If you wish to participate in this proceeding by becoming a party, the deadline for intervention in the proceeding is (date 45 days after the date the application was filed with the commission), and you must send a letter requesting intervention to the commission which is received by that date."

- (B) The notice must include a map as described in paragraph (1) of this subsection. Applicants may provide either a map of the entire proposed and alternative routes or maps for each county.
- (C) Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under subparagraphs (A) and (B) of this paragraph to all directly affected landowners who have not already received such notice.
- (D) Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). The proof

of notice shall include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice shall be filed with the commission no later than 20 days after the filing of the application.

- (E) Upon the filing of proof of notice as described in subparagraph (D) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it shall immediately provide notice in the same form described in subparagraphs (A) and (B) of this paragraph, except that the notice shall state that the person has fifteen days to intervene. The utility shall immediately notify the commission that such supplemental notice has been provided.
- (4) The utility shall hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application.
- (5) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.

- (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.

- (b) **Notice in telephone licensing proceedings.** In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant shall give notice in the following ways:
 - (1) Applicants shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state

the established intervention deadline. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice shall be in the form of a publisher's affidavit, which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

- (2) Applicant shall also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments shall be identical to that provided to cities and to

neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.

- (3) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention.

§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) All documents filed relating to a rulemaking proceeding;
 - (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) Letters or memoranda relating to any item with a control number;
 - (4) Reports pursuant to PURA, commission rules or request of the commission.
 - (5) Discovery requests and responses.

- (b) **File with the commission filing clerk.** 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) applications, petitions, and complaints: ten copies;
 - (2) applications for expanded local calling: seven copies;
 - (3) applications for certificates of operating authority (COAs) or service provider certificates of operating authority (SPCOA), amendments to COA or SPCOA applications, and all pleadings or documents related to the applications for COAs or SPCOAs: seven copies;
 - (4) applications for certification of retail electric providers or for registration of power generation companies, self-generators or aggregators: seven copies;
 - (5) tariffs:
 - (A) for review under §22.33 of this title (relating to Tariff Filings), including discovery responses for tariffs filed under §22.33 of this title: six copies;
 - (B) related to docketed proceedings: ten copies; and
 - (C) related to discovery responses in docketed proceedings: four copies;
 - (6) exceptions, replies, interim appeals, requests for oral argument, and other documents addressed to the commissioners: 19 copies;
 - (7) testimony and briefs: 11 copies, except that in contested cases transferred to the State Office of Administrative Hearings, parties must file 13 copies of testimony and briefs;

- (8) rate, fuel factor, and fuel reconciliation filing packages: 11 copies;
- (9) applications for certificates of convenience and necessity for transmission lines or boundary changes, certificate of convenience and necessity exemptions, and service area exceptions: seven copies;
- (10) discovery requests: five copies;
- (11) discovery responses: four copies;
- (12) reports filed pursuant to the Public Utility Regulatory Act or the commission's Substantive Rules: four;
- (13) comments to proposed rulemakings: 16; and
- (14) other pleadings and documents: ten copies, except that in contested cases transferred to the State Office of Administrative Hearings (SOAH), parties must file 12 copies of other pleadings and documents.

(d) **Confidential material:**

- (1) A party providing materials designated as confidential shall deliver them in an enclosed, sealed and labeled container, accompanied by an explanatory cover letter. The cover letter shall identify the control number, if available, and style of the proceeding and explain the nature of the sealed materials. The container shall identify the control number, if available, style of the proceeding, and name of the submitting party, and be marked "CONFIDENTIAL & UNDER SEAL" in bold print at least one inch in size and include any other markings as required by the

individual protective orders in each proceeding. Each page of the confidential material shall be marked "confidential" or as required by the individual protective orders in each proceeding.

- (2) Unless otherwise provided by this chapter or order of the presiding officer the number of copies of confidential material delivered to the commission shall be as follows:
 - (A) related to arbitrations: one copy;
 - (B) related to discovery: two copies;
 - (C) related to contested cases transferred to the SOAH: two copies to Central Records and one copy delivered directly to SOAH;
 - (D) related to any other proceeding: two copies; and
 - (E) related to request for proposal for goods and/or services: one copy
- (3) Unless otherwise provided by this chapter or order of the presiding officer, all confidential material shall be delivered to the commission's 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 material shall not be filed with the commission electronically unless specific arrangements are made and agreed to by the parties involved on a case-by-case basis.

- (A) Material related to arbitrations. Central Records will route the one copy to the commission's Policy Development Division.
 - (B) Material related to contested cases transferred to SOAH and other docketed proceedings. Central Records will maintain one file copy, that is not accessible to the public or commission staff. Central Records will route the additional copy to the commission's Legal Division. Commission staff who have signed an agreement to abide by the protective order in the proceeding may view the copy of the confidential material maintained by the commission's Legal Division. The party who provides the confidential material will be responsible for delivering one copy of confidential materials not related to discovery to SOAH.
 - (C) Request for proposal for goods and/or services. Confidential material related to a request for proposal for goods and/or services will be delivered to the commission's General Counsel or the General Counsel's authorized representative.
- (4) Confidential materials shall be maintained, destroyed and/or returned to the providing party pursuant to the individual protective orders in each proceeding and the commissions Records Retention Schedule as approved by the Texas State Library and Archives Commission.

- (e) **Receipt by the commission.** Pleadings and any other documents shall be deemed filed when the required number of copies and the electronic copy, if required, in conformance with §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission) are presented to the commission filing clerk for filing. The commission filing clerk shall accept pleadings and documents if the person seeking to make the filing is in line by the time the pleading or document is required to be filed.
- (f) **No filing fee.** No filing fee is required to file any pleading or document with the commission.
- (g) **Office hours of the commission filing clerk.** With the exception of open meeting days, for the purpose of filing documents, the office hours of the commission filing clerk are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days.
- (1) On open meeting days, the commissioners and the Policy Development Division may file items related to the open meeting on behalf of the commissioners between the hours of 8:00 a.m. and 9:00 a.m. The commissioners and the Policy Development Division shall provide the filing clerk with an extra copy of all documents filed pursuant to this paragraph for public access.
- (2) Central Records will open at 8:00 a.m. on open meeting days. With the exception of paragraph (1) of this subsection, no filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m.

- (h) **Filing a copy or facsimile copy in lieu of an original.** Subject to the requirements of subsection (c) of this section and §22.72 of this title, a copy of an original document or pleading, including a copy that has been transmitted through a facsimile machine, may be filed, so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding.
- (i) **Filing deadline.** All documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.
- (j) **Filing deadlines for documents addressed to the commissioners.**
- (1) Except as provided in paragraph (2) of this subsection, all documents from parties addressed to the commissioners relating to any proceeding that has been placed on the agenda of an open meeting shall be filed with the commission filing clerk no later than seven days prior to the open meeting at which the proceeding will be considered provided that no party is prejudiced by the timing of the filing of the documents. Documents that are not filed before the deadline and do not meet one of the exceptions in paragraph (2) of this subsection, will be considered untimely filed, and may not be reviewed by the commissioners in their open meeting preparations.
- (2) The deadline established in paragraph (1) of this subsection does not apply if:

- (A) The documents have been specifically requested by one of the commissioners;
 - (B) The parties are negotiating and such negotiation requires the late filing of documents; or
 - (C) Good cause for the late filing exists. Good cause must clearly appear from specific facts shown by written pleading that compliance with the deadline was not reasonably possible and that failure to meet the deadline was not the result of the negligence of the party. The finding of good cause lies within the discretion of the commission.
- (3) Documents filed under paragraph (2) of this subsection shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.

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

- (a) **Applicability.** This section applies to all pleadings as defined in §22.2 of this title (relating to Definitions) and the following documents:
- (1) All documents filed relating to a rulemaking proceedings;
 - (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) Letters or memoranda relating to any item with a control number;

- (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) Reports filed on commission prescribed forms;
 - (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 §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);
- (5) Discovery requests and responses, however, any portion of discovery responses that are copies of documents not generated for the purpose of responding to the discovery request, are exempt from the requirements of subsections (c), (d), (e), (f) and (h) of this section.

(b) **Requirements of form.**

- (1) Unless otherwise authorized or required by the presiding officer or this chapter, documents shall include the style and number of the docket or project in which they are submitted, if available; shall identify by heading the nature of the document submitted and the name of the party submitting the same; and shall be signed by the party or the party's representative.

- (2) Whenever possible, all documents should be provided on 8.5 by 11 inch paper. However, any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in subsection (g) of this section, if it cannot be provided legibly on letter-size paper. The document must be able to be folded to a size no larger than 8.5 by 11 inches. Documents that can not be folded may not be accepted.
- (c) **Format.** Any filing with the commission must:
 - (1) have double-spaced or one and one-half times spaced print with left margins not less than one inch wide, except that any letter, tariff filing, rate filing, or proposed findings of fact and conclusions of law may be single-spaced;
 - (2) indent and single-space any quotation which exceeds 50 words; and
 - (3) be printed or formatted in not less than 10-point type.
- (d) **Citation form.** Any filing with the commission should comply with the rules of citation, set forth, in the following order of preference, by the commission's "Citation Guide," the most current edition of the "Texas Rules of Form," published by the University of Texas Law Review Association (for Texas authorities), and the most current edition of "A Uniform System of Citation," published by The Harvard Law Review Association' (for all other authorities). Neither Rule 1.1 of the Uniform System nor the comparable portion of the "Texas Rules of Form" shall be applicable in proceedings.

- (e) **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. If the person signing the pleading or document is an attorney licensed in Texas, the attorney's State bar number shall be provided.
- (f) **Page limits.** In major rate proceedings, proceedings initiated pursuant to PURA Chapter 36, Subchapter D or Chapter 53, Subchapter D, fuel reconciliations, petitions to declare a market subject to significant competition, and applications for licensing of new generating plant, except for testimony and rate filing packages, no document shall exceed 100 pages in length, including attachments. In all other dockets, no document shall exceed 50 pages in length, including attachments. The page limitation shall not apply to courtesy copies of legal authorities cited in the pleading. A presiding officer may establish a larger or smaller page limit. In establishing larger or smaller page limits, the presiding officer shall consider such factors as which party has the burden of proof and the extent of opposition to a party's position that would need to be addressed in the document. The page limitations in this subsection do not apply to discovery responses.
- (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) Each document shall be typed or printed on paper measuring 8.5 by 11 inches. Oversized documents being filed on larger paper pursuant to subsection (b)(2) of this section shall be filed as separate referenced attachments. No single document shall consist of more than one paper size.
- (2) One copy of each document, that is not the original file copy, shall be filed without bindings, staples, tabs or separators.
 - (A) This copy shall be printed on both sides of the paper or, if it can not be printed on both sides of the paper, every page of the copy shall be single sided.
 - (B) All pages of the copy filed pursuant to this paragraph, starting with the first page of the table of contents, shall be consecutively numbered through the last page of the document, including attachments, if any.
- (3) For documents for which an electronic filing is required, all non-native figures, illustrations, or objects shall be filed as referenced attachments. No non-native figures, illustrations, or objects shall be embedded in the text of the document. "Non-native figures" means tables, graphs, charts, spreadsheets, illustrations, drawings and other objects which are not electronically integrated into the text portions of a document.
- (4) 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) Whenever possible, all documents and copies shall be printed on both sides of the paper.

(h) **Electronic filing standards.** Any document may be filed, and all documents containing more than ten pages shall be filed, electronically in accordance with the requirements of paragraphs (1)-(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 World Wide Web site, 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) All non-native figures, illustrations or objects must be filed as referenced attachments. No non-native figures, illustrations, or objects shall be imbedded in the text of the document. "Non-native figures" means tables, graphs, charts, spreadsheets, illustrations, drawings and other objects which are not electronically integrated into the text portions of a document.

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

- (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 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.
 - (7) Any information submitted under claim of confidentiality 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.
- (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 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.

§22.75. Examination and Correction of Pleadings and Documents.

- (a) **Construction of pleadings and documents.** All documents shall be construed so as to do substantial justice.
- (b) **Procedural sufficiency of pleadings and documents.**
 - (1) Except for motions for rehearing and replies to motions for rehearing, the filing clerk shall not accept documents that do not comply with §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).
 - (2) All pleadings and documents that do not comply in all material respects with other sections of this chapter, shall be conditionally accepted for filing. Upon notification by the presiding officer of a deficiency in a pleading or document, the responsible

party shall correct or complete the pleading or document in accordance with the notification. If the responsible party fails to correct the deficiency, the pleading or document may be stricken from the record.

(c) **Notice of material deficiencies in rate change applications.** This subsection applies to applications for rate changes filed pursuant to PURA, Chapter 36, Subchapter C or Chapter 53, Subchapter C.

- (1) Motions to find a rate change application 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 a rate change application materially deficient shall be filed no later than five working days after such motion is received.
- (2) If within 35 days after filing of a rate change application, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.
- (3) If the presiding officer determines that material deficiencies exist in an application, the presiding officer shall issue a written order within 35 days of the filing of the application specifying a time within which the applicant shall amend its application and correct the deficiency. The effective date of the proposed rate change will be

35 days after the filing of a sufficient application. The statutory deadlines shall be calculated based on the date of filing the sufficient application.

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

- (1) Motions to find an application for certificate of convenience and necessity for 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 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 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) If the presiding officer determines that material deficiencies exist in an application, the presiding officer shall issue a written order within 35 days of the filing of the application specifying a time within which the applicant shall amend its application

and correct the deficiency. Any statutory deadlines shall be calculated based on the date of filing the sufficient application.

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

§22.101. Representative Appearances.

- (a) **Generally.** Any person may appear before the commission or in a hearing in person or by authorized representative. The presiding officer may require a representative to submit proof of his or her authority to appear on behalf of another person. The authorized representative of a party shall specify the particular persons or classes of persons the representative is representing in the proceeding.
- (b) **Change in authorized representative.** Any person appearing through an authorized representative shall provide written notification to the commission and all parties to the proceeding of any change in that person's authorized representative. The required number of copies of the notification shall be filed in Central Records under the control number(s) for each affected proceeding and shall include the authorized representative's name, address, telephone number and facsimile number.

- (c) **Lead counsel.** A party represented by more than one attorney or authorized representative in a matter before the commission may be required to designate a lead counsel who is authorized to act on behalf of all of the party's representatives, but all other attorneys or authorized representatives for the party may take part in the proceeding in an orderly manner, as ordered by the presiding officer.
- (d) **Change in information required for notification or service.** Any person or authorized representative appearing before the commission in any proceeding shall provide written notification to the commission and all parties to the proceeding of any change in their address, telephone number or facsimile number. The required number of copies of the notification shall be filed in Central Records under the control number(s) for each affected proceeding.

§22.102. Classification of Parties.

- (a) **Parties.** Parties to proceedings before the commission shall be classified into the following categories:
- (1) applicants, or complainants;
 - (2) respondents;

- (3) intervenors; and
 - (4) commission staff representing the public interest.
- (b) **Rights of parties.** Subject to the alignment of parties pursuant to §22.105 of this title (relating to Alignment of Parties), parties to proceedings have the right to present a direct case, cross-examine all witnesses, conduct discovery, make oral or written legal arguments, and otherwise fully participate in any proceeding. Commission staff shall have no right to seek judicial review of any commission decision.
- (c) **Protestors.** Any person that has not intervened in a proceeding, or who has been denied permission to intervene, shall not be considered a party. The presiding officer may allow oral or written comments to be made by protestors.

§22.103. Standing to Intervene.

- (a) **Commission staff representing the public interest.** The commission staff representing the public interest shall have standing in all proceedings before the commission, and need not file a motion to intervene.

- (b) **Standing to intervene.** Persons desiring to intervene must file a motion to intervene and be recognized as a party under §22.104 of this title (relating to Motions to Intervene) in order to participate as a party in a proceeding. Any association or organized group must include in its motion to intervene a list of the members of the association or group that are persons other than individuals that will be represented by the association or organized group in the proceedings. The group or association shall supplement the list of members represented in the motion at any time a member is added or deleted from the list of members represented. A person has standing to intervene if that person:
- (1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or
 - (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.
- (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 P of this chapter (relating to Dispute Resolution).

§22.104. Motions to Intervene.

- (a) **Necessity for filing motion to intervene.** Applicants, complainants, and respondents, as defined in §22.2 of this title (relating to Definitions), are necessary parties to proceedings which they have initiated or **which** have been initiated against them, and need not file motions to intervene in order to participate as parties in such proceedings.
- (b) **Time for filing motion.** Motions to intervene shall be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule, or order of the presiding officer. The motion shall be served upon all parties to the proceeding and upon all persons that have pending motions to intervene.
- (c) **Rights of persons with pending motions to intervene.** Persons who have filed motions to intervene shall have all the rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.
- (d) **Late intervention.**
- (1) A motion to intervene that was not timely filed may be granted. In acting on a late filed motion to intervene, the presiding officer shall consider:
- (A) any objections that are filed;
- (B) whether the movant had good cause for failing to file the motion within the time prescribed;

- (C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention;
 - (D) whether any disruption of the proceeding might result from permitting late intervention; and
 - (E) whether the public interest is likely to be served by allowing the intervention.
- (2) The presiding officer may impose limitations on the participation of an intervenor to avoid delay and prejudice to the other parties.
 - (3) Except as otherwise ordered, an intervenor shall accept the procedural schedule and the record of the proceeding as it existed at the time of filing the motion to intervene.
 - (4) In an electric licensing proceeding in which a utility did not provide direct notice to an owner of land directly affected by the requested certificate, late intervention shall be granted as a matter of right to such a person, provided that the person files a motion to intervene within 15 days of actually receiving the notice. Such a person should be afforded sufficient time to prepare for and participate in the proceeding.
 - (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 Policy Development Division shall send separate

ballots to each commissioner to determine whether the motion to intervene will be considered at an open meeting. The Policy Development Division shall notify the parties by letter whether a commissioner by individual ballot has added the motion to intervene to an open meeting agenda, but will not identify the requesting commissioner(s).

- (B) Denial. If after five working days of the filing of a motion to intervene, which has been filed after the PFD or PO has been issued, no commissioner has by agenda ballot, placed the motion on the agenda of an open meeting, the motion is deemed denied. If any commissioner has balloted in favor of considering the motion, it shall be placed on the agenda of the next regularly scheduled open meeting or such other meeting as the commissioners may direct by the agenda ballot. In the event two or more commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots. The time for ruling on the motion shall expire three days after the date of the open meeting, unless extended by action of the commission.

§22.105. Alignment of Parties.

Parties, except for the Office of Public Utility Counsel and the commission staff representing the public interest, may be aligned for the purposes of participating in a hearing or portions of a hearing if the parties have the same positions on issues of fact or law. To the extent alignment is determined to be necessary, the presiding officer shall order alignment of the parties at the earliest reasonable opportunity so as to avoid unnecessary duplication of effort and to allow aligned parties an adequate opportunity to prepare for hearing. The presiding officer may limit the number of representatives of aligned parties who conduct cross-examination of any particular witness during the hearing on the merits.

§22.123. Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission.**(a) Appeal of an interim order.**

- (1) Availability of appeal.** Appeals are available for any order of the presiding officer that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Interim orders shall not be subject to exceptions or application for rehearing prior to issuance of a proposal for decision.

- (2) **Procedure for appeal.** If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer shall so indicate on the record at the time of the oral ruling and shall promptly issue the written order. Any appeal to the commission from an interim order shall be filed within ten days of the issuance of the written order or the appealable oral ruling when no written order is to be issued. The appeal shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.
- (3) **Contents.** An appeal shall specify the reasons why the interim order is unjustified, improper, or immediately prejudices a substantial or material right of a party or materially affects the course of the hearing.
- (4) **Responses.** Any response to an appeal shall be filed within five working days of the filing of the appeal.
- (5) **Motion for stay.** Pending a ruling by the commissioners, the presiding officer may, upon motion, grant a stay of the interim order. A motion for a stay shall specify the basis for a stay. Good cause shall be shown for granting a stay. The mere filing of an appeal shall not stay the interim order or the procedural schedule.
- (6) **Agenda ballot.** Upon filing of an appeal, the Policy Development Division shall send separate ballots to each commissioner to determine whether they will consider the appeal at an open meeting. The Policy Development Division shall notify the parties by letter whether a commissioner by individual ballot has added the appeal to an open meeting agenda, but will not identify the requesting commissioner(s).

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

(A) If after ten days of the filing of an appeal, no commissioner has, by agenda ballot, placed the appeal on the agenda of an open meeting, the appeal is deemed denied.

(B) If any commissioner has balloted in favor of considering the appeal, it shall be placed on the agenda of the next regularly scheduled open meeting or such other meeting as the commissioner may direct by the agenda ballot. In the event two or more commissioners vote to consider the appeal, but differ as to the date the appeal shall be heard, the appeal shall be placed on the latest of the dates specified by the ballots. The time for ruling on the appeal shall expire three days after the date of the meeting, unless extended by action of the commission.

(8) **Reconsideration of appeal by presiding officer.** The presiding officer may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal prior to a commission decision on the appeal. The presiding officer shall notify the commission of its decision to treat the appeal as a motion for reconsideration.

(b) **Motion for reconsideration of interim order issued by the commission.**

(1) **Availability of motion for reconsideration.** Motions are available for any interim order of the commission that immediately prejudices a substantial or

material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Interim orders shall not be subject to exceptions prior to issuance of a proposal for decision or motions for rehearing prior to the issuance of a final order.

- (2) **Procedure for motion for reconsideration.** If the commission does not intend to reduce an oral ruling to a written order, the commission shall so indicate on the record at the time of the oral ruling. A motion for reconsideration of an interim order issued by the commission shall be filed within five working days of the issuance of the written interim order or the oral interim ruling. The motion for reconsideration shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.
- (3) **Content.** A motion for reconsideration shall specify the reasons why the interim order is unjustified or improper.
- (4) **Responses.** Any response to a motion for reconsideration shall be filed within three working days of the filing of the motion.
- (5) **Agenda ballot.** Upon filing a motion for reconsideration, the Policy Development Division shall send separate ballots to each commissioner to determine whether they will consider the motion at an open meeting. The Policy Development Division shall notify the parties by letter whether a commissioner by individual ballot has added the motion to an open meeting agenda, but will not identify the requesting commissioner(s).

(6) **Denial or granting of motion.**

- (A) If after five working days of the filing of a motion no commissioner has, by agenda ballot, placed the motion on the agenda for an open meeting, the motion is deemed denied.
- (B) If any commissioner has balloted in favor of considering the motion, it shall be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the commissioner may direct by the agenda ballot. In the event two or more commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion shall be placed on the latest of the dates specified by the ballots. The time for ruling on the motion shall expire three days after the open meeting, unless extended by action of the commission.

§22.126. Bonded Rates.

During the pendency of its rate proceeding, a utility seeking to implement rates under bond pursuant to PURA §36.110 or §53.110 shall file the required number of copies of its application for approval of bond at least two weeks prior to the date the bonded rates are to be effective. The application shall conform to the requirements of Subchapter E, of this chapter (relating to Pleadings). The bond shall be in an amount equal to or greater than one-sixth of the annual

difference between the utility's current rates and the bonded rates. The bond must be approved by the Policy Development Division as to sufficiency based on the commission staff's review of the utility's application. Any decision by the Policy Development Division either approving or disapproving a bond is appealable to the commission pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

§22.127. Certification of an Issue to the Commission.

- (a) **Certification.** The presiding officer may certify to the commission an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law.
- (b) **Issues eligible for certification.** The following types of issues are appropriate for certification:
- (1) the commission's interpretation of its rules and applicable statutes;
 - (2) which rules or statutes are applicable to a proceeding; or
 - (3) whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

- (c) **Procedure for certification.** The presiding officer shall submit the certified issue to the Policy Development Division. The Policy Development Division shall place the certified issue on the commission's agenda to be considered at the earliest time practicable that is not earlier than 20 days after its submission. Parties may file briefs on the certified issue within 13 days of its submission. The presiding officer may abate the proceeding while a certified issue is pending.
- (d) **Commission action.** The commission shall issue a written decision on the certified issue within thirty days of its submission. A commission decision on a certified issue is not subject to motion for rehearing.

§22.143. Depositions.

- (a) **Governing statute.** The taking and use of depositions in any proceeding shall be governed by APA. A request to issue a commission for deposition shall be filed no later than five working days before the date of the deposition. Issuance of a commission for deposition is a ministerial act and does not preclude requests for issuance of a protective order pursuant to §22.142 of this title (relating to Limitations on Discovery and Protective Orders).

- (b) **Deposition by agreement.** Upon agreement of the parties, parties may waive the requirement of issuance of a commission. All parties shall be given no less than three working days notice of depositions, including the person to be deposed, the date, time, and place of the deposition, and the subject of the deposition.
- (c) **Copy to be provided.** Upon receipt of a transcript of the deposition by the party, the party conducting the deposition shall provide a copy of the transcript to commission staff .
- (d) **Agreements.** An agreement affecting a deposition upon oral examination is also enforceable if the agreement is recorded in the deposition transcript.

§22.161. Sanctions.

- (a) **Enforcement of subpoenas or commissions for depositions.** If a person fails to comply with the subpoena or commission for deposition issued by the presiding officer, the commission or the party requesting the subpoena or commission for deposition may seek enforcement pursuant to APA.

- (b) **Causes for imposition of sanctions.** An administrative law judge, on the administrative law judge's own motion or on the motion of a party, after notice and an opportunity for a hearing, may impose appropriate sanctions against a party or its representative for:
- (1) filing a motion or pleading that was brought in bad faith, for the purpose of harassment, or for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;
 - (2) abusing the discovery process in seeking, making or resisting discovery;
 - (3) failing to obey an order of an administrative law judge or the commission.
- (c) **Types of sanctions.** A sanction imposed under subsection (b) of this section may include, as appropriate and justified, issuance of an order:
- (1) disallowing further discovery of any kind or a particular kind by the disobedient party;
 - (2) charging all or any part of the expenses of discovery against the offending party or its representative;
 - (3) holding that designated facts be deemed admitted for purposes of the proceeding;
 - (4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;
 - (5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of such requests;

- (6) punishing the offending party or its representative for contempt to the same extent as a district court;
 - (7) requiring the offending party or its representative to pay, at the time ordered by the administrative law judge, the reasonable expenses, including attorney's fees, incurred by other parties because of the sanctionable behavior; and
 - (8) striking pleadings or testimony, or both, in whole or in part, or staying further proceedings until the order is obeyed.
- (d) **Imposition of sanctions by the commission.** In addition to the sanctions listed in subsection (c) of this section that may be imposed by an administrative law judge, except for Subsection (c)(6), any other presiding officer including the commission, after notice and opportunity for hearing, may impose sanctions including:
- (1) disallow the disobedient party's rights to participate in the proceeding;
 - (2) dismiss the application with or without prejudice;
 - (3) institute civil action; or
 - (4) impose any other sanction available to the commission by law.
- (e) **Procedure.** A motion for sanctions may be filed at any time during the proceeding or may be initiated *sua sponte* by the presiding officer. A motion to compel discovery is not a prerequisite to the filing of a motion for sanctions. A motion should contain all factual allegations necessary to apprise the parties and the presiding officer of the conduct at issue,

should request specific relief, and shall be verified by affidavit. A motion shall be served on all parties. Upon receipt of the motion, a hearing shall be held on the motion. Any order regarding sanctions issued by a presiding officer shall be appealable pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission). Any sanction imposed by the presiding officer shall be automatically stayed to allow the party to appeal the imposition of the sanction to the commission.

§22.181. Dismissal of a Proceeding.

(a) Motions for dismissal.

- (1) Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding without an evidentiary hearing, for any of the following reasons:
 - (A) lack of jurisdiction;
 - (B) moot questions or obsolete petitions;
 - (C) res judicata;
 - (D) collateral estoppel;
 - (E) unnecessary duplication of proceedings;
 - (F) failure to prosecute;

- (G) failure to state a claim for which relief can be granted; or
 - (H) other good cause shown.
- (2) The party that initiated the proceeding shall have 20 days from the date of receipt to respond to a motion to dismiss. If a hearing on the motion to dismiss is held, that hearing shall be confined to the issues raised by the motion to dismiss.
- (3) If the presiding officer determines that the proceeding should be dismissed, the presiding officer may prepare a Proposal for Decision to that effect, or issue an order dismissing the proceeding. The commission shall consider the Proposal for Decision as soon as is practicable.
- (4) An order dismissing a proceeding under paragraph (3) of this subsection may be appealed pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).
- (b) **Withdrawal of application.** A party that initiated a proceeding may withdraw its application, petition, or complaint, without prejudice to refiling of same, at any time before that party has presented its direct case. After the presentation of its direct case, but prior to the signing of a final order thereon by the commission, a party may withdraw its application, petition, or complaint, without prejudice to refiling of same, only upon a finding of good cause by the presiding officer. If an application is authorized to be withdrawn, the presiding officer shall issue an order of dismissal without prejudice.

§22.203. Order of Procedure.

- (a) **Opening the evidentiary hearing.** The presiding officer shall open the hearing by making a concise statement of its scope and purposes and by taking appearances of each party or the party's authorized representative.
- (b) **Order of procedure in evidentiary hearings.**
- (1) The party with the burden of proof on the whole proceeding shall be entitled to open and to close. Parties shall be allowed to make opening statements. Following opening statements, if any, the party with the burden of proof shall be allowed to proceed with its direct case. Opposing parties shall be allowed to cross-examine each witness, consistent with any order aligning parties. Each party shall then present its case and witnesses will be subjected to cross-examination. Unless otherwise ordered by the presiding officer for good cause, the commission staff representing the public interest shall be the last party to present a direct case.
 - (2) Redirect or recross examination will be limited to matters raised in the round of examination immediately preceding the redirect or recross examination.
 - (3) The party with the burden of proof may rebut evidence presented by opposing parties after all parties have presented their direct cases. Rebuttal may be afforded other parties at the presiding officer's discretion, provided that the party with the

burden of proof shall be entitled to make the closing presentation, which may include surrebuttal.

- (4) The presiding officer may allow supplemental rebuttal only to the extent that the party with the burden of proof could not have reasonably anticipated the need for such evidence in time to file it with the party's main rebuttal case. Oral supplemental rebuttal may be allowed, provided that the testimony is in response to matters first brought up in cross examination of a nonapplicant witness and only to the extent that the applicant could not have reasonably anticipated the need for such evidence in time to file it in written form. If a party intends to present supplemental rebuttal, it shall state in writing or on the record at the beginning of the presentation of its rebuttal case which witnesses will be presenting supplemental rebuttal, the general subject of the supplemental rebuttal, the evidence which the supplemental rebuttal is intended to rebut, and which rebuttal, if any, will be oral rather than written. Written supplemental rebuttal, if allowed, shall be filed no later than five working days after the date the evidence being rebutted was admitted. Oral supplemental rebuttal shall be limited to evidence offered to rebut evidence admitted less than five working days before the oral supplemental rebuttal is offered. Any exhibits offered during oral supplemental rebuttal shall be distributed to the presiding officer and the parties at the beginning of the applicant's rebuttal case, unless otherwise ordered by the presiding officer. A party may be exempted

from the requirements of this subparagraph only upon a showing that compliance is not feasible.

- (5) After parties have completed the presentation of evidence, and have been afforded the opportunity to cross-examine the other parties' witnesses, closing statements shall be allowed. Such statements shall be made either in writing or orally at the presiding officer's discretion.
- (6) The presiding officer may question any witness testifying in a case. A party may raise an evidentiary objection to any question asked by the presiding officer, and the presiding officer shall rule on any such objection.
- (7) Subject to the requirements of APA, the presiding officer may call upon any party for further material or relevant evidence on any issue before issuing a proposal for decision. The additional evidence shall not be admitted without an opportunity for inspection, objection, and cross-examination by all parties, and rebuttal by the party with the burden of proof on the whole proceeding.

§22.226. Exhibits.

- (a) **Form.** Exhibits to be offered in evidence at a hearing shall be of a size which will not unduly encumber the record. Whenever practicable, exhibits shall conform to the size requirements established by §22.72 of this title (relating to Formal Requisites of Pleadings

and Documents to be Filed with the Commission). The pages of each exhibit shall be consecutively numbered.

- (b) **Marking and exchanging exhibits.** Each exhibit offered in evidence shall be marked for identification by the presiding officer or official reporter, if one is present. Copies of the exhibit shall be furnished to the presiding officer and distributed to each party present at the hearing no later than the time the exhibit is offered in evidence, or at an earlier time if ordered by the presiding officer for the orderly conduct of the hearing.
- (c) **Excluded exhibits.** If the party offering an exhibit that has been identified, objected to and excluded wishes to withdraw the offer, the presiding officer shall permit the return of the exhibit to the party.
- (d) **Late exhibits.** Except as may otherwise be agreed to by the parties on the record prior to the close of the hearing, no exhibit shall be received in evidence in any proceeding after the hearing has been concluded except on the motion of the presiding officer or for good cause shown on written motion of the party offering the evidence. If the admission into evidence of a late-filed exhibit is proposed, copies shall be served on all parties of record. Parties shall file pleadings in opposition to admission of late-filed exhibits within five working days of the receipt of the motion requesting admission of the exhibit.

§22.241. Investigations.**(a) Commission investigations.**

- (1) The commission may at any time institute formal investigations on its own motion, or the motion of the commission's staff, . Orders and pleadings initiating investigations shall specify the matters to be investigated, and shall be served upon the person being investigated.
- (2) Notice of commission-instituted investigations of specific persons subject to commission regulation and investigative proceedings affecting such persons as a class will be served upon all affected persons under investigation. The commission shall post notice with the *Texas Register* of prehearing conferences and hearings. The presiding officer may require additional notice.

- (b) Show cause orders in complaint proceeding.** The presiding officer, either upon his or her own motion or upon receipt of written complaint, may at any time after appropriate notice has been given, summon any person within the commission's jurisdiction to appear in a public hearing and show cause why such person should not be compelled to comply with any applicable statute, rule, regulation, or general order with which the person is allegedly not in compliance. All hearings in such show cause proceedings shall be conducted in accordance with the provisions of this chapter.

- (c) **No limitations.** Nothing in this section shall be construed to limit the commission's authority to investigate persons subject to the commission's jurisdiction.

§22.242. Complaints.

- (a) **Records of complaints.** Any affected person may complain to the commission, either in writing or by telephone, setting forth any act or thing done or omitted to be done by any electric utility or telecommunications utility in violation or claimed violation of any law which the commission has jurisdiction to administer or of any order, ordinance, rule, or regulation of the commission. The commission staff may request a complaint made by telephone be put in writing if necessary to complete investigation of the complaint. The commission shall keep information about each complaint filed with the commission. The commission shall retain the information pursuant to the agency's records retention schedule as approved by the Texas State Library and Archives Commission. The information shall include:
- (1) the date the complaint is received;
 - (2) the name of the complainant;
 - (3) the subject matter of the complaint;
 - (4) a record of all persons contacted in relation to the complaint;
 - (5) a summary of the results of the review or investigation of the complaint; and

- (6) for complaints for which the commission took no action, an explanation of the reason the complaint was closed without action.
- (b) **Access to complaint records.** The commission shall keep a file about each written complaint filed with the commission that the commission has the authority to resolve. The commission shall provide to the person filing the complaint and to the persons or entities complained about the commission's policies and procedures pertaining to complaint investigation and resolution. The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person or entity complained of about the status of the complaint unless the notice would jeopardize an undercover investigation.
- (c) **Informal resolution required in certain cases.** A person who is aggrieved by the conduct of an electric utility or telecommunications utility or other person must present a complaint to the 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) the complainant is commission staff, , the Office of Public Utility Counsel, or any city;

- (B) the complaint is filed by a qualifying facility and concerns rates paid by an electric utility for power provided by the qualifying facility, the terms and conditions for the purchase of such power, or any other matter that affects the relations between an electric utility and a qualifying facility;
 - (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.
- (2) For any complaint that is not listed in paragraph (1) of this subsection, the complainant may submit to the commission a written request for waiver of the requirement for attempted informal resolution. The complainant shall clearly state the reasons informal resolution is not appropriate. The commission staff may grant the request for good cause.
- (d) **Termination of informal resolution.** The commission staff shall attempt to informally resolve all complaints within 35 days of the date of receipt of the complaint. The commission staff shall notify, in writing, the complainant and the person against whom the complainant is seeking relief of the status of the dispute at the end of the 35-day period. If the dispute has not been resolved to the complainant's satisfaction within 35 days, the complainant may present the complaint to the commission. The commission staff shall

notify the complainant of the procedures for formally presenting a complaint to the commission.

(e) **Formal Complaint.** If an attempt at informal resolution fails, or is not required under subsection (c) of this section, the complainant may present a formal complaint to the commission.

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

(A) The person may present the complaint to the commission after:

- (i) the city issues a decision on the complaint; or
- (ii) the city issues a statement that it will not consider the complaint or a class of complaints that includes the person's complaint.

(B) If the city does not act on the complaint within 30 days, the commission may send the city a letter requesting that the city act on the complaint. If the city does not respond or act within 30 days from the date of the letter, the complaint shall be deemed denied by the city and the commission shall consider the complaint.

- (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) the name of the complainant or complainants;
 - (B) the name of the complainant's representative, if any;
 - (C) the address, telephone number, and facsimile transmission number, if available, of the complainant or the complainant's representative;
 - (D) the name of the 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 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 utility within the limits of a city, a description of any complaint proceedings conducted by the city, including the outcome of those proceedings;
 - (G) a statement of whether the complainant has attempted informal resolution through the commission staff and the date on which the informal resolution was completed or the time for attempting the informal resolution elapsed;
 - (H) a description of the facts that gave rise to the complaint; and
 - (I) a statement of the relief that the complainant is seeking.

- (f) **Copies to be provided.** A complainant shall file the required number of copies of the formal complaint, pursuant to §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). A complainant shall provide a copy of the formal complaint to the person from whom relief is sought.
- (g) **Docketing of complaints.** Any complaint that substantially complies with the requirements of this section shall be docketed.
- (h) **Continuation of service during processing of complaint.** In any case in which a formal complaint has been filed and an allegation is made that 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 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.

§22.243. 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 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 the Public Utility Regulatory Act

(PURA), Chapter 36, Subchapter C or Chapter 53, Subchapter C shall file a rate filing package and supporting workpapers as required by the commission's current rate filing package at the same time it files a statement of intent. The rate filing package shall be securely bound under cover, and shall include all information required by the commission's rate filing package form in the format specified. Examination for sufficiency and correction of deficiencies in rate filing packages are governed by §22.75 of this title (relating to Examination and Correction of Pleadings and Documents).

- (c) **Uncontested applications subject to administrative review.** If no motion to intervene is filed by the deadline for filing motions to intervene, the application may be considered pursuant to the procedure set forth in §22.32 of this title (relating to Administrative Review).

§22.244. Review of Municipal Rate Actions.

- (a) **Contents of petitions.** In addition to any information required by statute, petitions for review of municipal rate actions filed pursuant to 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) Each signature page of a petition shall contain in legible form above the signatures the following:
 - (A) A statement that the petition is an appeal of a specific rate action of the municipality in question;
 - (B) The date of and a concise description of that rate action;
 - (C) A statement designating a specific individual, group of individuals, or organization as the signatories' authorized representative; and
 - (D) A statement that the designated representative is authorized to represent the signatories in all proceedings before the commission and appropriate courts of law and to do all things necessary to represent the signatories in those proceedings.
 - (2) The printed or typed name, telephone number, street or rural route address, and facsimile transmission number, if available, of each signatory shall be provided. Post office box numbers are not sufficient. In appeals relating to PURA §§33.101 – 33.104, the petition shall list the address of the location where service is received if the address differs from the residential address of the signatory.
- (b) **Signatures.** A signature shall be counted only once, regardless of the number of bills the signatory receives. The signature shall be of the person in whose name service is provided or such person's spouse. The signature shall be accompanied by a statement indicating whether the signatory is appealing the municipal rate action as a qualified voter of that

municipality under PURA §33.052, or as a customer of the municipality served outside the municipal limits under PURA §§33.101 – 33.104.

- (c) **Validity of petition and correction of deficiencies.** The petition shall include all of the information required by this section, legibly written, for each signature in order for the signature to be deemed valid. The presiding officer may allow the petitioner a reasonable time of up to 30 days from the date any deficiencies are identified to cure any defects in the petition.
- (d) **Verification of petition.** Unless otherwise provided by order of the presiding officer, the following procedures shall be followed to verify petitions appealing municipal rate actions filed pursuant to PURA §33.052 and §§33.101 – 33.104.
- (1) Within 15 days of the filing of an appeal of a municipal rate action, the Policy Development Division shall send a copy of the petition to the respondent municipality with a directive that the municipality verify the signatures on the petition.
 - (2) Within 30 days after receipt of the petition from the Policy Development Division, the municipality shall file with the commission a statement of review, together with a supporting written affidavit sworn to by a municipal official.
 - (3) The period for the municipality's review of the signatures on the petition may be extended by the presiding officer for good cause.

- (4) Failure of the municipality to timely submit the statement of review shall result in all signatures being deemed valid, unless any signature is otherwise shown to be invalid or is invalid on its face.
 - (5) Objections by the municipality to the authenticity of signatures shall be set out in its statement of review and shall be resolved by the presiding officer.
- (e) **Disputes.** Any dispute over the sufficiency or legibility of a petition shall be resolved by the presiding officer by interim order.

§22.262. Commission Action After a Proposal for Decision.

- (a) **Commission Action.** The commission may change a finding of fact or conclusion of law made by the administrative law judge or vacate or modify an order issued by the administrative law judge only if the commission:
 - (1) determines that the administrative law judge:
 - (A) did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions; or
 - (B) issued a finding of fact that is not supported by a preponderance of the evidence; or

- (2) determines that a commission policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.

- (b) **Reasons to Be in Writing.** The commission shall state in writing the specific reason and legal basis for its determination under subsection (a) of this section.

- (c) **Remand.** The commission may remand the proceeding for further consideration.
 - (1) The commission may direct that further consideration by an administrative law judge be accomplished with or without reopening the hearing and may limit the issues to be considered.
 - (2) If, on remand, additional evidence is admitted that results in a substantial revision of the proposed decision or the underlying facts, an amended or supplemental proposal for decision or proposed order shall be prepared. If an amended or supplemental proposal for decision is prepared, the provisions of §22.261(d) of this title (relating to Proposal for Decision) apply. Exceptions and replies shall be limited to discussions, proposals, and recommendations in the supplemental proposal for decision.

- (d) **Oral Argument Before the Commission.**
 - (1) Any party may request oral argument before the commission prior to the final disposition of any proceeding.

- (2) Oral argument shall be allowed at the discretion of the commission. The commission may limit the scope and duration of oral argument. The party bearing the burden of proof has the right to open and close oral argument.
 - (3) A request for oral argument shall be made in a separate written pleading, filed with the commission's filing clerk. The request shall be filed no later than 3:00 p.m. on the seventh working day preceding the date upon which the commission is scheduled to consider the case.
 - (4) Upon the filing of a motion for oral argument, the Policy Development Division shall send separate ballots to each commissioner to determine whether the commission will hear oral argument at an open meeting. An affirmative vote by one commissioner is required to grant oral argument. Not more than two days before the commission is scheduled to consider the case, the parties may contact the Policy Development Division to determine whether a request for oral argument has been granted.
 - (5) The absence or denial of a request for oral argument shall not preclude the commissioners from asking questions of any party present at the open meeting.
- (e) **Commission Not Limited.** This section does not limit the commission in the conduct of its meetings to the specific types of action outlined in this section.

§22.264. Rehearing.

- (a) Motions for rehearing, replies thereto, and commission action on motions for rehearing shall be governed by APA. Only a party who has been granted intervenor status may file a motion for rehearing.
- (b) All motions for rehearing shall state the claimed error with specificity. If an ultimate finding of fact stated in statutory language is claimed to be in error, the motion for rehearing shall state all underlying or basic findings of fact claimed to be in error and shall cite specific evidence which is relied upon as support for the claim of error.
- (c) Upon the filing of a motion for rehearing, the Policy Development Division shall send separate ballots to each commissioner to determine whether they will consider the motion at an open meeting. An affirmative vote by one commissioner is required for consideration of the motion at an open meeting.

§22.281. Initiation of Rulemaking.

- (a) **Petition for Rulemaking.** Any interested person may petition the commission requesting the adoption of a new rule or the amendment of an existing rule.

- (1) The petition shall be in writing and shall include a brief explanation of the rule, the reason(s) the new or amended rule should be adopted, the statutory authority for such a rule or amendment, and complete proposed text for the rule. The proposed text for the rule shall indicate by striking through the words, if any, to be deleted from the current rule and by underlining the words, if any, to be added to the current rule.
 - (2) Upon receipt of a petition for rulemaking, the commission shall submit a notice for publication in the "In Addition" section of the *Texas Register*. The notice shall include a summary of the petition, the name of the individual, organization or entity that submitted the petition, and notification that a copy of the petition will be available for review and copying in the commission's central records. Comments on the petition shall be due 21 days from the date of publication of the notice. Failure to publish a notice of a petition for rulemaking in the *Texas Register* shall not invalidate any commission action on the petition for rulemaking.
 - (3) Within 60 days after submission of a petition, the commission either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings.
- (b) **Commission Initiated Rulemaking.** The commission may initiate rulemaking proceedings on its own motion. Nothing in this section shall preclude the commission

general counsel or commission staff from consideration or development of new rules or amendments to existing rules without express direction from the commission.

This agency hereby certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that Procedural Rule §§22.51, 22.52, 22.71, 22.104, 22.123, and 22.242 are hereby adopted with changes to the text as proposed; and §§22.1, 22.2, 22.22, 22.33, 22.35, 22.72, 22.75, 22.101, 22.102, 22.103, 22.105, 22.126, 22.127, 22.143, 22.161, 22.181, 22.203, 22.226, 22.241, 22.243 22.244, 22.262, 22.264 and 22.281 are hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 1st DAY OF MARCH 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman