

The Public Utility Commission of Texas (commission) adopts amendments to §§22.71 relating to Filing of Pleadings and Other Materials, 22.72 relating to Formal Requisites of Pleadings to be Filed with the Commission, 22.73 relating to General Requirements for Applications, 22.74 relating to Service of Pleadings, 22.75 relating to Examination and Correction of Pleadings, 22.76 relating to Amended Pleadings, 22.77 relating to Motions, 22.78 relating to Responsive Pleadings and Emergency Action, and 22.80 relating to Commission Prescribed Forms with changes to the proposed text as published in the March 12, 1999 *Texas Register* (24 TexReg 1708). These amendments are adopted under Project Number 20364. These rules are necessary to establish consistent and efficient procedures for conducting commission business. The amendments are necessary to clarify the requirements for all pleadings, documents, and other materials filed with the commission. The amendment to §22.74 relating to service of pleadings is necessary to reflect a change in commission practice required by State law relating to agency mail. The amendments to §22.75 are necessary to shorten the time allowed for finding material deficiencies in transmission line applications in order to expedite these proceedings. The amendments to §22.78 establish a presumed date of receipt for pleadings and other documents to allow closure of the required response time; establish a response time for complaint proceedings consistent with the agency's customer service and protection rules; provide that emergency actions may include matters affecting the ability of a provider to compete; and allow the presiding officer discretion to set appropriate deadlines in proceeding under the Public Utility

Regulatory Act (PURA), Chapter 36, Subchapter D, and Chapter 53, Subchapter D in order to promote efficient processing of proceedings on a case-by-case basis.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. In the notice of intent to review Procedural Rules, Subchapter E, March 12, 1999 *Texas Register* (24 TexReg 1844), the commission invited specific comments regarding the Section 167 requirement as to whether the reason for adopting these rules continues to exist. No parties commented on the Section 167 requirement. The commission finds that the reason for adopting these sections continues to exist.

The commission received written comments on the proposed amendments from Brazos Electric Power Cooperative, Inc. (Brazos); Central Power and Light Company, Southwestern Electric Power Company and West Texas Utilities Company, collectively the Central and South West Corporation of Texas Electric Operating Companies (CSW); Reliant Energy HL&P (Reliant); Southwestern Bell Telephone Company (SWBT); and Texas Utilities Electric Company (now TXU Electric Company) (TXU). Brazos also filed reply comments.

A public hearing and workshop on the proposed amendments was held at commission offices on Wednesday, July 7, 1999. Representatives from AT&T Communications of the Southwest

(AT&T), Broyles and Pratt, P.C., Central and South West Corporation of Texas Electric Operating Companies (CSW), Clark Thomas and Winters, I-Search, Lloyd Gosselink Blevins Rochelle Baldwin and Townsend (Lloyd Gosselink), Reliant Energy HL&P (Reliant), Southwestern Public Service Company (SPS), Southwestern Bell Telephone Company (SWBT), and TXU Electric Company (TXU) attended the hearing. To the extent that these comments differ from the written comments, they are summarized herein.

General comments

TXU expressed concern that changing the word "pleading" to the word "document" throughout the subchapter would significantly expand the scope of the requirements found in Subchapter E. TXU stated that the filing requirements, including format and electronic filing standard would now apply to "all documents filed at the commission". TXU stated that many "documents" required to be filed with the commission for information purposes, i.e., Forms 10-K and 10-Q, FERC Form 1 and Annual Reports, cannot meet the commission's filing requirements. TXU states that the commission, as a repository for that information, should accept it in the format that the federal agency requires. TXU believes that if the commission retains the word "document" instead of "pleading", then certain documents should be specifically exempted from the filing requirements.

The commission proposed the amendment to change the word "pleading" to "document" to clarify that the rules apply to all filings made in Central Records. "Pleading" is a defined term

that may be read broadly to cover all filings, but the commission's experience is that persons making filings are sometimes uncertain about whether certain requirements apply to all filings. In response to TXU's comments, the commission has modified the use of the terms "pleading" and "document" to narrow the applicability of this subchapter. In addition, the commission will review its filing requirements for federal documents to determine whether, in light of widespread Internet availability of such information, it is still necessary to require utilities to file copies of documents filed with federal agencies.

TXU expressed concern that the number of paper copies required to be filed has not been reduced after almost two years of implementation of the electronic filing requirements. TXU states that in the amendment as proposed the number of copies of discovery responses, which are usually quite voluminous, will increase from three to four copies. TXU states this will increase the cost of compliance with the commission's filing requirements.

The commission makes the following reductions in copy requirements: (1) applications, petitions, and complaints are reduced from 13 to ten copies; (2) applications for expanded local calling are separated from the general application filing requirements and the number of copies are reduced from 13 to seven; (3) and applications for certificates of authority and service provider certificates of authority are separated from the general application filing requirements and the number of copies required reduced to six.

Reliant and CSW commented that the commission could be more responsive to the public if open meeting consent agendas were made available on the commission's web site by 3:00 p.m. the day before an open meeting, as this would avoid unnecessary travel expenses. TXU commented that it would be helpful if the agenda were available no later than noon the day before the open meeting. Reliant and CSW also commented that on-line Internet access to open meeting proceedings, similar to the coverage available on the Legislature's web site, would promote cost savings and be more efficient both for the public and the commission.

The consent agenda and on-line Internet access are internal management matters and are not addressed in the commission's rules. However, the commission recognizes that many persons depend on the consent agenda and posts it as soon as it is available.

Broyles and Pratt requested the commission consider adding the category "orders" to the search parameters available over the commission's web site. Currently it is not possible for those outside the commission to search on "orders" only.

The search parameters for the Interchange are internal management matters that are not addressed in the commission's rules. However, in response to user interest, the commission's Information Technology division will investigate providing additional search options.

I-Search requested Central Records review their internal procedures to see if files and documents could be made more accessible to interested persons. I-Search further commented that the only

printer available for electronic downloading often has document after document in queue and so is not available for obtaining information on a timely basis. I-Search further requested, that if possible, the electronic index be modified to indicate when a document is so large that it is not in the regular file, so that interested persons know when to request a bulk item and do not have to make two requests in order to get the same document.

Many Central Records practices relate to internal management and are not addressed in the commission's rules. However, the commission is interested in improving its Central Records service whenever possible. Since the public hearing, two additional printers have been added to Central Records for public access.

Section 22.71

CSW, Reliant and I-Search commented concerning the commission's "extra copy box" in Central Records. The "extra copy box" was started to assist parties in retrieving documents from Central Records on a real-time basis; however parties are not required to provide a copy of documents for this box. CSW, Reliant and I-Search commented that this copy is essential, and in some cases, the only resource available to parties to retrieve relevant documents in a timely manner. Reliant expressed concern that during the implementation of Senate Bill 7, quick access to documents will be critical. These commenters requested that parties be required by rule to provide a copy of all documents for the "extra copy box". CSW and Reliant commented that the commission's filing clerk should be required to stamp the extra copy to designate it as such and should ensure

that the copy is returned to the box after it has been copied by parties in Central Records. CSW suggested the requirement would not unduly burden any party. Brazos filed reply comments strongly opposing providing an additional copy for the "extra copy box." Brazos suggest the commission focus on creating new internal processes and systems that do not rely on having hard copies of the many documents that are filed at the commission. Brazos disagrees with CSW that providing the additional copy would not unduly burden parties and states that the proposed rule broadens the filing requirements with the result being increased costs without explanation of the overriding benefit.

Except for tariffs and discovery responses, Central Records routes a copy to the "extra copy box" in most cases. Although the "extra copy box" has been a valuable Central Records feature for many years, the commission urges parties to use the Interchange for prompt availability of filings. Almost all filings are available before 9:00 a.m. the day after filing. However, since parties rely on the "extra copy box", the commission changes the rule to ensure that a copy of every filing will be placed in the "extra copy box". This results in increasing the number of copies for tariffs from five to six; applications for certificates of convenience and necessity for transmission lines or boundary changes, certificates of convenience and necessity exemptions, and service area exceptions from six to seven; and discovery requests from the proposed four copies to five copies.

TXU stated that as a party to all docketed proceedings, General Counsel receives a service copy of all pleadings that are filed. Therefore, either the number of copies should be reduced by at

least one, or General Counsel could be excluded from additional service by the parties in all proceedings assigned a control number.

Although the Procedural Rules require service of pleadings on the Office of Regulatory Affairs, not all parties provide a copy in addition to those required by §22.71. For that reason, the more appropriate course is to change the service requirement, which cannot be accomplished in this proceeding.

TXU commented that there are sometimes discrepancies between the number of copies the rule or a commission form require and the number of copies actually required by Central Records. TXU advised this is especially a problem with tariffs.

The commission will review all commission prescribed forms and make conforming changes where necessary. The copy requirements for tariffs, a frequent source of confusion, are determined based on whether the tariff is being filed in an undocketed or a docketed proceeding. Tariffs filed for review under §22.33 required five copies, as provided in proposed subsection (c)(2). Section 22.33 is limited to "undocketed applications by utilities to change their tariffs." Tariffs filed in connection with docketed proceedings are under the requirements of proposed §22.71(c)(11). Tariffs that are filed as a discovery response are under the requirements of proposed §22.71(c)(2) if the discovery request is in a §22.33 tariff proceeding, and under proposed §22.71(c)(8) if in a docketed proceeding. Subsection (c) has been modified to clarify the number of copies required related to tariffs.

CSW and Brazos commented on proposed §22.71(c)(8) regarding the number of discovery responses filed. The proposed rule increased the number of copies of discovery responses required to be filed from three to four. CSW suggested that the scan copy be used as the Office of Regulatory Affairs-Legal Division's copy or the copy for technical staff, allowing the fourth copy to be used for the "extra copy box."

Brazos requested the commission reconsider §22.71(c)(8) to clarify ambiguities which exist between §22.71(c)(8), and §22.144(c)(2)(C) and §22.144(h)(1). Section 22.144(c)(2)(C) states that "responses to requests for production of documents, property, or other items, shall state, for each item or category of items for which an objection has not been raised, that inspection or other requested action will be permitted at a mutually convenient time at the location where the documents, property, or other items are maintained." Section 22.144(h)(1) states that "responses to particular questions that consist of less than 100 pages are not voluminous and shall be provided in full." Brazos states that the term "provided" simply means producing the documents to the requesting party and is not synonymous with "filing". Proposed §22.71(c)(8) states that four copies of discovery responses shall be filed. Brazos comments that the commission's Procedural Rules give credence to the argument that only the narrative responses to discovery must be filed and that non-voluminous documents are to be given to the party requesting the discovery and made available to additional parties who request the information.

In support of its argument that only "narrative" responses to discovery requests should be filed with the commission, Brazos notes that the State Office of Administrative Hearings (SOAH) does not require documents produced in discovery to be filed with SOAH, except by order of the administrative law judge or in support of a motion to compel, motion for protective order or motion to quash. Brazos also refers to the new Rules of Civil Procedure for the State of Texas recently adopted by the Texas Supreme Court, which lists among the items not to be filed "documents and tangible things produced in discovery". Brazos states that the Texas Supreme Court did not negate the public access requirement, but rather made a requirement that "any person required to serve discovery materials not required to be filed must retain the original or exact copy of the materials during the pendency of the case and any related appellate proceedings begun within six months after judgment is signed unless otherwise provided by the trial court." Brazos states that requiring a party to file not only one copy of discovery documents, but four copies, serves to open discovery up to countless abuses as the costs associated with discovery mount and the commission becomes needlessly burdened by voluminous documents tying up staff, resources and space.

At the public hearing, SWBT and TXU requested clarification on why discovery responses must be filed with the commission, noting that SOAH does not require discovery responses.

The commission is unable to clarify §22.144 as requested by Brazos because no notice has been provided for amending that section. The commission recognizes that SOAH and civil courts do not require discovery responses to be filed. However, the commission must comply with the

State record management and retention laws, including the retention schedule that has been specifically approved for the commission by the State Library and Archives Commission. All documents received by the commission, whether they are filed in Central Records or provided to the staff, must be managed and retained in accordance with the approved retention schedule. In developing the existing retention schedule, the commission determined it would be more efficient for Central Records to maintain the record copy of all documents in docketed proceeding. The commission will investigate changing its internal practices and retention schedule requirements to determine whether the filing requirement for discovery responses can be eliminated.

The commission recognizes that discovery responses are often large documents and additional copies may add significant costs. Because of the large volume of material that must be scanned on a same-day basis, it is not feasible to retrieve the scan copy of all filings. However, for discovery responses only, Central Records will salvage the scan copy to be used for the "extra copy box".

CSW commented on proposed §22.71(c)(9) which requires four copies of all reports required pursuant to the Public Utility Regulatory Act (PURA) or the commission's substantive rules. CSW recommended that the commission further distinguish between commission required reports and those that are required to be filed at the commission as a result of their filing with other agencies. CSW states that because these filings are informational filings, scanning should not be necessary and only three copies should be required.

All pleadings and documents filed in Central Records, with the exception of oversized documents, e.g., maps, are scanned and require a scan copy. The commission has distinguished between reports prepared specifically for the commission and informational filing reports prepared for other agencies regarding formatting requirements. However, because scanning is required to make documents available over the Interchange, the number of copies required will not be changed for the reason that scanning is unnecessary.

CSW, Reliant, SWBT and TXU filed comments regarding §22.71(f). CSW and Reliant commented that even though the filing clerk's hours are from 9:00 a.m. to 5:00 p.m., Central Records' hours for parties to retrieve information and files for prehearing conferences, hearings, workshops or other meetings should be 8:00 a.m. to 5:00 p.m. CSW and Reliant advised they do not object to the amendment which allows commission staff to file items related to the open meeting between the hour of 8:00 a.m. and 9:00 a.m. on open meeting days, as long as a copy is made available in the "extra copy box." SWBT and TXU oppose the amendment that allows commission staff to file items related to open meetings between the hour of 8:00 a.m. and 9:00 a.m. on open meeting days. SWBT states that it is difficult to follow conversations in open meeting without access to documents filed for that meeting and submits that open meeting related items should be filed by 3:00 p.m. the day before the open meeting and copies provided to parties. TXU states that as commission staff, General Counsel and the Office of Regulatory Affairs would have an unfair advantage because they are parties to contested cases and would be able to file last minute pleadings without opportunity for other parties to see or respond to the

pleadings. TXU also states that the Office of Policy Development should be required to file documents by noon the day before the open meeting in order to allow parties time to obtain copies of the documents.

The commission declines to make the change suggested by CSW and Reliant regarding Central Records' hours. It is necessary for Central Records to have this uninterrupted time to complete scanning, logging and filing of documents so they will be available for customer use. The commission modifies §22.71(f) to clarify that Commissioners and the Office of Policy Development may file documents on behalf of the Commissioners between the hours of 8:00 a.m. and 9:00 a.m. on open meeting days. The Commissioners and the Office of Policy Development will provide Central Records an extra copy of any document filed during that hour for the upcoming open meeting, so that the public will have access to the information. Even though it has been the policy of Central Records to allow the public to have access to documents between 8:00 a.m. and 9:00 a.m. on open meeting days, this policy has now been incorporated into the rule.

CSW commented on the proposed amendment to §22.71(i) to further discourage late filing of documents addressed to the commission prior to an open meeting. CSW suggests that a statement by the commission that participants will be treated in a fair and evenhanded manner will go a long way to deter attempts by parties to gain advantage by craftily timed late filings.

Section 22.71 clearly states the requirements for filings relating to open meeting items addressed to the commissioners and provides for limited exceptions. The commission administers all of its rules, dockets and business in a fair and even handed manner.

Section 22.72

CSW and SWBT commented on §22.72(c)(1) that sets out the format, i.e., line spacing and margins, for any filing with the commission. CSW and SWBT stated that reports filed with the commission as a result of having to file these reports with other agencies, i.e., Securities and Exchange Commission reports and Federal Communications Commission filings, should be exempt from these requirements. SWBT requested clarification on whether these filings would have to be reformatted to meet commission requirements. CSW advises that reformatting these reports to meet commission requirements is sometimes difficult and time consuming.

It is not the commission's intent that pleadings and/or documents prepared for other agencies but filed with the commission for informational purposes should have to be reformatted. This section has been modified to clarify the commission's intent.

CSW commented on §22.72(d) concerning citation form. CSW suggests that to avoid potential confusion between the Office of Policy Development's Citation Guide and other citation authorities, the commission should designate the order of preference on which authority should be used.

Since the Office of Policy Development's Citation Guide provides guidance on citation form unique to the commission, this authority should be used first. The commission modifies §22.72(d) per CSW's suggestion.

Reliant, SWBT and TXU commented on the proposed amendment to §22.72(e) to require parties to include their email addresses on all documents. Reliant commented that it sees no problem with providing the email information as long as the primary contact medium continues to be the telephone number. TXU states that this would impact non-commission documents as previously discussed and also some commission prescribed forms. TXU states that if the commission is considering allowing service to be accomplished by email, then TXU would have numerous concerns as to how this would be implemented. If not, then TXU sees no reason to require parties to provide email addresses, but notes that parties could agree to exchange email addresses as appropriate or necessary. SWBT opposes the mandatory requirement for email addresses. SWBT has concerns that providing email addresses in public documents will result in an increase in unwanted emails, increase the risk of virus contamination affecting corporate security, and raises questions concerning attorney client privilege. SWBT states that providing an email address should be optional.

The commission does not adopt the requirement for parties to include their email addresses.

TXU commented on §22.72(f) regarding limitations on the number of pages. TXU stated that due to the proposed expansion of the rules from "pleadings" to "documents," the current page limitation provision is no longer completely appropriate, and would need to exclude, at the very least, discovery responses. TXU also requested clarification on whether the page limitations apply to "all documents" or only those filed in "docketed" proceedings, as documents filed in projects or in response to commission rules can easily exceed the 50-page limitation.

As previously discussed, the commission has modified the rules on adoption to narrow the application of "documents" and clarified exactly what is considered a "pleading" for purposes of this subchapter. This subsection applies to docketed proceedings. A sentence has been added to clarify that the page limitations in this subsection do not apply to discovery responses.

TXU commented on §22.72(b)(1) and §22.72(g)(4). Section 22.72(b)(1) requires documents be filed with the style and number of the docket or project in which they are submitted, if available. TXU states that for non-commission documents, i.e., FERC filings, SEC reports, etc., this requirement can not be met since §22.72(g)(4) prohibits cover letters. TXU suggests that this provision be amended to either delete the requirement for non-commission documents or to allow cover letters to be filed with the documents. TXU advises that this problem could be eliminated by retaining the current scope of this rule to apply only to "pleadings".

CSW and TXU commented on proposed §22.72(g)(4) that prohibits cover letters except for tariff sheets. CSW supports the change but requests clarification on what might be classified as a

cover letter in situations other than tariff filings and where such letters are necessary to convey substantive information not otherwise contained in the filing. TXU states that this subsection should be revised to allow a cover letter, when necessary to convey information required by the rules, with respect to a filing other than a pleading.

The commission considers a "cover letter" to be a letter whose only function is to state that a document is being filed. Letters containing information that is necessary to explain or complete a filing are not prohibited. TXU's concern has been addressed by the modifications to the adopted amendments concerning the use of the terms "document" and "pleading."

TXU commented on §22.72(g)(5) regarding the consecutive numbering of all pages to documents filed pursuant to §22.72(g)(2). TXU states that an exemption should be included with respect to certain voluminous documents such as large filing packages and non-commission reports. SPS requested clarification that it is only the scanned copy that must be consecutively numbered.

Parties are required to provide one copy of each document filed with the commission without bindings, staples, tabs or separators. This is the copy used to scan the image of the document into the electronic filing system. This is the only copy that must be consecutively page numbered. Since all the pages are loose, the numbering is required to ensure the integrity of the document. Proposed paragraph (5) has been moved to be a clause under paragraph (2) to clarify that only the scan copy must be consecutively numbered.

TXU also comments that discovery responses should be exempt from the table of contents requirement. TXU states that discovery responses may include more than 50 questions and include dozens of subparts and that preparing the table of contents can take literally hours of time to prepare. TXU submits that a table of contents for discovery responses is of minimal use and is far outweighed by the burden imposed in creating one. At the public hearing, CSW, Reliant, and SWBT agreed with TXU.

The commission agrees and has removed the requirement for a table of contents for discovery responses.

SPS and TXU commented on §22.72(h) concerning electronic filing requirements. SPS advised that at times there have been problems with the commission's Interchange and it has not been possible to get the electronic filing here with the paper copies. The paper copy is then not accepted for filing, resulting in documents being filed late. TXU states that this subsection provides for electronic filings via diskette or Internet, but that the commission has not offered the Internet option for some time as copies filed over the Internet are corrupted. TXU also states that the commission's Central Records requires a diskette even if a filing is made over the Internet. TXU advises that using diskettes for each filing over 10 pages is costly and the option of retrieving "used" diskettes from the commission is not a good option due to concerns about computer viruses being spread. TXU comments that this subsection should be revised to exclude all documents except pleadings from the electronic filing requirements. TXU states that

documents not created specifically for the commission may not be able to meet the requirements of §22.72(h)(1) or (h)(3). TXU also suggests amending the subsection to require a table of contents only on documents exceeding 20 pages or that has more than five headings and/or subheadings. TXU advises that many documents required to be filed electronically because they are over ten pages do not have major sections that lend themselves to listing and the table of contents often has only one or two items listed.

The problems with the Interchange that prevented filing documents via the Internet have been corrected. Any person who has a problem submitting a document through the Internet should contact the commission's Information Technology division help desk at (512) 936-7100. Central Records no longer requires a diskette to be submitted along with the Internet submission. The commission believes that TXU's concerns about documents not created specifically for the commission meeting the requirements has been addressed in the clarification of the terms "pleading" and "document." The commission agrees with TXU concerning the table of contents and has modified the rule to require a table of contents for documents over ten pages that contain five or more headings and/or subheadings.

The diskette size in §22.72(i)(2) has been corrected to 1.44M as pointed out by TXU.

Section 22.74

TXU commented on §22.74(b)(1) concerning methods of service. The proposed amendment modified this subsection to allow state agencies to complete service on a party at the time the document is deposited with the General Services Commission instead of the United States Postal Service. TXU sees no reason to alter the current rule. TXU advises that the Texas Rules of Civil Procedure do not contain any such special dispensation for state agencies even though they, via representation by the Attorney General, are frequently parties to court proceedings. TXU states further, that while most deadlines are calculated based upon receipt, not when service is complete, a proposed change to §22.78(a) provides that "it shall be presumed that all documents are received within three days of the filing date." For documents that are filed with the commission and delivered to the General Services Commission on a Friday, the document may not even be delivered to the Postal Service within three days, let alone be received by the addressee within three days. TXU states that the special provision for state agencies should be deleted, but that if not, then §22.78(a) should be modified to reflect the additional lapse of time caused by the General Services Commission.

Because state agencies are required to use the General Services Commission to provide mail service, and have no control over when an item is actually mailed, the commission retains the exception for state agencies that allows for completion of service on a party at the time the document is deposited with the General Services Commission instead of the United States Postal Service. The commission modifies §22.78(a) to reflect that all pleadings and documents shall be presumed received within five days instead of three days.

Section 22.75

CSW, SWBT and TXU commented on §22.75. CSW and SWBT commented on subsection (b) which gives the commission filing clerk explicit authority to reject documents which do not comply with the commission's filing requirements. CSW suggests that language be added to provide a time limit such as 48 hours to permit correction of the deficiency before the failure to correct the deficiency will result in the striking of the document from the record. SWBT expressed concerns with pleadings that are jurisdictional, like motions for rehearing. SWBT felt the proposed language provided the filing clerk with too much discretion that could have serious consequences for parties with time sensitive documents. SWBT suggested adding the words "do not substantially comply."

The commission clarifies subsection (b) by dividing it into two paragraphs. Paragraph (1) states that the filing clerk shall not accept documents that do not comply with §22.72 relating to Formal Requisites of Documents to be Filed with the Commission, except for motions for rehearing and replies to motions for rehearing. All pleadings required under paragraph (1) must meet the requirements of §22.72 before being accepted by the commission filing clerk. If a filing made in a docketed proceeding is late because it did not meet the requirements of §22.72, the presiding officer will determine whether the document should be stricken from the record. Paragraph (2) states that all pleadings that do not comply in all material respects "with other sections" of Chapter 22 shall be conditionally accepted for filing. The presiding officer assigned to the proceeding, not the filing clerk, determines the deficiency in the pleading and notifies the

responsible party. The presiding officer determines how long a party will have to correct the deficiency.

TXU commented on subsection (d)(1) concerning the proposed amendments to the number of days to find an application for certificates of convenience and necessity for transmission lines materially deficient. The proposed amendment reduced the time from 60 days to 21 days to file a motion to find an application deficient and from 15 days to five days for a party to respond to the motion. TXU agrees with the proposed change from 60 days to 21 days but suggest that due to weekends and holidays the response time should be five "working" days not five calendar days.

The commission agrees with TXU and has modified subsection (d)(1) to indicate five working days.

Section 22.78

TXU commented on §22.78(a) concerning the proposed language, "Unless the presiding officer is advised otherwise, it shall be presumed that all documents are received within three days of the filing date." TXU states that if the exception for state agencies in §22.74(b)(1) is adopted, then this subsection should be modified to indicate that for documents mailed by state agencies, the presumed receipt date should be within five days of the filing date.

The commission has modified §22.78(a) to reflect "within five days of the filing date" for all parties, not just state agencies.

CSW, Reliant, SWBT and TXU commented on proposed §22.78(b). The proposed amendment added the language that responses to complaints should be filed within 14 days. CSW, Reliant and SWBT stated that the time for responding to a complaint should be consistent with the 21 days for responding to a complaint adopted in the new customer service and protection rules. SWBT and TXU commented that current practice is to wait until the commission docket the complaint and requires a response. TXU stated that there is no reason to change the current practice, because what is required in a response, and when, should be determined on a case by case basis, as the complexity and dollar amount in dispute can vary greatly. SWBT and TXU stated that if a deadline is included in the rule, then the deadline should run from when the respondent receives the complaint, not when it is filed, in case the complainant fails to serve a copy of the complaint on the respondent. SWBT also expressed concern because the rule does not specify what type of denial is required. In court what is filed is typically a general denial, however, SWBT advises that has not been the usual practice at the commission. Also, if the complaint is frivolous, the appropriate response might be a motion to dismiss rather than responding to each point-by-point allegation of the complaint.

The commission agrees that the time for responding should be changed from 14 days to 21 days and that the deadline for response should date from receipt of a complaint rather than the filing

date. The rule has been modified accordingly. The respondent has the responsibility to determine the appropriate type of response based on the circumstances in each case.

CSW, Reliant, SWBT and TXU commented on §22.78(c) concerning emergency action and the proposed amendment to add the language "harm or injury shall also include items affecting the ability of any provider to compete." SWBT requested clarification to more clearly define potential competitors. SWBT submits that any proposed rule should be drafted and interpreted as allowing SWBT to apply for and obtain emergency relief in the event one of its competitors files frivolous interventions. TXU believes the commission has no authority under PURA to grant such injunctive relief without first holding some type of hearing on the merits and that the proposed amendment is unwarranted. TXU states that many actions that "impair" a competitor's ability to compete are perfectly legal and to be expected in a competitive market. TXU comments that if actions are taken to impair a provider's ability to compete, then the result may be economic harm. If those actions are found to be unlawful then the economic harm can be recompensed through monetary damages awarded by the courts, which is the proper entity to which such complaints and claims should be taken.

CSW submits that the commission should be extremely cautious in exercising "emergency authority" since there may be legal limits on the commission's authority to act without notice and a hearing. CSW advises that its experience shows that most parties accused of the type of conduct which is alleged to warrant emergency relief are ready and willing to respond quickly to such allegations. CSW states that allegations that may warrant emergency relief may be placed

before the commission in a one-sided manner and may erroneously lead the commission to believe that action is needed before a response can be filed. Both CSW and Reliant suggest that the subsection on emergency action should specify what requirements must be met to grant emergency relief, including a sworn affidavit or verified complaint stating the specific facts to support the complaint. Reliant states the complainant should be minimally required to show: (1) the existence of a wrongful act; (2) the existence of imminent harm; (3) the existence of irreparable injury; and (4) the lack of an adequate remedy at law. CSW also comments that the rule should specify severe sanctions, such as dismissal, if the claim is found to be without merit.

The current language in §22.78(c) limits the presiding officer's authority to take emergency action by providing that such action must not be otherwise precluded by law. This language provides all protections afforded by other relevant laws, and sufficiently addresses the concerns raised by the commenters.

TXU commented on §22.78(d) regarding PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D Investigations or Complaints. The proposed amendment deleted the language "in no event shall the deadline for filing a response be less than 120 days if a full rate filing package is required, or less than 30 days if a full rate filing package is not required." TXU states that this leaves the matter entirely to the discretion of the presiding officer. TXU advises the minimum response times should be retained and that the language should remain in the rule. TXU states that the 120-day response time for electric utilities is included in PURA §36.153(a), with the

commission having the discretion under PURA §36.153(b) to extend the deadline or waive the requirement upon agreement of the parties, but not to shorten it.

This subsection states that "the presiding officer shall also set an appropriate deadline for the electric or telecommunications utility's response." PURA §36.153 establishes the filing guidelines for electric utilities. PURA does not establish similar guidelines for telecommunications utilities. Removing the language from the rule gives the presiding officer the flexibility to determine the best course of action on a case by case basis consistent with applicable statutory requirements.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (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.

Subchapter E. PLEADINGS AND OTHER DOCUMENTS.

§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: six copies;
- (4) 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;
- (5) exceptions, replies, interim appeals, requests for oral argument, and other documents addressed to the commissioners: 19 copies;
- (6) 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;
- (7) rate, fuel factor, and fuel reconciliation filing packages: 11 copies;
- (8) 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;
- (9) discovery requests: five copies;
- (10) discovery responses: four copies;
- (11) reports filed pursuant to the Public Utility Regulatory Act or the commission's Substantive Rules: four;

- (12) comments to proposed rulemakings: 16; and
 - (13) other pleadings and documents: ten copies, except that in contested cases transferred to the State Office of Administrative Hearings, parties must file 12 copies of other pleadings and documents.
- (d) **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.
- (e) **No filing fee.** No filing fee is required to file any pleading or document with the commission.
- (f) **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 Office of Policy Development 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 Office

of Policy Development 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.
- (g) **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.
- (h) **Filing deadline.** All documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.
- (i) **Filing deadlines for documents addressed to the commissioners.**
- (1) Except as provided in paragraph (2) of this subsection, all documents from parties addressed to the commissioners relating to any proceeding that has been placed on the agenda of an open meeting shall be filed with the commission filing clerk no later than seven days prior to the open meeting at which the proceeding will be considered provided that no party is prejudiced by the timing of the filing of the documents. Documents that are not filed before the deadline and do not meet one

of the exceptions in paragraph (2) of this subsection, will be considered untimely filed, and may not be reviewed by the commissioners in their open meeting preparations.

- (2) The deadline established in paragraph (1) of this subsection does not apply if:
 - (A) The documents have been specifically requested by one of the commissioners;
 - (B) The parties are negotiating and such negotiation requires the late filing of documents; or
 - (C) Good cause for the late filing exists. Good cause must clearly appear from specific facts shown by written pleading that compliance with the deadline was not reasonably possible and that failure to meet the deadline was not the result of the negligence of the party. The finding of good cause lies within the discretion of the commission.
- (3) Documents filed under paragraph (2) of this subsection shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.

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

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

- (1) 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 Office of Policy Development'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.

§22.73. General Requirements for Applications.

In addition to the requirements of form specified in §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission), all applications shall contain the following, unless otherwise required by statute or commission rule:

- (1) a statement of the jurisdiction of the commission over the parties and subject matter;
- (2) a list of all the known parties, classes of customers, and territories, if applicable, which would be affected if the requested relief were granted;
- (3) the name and address of each party against whom specific relief is sought;
- (4) a concise statement of the facts relied upon by the pleading party;
- (5) a concise statement of the specific relief, action, or order desired by the pleading party;
- (6) any other matter required by statute or rule; and

- (7) a certificate of service.

§22.74. Service of Pleadings and Documents.

- (a) **Pleadings and Documents submitted to a presiding officer.** At or before the time any document or pleading regarding a proceeding is submitted by a party to a presiding officer, a copy of such document or pleading shall be filed with the commission filing clerk and served on all parties. These requirements do not apply to documents which are offered into evidence during a hearing or which are submitted to a presiding officer for in camera inspection; provided, however, that the party submitting documents for in camera inspection shall file and serve notice of the submission upon the other parties to the proceeding. Pleadings and documents submitted to a presiding officer during a hearing, prehearing conference, or open meeting shall be filed with the commission filing clerk as soon as is practicable. These requirements apply to all documents and pleadings submitted in a proceeding under §22.33 of this title (relating to Tariff Filings); service shall be made on all persons who previously submitted a pleading or document to the presiding officer in that proceeding.
- (b) **Methods of service.** Except as otherwise expressly provided by order, rule, or other applicable law, service on a party may be made by delivery of a copy of the pleading or

document to the party's authorized representative or attorney of record either in person; by agent; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; or by registered mail to such party's address of record, or by facsimile transmission to the recipient's current facsimile machine.

- (1) Service by mail shall be complete upon deposit of the document, enclosed in a wrapper properly addressed, stamped and sealed, in a post office or official depository of the United States Postal Service, except for state agencies. For state agencies, mailing shall be complete upon deposit of the document with the General Services Commission.
 - (2) Service by agent or by courier receipted delivery shall be complete upon delivery to the agent or courier.
 - (3) Service by facsimile transmission shall be complete upon actual receipt by the recipient's facsimile machine.
- (c) **Evidence of service.** A return receipt or affidavit of any person having personal knowledge of the facts shall be prima facie evidence of the facts shown thereon relating to service. A party may present other evidence to demonstrate facts relating to service.
- (d) **Certificate of service.** Every document required to be served on all parties pursuant to subsection (a) of this section shall contain the following or similar certificate of service:
"I, (name) (title) certify that a copy of this document was served on all parties of record in this proceeding on (date) in the following manner: (specify method). Signed,

(signature)." The list of the names and addresses of the parties on whom the document was served, should not be appended to the document.

§22.75. Examination and Correction of Pleadings and Documents.

(a) **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 and Documents) apply.

§22.76. Amended Pleadings.

(a) Filing amended pleadings.

- (1) Any pleading may be amended at any time before notice of the docket as required by §22.51 of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapter C-E, Proceedings and §22.52 of this title (relating to Notice in Licensing Proceedings is given.
- (2) After notice of a proceeding has been provided, a pleading may be amended with leave of the presiding officer, provided that the amended pleading is served upon all parties, is filed at least seven days before the hearing on the merits, and does not seek relief for which notice in accordance with this chapter has not been provided.
- (3) If an amended pleading seeks a new type of relief for which notice in accordance with this chapter has not been provided, the presiding officer may sever the issue from the proceeding.
- (4) Any amended pleading offered for filing within seven days of the date of hearing or thereafter will be considered by the presiding officer only if there is a showing of good cause for such filing and that consideration of such filing will not unduly delay the proceeding by injecting issues to which the remaining parties may be entitled to respond. If additional notice is required or additional time needed for

opposing parties to respond to the proposed pleading, the presiding officer may order such additional notice or time as is reasonable under the circumstances.

- (b) **Amendments to conform to issues tried at hearing without objection.** When issues not raised by the pleadings are tried or otherwise heard or argued at hearing by express or implied consent of the parties, upon a determination by the presiding officer that no prejudice to any of the parties will occur, the issues shall be treated in all respects as if they had been raised in the pleadings. Amendment of the pleadings to conform them to the evidence may be made with leave of the presiding officer upon any party's motion until the close of evidence, but failure to so amend shall not affect whether the issues may be properly considered by the presiding officer.

§22.77. Motions.

- (a) **General requirements.** A motion shall be in writing, unless the motion is made on the record at a prehearing conference or hearing. It shall state the relief sought and the specific grounds supporting a grant of relief. If the motion is based upon alleged facts that are not a matter of record, the motion shall be supported by an affidavit. Written motions shall be served on all parties in accordance with §22.74 of this title (relating to Service of Pleadings and Documents).

- (b) **Time for response.** The time for responding to motions is governed by §22.78 of this title (relating to Responsive Pleadings and Emergency Action), unless otherwise provided by the presiding officer, commission rule, or statute.

- (c) **Rulings on motions.** The presiding officer shall serve orders ruling on motions upon all parties, unless the ruling is made on the record in a hearing or prehearing conference open to the public.

§22.78. Responsive Pleadings and Emergency Action.

- (a) **General rule.** Unless otherwise specified by statute, by this chapter, or by order of the presiding officer, a responsive pleading, if made, shall be filed by a party within five working days after receipt of the pleading to which the response is made. Responsive pleadings shall state the date of receipt of the pleading to which response is made. Unless the presiding officer is advised otherwise, it shall be presumed that all pleadings are received within five days of the filing date.

- (b) **Responses to complaints.** Unless otherwise specified by statute, by this chapter, or by order of the presiding officer, responsive pleadings to complaints filed to initiate a proceeding shall be filed within 21 days of the receipt of the complaint. This subsection

does not apply to complaints filed pursuant to PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D.

- (c) **Emergency action.** Unless otherwise precluded by law or this chapter, the presiding officer may take action on a pleading before the deadline for filing responsive pleadings when necessary to prevent or mitigate imminent harm or injury to persons or to real or personal property. Harm or injury shall also include items affecting the ability of any provider to compete. Action taken pursuant to this subsection is subject to modification based on a timely responsive pleading.
- (d) **PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D Investigations or Complaints.** In a complaint proceeding filed pursuant to PURA, Chapter 36, Subchapter D or Chapter 53, Subchapter D, the presiding officer shall determine the scope of the response that the electric or telecommunications utility shall be required to file, up to and including the filing of a full rate filing package. The presiding officer shall also set an appropriate deadline for the electric or telecommunications utility's response.

§22.80. Commission Prescribed Forms.

The commission may require that certain reports and applications be submitted on standard forms. The commission filing clerk shall maintain a complete index to and set

of all commission forms. All documents that are the subject of an official form shall contain all matters designated in the official form and shall conform substantially to the official form. Prior to the implementation of any new form or significant change to an existing form, the change or new form shall be referenced in the "In Addition" section of the Texas Register for public comment. For good cause, new forms or significant changes to existing forms may be implemented without publication on an interim basis for a period not to exceed 180 days.

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 rule §§22.71-22.78 and 22.80 are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 3rd DAY OF SEPTEMBER 1999.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh