

Subchapter H. DISCOVERY PROCEDURES.

§22.142. Limitations on Discovery and Protective Orders.

- (a) **Limitation of discovery requests.** The presiding officer may limit discovery, by order, to protect a party against unreasonable or unwarranted discovery requests.
- (1) The presiding officer may issue an order limiting discovery requests for good cause, including the following purposes:
- (A) Prevention of undue delay in the proceeding;
 - (B) Protection from a request to provide information which is readily available to the requesting party at a reasonable cost;
 - (C) Protection from unreasonably cumulative or duplicative discovery requests; or
 - (D) Protection of a party or other person from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights.
- (2) Any person from whom discovery is sought may file a motion for a protective order, specifying the grounds on which a protective order is justified. Motions or responses must include affidavits, discovery pleadings, or other pertinent documents to support the allegations made therein.
- (3) The presiding officer may order that:
- (A) Specific discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified;
 - (B) Discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the presiding officer;
 - (C) For good cause shown, results of discovery be sealed or otherwise adequately protected, that its distribution be limited, or that its disclosure be restricted;
 - (D) Information or material be protected by any means consistent with the intent of this chapter; or
 - (E) Information or material be protected in the interest of justice if necessary to protect the party from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights.
- (4) The presiding officer may limit requests for information (RFIs) as set out in subsection (d) of this section.
- (b) **Denial of right to discovery requests.** The presiding officer may deny a party the right to continue discovery, by order, upon proof and a finding that the party abused the discovery process.
- (c) **Protection of confidential or proprietary information.** The presiding officer may issue a protective order governing the production of confidential or proprietary information as is appropriate in each proceeding before the commission. The order must be in the form adopted by the commission as the standard protective order. In addition, the parties may enter into agreements regarding protection of confidential or proprietary information. Entry of a protective order is not a determination that any documents produced under the protective order are proprietary or confidential.
- (d) **Limitations on requests for information.**
- (1) Before setting limitations on RFIs, the presiding officer must consider the factors set out in subparagraphs (A)-(K) of this paragraph.
- (A) The type of proceeding.
 - (B) The number and complexity of the issues in the proceeding.
 - (C) The cost of alternative forms of discovery for the party seeking discovery.
 - (D) The comprehensiveness of the information provided in the application.
 - (E) Any material deficiencies in the application.
 - (F) The number of issues that the party seeking discovery is expected to address.
 - (G) The novelty of the issues in the proceeding.
 - (H) The number of answers required by requests, including subparts, propounded in similar proceedings.

Subchapter H. DISCOVERY PROCEDURES.

- (I) Whether the number of questions is limited in other forms of discovery.
- (J) Whether the hearing on the merits will be shortened by virtue of questions that are answered.
- (K) Any jurisdictional deadlines.
- (2) For purposes of calculating the number of RFIs, each answer is considered a separate request for information.
- (3) If a party is not required to answer a question, that question may not be included in the calculation of whether the propounding party has reached its limit. However, if the presiding officer determines that a party is intentionally propounding frivolous, irrelevant, or otherwise objectionable requests, the question will be included in the calculation of a propounding party's limit.
- (4) To discourage duplicate RFIs, any party that does not use its entire allotment of RFIs directed toward another party may transfer, by written notice to the presiding officer, that portion of its allotment to any other party in the proceeding. The requirements of this paragraph do not apply to RFIs originating from commission staff or directed to commission staff.
- (5) The presiding officer may use discretion in determining whether to limit the number of RFIs that may be propounded upon commission staff or the Office of Public Utility Counsel by another party. In making this determination, the presiding officer must consider the limited resources available to each agency, and specifically that commission staff is required by law to represent the public interest in all proceedings before the commission.
- (6) The presiding officer may limit or expand the number of RFIs that commission staff may propound upon any other party, and must consider that commission staff is required by law to represent the public interest in all proceedings before the commission, and thus may require more questions than other parties to ensure that it adequately explores all of the issues presented in the case.