PROJECT NO. 45116

PROJECT TO AMEND CHAPTER 22 - SERVICE PROCEDURE UPDATES; PHASE II OF WATER/SEWER UTILITIES; FILING TECHNOLOGY UPDATES; APA UPDATES; LIMITED PROCEDURAL PRACTICE UPDATES; COMMISSION ORGANIZATION UPDATES	**§**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING NEW §22.106 AND AMENDMENTS TO §22.2, §22.31, §22.32, §22.33, §22.52, §22.71, §22.72, §22.73, §22.74, §22.75, §22.76, §22.78, §22.101, §22.103, §22.104, §22.125, §22.126, §22.127, §22.141, §22.183, §22.225, §22.226, §22.242, §22.243, §22.244, §22.246, §22.263, AND §22.264 AS APPROVED AT THE NOVEMBER 10, 2016 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §22.106, relating to Statement of No Access, and amendments to §22.2, relating to Definitions; §22.31, relating to Classification in General; §22.33, relating to Tariff Filings; §22.52, relating to Notice in Licensing Proceedings; §22.71, relating to Filing of Pleadings, Documents, and Other Materials; §22.72, relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission; §22.73, relating to General Requirements for Applications; §22.74, relating to Service of Pleadings and Documents; §22.75, relating to Examination and Correction of Pleadings and Documents; §22.76, relating to Amended Pleadings; §22.78, relating to Responsive Pleadings and Emergency Action; §22.101, relating to Representative Appearances; §22.103, relating to Standing to Intervene; §22.104, relating to Motions to Intervene; §22.126, relating to Bonded Rates; §22.141, relating to Forms and Scope of Discovery; §22.183, relating to Disposition by Default; §22.225, relating to Written Testimony and Accompanying Exhibits; §22.242, relating to Complaints; §22.243, relating to Rate Change Proceedings; §22.244, relating to Review of Municipal Rate Actions; §22.246, relating to Administrative Penalties; and §22.263, relating to Final Orders, with changes to the proposed text

as published in the June 24, 2016 issue of the *Texas Register* (41 TexReg 4556). The commission adopts §22.32, relating to Administrative Review; §22.125, relating to Interim Relief; §22.127, relating to Certification of an Issue to the Commission; §22.226, relating to Exhibits; and §22.264, relating to Rehearing, with no changes to the proposed text as published in the June 24, 2016 issue of the *Texas Register* (41 TexReg 4556). The new rule and amendments will update the commission's service procedures for all industries regulated by the commission; further address the application of the commission's procedural rules to proceedings involving water and sewer utilities; update the commission's filing procedures to streamline filing of routine reports, clarify filing requirements for maps and digital mapping data, and make other minor changes to the commission's filing practices; address recent changes to the Administrative Procedure Act (APA), Texas Government Code chapter 2001; make limited updates to the commission's procedural practices for all industries regulated by the commission; and reflect changes to the commission's rules and internal organizational structure. This new rule and amendments are adopted under Project Number 45116.

The commission received comments on the proposed new rule and amendments from Aqua Texas, Inc., Aqua Utilities, Inc., Aqua Development, Inc. d/b/a Aqua Texas, SJWTX, Inc. d/b/a Canyon Lake Water Service Company, and SouthWest Water Company (collectively, the Water IOUs); the Texas Rural Water Association (TRWA); the Texas Cable Association (TCA); Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T); and the Office of Public Utility Counsel (OPUC). Reply comments were received from the Water IOUs, the TCA, and OPUC.

General Comments

AT&T recommended that the rules contained in chapter 22 be readopted. AT&T also included its comments from Project No. 45856 and requested that the commission include the modifications from those comments in this rulemaking proceeding.

OPUC disagreed with AT&T and argued that the commission should not take action in this rulemaking with regard to comments in Project No. 45856. OPUC argued that incorporating comments from Project No. 45856 would bring the rulemaking further afield of what was originally noticed in the strawman and the proposal for publication, depriving stakeholders of adequate opportunity to comment.

Commission response

To the extent that AT&T's comments from Project No. 45856 address rules open in this project and issues within the scope of this project, the commission responds to those comments below as appropriate. To the extent that AT&T's comments from Project No. 45856 address rules that are not open in this project or issues beyond the scope of this project, the commission declines to implement changes suggested by those comments in this project. The commission cannot open new rules at this stage of the project without re-noticing the rulemaking in the *Texas Register*, which the commission declines to do. The commission also declines to expand the scope of this project beyond that originally noticed in the *Texas Register* on June 24, 2016.

Section 22.2

AT&T proposed that the term *unprotested case* and its accompanying definition be deleted from the definitions section since the definitions section is the only place in chapter 22 where the term is used.

The Water IOUs requested that a definition of the term *complaint* be added to §22.2 to clarify that not every communication with a utility is automatically a complaint. The Water IOUs noted that there have been instances where water or sewer utility customers have inadvertently initiated the commission's complaint process.

The Water IOUs also requested that the definition of *respondent* in proposed §22.2(41) be revised to include Certificate of Convenience and Necessity (CCN) holders affected by decertification and single certification applications under Texas Water Code (TWC) §§13.254-.255 and commission rules implementing those sections. The Water IOUs stated that CCN holders should automatically be parties in those types of proceedings instead of having to intervene, as they do under current commission practice.

Commission response

The commission agrees with AT&T that the term *unprotested case* and its accompanying definition should be deleted from the definitions section since the term is not used in any other part of chapter 22.

The commission declines to add a definition of the term *complaint* to §22.2. The commission considers it important to retain the flexibility to evaluate communications from utility customers as they are received. Creating a formal definition of complaint in §22.2 could open the door to disputes over whether a customer who intended to make a complaint has in fact made a complaint that complies with §22.2. As many customers may be unfamiliar with commission rules and procedures, the commission declines to open this door and chooses instead to retain the flexibility of the current system.

The commission also declines to revise the definition of *respondent.* Such a revision would needlessly delay the processing of decertification and single certification applications in which the CCN holder no longer exists, is defunct, or is otherwise unable or unwilling to respond to the decertification or single certification application. Under the current system, a nonexistent or unresponsive CCN holder causes no delay in the processing of decertification and single certification applications. Changing the definition of respondent to include CCN holders affected by TWC §§13.254-.255 applications could delay processing of those applications if the CCN holder no longer exists or is otherwise unresponsive, as a determination of when to dismiss the nonresponsive CCN holder from the proceeding would have to be made. Given the short timeframes involved with these types of applications, the commission declines to revise the definition of respondent in this manner, as it could needlessly delay processing of these types of applications.

Section 22.3

AT&T recommended that a clause be added to §22.3(a) prohibiting a person appearing in an administrative hearing before the commission from *knowingly making false, misleading, or abusive statements in pleadings or commission proceedings or using threatening, obscene or vulgar language in pleadings or communications between or among the parties*. AT&T argued that this modification is necessary because non-lawyers appearing before the commission are not bound by the Texas Disciplinary Rules of Professional Conduct but are bound by the general standards of conduct imposed by the commission procedural rules.

Commission response

The commission declines to modify §22.3(a) as suggested by AT&T. Making this modification would be outside the scope of this project and would require the commission to renotice this rulemaking in the *Texas Register* in order to open §22.3, which is not currently open in this project. The commission declines to expand the scope of this project or renotice this rulemaking.

Section 22.32

OPUC requested that the commission add language to clearly identify which applications this rule addresses. The proposed language includes a change relating to an ALJ's authority to act on TWC applications that do not require notice or hearing. OPUC recommended adding specific references to TWC §§13.1872(e), 13.188, 13.254(a-1), or 13.254(a-5), which do not require notice of hearing. OPUC argued that this would help interested parties better understand which applications require a hearing and which do not.

Commission response

The commission declines to add language to §22.32 referencing specific sections of the TWC, as the Legislature might add new sections or renumber current sections of the TWC, which could then make specific references to those code sections inaccurate.

Section 22.33

OPUC noted that subsection (a) uses the term *a water or sewer retail public utility (other than a municipality, district, or county)*, which combines the terms retail public utility and water or sewer utility. Both retail public utility and water or sewer utility are defined terms in 16 TAC §24.3. There is no definition for water or sewer retail public utility. OPUC recommended using one of the previously defined terms and argued that the combination of terms is confusing.

OPUC recommended making a change to label water and sewer tariff filings as *water or sewer tariff filings*. OPUC argued that this would conform the term to the other classifications of tariffs in the rule and shift the focus from type of entity filing the tariff to the type of tariff being filed.

Commission response

The commission agrees with OPUC that the language in §22.33 should be clarified and made consistent with the pre-existing language in that section. The commission therefore changes the language of the rule throughout to refer to water or sewer utility tariff filings.

The commission also makes modifications to this section to clarify that tariff filings by water supply and sewer service corporations are exempt from the provisions of §22.33, to further clarify its intent regarding whether water and sewer utility tariff filings should be docketed under §22.33(b), and to remove proposed language from §22.33(c) that is unnecessarily duplicative of language already found in §24.26 of the commission's rules.

Section 22.71

TCA commented that it is unclear whether the commission's proposed revisions to §22.71 would preclude parties from agreeing to certain modifications to the standard protective order. TCA requested that the commission confirm that the proposed revisions would not prevent parties from making agreed changes to the standard protective order.

Commission response

In response to TCA's comment, the commission confirms that the revisions to §22.71 do not change current practice regarding agreed changes to the standard protective order.

Section 22.71(b) & (c)

The Water IOUs commented that the commission should remove the requirement to file hard copies of documents that are filed electronically. The Water IOUs argued that the current process is overly burdensome and unnecessary.

AT&T recommended that the proposed language in §22.71(b) be further modified to allow any pleading or document, not just reports, to be filed electronically in lieu of filing hard copies with

the commission filing clerk. AT&T re-urged the proposed modifications to these subsections it recommended in its comments in Project No. 45856. Alternatively, AT&T proposed that the commission reduce the number of copies that must be filed with the commission under §22.71(c).

To promote efficiency and lessen the administrative burden on parties and the commission, AT&T proposed that the commission provide an option for parties to comply with filing requirements by filing a complete original electronic copy of pleadings rather than filing multiple paper copies. Alternatively, AT&T requested that the commission reduce, to the extent possible, the number of paper copies required under §22.71(c).

The Water IOUs commented that documents may be simultaneously copies and originals, and that §22.71(c) should be clarified to indicate whether parties should file the original of a document or retain it.

OPUC requested that the proposed language be revised to reflect that some information is more appropriately filed in its native medium rather than hard copy. OPUC stated that Microsoft Excel documents and voluminous work papers are examples of information more easily viewed in their native format. OPUC proposed additional language to permit some information and copies to be filed in electronic format in their native medium.

In its reply comments, TCA stated that it supports AT&T's and the Water IOUs' comments that hard copy filing requirements in §22.71 be eliminated where electronic filing is used. TCA also stated that it would be more environmentally friendly for the commission to eliminate or reduce

the number of paper copies required of parties filing with the commission. TCA noted that other states have eliminated hard copy filing requirements with positive results. TCA pointed to the experience of the Maine Public Utilities Commission in particular, and argued that the Maine commission's results negate the concerns expressed by OPUC in its comments on §22.74 (summarized below) regarding potential cost and storage issues surrounding increased use of electronic documents. TCA argued that even if the commission does not wish to require parties to file electronically exclusively, it should stop requiring hard or multiple copies of documents that are able to be filed electronically.

Commission response

The commission declines to remove the requirement that parties file hard copies of documents that are also filed electronically. The commission is currently in the process of upgrading its internal filing systems, and decisions regarding reduction or elimination of the commission's current hard copy filing requirements are best made after the upgrades to the commission's filing systems are complete. For the same reasons, the commission declines to make OPUC's requested revisions to the proposed language to allow some information to be filed in its native medium rather than in hard copy.

The commission also declines to modify the portion of §22.71(c) that includes the phrase *including the original*. As written, the subsection provides that the original of a document counts towards the numerical requirements contained in the subsection. Changing the wording of this portion of the subsection could cause unnecessary confusion about whether

the commission intends to change its hard-copy filing practices. As the commission does not intend to make such a change, it declines to revise this portion of subsection (c).

Section 22.71(d)(1)

OPUC highlighted an apparently incorrect statement of the number of requirements in subsection (d)(1). OPUC recommends correcting (d)(1) to reflect that there are eight requirements, not seven.

TCA commented that the proposed revisions to §22.71(d)(1) would delete language requiring the Legal Division's confidential documents manager to review confidential filings for compliance and return non-compliant filings to the filing party, but would not delete language requiring the filing party to bring its filing into compliance and resubmit it after receiving the notice of noncompliance. TCA stated that the proposed revisions do not incorporate a mechanism to alert a party that its confidential filing is deficient. TCA commented that the rule should provide for a process for determining if confidential filings are compliant and notifying filers of deficient filings if the commission intends to continue to permit confidential filings to be accepted provisionally, subject to a review for compliance.

Commission response

The commission declines to adopt OPUC's recommended change to §22.71(d)(1). The eighth requirement to which OPUC refers is a requirement specific to the protective order in each individual proceeding. As such, the commission leaves to the discretion of the presiding officer in each proceeding the decision of how best to monitor and enforce any additional labeling requirements for envelopes containing confidential material filed in that proceeding.

The commission agrees with TCA's comment, and removes additional language from §22.71(d)(1) to provide clarity. Specifically, the commission removes language regarding provisional acceptance of confidential materials and refiling of material rejected after being provisionally accepted. Confidential material will be either accepted or rejected at the time it is presented to Central Records for filing. Any issues regarding the content of filings made confidentially will be resolved by presiding officers in the course of proceedings.

Section 22.71(d)(3)

TCA commented that the proposed revisions to §22.71(d)(3)(A), (d)(3)(B), and(d)(3)(D) do not require a party that has filed confidential information with the commission to be notified who has been provided access to that information, when access was provided, and whether copies of the information were made. TCA indicated that these revisions would mark a significant departure from current commission practice of requiring parties to a proceeding to execute an exhibit to that proceeding's protective order and request access from the party that filed a given piece of confidential information before viewing that information.

TCA also objected to proposed rule language that would allow staff in the Commissioners' offices and in the Commission Advising and Docket Management Division to sign a single confidentiality agreement that applies to all proceedings. TCA commented that this language should be removed in favor of the current practice of commission staff signing exhibits to proceeding-specific protective orders prior to receiving access to confidential information.

AT&T recommended that, in order to ensure that parties' confidential information is sufficiently protected, all parties should have the opportunity to formally review and the commission should have the opportunity to formally approve the confidentiality and non-disclosure agreement that employees in the commissioners' offices and Commission Advising and Docket Management Division would be required to sign on a one-time basis under the proposed revisions to §22.71(d)(3)(D).

OPUC recommended amending the proposed rules to require the commission to confine its decision making to record evidence. The APA limits findings of fact to only the evidence and matters that are officially noticed. OPUC argued that this preserves the right of other parties to respond to evidence in their case and that it is therefore inappropriate for the commissioners and their advisors to review those filings that have not been introduced into the evidentiary record. OPUC recommended clarifying the current proposed language to contain this limitation and make the proposed language consistent with the APA.

Commission response

The commission rejects TCA's proposed revisions to this portion of the rule as unnecessary. The commission already maintains a protective order signature log. The commission lacks the resources to track access to confidential information in the manner proposed by TCA. The commission also retains the language allowing staff in the commissioners' offices and in the Commission Advising and Docket Management Division to sign a single confidentiality agreement that applies to all proceedings. This change to the rule is made to codify long-standing commission practice. These staff members assist the commission in its decision-

making capacity and therefore properly may have access to all confidential information the commissioners and presiding officers who have delegated authority from the commission may consider in making any given decision. Given the role played by staff in the commissioners' offices and in the Commission Advising and Docket Management Division, the commission finds that these efficiencies outweigh any benefits that might be gained by requiring staff in the Commissioners' offices and in the Commission Advising and Docket Management Division to sign proceeding-specific confidentiality agreements.

The commission declines to follow AT&T's recommendation that all parties be allowed the opportunity to formally review the confidentiality and non-disclosure agreement. As stated above, the staff members who would be signing this agreement assist the commission in its decision-making capacity and therefore may have access to any confidential information that may be considered in making a decision. Ensuring that these staff members properly handle confidential information is a matter of internal personnel policy, and therefore need not be subjected to a formal review process any more than other internal commission policies.

The commission disagrees with OPUC's recommendation because it would result in unnecessary duplication of APA protections. In addition, there are circumstances under which Commissioners must review confidential information that is not part of the record evidence. For example, the Commissioners might need to review confidential information that is not part of record evidence if an order resulting from an in camera review of material were to be appealed.

Section 22.71(h)

AT&T, OPUC, and TCA all opposed the deletion of §22.71(h). AT&T argued that there are no problems with the rule as it is currently written and that the time constraints imposed by the deletion of the rule would be too severe and unreasonable. All three commenters expressed concern that eliminating the rule would remove the ability to file copies of documents rather than originals, thereby creating a hardship for any party dealing with, for example, a witness located outside of Austin whose signature was required for an affidavit, or other situations in which time constraints or other reasons make it necessary to file documents that have been faxed or copied. OPUC noted that parties frequently include copies of documents that have been received by facsimile in their pleadings. OPUC also argued that this is permitted by the Texas Rules of Evidence and should therefore remain in the rule. TCA commented that it is unaware of any instances in which there has been a disparity at the commission between an original document and a faxed or copied version of that document.

Commission response

The commission declines to restore the language it has deleted from §22.71(h). The commission does clarify, however, that this deletion does not prevent parties from filing copies of documents or documents that have been faxed from one location to another in the course of preparing a filing. Rather, the commission deletes this subsection in order to make clear that it is not possible to file documents with the commission by faxing those documents to the commission.

Section 22.72

AT&T recommended that §22.72(e) be modified to include a requirement that the person signing a pleading or document also provide his or her e-mail address, as much of today's communication between parties is done electronically. AT&T commented that this would be consistent with what is already required by §21.33(e).

TRWA commented that water supply corporations should be exempted from the formatting, citation, and electronic filing standards for filing tariffs, arguing that water supply corporation tariffs are filed for informational purposes only and require no commission action.

TCA commented that it supports the proposed changes to §22.72(i)(2) and stated that the phrase *and searchable* should be added after the first reference to *native file* in the commission's proposed new language. TCA commented that native files available from the commission's website should be searchable, but that is not always the case in practice. In addition, TCA commented that the commission should either confirm or provide that orders, reports, memoranda, and other items filed by the commission and its staff also be filed in native file format, as such filings have not always been searchable.

OPUC recommended that there be an exception to the current requirement in subsection (h) that all filings with Central Records be filed as a hard copy. OPUC noted that not all documents, such as Excel workbooks, are useful when printed. Additionally, OPUC argued that some filings are so voluminous that it is a waste of paper and space to submit a hard copy. OPUC argued that these types of filings may be better submitted in electronic format. OPUC recommended that the

proposed rule be amended to allow certain exceptions from the requirement to file a hard copy for these types of filings

OPUC objected to the proposed language that requires pleadings and documents to include an email address in the signature block because it requires members of the public to disclose their private email address. OPUC argued that this is contrary to the confidentiality requirements of the Texas Public Information Act. Only in instances where parties agree to disclose their email address should they be required to include an email address in the signature block. OPUC stated that in these cases, the procedural rule should allow the parties to register an official e-service email address which would allow the other parties to predict from whom they will receive electronic service.

OPUC recommended that the commission retain the deleted requirements in subsection (h), regarding labeling and organizing files submitted in their native format. OPUC argued that the table of contents and labeling of files on a CD helps sort through a voluminous filing. OPUC supported the commission's retention of the current rule's paragraph (5) that requires a table of contents and list of file names at the beginning of the document itself. OPUC argued that keeping this requirement and revising the rule to add the other requirements back in would aid in parties' efficiency of review.

Commission response

The commission agrees with AT&T that the person signing a pleading should be required to include an email address. The commission finds that this requirement will facilitate

communications between parties to proceedings. The commission disagrees with OPUC regarding the privacy concerns implicated by requiring the inclusion of an email address on pleadings. Pleadings, by their very nature, are public documents, and any information included on them is available to the public. The commission imposes no requirements on the email address that a party includes on a pleading, so long as an address is included. If the person signing the pleading does not wish to include their primary email address, it is easy for them to create a secondary address to include instead. The commission also declines to require parties to register an official e-service email address, as it finds that the costs of administration of and compliance with such a requirement would outweigh the benefits gained. Knowledge of the identities of the other parties in a case is sufficient for parties to predict from whom they will receive email service; service lists that will now contain email addresses will makes this a simple task. Requiring parties to register official e-service addresses is unnecessary.

While the commission declines to exempt water supply corporations from the formatting, citation, and electronic filing standards for filing tariffs, it does recognize the informational nature of water supply corporation tariff filings, and therefore reduces the number of copies that water supply corporations are required to file.

The commission declines to add the phrase *and searchable* after the first reference to *native file* in the commission's proposed new language. While files that are truly native files should be searchable by their very nature, certain file types (such as images) might not be; and some programs could protect information such that searches would not be available. In addition,

the commission's scans of filings that are available in the interchange are generally searchable. The commission therefore finds that a requirement that native filings be searchable would be superfluous and potentially impossible to comply with, and therefore declines to impose such a requirement. The commission does confirm that items filed by the commission and its staff will also be filed in native format under this rule, as the rule creates no exemption from the requirement for any party.

The commission declines to adopt OPUC's recommendation to allow certain materials to be filed electronically without corresponding hard copies. The commission is currently in the process of upgrading its internal filing systems and declines to address possible changes in the hard copy filing requirements until those filing system upgrades are complete.

The commission declines to retain the requirements that were deleted from proposed subsection (i), currently subsection (h), regarding labeling and organizing electronic filings. The requirements that were deleted were designed for an older version of the commission's electronic filing system, and are therefore outdated. The requirements that remain in the commission's rules regarding the contents and organization of documents and filings suffice to ensure that electronic filings remain easily navigable.

Section 22.73

OPUC requested revisions that reflected their argument that electronic service should only be allowed by agreement of the parties.

Commission response

For the reasons discussed below regarding §22.74 and §22.106, the commission declines to modify §22.73 as suggested by OPUC.

Section 22.74

AT&T recommended that §22.74(b) be amended to permit service by email as a method of service. AT&T stated that this change would be consistent with the State Office of Administrative Hearings' (SOAH) procedural rules and would bring the commission's rules in line with parties' current practice of agreeing to service of filings through electronic means. AT&T also proposed that these rules be modified to accept email-sent messages or an email delivery certificate as prima facie evidence of the facts shown thereon related to service.

OPUC recommended that if the commission were to adopt electronic service procedures, it do so in phases, following the example set by the Federal Energy Regulatory Commission (FERC).

OPUC recommended that the commission revise proposed subsection (c) to clarify the language in the following statement: *The presiding officer may require service by electronic mail or service by filing with or without notice, or a combination of service by either or both of those methods and any method specified in subsection (b) of this section*. OPUC argued that the *either or both* applies to the service by filing with or without notice and excludes service by email. Further, OPUC stated that the combination of methods required in the latter half of the quoted proposed text prevents the commission from using more than one method of service unless one of the new methods is used and one of the traditional methods is used. OPUC objected to all new methods of service, but

recommended clarifying the proposed rule language to the following: *the presiding officer may require service by electronic mail, filing with notice, or filing without notice, or any combination thereof as well as any method specified in subsection (b) of this section*.

OPUC commented that subsection (c)(3) may be read to make service by filing without notice as the default method of service for the commission. OPUC argued that the phrase *for good cause shown* may be read in such a way that the subsection (b) methods are available only upon a showing of good cause. OPUC objected to language that requires a good-cause exception to receive service by traditional methods. OPUC recommended that the good-cause exemption be required to receive service in the non-traditional methods outlined in subsection (c).

OPUC argued that electronic service should be allowed only by agreement to ensure proper notice and participation by members of the public. OPUC cited to the APA, Federal Rules of Civil Procedure, Texas Water Code, SOAH's procedural rules, and the Texas Rules of Civil Procedure (TRCP) as evidence that Texas jurisprudence has set the standard for voluntary rather than mandatory electronic service. OPUC also argued that the proposed rules lack safeguards necessary to ensure proper service and receipt of served documents.

OPUC argued that electronic service could make public participation in commission proceedings more burdensome, in part by shifting printing and other costs from the sender to the recipient. OPUC argued that printing costs and record retention regulations with which OPUC must comply place an additional burden on OPUC and members of the public. Additionally, OPUC argued that the proposed rule fails to recognize that having internet access is not necessarily the same as having

sufficient internet access to transmit and process some of the larger data files used in contested cases at the commission.

OPUC objected to the electronic service provisions in 22.74(c)(4) as premature because the proposed language does not include standards or a program to provide secure and reliable notice. OPUC pointed to the TRCP, which tie the notice procedure to a third party electronic filing manager. OPUC argued that this third party filing manager allows the sender of a document to ensure the document was received and protects the sender and recipients from cyber issues such as hacking, spam, or viruses. OPUC argued that without this system and without more specificity in the rules, recipients may never receive notice because emails may be sorted by spam filters or emails may be addressed incorrectly.

OPUC objected to mandatory electronic service because it may create conflicts with the standard protective order for highly sensitive materials. OPUC indicated it is concerned that transmitting such materials by email may result in inadvertent disclosure of such materials. Additionally, OPUC wondered whether printing a hard copy of the filing would count as one copy in the allotment of copies available to a party under a protective order. OPUC asked that the standard protective order be reviewed to account for electronic service.

OPUC objected to the fact that email service would require the inclusion of email addresses in filings. OPUC cited the Public Information Act, which classifies email addresses as confidential information that, with few exceptions, may only be disclosed with the affirmative consent of the affected members of the public.

OPUC disagreed with the proposed language that deems service by email complete when the email is sent. OPUC recommended changing this language to deem service complete when electronic service is received, as is done in SOAH procedural rules and commission's existing rules regarding service by facsimile. OPUC also noted that a document filed with the commission is considered filed when the commission receives the document, not when the document is sent.

OPUC objected to service by a link to the commission interchange because not all documents can be accessed through the interchange (i.e. highly sensitive documents). OPUC also objected that this form of service may complicate procedural schedules. OPUC noted that there are varied timings between when a document is filed and when it becomes available for viewing on the interchange, which can make it hard to determine when service is completed. OPUC argued that Texas courts have recognized the challenges presented by service by link and have limited or prohibited this type of service. The TRCP only allow service by link through a third party electronic filing manager and by agreement. OPUC recommended that without a third party electronic filing system, the commission remove service by link as an acceptable form of service and prohibit it even by agreement. If the commission does adopt service by link, OPUC recommended that the commission adopt language similar to FERC's electronic service regulations, which address the burden on the sender to ensure receipt of the link and the possibility of a delay in accessibility of a document. The FERC procedural rules permit procedural schedule adjustments in instances where a slow link delays service.

OPUC objected to the proposed language on service by filing without notice and urged the commission to remove this language. OPUC argued that service by filing without notice is contrary to the very purpose of service, which it asserted is to notify parties and afford them the opportunity to be heard on all matters at issue. OPUC recommended the commission remove this type of service from the proposed language, arguing that it does not constitute service under Texas practice and fails to preserve the protections afforded by notice.

In addition, OPUC argued that the rule is vague in its description of when filing without notice can be required. OPUC argued that service without notice could be chosen by the presiding officer *sua sponte*, without agreement of the parties. OPUC recommended that the commission clarify when this method of service may be chosen and remove this type of service or at least limit it to those instances where the parties agree to service by filing without notice.

OPUC also argued that service by filing without notice leaves no way to prove that a party received notice. OPUC argued that the proposed language absolves the filing party of all responsibility for notifying the recipient that a document or pleading was presented to the commission and SOAH. In many instances a presumption of receipt is supported by a certificate of service. OPUC argued that under this type of service, a certificate of service would be meaningless and OPUC therefore recommended removing this type of service.

OPUC also objected to proposed subsection (c)(6) on the grounds that the commission's website should not be the sole source of notification. OPUC argued that this type of service depends entirely on the functioning of the commission's website, which is often subject to errors such as

delayed notifications, incorrect filing descriptions, or missing links. Additionally, if the website experiences an outage, a recipient may be unable to access the filing. OPUC recommended the commission reject the proposed method of service by filing without notice.

In reply comments, the Water IOUs stated that OPUC's proposed language regarding electronic service would likely undermine the practice. The Water IOUs also stated that the commission's proposed language is conceptually preferable to OPUC's proposals on this issue. The Water IOUs stated that, so long as service is effectuated properly, electronic service should not be contingent on receipt. The Water IOUs also disagreed with OPUC's proposed requirement that a designated sender be required for electronic service. The Water IOUs stated that most litigation forums are working to reduce the amount of paper required by their procedural requirements and requested that the commission do the same in its revisions to its procedural rules.

In reply comments, OPUC indicated that it remains opposed to the requirement to use email for the service of documents and pleadings.

Commission response

The commission declines to create a standard for prima facie evidence of provision of email service. If disputes about completion of email service arise, the commission concludes that these disputes are best resolved by the sound judgment of the presiding officer. If a need for a formalized standard arises in the future, the commission will revisit the issue at that time.

The commission recognizes that issues may arise with electronic service, but issues may arise with any method of service. Based on its experience in cases over the last five years in which SOAH has ordered electronic service, the commission concludes that the few issues that might arise can be adequately addressed by the presiding officers. Consequently, the commission declines to adopt most of OPUC's proposed revisions. The commission notes that none of the other commenters opposed the adoption of electronic service procedures and several supported the concept. The commission declines to break the formal adoption of electronic service into additional phases. To do so would effectively delay adopting electronic service until a later date. In response to OPUC's recommendation that the commission clarify the language in subsection (c) regarding which methods of service a presiding officer may require in a proceeding, the commission modifies the language to permit the presiding officer maximum flexibility in determining which methods of service to require. The commission also edits the language for internal consistency. In addition, the commission revises subsection (c)(3) to clarify that a good cause showing is only required to obtain traditional service methods if the presiding officer has ordered that only electronic service be used in a proceeding.

The commission disagrees with OPUC that electronic service should be available only upon agreement of the parties. Parties already routinely agree to electronic service in commission proceedings, which seems to indicate that the agreement is becoming a mere formality that serves no practical purpose. The commission also disagrees with OPUC that any of the methods of service the commission adds to the rule are impermissible or unworkable. SOAH routinely orders electronic service, including service by filing without notice or service by

interchange, in large commission cases in which there are many pro se intervenors. Docket nos. 45866 and 46042 are examples of cases in which SOAH has ordered electronic service. Parties have not had issues in these cases with access to filings, adequacy of notice, preservation of confidentiality, internet connection capability, spam, computer viruses, or any of the other concerns raised by OPUC. In addition, the commission is unaware of electronic service causing any noticeable or significant impediment to public participation. On the contrary, electronic service typically makes it significantly easier and less costly for members of the public to participate in cases before the commission, especially large, contentious cases. Providing traditional service in a proceeding with hundreds of intervenors, such as docket no. 45866, quickly becomes cost-prohibitive for all parties involved, except perhaps large utilities, who would in turn recoup the costs from ratepayers. Electronic service, especially service by filing without notice, is low-cost, effective, and simple for all participants. Given the commission's experience thus far with cases in which electronic service has been ordered using some or all of the methods included in the rule, the commission believes that its rule strikes an appropriate balance between permitting electronic service only with the agreement of the parties and requiring exclusive use of electronic service. The commission also declines to create unnecessarily rigid procedures surrounding electronic service, such as requiring parties to designate an email address for sending electronic service. Such procedures would unnecessarily constrain the parties from addressing issues as they may arise, and the commission's experience with electronic service thus far leads it to conclude that the costs of implementing such procedures would outweigh any benefits gained.

The commission also disagrees with OPUC that a certificate of service is any less trustworthy because of electronic service, or any other particular method of service. Rather, the value of the certificate rests with the truthfulness of the party signing the certificate. Finally, no method of service is without potential problems; no method works perfectly all the time. Should issues arise, the presiding officer is best equipped to resolve those issues based on the facts of the situation at hand.

Section 22.77

AT&T requested that a sentence be added to §22.77(c) to prohibit the presiding officer from ruling on a motion before the expiration of the time for response allotted unless the motion states that it is unopposed or an emergency situation exists.

Commission response

The commission declines to modify §22.77(c) as suggested by AT&T. Making this modification would be outside the scope of this project and would require the commission to renotice this rulemaking in the *Texas Register* in order to open §22.77, which is not currently open in this project. The commission declines to expand the scope of this project or renotice this rulemaking.

Section 22.78

TRWA commented that §22.78(b), which establishes the timeframe for filing responses to complaints, should be amended to explicitly indicate that it applies to complaints filed under TWC §13.004. TRWA stated that not including TWC §13.004 complaints in the rule text creates

uncertainty as to whether entities affected by TWC §13.004 complaints have a right to respond, and if they do, when that response would need to be filed.

Commission response

The commission declines to make the revisions recommended by TRWA at this time. The commission has not yet processed enough complaints filed under TWC §13.004 to add a formalized procedural process to its rules. In addition, creating a process for complaints filed under §13.004 would be better accomplished in a dedicated project.

Section 22.101

AT&T urged the commission to reconsider modification to §22.101(a) to ensure that non-attorneys do not engage in the practice of law as defined by the Texas Government Code. AT&T argued that the need to modify §22.101(a) to require an authorized representative in contested cases to be a licensed attorney has been an issue since at least 2008, and that modification is further supported by Texas Attorney General Opinion No. GA-0936.

AT&T stated that, under current commission rules, anybody--not just a pro se individual or an attorney--can appear before the commission to represent a party in any proceeding. AT&T contended that this rule conflicts with restrictions on the unauthorized practice of law in contested case proceedings. AT&T argued that §22.101(a) conflicts with §81.102(a) of the Texas Government Code and that the rule is therefore subject to invalidation and should be modified to conform with §81.102(a) of the Texas Government Code.

AT&T recommended modifying the rule so that contested case proceedings would require representation by an attorney authorized to practice law in Texas. AT&T's recommended language would include an exception for individuals who choose to represent themselves pro se in contested case proceedings. The current rule would remain in effect for all proceedings not involving a contested case.

OPUC disagreed with AT&T and argued that the commission should not now take further action with regard to the unauthorized practice of law. OPUC first argued that this issue is being addressed in project no. 41618 and that taking action on this issue in this project at this stage would deprive the interested parties, including commenters in project no. 41618, of the opportunity to participate in the rulemaking process. Second, OPUC objected to AT&T's recommendations because its proposed amendments would impede the ability of non-attorneys to participate in contested case hearings. OPUC stated that public participation in commission proceedings is important and should be encouraged by the commission. OPUC argued that limiting representative appearances to exclude all non-attorneys may severely limit the public's participation. OPUC pointed to SOAH's proposed rule changes, which recognize that there will be instances where non-attorneys may be authorized representatives. OPUC further argued that there are, in theory, many things that non-attorneys can do for each other that do not constitute the practice of law. OPUC argued that requiring persons to either hire an attorney or navigate the contested-case process alone will deter many from participating. Secondly, OPUC argued that having one person as a designated contact for a larger group of pro se protestants presents efficiencies, especially in discovery. Additionally, OPUC warned that adopting AT&T's proposed amendments could place the commission in the position of policing whether any given activity is the practice of law.

Finally, OPUC argued that courts have made it clear that determining what constitutes the unauthorized practice of law must be done on a case-by-case basis. OPUC argued that AT&T's comments are therefore overbroad and should be rejected.

Commission response

The commission declines to make this suggested modification to §22.101, as doing so would be beyond the scope of this proceeding. Furthermore, the commission does not regulate attorneys or the practice of law, and it is not the appropriate body to determine whether non-attorneys are engaged in the practice of law as defined by the Texas Government Code.

Sections 22.103-.104

TRWA commented that §§22.103-104 should be amended to indicate that retail public utilities that are the subject of a petition, complaint, or appeal are respondents to such actions. TRWA stated that one alternative would be to amend the definition of respondent in §22.2(40), while another alternative would be for the commission to consider any response to a petition or complaint filed by a retail public utility in a matter affecting that retail public utility to be a request to intervene in that matter. TRWA commented that this would provide a fair opportunity for a retail public utility affected by a complaint or petition filed against them to participate in the matter without having to run the risk that their attempt to participate will be rejected due to incorrect procedural language.

Commission response

The commission declines to make this modification. Such a revision would needlessly delay the processing of decertification and single certification applications in which the CCN holder no longer exists, is defunct, or is otherwise unable or unwilling to respond to the decertification or single certification application. Under current procedure, a nonexistent or unresponsive CCN holder causes no delay in the processing of decertification and single certification applications. Changing the definition of respondent to include CCN holders affected by TWC §§13.245-.255 applications could delay processing of those applications if the CCN holder no longer exists or is otherwise unresponsive, as a determination of when to dismiss the nonresponsive CCN holder from the proceeding would have to be made. Given the short timeframes involved with these types of applications, the commission declines to revise the definition of respondent in this manner, as it could needlessly delay processing of these types of applications. In addition, intervening in a proceeding is not a burdensome or complex process, and the commission does not generally require intervention requests to contain specific language so long as it is clear that the person filing the request has a legal interest in the proceeding.

Section 22.103

OPUC argued that the proposed amendments to §22.103 exceed the commission's statutory authority because the amendments nullify a provision in the APA which allows email notification only upon agreement of the party to be notified. APA §2001.142(a) outlines three ways for an agency to provided service in a contested case. Electronic notification is permitted but only upon agreement of the party. OPUC argued that the proposed mandatory electronic service in §22.103

contradicts the APA and should be removed. If the commission wishes the parties to declare from the beginning of a proceeding whether electronic service is acceptable, OPUC recommended amending §22.104 and not §22.103.

OPUC expressed concern that the proposed §22.103(d) creates improper impediments to standing because it requires an intervener to consent to electronic service. OPUC argued that the requirement in subsection (d) inappropriately ties a procedural requirement to the right of an affected party to participate. Adding conditions to a party's ability to obtain standing conflicts with the party's statutory rights to intervene and unfairly limits access to commission proceedings. Thus, OPUC argued that this requirement should be stricken or at least revised to permit electronic service by agreement.

OPUC also argued that even if the commission rejects its arguments and chooses to keep the proposed language, the language in §22.103 is unclear. First, OPUC argued that the proposed rule language makes it unclear whether the commission intends to serve intervening parties with rehearing filings from any party or only Staff's motions for rehearing and Staff's replies to motions for rehearing. Second, OPUC noted that this section uses the word *delivery* where presumably *service* is appropriate. OPUC recommended the commission provide clarification on these two issues.

Commission response

The commission disagrees that the revisions to §22.103 nullify the APA or otherwise exceed the commission's authority under the APA. The commission also disagrees that the revisions

create any impediment to standing or constitute service. As OPUC correctly points out, §2001.142(a) of the APA allows electronic delivery of certain documents if agreed to by the party to be notified. The revisions to §22.103 do not contradict the agreement requirement or attempt to impose electronic service regardless of a party's position on the matter; nor do they require the party to consent to electronic service as a condition of having standing to intervene in a proceeding before the commission. Rather, the revised rule formally establishes that the commission will consider a motion to intervene to constitute the agreement required by the APA unless the person filing the motion indicates otherwise by following the appropriate procedure as laid out by the commission's rules. The commission notes that any party filing a motion for rehearing or a reply to such motion is required by existing commission rules to serve all other parties with a copy of that pleading.

The commission declines to replace the word *delivery* with a different word, as this section is designed to address the commission's obligations under §2001.142 and §2001.146 of the APA to deliver copies of certain documents to parties in cases. It does not address service obligations of the parties. Consistent with the APA, §22.103 is not limited to motions or replies filed by commission staff.

Section 22.106

AT&T proposed that §22.106(a) be modified so that the requirement to file a statement of no access, when applicable, is not limited to motions to intervene but also applies upon the filing of any pleading or document. AT&T also proposed that §22.106(b) include a 30-day deadline for a

person or representative to provide the additional information required upon gaining subsequent access to the internet or email.

OPUC pointed out that should the commission agree with its previous concerns regarding electronic service and remove proposed language that requires electronic service, then this section is no longer necessary.

OPUC argued that this requirement should be removed because requiring parties to file additional paperwork may be a deterrent to participation in an already intimidating contested case process.

OPUC also argued that this requirement fails to recognize that not all access to the internet is equal. Having adequate internet access to litigate a contested case is different from having any access to the internet. OPUC requested that this requirement be removed or at least allow for good cause exemptions, similar to those allowed by FERC, in situations where access to the internet is inadequate.

In its reply comments, TCA supported AT&T's proposed revisions to §22.106. TCA stated that it does not oppose a requirement to file statements of no access, and indicated that such a requirement should apply to any pleading, not just intervention requests, and be either included with a party's initial filing or made within a specific time period, such as the 30 day period suggested by AT&T.

Commission response

The commission agrees with AT&T that §22.106(a) should be modified to clarify that the requirement to file a statement of no access, when applicable, applies to all initial pleadings and not just to motions to intervene. The commission therefore modifies the language of §22.106 to require a statement of no access, if needed, with a party's first pleading in a docket, regardless of whether that pleading is a motion to intervene.

With respect to imposing a 30-day deadline for a person or representative to provide the additional information required upon gaining subsequent access to the internet or email, the commission declines to modify the rule as suggested by AT&T. The commission disagrees that the rule needs to include an explicit deadline at this time, but it will revisit the issue if needed after the rule has been put into operation.

The commission declines to remove the proposed language as suggested by OPUC. Because the commission declines to remove the revisions to chapter 22 allowing electronic service, the need for §22.106 remains. The commission also disagrees that the requirements of §22.106 create any meaningful deterrent to participation in proceedings before the commission. The rule is straightforward to comply with, and the commission does not anticipate that compliance with the rule will be in any way costly or onerous. The commission also disagrees that the rule needs to differentiate between different levels of internet access. Participation in commission proceedings does not involve activities that tax an internet connection beyond downloading the occasional large document. It does not require the ability to conduct more bandwidth-intensive activities, such as videoconferencing.

Section 22.123

AT&T requested that §22.123(a)(2) be clarified to provide that the date of issuance of the order is the date that the presiding officer signs it because there have been occasions where an order was signed on one day and filed on another, which can possibly lead to confusion. AT&T further requested that these rules be modified to permit the motion for clarification or reconsideration and the appeal to be served on all parties by email.

Commission response

The commission declines to modify §22.123(a)(2) as suggested by AT&T. Making this modification would be outside the scope of this project and would require the commission to renotice this rulemaking in the *Texas Register* in order to open §22.123, which is not currently open in this project. The commission declines to expand the scope of this project or renotice this rulemaking.

Section 22.141-.145

The Water IOUs commented that the commission should revisit the topic of discovery control in proceedings involving water and sewer utilities, as these utilities currently face the prospect of responding to unlimited RFIs without necessarily being able to recover the cost incurred in responding to RFIs in CCN proceedings.

Commission response

The commission declines to address the topic of discovery control in this project. Doing so would be beyond the scope of this project, and would be more appropriately handled in a dedicated rulemaking project.

Section 22.144

AT&T requested that §22.144 be modified to eliminate the requirement to file discovery responses for the same reasons as the modifications AT&T proposed to §22.71(c)(10) and (11). AT&T also recommended that §22.144(b)(2) be modified to permit requests for information to be served on all parties by email. AT&T further requested that §22.144(c)(2)(F) be modified to require that the responding party--not the authorized representative or attorney--make and sign responses to requests for information.

AT&T recommended that the time period for objections be changed from its current length of ten calendar days to 20 calendar days to coincide with the time period for responding to requests for information. AT&T stated that such a change would make the commission's time period for objections mirror the TRCP.

AT&T requested that the portions of §22.144 that concern privilege logs be modified to mirror the rule for asserting a privilege in Texas' district courts, TRCP Rule 193.3. Unlike the commission's rule, TRCP Rule 193.3 does not require parties to automatically file an index of documents alleged to be privileged in each and every instance. Instead, parties asserting a privilege in state court are merely required to indicate in their response or in a separate document that information of

documents have been withheld and what privilege is being asserted. AT&T stated that parties in commission proceedings already routinely agree to waive the burdensome index requirement.

If the commission were to modify the time period for objections as AT&T recommended, AT&T further recommended that the current requirement to file motions to compel within five working days of the receipt of the objection be changed to ten calendar days from the receipt of the objection.

Commission response

The commission declines to modify §22.144 as suggested by AT&T. Making this modification would be outside the scope of this project and would require the commission to renotice this rulemaking in the *Texas Register* in order to open §22.144, which is not currently open in this project. The commission declines to expand the scope of this project or renotice this rulemaking.

Section 22.161

AT&T recommended that the list of sanctionable conduct set forth in §22.161(b) also include failing to comport with the standards of conduct for parties in §22.3(a).

The commission declines to modify §22.161(b) as suggested by AT&T. Making this modification would be outside the scope of this project and would require the commission to renotice this rulemaking in the *Texas Register* in order to open §22.161, which is not currently

open in this project. The commission declines to expand the scope of this project or renotice this rulemaking.

Section 22.225

OPUC recommended using either the phrase *pre-filing schedule* or *the testimony pre-filing schedule* to provide clarity rather than using both terms interchangeably. OPUC suggested that the section could merely refer to a procedural schedule and state that such a schedule shall provide for the filing of testimony prior to the hearing on the merits.

OPUC argued that §22.225(a)(8) is cumbersome and recommended rewriting it to simply state that unless an applicant is otherwise required to file its testimony with its application, the presiding officer will set a schedule in which to do so.

Commission response

The commission agrees with OPUC that the rules should use a consistent term and modifies the rule so that the term *prefiled testimony schedule* is used throughout. The commission agrees with OPUC that §22.225(a)(8) should be revised. The commission makes revisions to §22.225(a)(8) to clarify its intent.

Section 22.242

OPUC recommended changes to the proposed §22.242 to clarify against whom a complaint may be filed and to use a consistent term to describe the persons who may file complaints. First, OPUC noted that subsection (a) limits those parties against whom a complaint may be filed to a person

subject to the commission's jurisdiction while subsection (c) includes the phrase *or other person*. OPUC recommended making the two subsections conform. Additionally, subsection (a) refers to an *affected person* and subsection (c) applies to a *person who is aggrieved*. OPUC stated that either the same term should be used in both subsections or clarification should be added to better indicate the distinction between the two terms.

OPUC recommended adding an additional subsection that establishes a process for members of a Water Supply Corporation to file a complaint with the commission under TWC §13.004 and 16 TAC §24.35. TWC §13.004 and 16 TAC §24.35 both describe how a Water Supply Corporation may be subject to the commission's original jurisdiction; however, OPUC argued, there currently is no applicable procedural process. OPUC proposed language to establish a TWC §13.004 complaint process.

AT&T proposed the deletion of the phrase *or other person* where it appears in §§22.242(c), (e)(2)(D) & (h). AT&T argued that the use of that phrase is redundant in light of the proposed addition of the phrase *a person under the jurisdiction of the commission* in those subsections, because there could be no other person other than those persons subject to the jurisdiction of the commission who would be proper respondents to a complaint.

The Water IOUs commented that they support extending the procedures in §22.242 to water and sewer utilities, particularly the separation between informal and formal complaint processes, and that §22.242 should be harmonized with §§24.81-.82.

Commission response

The commission agrees that consistent terminology should be used throughout the rule, and therefore replaces both *person under the jurisdiction of the commission or other person* and *person who is aggrieved by the conduct of a person under the jurisdiction of the commission or other person* with *person*. These changes do not expand the commission's jurisdiction; rather, they ensure that §22.242 does not unnecessarily or unintentionally limit the commission's jurisdiction from that conferred on it by PURA and the TWC. The commission declines to address a complaint process for TWC §13.004 complaints in this project. The commission has not yet processed enough complaints filed under TWC §13.004 to add a formalized procedural process to its rules. In addition, creating a process for complaints filed under §13.004 would be better accomplished in a dedicated project. Regarding harmonization of §22.242 with §§24.81-.82, the commission declines to make further changes to §22.242 at this time, as the changes the commission has already made make clear that §22.242 applies to complaints against water and sewer utilities. The commission also declines to make changes to §§24.81-.82 because doing so would require the commission to renotice this rulemaking in the *Texas Register* in order to open §§24.81-.82, which are not currently open in this project. The commission declines to renotice this rulemaking.

Section 22.246

AT&T stated that the reference to subchapter A (relating to judicial review) in the proposed modification to §22.246(j) was incorrect and should be changed to subchapter B (relating to enforcement and penalties).

Commission response

The commission agrees with AT&T's recommendation. To reduce the possibility of the reference becoming incorrect if PURA is reorganized in the future, the commission removes entirely the reference to a specific subchapter, such that the subsection now refers only to chapter 15 of PURA.

Section 22.262

TRWA commented that §22.262(d) should be amended to allow an affected retail public utility to request oral argument on any matter affecting the retail public utility, including a motion for rehearing that is before the commission. TRWA stated that the current rule is too restrictive, as many of the commission's dockets involving water and sewer retail public utilities are not heard by SOAH.

Commission response

The commission declines to modify §22.262(d) as suggested by TRWA. Making this modification would be outside the scope of this project and would require the commission to renotice this rulemaking in the *Texas Register* in order to open §22.262, which is not currently open in this project. The commission declines to expand the scope of this project or renotice this rulemaking.

Section 22.264(a)

AT&T recommended that the second sentence in §22.264(a) be deleted as redundant, since the APA already provides that a motion for rehearing must be filed by a party.

Commission response

While AT&T is correct that the APA provides that a motion for rehearing must be filed by a party, the commission notes that many of its rules and those of other agencies repeat requirements found in statute. The commission concludes that retaining the language currently in the rule results in a more useful, comprehensive rule. The commission therefore declines to remove the language.

Section 22.264(c)-(e)

OPUC argued that the addition of new subsection (c) is unnecessary because subsection (a) already contains the necessary instruction on timely filing by stating that rehearing *shall be governed by the APA.*

OPUC further argued that the conclusory use of untimely in subsection (c) precludes the commission from deciding whether a filing was timely or not on a case by case basis. OPUC noted that this restricts the commission and the parties and ignores the possibility that good cause may exist for missing a deadline. OPUC also cited to case law stating that determining if a filing is timely should be left to the judge. OPUC concluded that deeming something timely as a matter of law removes the presiding officer's discretion and is contrary to good public policy.

OPUC opposed the proposed changes to subsection (d) in the published proposal on the grounds that the changes make the rehearing process more restrictive than the APA, unnecessarily limit both a party's and the commission's range of options, and contravene APA §2001.147, which allows an extension of the rehearing deadlines by agreement of the parties. OPUC argued that the new amendments to the APA relax the process for rehearing and petitioning for judicial review and that the commission cannot restrict the procedural time requirements established by the APA.

OPUC objected to the proposed requirement in subsection (e) that a motion for extension of time to file a motion for rehearing be filed no less that ten days before the original deadline. OPUC first argued that the phrase *from the original deadline* is unclear and prevents any other party from seeking an extension of time if one has already been granted to any party. OPUC suggested that if the intent is to limit the timing of the motion to no less than ten days before the currently set deadline, the language should be clarified. Second, OPUC asserted that requiring motions for extension of time be filed no less than ten days before the deadline is excessive for purposes of providing notice to the other parties and that parties may not know that they need extra time that far ahead in the drafting process. OPUC worried that this rule may result in parties routinely requesting extensions that are not needed. Finally, OPUC worried that this rule is too restrictive regarding motions for rehearing and argued that good public policy dictates a more lenient approach.

Commission response

The commission disagrees with OPUC regarding the necessity of subsection (c) or the use of the word *untimely* in § 22.264. Including subsection (c) results in a cleaner rule that will

enhance readability and understanding of the APA requirement that motions for rehearing be timely filed. Further, it is the commission that must decide whether each motion for rehearing is timely filed, and use of the word untimely does not hinder or limit the commission in that regard. Finally, the deadlines in the APA are mandatory and must be met. While the commission may extend some deadlines under certain circumstance, a reset deadline is likewise mandatory and may not be waived for good cause. The commission therefore retains subsection (c) and use of the word untimely. The commission disagrees with OPUC that the APA has relaxed the process for motions for rehearing or that the rule contravenes the requirements of §2001.147 of the APA. The APA now provides a method to extend the deadline for a motion for rehearing if a party did not timely receive notice of the commission's order; but that extended deadline is mandatory. And while the APA provides that the parties to a contested case may agree to modify certain timelines, those timelines may only be changed with the approval of the commission. That process is unchanged from prior law. The ten-day requirement used throughout the rule is the minimum amount of time needed to post a request to modify a deadline on an open meeting agenda for consideration by the commissioners. Time is needed to consider a request, to ballot the commissioners on the request, and to meet the posting requirements for an open meeting. Shortening the ten-day requirement is not feasible given the time requirements and would make it difficult for the commission to address the request. The commission also notes that the *from the original deadline* language to which OPUC objected was not in the proposed rule.

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, updating the terminology used in the rules, and ensuring that consistent terminology is used throughout the rules.

This new rule and amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code §14.002 and §14.052 (PURA) and under the Texas Water Code §13.041(b) (TWC), which provide 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: PURA §14.002 and §14.052 and TWC §13.041(b).

§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** -- For a matter involving an entity that provides electric or telecommunications service, the definition of affected person is that definition given in PURA §11.003(1). For a matter involving an entity that provides water or sewer service, the definition of affected person is that definition given in TWC §13.002(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 in accordance with 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 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 under 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 under PURA, §§36.151 - 36.156 or §53.151 and §53.152 in which the respondent utility is directed to file a rate filing package. For water and sewer utilities, a rate filing package filed under TWC §13.187 is a major rate proceeding.

(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) **PWS** -- **Public Water System.**

(40) **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.

(41) **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.

(42) **Retail Public Utility** -- Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(43) **Rulemaking** -- A proceeding under APA, Texas Government Code, chapter 2001, subchapter B conducted to adopt, amend, or repeal a commission rule.

(44) **SOAH** -- The State Office of Administrative Hearings.

(45) **TCEQ** -- The Texas Commission on Environmental Quality.

(46) **TWC** -- The Texas Water Code, as it may be amended from time to time.

(47) **WQ** -- Water Quality discharge permit.

(48) **Working day** -- A day on which the commission is open for the conduct of business.

§22.31. Classification in General.

(a) **Classification and assignment of control number.** Central Records shall determine whether an application or other document initiating a proceeding should be designated as a docket, tariff, or project. Central Records shall assign an appropriate control number to each docket, tariff, or project.

(b) **Control numbering system.** Central Records shall establish and maintain a control numbering system.

(c) **Control number log.** Central Records shall maintain a record or log of all applications or other documents assigned a control number, which shall include the style, the date the application or other document was filed or the proceeding initiated, the nature of the proceeding, and the presiding officer assigned to the proceeding, if any. The log shall be accessible to the public.

(d) **Control number assignment.** A control number will be assigned to a docket only at the time of filing an application unless otherwise required by rule or on approval of the director of the Commission Advising and Docket Management Division or the director's designee.

(e) **Closing unused control numbers.** Any control number assigned to a docket before the filing of an application will be closed if the application is not filed within 25 days of

assignment of the control number unless otherwise directed by the director of the Commission Advising and Docket Management Division or the director's designee.

§22.32. Administrative Review.

(a) **Applications qualified for administrative review.** An application, other than a major rate proceeding, may be approved by an administrative law judge without a hearing or action by the commission, under the following conditions:

(1) the commission has referred the application to SOAH for processing;

(2) at least 30 days have passed since the completion of all notice requirements;

(3) the matter has been fully stipulated so that there are no issues of fact or law disputed by any party; and

(4) the administrative law judge finds that no hearing or commission action is necessary and that administrative review is warranted.

(b) **TWC applications without notice requirements.** An administrative law judge, without a hearing or action by the commission, may approve an application filed under the TWC that does not require a notice or hearing.

(c) **Administrative law judge's order.** If an application qualifies for administrative review, the administrative law judge shall issue an order with proposed findings of fact and conclusions of law as soon as is reasonably practicable. The order shall be served upon each commissioner and all parties.

(d) **Finality of order.** At the request of any commissioner or the administrative law judge, the order shall be placed on the agenda to be considered in open meeting. On such request,

the Commission Advising and Docket Management Division shall provide notice to the parties that the order will be considered by the commission at open meeting and the open meeting at which the order will be considered. The commission may approve the order of the administrative law judge, vacate the order of the administrative law judge and remand the docket for hearing or additional proceedings, or modify the order with the agreement of the parties. The order is deemed approved and becomes final 20 days after issuance by the administrative law judge unless before the 20th day the administrative law judge or a commissioner has requested that the order be considered by the commission at open meeting, in which case the order may become final only after action by the commission in open meeting.

(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.

(g) **Exceptions to administrative law judge's order.** Nothing in this section shall be construed to preclude any party from filing exceptions to the administrative law judge's order, provided such exceptions are filed with the commission within 15 days after the issuance of the administrative law judge's order.

§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," "special telephone tariff filings," or "water or sewer utility tariff filings." Electric tariff filings shall be those applications filed under §25.241 of this title (relating to Form and Filing of Tariffs). Regular telephone tariff filings shall be those applications filed under §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 under §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. Water or sewer utility tariff filings shall be those applications filed under §24.21 of this title (relating to Form and Filing of Tariffs), except those filed by a water supply or sewer service corporation as those terms are defined in the TWC. This section shall apply unless it is inconsistent with chapters 24, 25, or 26 of this title, or PURA or the TWC.

(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, regular telephone, or water or sewer utility tariff filing would change the revenues received by the utility for an existing service;

(2) if an electric, regular telephone, or water or sewer utility 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 under 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 under §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 under §22.264 of this title (relating to Rehearing).

§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 once 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, no later than the week after the application is filed with the commission. This notice shall identify the commission's docket number and the style assigned to the case by Central Records. In electric transmission line cases, the applicant shall obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice shall describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(A) The notice shall include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice shall state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an application for certificate of convenience and necessity filed under PURA §39.203(e)) and

that a letter requesting intervention should be received by the commission by that date.

(B) The notice shall describe in clear, precise language the geographic area for which the certificate is being requested and the location of all 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. In addition, the notice shall include a map that identifies all of the alternative locations of the proposed routes and all major roads, transmission lines, and other features of significance to the areas that are used in the utility's written notice description.

(C) The notice shall state a location where a detailed routing map may be reviewed. The map shall clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the alternative locations of the proposed routes, 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.

(E) The applicant shall provide a copy of each environmental impact study and/or assessment for the project to the Texas Parks and Wildlife Department (TPWD) for its review within seven days of filing the application. Proof of submission of the information to TPWD shall be provided in the form of an affidavit to the commission, which shall specify the date the information was mailed or otherwise provided to TPWD, and shall provide a copy of the cover letter or other documentation that confirms that the information was provided to TPWD.

(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. In addition, the applicant shall, upon filing the application, serve the notice on the Office of Public Utility Counsel using a method specified in §22.74(b) of this title (relating to Service of Pleadings and Documents). The notice shall contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1)(C) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, counties, and the Office of Public Utility Counsel 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, on the date it files 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. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.

(A) The notice must contain all information required in paragraph (1) of this subsection and shall include all the information required by the standard notice letter to landowners prescribed by the commission. The commission's docket number pertaining to the application must be stated in all notices. The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission.

(B) The notice must include a map as described in paragraph (1)(C) of this subsection.

(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 advise the commission by written pleading and shall provide notice to such landowner(s) by priority mail, with delivery confirmation, 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 from the date of delivery to intervene. The utility shall immediately file a supplemental affidavit of notice with the commission.

(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. Direct mail notice of the public meeting shall be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV. In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility shall not describe routes as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes.

(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.

(7) All notices of an applicant’s intent to secure a certificate of convenience and necessity whether provided by publication or direct mail shall include the following

language: "All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas."

(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 or newspapers in which the notice was published; the county or counties in which the newspaper or newspapers 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 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.

(3) Letters or memoranda relating to any item with a control number.

(4) Reports required by PURA, commission rules or request of the commission.

(5) Discovery requests and responses.

(b) **File with the commission filing clerk.** Except as provided in §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission), 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;

(C) related to discovery responses in docketed proceedings: four copies; and

(D) filed by a water supply or sewer service corporation under §24.21 of this title (relating to Form and Filing of Tariffs): two 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, amendments to certificates of convenience and necessity (including petitions for decertification), and service area exceptions: seven copies;

(10) discovery requests: five copies;

(11) discovery responses: four copies;

(12) reports required by PURA, the TWC, or the commission's Substantive Rules: four copies;

(13) comments to proposed rulemakings: 16 copies; and

(14) other pleadings and documents: ten copies, except that in contested cases transferred to 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 to Central Records in an enclosed, sealed and labeled envelope (the confidential envelope). The confidential envelope shall not include any non-confidential materials unless directly related to and essential for clarity of the confidential material. Each copy of confidential material shall be provided in a separate sealed and labeled envelope. Parties shall notify the Central Records filing clerk at the time of submission of any documents to be file-stamped whether the submission includes any confidential material. If the confidential envelope does not meet the requirements of subparagraph (A)(i)-(vii) of this paragraph, both the confidential envelope and any document directly related to the confidential material will be immediately returned to the submitting party without being filed-stamped. If the confidential envelope meets the requirements of subparagraph (A)(i)- (vii) of this paragraph, Central Records shall accept it No submitting party shall deliver any confidential materials directly to commission staff. Confidential documents related to settlement negotiations shall be submitted in conformance with paragraph (4) of this subsection. Confidential documents submitted for *in camera* review shall be submitted in conformance with paragraph (5) of this subsection.

(A) The confidential envelope shall contain confidential material related only to a single proceeding. All confidential material, including that submitted in

diskette or CR-ROM format, shall be provided in a 10 X 13 inch manila clasp envelope. A larger envelope shall be permitted only when necessary as a result of the document's size as detailed in §22.72(b)(2) of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). All envelopes shall be identified with a label containing the information required in clauses (i)-(viii) of this subparagraph:

(i) the word "CONFIDENTIAL" in bold print and all capitals at least one-half inch in size;

(ii) the control number, if available;

(iii) the style of the proceeding;

(iv) the name of the submitting party;

(v) Brief description of contents, i.e., Response to (Name of RFI requestor)'s First RFI No. 1-1;

(vi) Bate Stamped or consecutive page number range of documents enclosed;

(vii) Number and quantity of envelopes: If the confidential material fits into one envelope, each copy would be marked *one of one*. If the confidential material requires two envelopes, each copy would be marked *one of two* and *two of two*; and

(viii) any other markings as required by the individual protective orders in each proceeding.

(B) The submitting party's label shall substantially conform to the following form, with changes as necessary to comply with any individual protective

order applicable to the proceeding, and shall be securely taped or adhered only to the front of the confidential envelope:

CONFIDENTIAL

DOCKET NO. _____

STYLE: _____

_____

SUBMITTING PARTY: _____

BRIEF DESCRIPTION OF CONTENTS: _____

_____

_____

BATE STAMP OR SEQUENTIAL PAGE NUMBER RANGE:

_____ TO _____

ENVELOPE #_____ OF _____

ADDITIONAL INFORMATION REQUIRED BY PROTECTIVE ORDER:

_____

DATE SUBMITTED TO COMMISSION: _____

(C) The confidential materials shall:

(i) have each page of the confidential material marked *confidential* or as required by the individual protective orders in each proceeding;

(ii) meet the requirements of §22.72(g) of this title;

(iii) have each page, including any cover letters or divider pages, sequentially numbered and the sequential numbers shall be easily distinguishable from any other numbering the submitting party uses for internal purposes;

(iv) be stapled or secured in a pressboard letter folder or binder, and not loose, rubber banded, paper clipped or in a three-ring binder.

(D) Unless otherwise provided by this chapter or the presiding officer, confidential material submitted as evidence at hearings shall follow the procedures set forth in this paragraph.

(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: two copies;

(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 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 as confidential under paragraph (1) of

this subsection. Confidential materials 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) Materials related to arbitrations. Central Records will maintain one file copy that is not accessible to the public or commission staff and one copy that may be viewed by parties who have signed an agreement to abide by the protective order in the proceeding. The party who provides the confidential material must deliver one copy of confidential materials not related to discovery to the commission's arbitrators assigned to the matter.

(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 and one copy that may be viewed by parties who have signed an agreement to abide by the protective order in the proceeding. Parties who have signed an agreement to abide by the protective order in the proceeding may view the copy of the confidential material maintained by Central Records. 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 Agency Counsel or the Agency Counsel's authorized representative.

(D) Notwithstanding subparagraphs (A)-(C) of this paragraph, commission employees in the Commission Advising and Docket Management Division and in the commissioners' offices shall sign one confidentiality and non-disclosure agreement applicable to all proceedings. Employees in the Commission Advising and Docket Management Division that are assigned to a matter and employees in the commissioners' offices may view and check out confidential material for that matter maintained by Central Records and may disclose such information to other employees in the Commission Advising and Docket Management Division that are assigned to the matter and to employees in the commissioners' offices.

(4) **Settlement negotiations.** Confidential materials related to settlement negotiations shall be delivered to Central Records. Confidential materials related to settlement negotiations shall not be considered part of the official record and shall not be logged into the commission's agency information system (AIS). The party submitting confidential materials for settlement negotiations is responsible for ensuring that the materials are properly labeled as required by subparagraphs (A) and (B) of this paragraph. Confidential materials that are not properly labeled will not be accepted by Central Records. Central Records will ensure that the materials are delivered to the staff person identified on the label.

(A) Confidential material related to settlement negotiations shall be delivered in a sealed envelope identified with a label containing the information in clauses (i)-(v) of this subparagraph:

(i) the words SETTLEMENT NEGOTIATIONS and CONFIDENTIAL in bold print and all capitals at least one-half inch in size;

(ii) the control number;

(iii) the style of the proceeding;

(iv) name of submitting party; and

(v) name of the staff person assigned to the proceeding who is to receive the confidential material.

(B) The submitting party's label shall substantially conform to the following form and shall be securely taped or adhered only to the front of the confidential envelope:

SETTLEMENT

NEGOTIATIONS

CONFIDENTIAL

DOCKET NO. _____

STYLE: _____

_____

SUBMITTING PARTY: _____

COMMISSION STAFF PERSON TO RECEIVE MATERIAL:

_____

DATE SUBMITTED TO COMMISSION: _____

(5) ***In camera* review.** One copy of confidential materials related to *in camera* review shall be delivered to Central Records. Confidential materials related to *in camera* review shall not be considered part of the official record and shall not be logged into the commission's agency information system (AIS). The party submitting confidential materials for *in camera* review is responsible for ensuring that the materials are properly labeled as required by subparagraphs (A) and (B) of this paragraph. Confidential materials that are not properly labeled will not be accepted by Central Records. Central Records will ensure that the materials are delivered to the administrative law judge or arbitrator assigned to the proceeding.

(A) Confidential material related to *in camera* review shall be delivered in a sealed envelope identified with a label containing the information in clauses (i) - (v) of this subparagraph:

(i) the words IN CAMERA REVIEW and CONFIDENTIAL in bold print and all capitals at least one-half inch in size;

(ii) the control number;

(iii) the style of the proceeding;

(iv) name of submitting party; and

(v) name of the administrative law judge or arbitrator assigned to the proceeding.

(B) The submitting party's label shall substantially conform to the following form and shall be securely taped or adhered only to the front of the confidential envelope:

IN CAMERA

REVIEW

CONFIDENTIAL

DOCKET NO. _____

STYLE: _____

SUBMITTING PARTY: _____

ADMINISTRATIVE LAW JUDGE or ARBITRATOR:

_____

SUBMITTED TO COMMISSION: _____

(6) Working copies of confidential material shall be maintained, destroyed, or returned to the providing party in conformance with the individual protective orders in each proceeding. Record copies of confidential material shall be maintained or destroyed as required by the commission's 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 are presented to the commission filing clerk for filing. Reports that are exempt from being filed with the commission filing clerk under §22.72 of this title shall be deemed received when a record containing the data from the report is created in the system used by the commission to store the report. 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 Central Records and the commission filing clerk.**

The office hours of Central Records are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days, except on Fridays and open meeting days. On Fridays, Central Records will close for all purposes from noon to 1:00 p.m. On open meeting days, Central Records will open at 8:00 a.m., and the commissioners and the Commission Advising and Docket Management 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. No other filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m. The commissioners and the Commission Advising and Docket Management Division shall provide the filing clerk with an extra copy of all documents filed under this subsection for public access.

(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.

(3) Letters or memoranda relating to any item with a control number;

(4) Reports required by 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;

(C) Reports filed under §24.73 of this title (relating to Water and Sewer Utilities Annual Reports), §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); and

(D) Reports that are submitted directly to the commission using the commission's website under subsection (j) of this section.

(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 cannot 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 and Style*

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. In addition, every pleading and document shall include an email address, unless the party or the party's authorized representative has filed a statement under §22.106 of this title (relating to Statement of No Access). 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 under 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 as allowed by 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 cannot be printed on both sides of the paper, every page of the copy shall be single sided.

(B) All pages of the copy filed under 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) A cover letter may be attached to any document filed with the commission, and must be included with tariff-sheet filings. 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.

(6) If the document contains a barcode, the barcode shall be covered or redacted.

(7) If the document contains personally identifiable information such as social security numbers or bank account numbers, either the information must be covered or redacted, or the document shall be filed confidentially under §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other materials).

(h) **Electronic filing standards**. In addition to the hard copy filings required by subsection (g) of this section, 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)-(3) of this subsection. Electronic filings are registered by submission of the relevant electronic documents via the internet in accordance with transfer standards available in Central Records or on the commission's website. Alternatively, electronic filings may be registered by submission of a physical medium that is acceptable to the commission, is prepared in accordance with submission standards available in Central Records or on the

commission's website, and contains the relevant electronic documents. The commission will maintain a list of acceptable physical media on its website.

(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) 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 number(s) 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.

(3) Any information submitted under claim of confidentiality shall not be submitted in electronic format.

(i) **File format standards.**

(1) Electronic filings shall be made in accordance with the current list of preferred file formats available in Central Records and on the commission's World Wide Web site.

(2) Electronic filings shall be made using the native file format used to create and edit the file, unless the native file format is not on the current list of preferred file formats maintained by the commission referenced in paragraph (1) of this subsection. Microsoft Excel spreadsheets shall have active links and formulas that

were used to create and manipulate the data in the spreadsheet. An application that fails to include the native file filings is materially deficient.

(3) 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.

(j) **Electronic reports.** The commission may allow reports to be submitted on the commission's website.

(1) If a report is submitted on the commission's website under this subsection, it is exempt from §22.71(b) of this title and therefore does not have to be filed with the commission's filing clerk.

(2) The commission will maintain a list of reports that may be submitted on the commission's website under this subsection. This list will be available on the commission's website.

(3) A report submitted under this subsection shall be formatted and submitted in accordance with the standards and procedures applicable to that report, as listed on the commission's website.

(k) **Map filing standards.**

(1) If a hard copy of a map is filed in response to a requirement contained in chapter 24 of this title, it shall be filed in its original size. It shall not be reduced or enlarged.

(2) If digital mapping data is filed, it shall be filed using an industry standard file format acceptable to the commission containing feature class subcomponents of a

geodatabase and capable of being manipulated by commission mapping staff. The commission will maintain a list of acceptable formats on its website.

(3) Digital mapping data shall be filed electronically in conformance with subsection (h) of this section and shall be submitted on a physical medium capable of holding digital data and acceptable to the commission. The commission will maintain a list of acceptable media on its website. The physical medium described in this paragraph shall contain digital mapping data that conforms with the requirements of paragraph (2) of this subsection and graphic versions of any hard copy maps filed under paragraph (1) of this subsection.

(4) Copies of physical maps and physical media containing digital mapping data shall be filed in conformance with §22.71(c) of this title.

§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;

(7) a certificate of service; and

(8) the name of a person upon whom service may be had and, unless such person has filed a statement under §22.106 of this title (relating to Statement of No Access), an email address at which the person can be served.

§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) **Alternative methods of service**. On motion of a party or the presiding officer's own motion, the presiding officer may require service by email or service by filing with or without notice, or any combination of those methods and any method specified in subsection (b) of this section. On joint or separate motion of all parties to a proceeding, the presiding officer shall require service by email or service by filing with or without notice.

(1) If a person has filed a statement of no access under §22.106 of this title (relating to Statement of No Access), the presiding officer shall require service on such person(s) by a method specified in subsection (b) of this section.

(2) A party or representative of a party that has filed a statement of no access but that is required by §22.106(b) of this title to subsequently provide an email address will thereafter be subject to service by an alternative method if the presiding officer has required service by an alternative method.

(3) If the presiding officer has required service only by methods specific in subsection (c) of this section, the presiding officer may, upon motion and good cause shown, require service by a method specified in subsection (b) of this section for any party in a proceeding.

(4) Service by email shall be complete upon sending an email message with the pleading or document attached to the message to the email address provided by the party being served.

(5) Service by filing with notice shall be complete upon sending an email message that contains a link to the electronic copy of the pleading or document that is accessible through the interchange on the commission's website to the email address provided by the party being served.

(6) Service by filing without notice shall be complete upon filing with Central Records. If this method of service is required, the presiding officer shall encourage parties to sign up with the commission's Filings Notification System on its website to receive automatic notifications of filings in the docket.

(d) **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.

(e) **Certificate of service**. Every document required to be served on all parties by 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(s)). 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 under 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 electric transmission lines.**

(1) Motions to find an application for certificate of convenience and necessity for electric 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 electric 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 electric 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 a material deficiency exists 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.

(4) For an application for certificate of convenience and necessity filed under PURA §39.203(e), a pleading alleging a material deficiency in the application shall be filed no later than 14 days after the application is filed, and shall be served on the applicant by hand delivery, facsimile transmission, or overnight courier delivery and on the other parties in conformance with §22.74(b) of this title (relating to Service of Pleadings and Documents). The applicant shall reply to a pleading alleging a material deficiency no later than seven days after it is received. If the presiding officer determines that a material deficiency exists in an application, the presiding officer shall issue a written order within 28 days of the filing of the application ordering the applicant to amend its application and correct the deficiency within seven days. This order shall be served on the applicant by hand delivery, facsimile transmission, or overnight courier delivery and on the other parties in conformance with §22.74(b) of this title. If the applicant does not timely

amend its application and correct the deficiency, the presiding officer shall dismiss the application without prejudice.

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

§22.78. 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 under PURA, chapter 36, subchapter D or chapter 53, subchapter D, or for a complaint filed under TWC §13.004 (relating to Jurisdiction of Utility Commission Over Certain Water Supply or Sewer Service Corporations).

(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 under 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 under 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.

§22.101. 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, facsimile number, and, unless the authorized representative has filed a statement under §22.106 of this title (relating to Statement of No Access), an email address.

(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.

§22.103. 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** under **the Federal Telecommunications Act of 1996** (FTA96). Standing to intervene in proceedings concerning dispute resolution and approval of agreements under the commission's authority under FTA96 is subject to the requirements of subchapter D of chapter 21 of this title (relating to Dispute Resolution).

(d) By requesting to intervene in a proceeding, a person agrees to accept delivery by email from the commission of any motions for rehearing and replies to motions for rehearing, unless he or she has filed a statement under §22.106 of this title (relating to Statement of No Access).

§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. For an application for certificate of convenience and necessity filed under Public Utility Regulatory Act §39.203(e), motions to intervene shall be filed within 30 days from the date the application is filed with the commission. 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 or Proposed Order issued. For late interventions, other than those allowed by 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 Commission Advising and Docket Management

Division shall send separate ballots to each commissioner to determine whether the motion to intervene will be considered at an open meeting. An affirmative vote by one commissioner is required for consideration of a motion to intervene at an open meeting. The Commission Advising and Docket Management 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 Proposal for Decision or Proposed Order 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.

§22.106. Statement of No Access.

(a) **Statement of no access.** If a person or representative of a person has no access to the internet or to email, his or her first pleading in a docket shall include a signed statement that:

(1) he or she has no access to the internet or to email; and

(2) if circumstances change such that the person or representative gains access to the internet or to email, he or she agrees to:

(A) promptly notify the commission in writing;

(B) provide the commission with his or her email address; and

(C) become subject to the commission rules governing service by email for those who have not provided a statement of no access.

(b) **Subsequent access.** If a person who has provided the commission with a statement of no access as required by subsection (a) of this section subsequently obtains access to the internet or to email, he or she must provide an email address to the commission and will become subject to the commission rules governing service by email for those who have not provided a statement of no access.

§22.125. Interim Relief.

(a) **Availability.** Interim relief is not available for tariff filings unless the tariff filing has been docketed.

(b) **Requests for interim relief.** A request for interim relief shall be filed no later than 30 days before the interim relief is proposed to take effect, unless all parties agree to a later filing date.

(c) **Consideration of request for interim relief.** Interim relief may be granted based on the agreement of all parties. The presiding officer may, after notice and opportunity for hearing, grant a contested request for interim relief only on a showing of good cause. In determining whether good cause exists, the presiding officer shall take into account:

(1) The utility's ability to anticipate the need for and obtain final approval of relief prior to the time relief is reasonably needed;

(2) other remedies available under law;

(3) changed circumstances;

(4) the effect of granting the request on the parties and the public interest;

(5) whether interim relief is necessary to effect uniform system-wide rates; and

(6) any other relevant factors as determined by the presiding officer.

(d) **Standard and burden of proof.** In any proceeding involving a proposed interim change in rates, the burden of proof to show that the change proposed by the utility or existing rate is just and reasonable shall be on the utility.

(e) **Refunds and surcharges.** Interim rates shall be subject to refund or surcharge to the extent the rates ultimately established differ from the interim rates.

§22.126. Bonded Rates.

During the pendency of its rate proceeding, a utility seeking to implement rates under bond as allowed by PURA §36.110 or §53.110 or as allowed by TWC §13.187 or §13.1871 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 Commission Advising and Docket Management Division as to sufficiency based on the commission staff's review of the utility's application. Any decision by the Commission Advising and Docket Management Division either approving or disapproving a bond is appealable to the commission under §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

§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 Commission Advising and Docket Management Division. The Commission Advising and Docket Management 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.

§22.141. Forms and Scope of Discovery.

(a) **Scope.** Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding. Discoverable matters include the existence, description, nature, custody, condition, location and contents of any documents, including papers, books, accounts, drawings, graphs, charts, photographs, maps, email, audio or video recordings, and any other data compilations from which information can be obtained and translated, if necessary, by the person from whom information is sought, into reasonably usable form, and any other tangible things which constitute or contain matters relevant to the subject matter in the action, and the identity and location of persons having any knowledge of any discoverable matter. Discovery is not limited to tangible things, but may extend to knowledge, mental impressions, and opinions of persons who will testify; explanations of documents or tangible things, or information contained therein; and other relevant information within the knowledge or control of the entity from whom discovery is sought. A person is not required to produce a document or tangible thing unless it is within that person's constructive or actual possession, custody, or control. A person has possession, custody or control of a document or tangible thing as long as the person has a superior right to compel the production from a third party and can obtain possession of the document or tangible thing with reasonable effort.

(b) **Discovery methods.** Parties may obtain discovery by requests for information, which include requests for inspection or production of documents or things, requests for admissions, and depositions by oral examination.

(c) **Stipulations regarding discovery procedure.** The parties may, by written agreement:

(1) provide that depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions;

(2) agree to extensions of time in which to respond to or object to a discovery request; and

(3) modify the procedures provided by this chapter for other methods of discovery.

§22.183. Disposition by Default.

(a) **Default.** A default occurs when a party who does not have the burden of proof fails to appear for a hearing or request a hearing within 30 days after service of notice of an opportunity for a hearing.

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

(1) The notice of the opportunity for a hearing included a disclosure in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default, if the defaulting party fails to timely request a hearing; and

(2) The notice of opportunity for a hearing was sent by certified mail to:

(A) the party's last known address in the commission's records, if the party has a license, certificate, or registration approved by the commission;

(B) the registered agent for process for the party on file with the Secretary of State, if the party does not have a license, certificate, or registration approved by the commission and is registered with the Secretary of State; or

(C) an address for the party identified after reasonable investigation, if subparagraphs (A) and (B) of this paragraph do not apply.

(c) **Exceptions and replies.** Any party may file exceptions to a default proposal for decision and replies to exceptions under §22.261(d) of this title (relating to Proposals for Decision).

(d) **Motions for rehearing.** Any party may file a motion for rehearing to a default final order under §22.264 of this title (relating to Rehearing).

(e) **Late hearing request**. If a party requests a hearing after the deadline to request a hearing, but before a default order has become final, the presiding officer may grant the request for good cause shown.

§22.225. Written Testimony and Accompanying Exhibits.

(a) **Prefiling of testimony, exhibits, and objections.**

(1) Unless otherwise ordered by the presiding officer upon a showing of good cause, the written direct and rebuttal testimony and accompanying exhibits of each witness shall be prefiled. Deposition testimony and responses to requests for information by an opposing party that a party plans to introduce as part of its direct case shall be filed at the time the party files its written direct testimony. The presiding officer shall establish a date for filing of deposition testimony and requests for information that an applicant plans to introduce as part of its direct case.

(2) Deposition testimony and responses to requests for information that a party plans to introduce in support of its rebuttal case shall be filed at the time the party files its written rebuttal testimony.

(3) A party is not required to prefile documents it intends to use during cross-examination except that the presiding officer may require parties to identify documents that may be used during cross examination if it is necessary for the orderly conduct of the hearing.

(4) Objections to prefiled direct testimony and exhibits, including deposition testimony and responses to requests for information, shall be filed on dates established by the presiding officer and shall be ruled upon before or at the time the prefiled testimony and accompanying exhibits are offered. Objections to prefiled rebuttal testimony shall be filed according to the schedule ordered by the presiding officer.

(5) Nothing in this section shall preclude a party from using discovery responses in its direct or rebuttal case even if such responses were not received prior to the applicable deadline for prefiling written testimony and exhibits.

(6) The prefiled testimony schedule in a major rate proceeding shall be established as set out in this subsection.

(A) Any utility filing an application to change its rates in a major rate proceeding shall file the written testimony and exhibits supporting its direct case on the same date that such statement of intent to change its rates is filed with the commission. As set forth in §22.243(b) of this title (relating to Rate Change Proceedings), the prefiled written testimony and exhibits shall be included in the rate filing package filed with the application.

(B) Other parties in the proceeding shall prefile written testimony and exhibits according to the schedule set forth by the presiding officer. Except for good cause shown or upon agreement of the parties, the commission staff representing the public interest may not be required to file earlier than seven days prior to hearing.

(C) The presiding officer shall establish dates for filing of rebuttal testimony.

(7) For electric and telecommunication rate proceedings, the presiding officer shall establish a prefiled testimony schedule for PURA chapter 36, subchapter D or chapter 53, subchapter D rate cases and for cases other than major rate proceedings. In proceedings that are not major rate proceedings, notice of intent proceedings, applications for certificates of convenience and necessity for new generating plant, or applications for fuel reconciliations, the applicant is not required to prefile

written testimony and exhibits at the time the filing is made unless otherwise required by statute or rule.

(8) For all water and sewer matters filed under TWC chapters 12 or 13, the presiding officer shall establish a prefiled testimony schedule. The applicant is not required to prefile written testimony and exhibits at the time the filing is made unless otherwise required by statute or rule.

(9) Utilities filing an application for construction of a transmission facility that has been designated by the Electric Reliability Council of Texas (ERCOT) independent system operator as critical to the reliability of the ERCOT system and to be considered on an expedited basis, shall file written testimony and exhibits supporting its direct case on the same date that the application is filed with the commission. This requirement shall also apply to transmission lines located in other reliability councils or administered by other independent system operators provided such councils have a process for designation of critical transmission lines.

(10) The times for prefiling set out in this section may be modified upon a showing of good cause.

(11) Late-filed testimony may be admitted into evidence if the testimony is necessary for a full disclosure of the facts and admission of the testimony into evidence would not be unduly prejudicial to the legal rights of any party. A party that intends to offer late-filed testimony into evidence shall, at the earliest opportunity, inform the presiding officer, who shall establish reasonable procedures and deadlines regarding such testimony.

(b) **Admission of prefiled testimony.** Unless otherwise ordered by the presiding officer, direct and rebuttal testimony shall be received in written form. The written testimony of a witness on direct examination or rebuttal, either in narrative or question and answer form, may be received as an exhibit and incorporated into the record without the written testimony being read into the record. A witness who is offering written testimony shall be sworn and shall be asked whether the written testimony is a true and accurate representation of what the testimony would be if the testimony were to be given orally at the time the written testimony is offered into evidence. The witness shall submit to cross-examination, clarifying questions, redirect examination, and recross-examination. The presiding officer may allow voir dire examination where appropriate. Written testimony shall be subject to the same evidentiary objections as oral testimony. Timely prefiling of written testimony and exhibits, if required under this section or by order of the presiding officer, is a prerequisite for admission into evidence.

(c) **Supplementation of prefiled testimony and exhibits.** Oral or written supplementation of prefiled testimony and exhibits may be allowed prior to or during the hearing provided that the witness is available for cross-examination. The presiding officer may exclude such testimony if there is a showing that the supplemental testimony raises new issues or unreasonably deprives opposing parties of the opportunity to respond to the supplemental testimony. The presiding officer may admit the supplemental testimony and grant the parties time to respond.

(d) **Tender and service.** On or before the date the prefiled written testimony and exhibits are due, parties shall file the number of copies required by §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials), or other commission rule or order, of the testimony and exhibits with the commission filing clerk and shall serve a copy upon each party.

(e) **Withdrawal of evidence.** Any exhibit offered and admitted in evidence may not be withdrawn except with the agreement of all parties and approval of the presiding officer.

§22.226. Exhibits.

(a) **Form.** Exhibits, other than maps, 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.

§22.242. 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 person under the jurisdiction of the commission 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 in conformance with 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 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;

(D) the complaint has been the subject of a complaint proceeding conducted by a city;

(E) the complaint is filed by a person alleging that a water or sewer utility has abandoned the service of the utility; or

(F) the complaint is filed by a person alleging that a wholesale water or sewer provider has discontinued, reduced, or impaired its wholesale water or sewer service to its customers for reasons other than those specified in §24.88 of this title (relating to Discontinuance of Service).

(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, water, or sewer utility to a city.** If a person receives electric, water, or sewer utility service or has applied to receive electric, water, or sewer utility service within the limits of a city that has original jurisdiction over the electric, water, or sewer utility providing service or requested to provide service, the person must present any complaint concerning the electric, water, or sewer 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, and, unless the person has filed a statement under §22.106 of this title (relating to Statement of No Access), the email address of the complainant or the complainant's representative;

(D) the name of the person against whom the complainant is seeking relief;

(E) if the complainant is seeking relief against an electric, water, or sewer 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, water, or sewer 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 as required by §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 a person is threatening to discontinue a customer's service, the presiding officer may, after notice and opportunity for hearing, issue an order requiring the 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 and a list of the municipalities that have surrendered to the commission original jurisdiction over the rates charged by a utility for retail water or sewer service within the corporate boundaries of the municipality.

§22.243. Electric or Telecommunication 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 PURA 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 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 is 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 under the procedure set forth in §22.32 of this title (relating to Administrative Review).

§22.244. Review of Municipal Electric Rate Actions.

(a) **Contents of petitions.** In addition to any information required by statute, petitions for review of municipal rate actions filed under 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 under PURA §33.052 and §§33.101 - 33.104.

(1) Within 15 days of the filing of an appeal of a municipal rate action, the Commission Advising and Docket Management 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 Commission Advising and Docket Management 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.

§22.246. Administrative Penalties.

(a) **Scope.** This section addresses enforcement actions related to administrative penalties or disgorgement of excess revenues only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

(1) **Affected Wholesale Electric Market Participant** -- An entity, including a retail electric provider (REP), municipally owned utility (MOU), or electric cooperative, that sells energy to retail customers and served load during the period of the violation.

(2) **Excess Revenue** -- As defined in §25.503 of this title (relating to Oversight of Wholesale Market Participants).

(3) **Executive director** -- The executive director of the commission or the executive director's designee.

(4) **Person** -- Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.

(5) **Violation** -- Any activity or conduct prohibited by PURA, the TWC, commission rule, or commission order.

(6) **Continuing violation** -- Except for a violation of PURA chapter 17, 55, or 64, and commission rules or commission orders adopted or issued under those chapters, any instance in which the person alleged to have committed a violation attests that

a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.

(c) **Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.**

(1) Each day a violation continues or occurs is a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed $25,000 per day, provided that an administrative penalty in an amount that exceeds $5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.

(3) The amount of the administrative penalty shall be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts to correct the violation; and

(F) any other matter that justice may require, including, but not limited to, the respondent’s timely compliance with requests for information,

completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.

(d) **Amount of administrative penalty for violations of the TWC or a rule or order adopted under chapter 13 of the TWC.**

(1) Each day a violation continues may be considered a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed $5,000 per day.

(3) The amount of the penalty shall be based on:

(A) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;

(D) any economic benefit gained through the violations;

(E) the amount necessary to deter future violations; and

(F) any other matters that justice requires.

(e) **Initiation of investigation.** Upon receiving an allegation of a violation or of a continuing violation, the executive director shall determine whether an investigation should be initiated.

(f) **Report of violation or continuing violation.** If, based on the investigation undertaken in accordance with subsection (e) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.

(1) **Contents of the report.** The report shall state the facts on which the determination is based and a recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the administrative penalty and, if applicable under §25.503 of this title, a recommendation that excess revenue be disgorged.

(2) **Notice of report.**

(A) Within 14 days after the report is issued, the executive director shall, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.

(B) For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, within ten days after the report is issued, the executive director shall, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.

(C) The notice must include:

(i) a brief summary of the alleged violation or continuing violation;

(ii) a statement of the amount of the recommended administrative penalty;

(iii) a statement recommending disgorgement of excess revenue, if applicable, under §25.503 of this title;

(iv) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the administrative penalty, or both the occurrence of the violation or continuing violation and the amount of the administrative penalty;

(v) a copy of the report issued to the commission under this subsection; and

(vi) a copy of this section, §22.246 of this title (relating to Administrative Penalties).

(g) **Options for response to notice of violation or continuing violation.**

(1) **Opportunity to remedy.**

(A) This paragraph does not apply to a violation of PURA chapters 17, 55, or 64, or chapter 13 of the TWC, or of a commission rule or commission order adopted or issued under those chapters.

(B) Within 40 days of the date of receipt of a notice of violation set out in subsection (f)(2) of this section, the person against whom the administrative

penalty or disgorgement may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent shall be evidenced in writing, under oath, and supported by necessary documentation.

(C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no administrative penalty will be assessed against the person who is alleged to have committed the violation.

(D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director shall make a determination as to what further proceedings are necessary.

(E) If the executive director determines that the alleged violation is a continuing violation, the executive director shall institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.

(2) **Payment of administrative penalty and/or disgorged excess revenue.** Within 20days after the date the person receives the notice set out in subsection (f)(2) of

this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option is selected, the person shall take all corrective action required by the commission. The commission by written order shall approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue.

(3) **Request for hearing.** Not later than the 20th day after the date the person receives the notice set out in subsection (f)(2) of this section, the person may submit to the executive director a written request for a hearing on any or all of the following:

(A) the occurrence of the violation or continuing violation;

(B) the amount of the administrative penalty; and

(C) the amount of disgorged excess revenue, if applicable.

(h) **Settlement conference.** A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

(1) If a settlement is reached:

(A) the parties shall file a report with the executive director setting forth the factual basis for the settlement;

(B) the executive director shall issue the report of settlement to the commission; and

(C) the commission by written order will approve the settlement.

(2) If a settlement is reached after the matter has been referred to SOAH, the matter shall be returned to the commission. If the settlement is approved, the commission shall issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.

(i) **Hearing.** If a person requests a hearing under subsection (g)(3)of this section, or fails to respond timely to the notice of the report of violation or continuing violation provided under subsection (f)(2)of this section, or if the executive director determines that further proceedings are necessary, the executive director shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH under §22.207 of this title (relating to Referral to State Office of Administrative Hearings). For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order shall assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing or the executive director sets a hearing, the case shall then proceed as set forth in paragraphs (1)-(5) of this subsection.

(1) The commission shall provide the SOAH administrative law judge a list of issues or areas that must be addressed.

(2) The hearing shall be conducted in accordance with the provisions of this chapter.

(3) The SOAH administrative law judge shall promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

(A) the occurrence of the alleged violation or continuing violation;

(B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA chapters 17, 55, or 64; of a commission rule or commission order adopted or issued under those chapters; or of chapter 13 of the TWC; and

(C) the amount of the proposed administrative penalty and, if applicable, disgorged excess revenue.

(4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) determine that a violation or continuing violation has occurred and impose an administrative penalty and, if applicable, disgorged excess revenue;

(B) if applicable, determine that a violation occurred but that, as permitted by subsection (g)(1)of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no administrative penalty will be imposed; or

(C) determine that no violation or continuing violation has occurred.

(5) Notice of the commission's order issued under paragraph (4) of this subsection shall be provided under the Government Code, chapter 2001 and §22.263 of this title (relating to Final Orders) and shall include a statement that the person has a right to judicial review of the order.

(j) **Parties to a proceeding.** The parties to a proceeding under chapter 15 of PURA relating to administrative penalties or disgorgement of excess revenue shall be limited to the person

who is alleged to have committed the violation or continuing violation and the commission, including the independent market monitor. This does not apply to a subsequent proceeding under subsection (k) of this section.

(k) **Distribution of Disgorged Excess Revenues.** Disgorged excess revenues shall be remitted to an independent organization, as defined in PURA §39.151. The independent organization shall distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred to be used to reduce costs or fees incurred by retail electric customers. The load of any market participants that are no longer active at the time of the distribution shall be removed prior to calculating the load proportions of the affected wholesale electric market participants that are still active. However, if the commission determines other wholesale electric market participants are affected or a different distribution method is appropriate, the commission may direct commission staff to open a subsequent proceeding to address those issues.

(1) No later than 90 days after the disgorged excess revenues are remitted to the independent organization, the monies shall be distributed to affected wholesale electric market participants active at the time of distribution, or the independent organization shall, by that date, notify the commission of the date by which the funds will be distributed. The independent organization shall include with the distributed monies a communication that explains the docket number in which the commission ordered the disgorged excess revenues, an instruction that the monies

shall be used to reduce costs or fees incurred by retail electric customers, and any other information the commission orders.

(2) The commission may require any affected wholesale electric market participants receiving disgorged funds to demonstrate how the funds were used to reduce the costs or fees incurred by retail electric customers.

(3) Any affected wholesale electric market participant receiving disgorged funds that is affiliated with the person from whom the excess revenue is disgorged shall distribute all of the disgorged excess revenues directly to its retail customers and shall provide certification under oath to the commission that the entirety of the revenues were distributed to its retail electric customers.

§22.263. Final Orders.

(a) **Form and Content.**

(1) A final order of the commission shall be in writing and signed by a majority of the commissioners.

(2) A final order shall include findings of fact and conclusions of law separately stated and may incorporate findings of fact and conclusions of law proposed within a proposal for decision.

(3) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(4) The final order shall comply with the requirements of §22.262(b) of this title (relating to Commission Action After a Proposal for Decision).

(b) **Notice.** Parties shall be notified of the commission's final order as required by APA.

(c) **Effective Date of Order.** Unless otherwise stated, the date a final order is signed is the effective date of that order, and such date shall be stated therein.

(d) **Date That an Order is Signed.** An order is signed on the date shown on the order. If a sworn motion filed under APA §2001.142(c) is granted, with or without commission action, then, regardless of the date shown on the order, the date that the commission's order is considered to be signed shall be the date specified in that sworn motion as the date that the movant received the order or obtained actual knowledge of the order. If more than one

sworn motion is granted, then the date that the commission's order is considered to be signed is the latest date specified in any such granted motions.

(e) **Reciprocity of Final Orders Between States.** After reviewing the facts and the issues presented, a final order may be adopted by the commission even though it is inconsistent with the commission's procedural or substantive rules provided that the final order, or the portion thereof that is inconsistent with commission rules, is a final order, or a part thereof, rendered by a regulatory agency of some state other than the State of Texas and provided further that the number of customers in Texas affected by the final order is no more than the lesser of either 1,000 customers or 10% of the total number of customers of the affected utility.

§22.264. Rehearing.

(a) Motions for rehearing, replies thereto, and commission action on motions for rehearing shall be governed by APA. Only a party to a proceeding before the commission 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) A motion for rehearing or a reply to a motion for rehearing is untimely if it is not filed by the deadlines specified in APA §2001.146 or, if the commission extends the time to file such motion or reply or approves a time agreed to by the parties, the date specified in the order of the commission extending time or approving the time.

(d) A motion by a party to extend time related to a motion for rehearing must be filed no less than ten days before the end of the time period that the party seeks to extend or it is untimely. Such motion must state with specificity the reasons the extension is justified.

(e) Upon the filing of a timely motion for rehearing or a timely motion to extend time, the Commission Advising and Docket Management Division shall send separate ballots to each commissioner to determine whether they will consider the motion at an open meeting.

Untimely motions shall not be balloted. An affirmative vote by one commissioner is required for consideration of a motion for rehearing or a motion to extend time at an open meeting. If no commissioner votes to add a timely motion to extend time to an open meeting for consideration, the motion is overruled ten days after the motion is filed.

(f) If the commission extends time to act on a motion for rehearing, the Commission Advising and Docket Management Division shall send separate ballots to each commissioner to determine whether they will consider the motion for rehearing at a subsequent open meeting. An affirmative vote by one commissioner is required to place the motion for rehearing on an open meeting agenda.

(g) A party that files a motion for rehearing or a reply to a motion for rehearing shall deliver a copy of the motion or reply to every other party in the case.

This agency hereby certifies that the adoption has 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 new §22.106, relating to Statement of No Access, and amendments to §22.2, relating to Definitions; §22.31, relating to Classification in General; §22.33, relating to Tariff Filings; §22.52, relating to Notice in Licensing Proceedings; §22.71, relating to Filing of Pleadings, Documents, and Other Materials; §22.72, relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission; §22.73, relating to General Requirements for Applications; §22.74, relating to Service of Pleadings and Documents; §22.75, relating to Examination and Correction of Pleadings and Documents; §22.76, relating to Amended Pleadings; §22.78, relating to Responsive Pleadings and Emergency Action; §22.101, relating to Representative Appearances; §22.103, relating to Standing to Intervene; §22.104, relating to Motions to Intervene; §22.126, relating to Bonded Rates; §22.141, relating to Forms and Scope of Discovery; §22.183, relating to Disposition by Default; §22.225, relating to Written Testimony and Accompanying Exhibits; §22.242, relating to Complaints; §22.243, relating to Rate Change Proceedings; §22.244, relating to Review of Municipal Rate Actions; §22.246, relating to Administrative Penalties; and §22.263, relating to Final Orders, are hereby adopted with changes to the text as proposed. It is also ordered by the Public Utility Commission of Texas that amendments to §22.32, relating to Administrative Review; §22.125, relating to Interim Relief; §22.127, relating to Certification of an Issue to the Commission; §22.226, relating to Exhibits; and §22.264, relating to Rehearing, are hereby adopted with no changes to the text as proposed.

Signed at Austin, Texas the _____ day of November 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER

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