

The Public Utility Commission of Texas (commission) adopts an amendment to §22.33 relating to Tariff Filings and §22.305 relating to Compulsory Arbitration with no changes to the proposed text as published in the June 23, 2000 *Texas Register* (25 TexReg 6019). The proposed amendments replace references to repealed sections in Chapter 23 with the correct references in Chapter 25 and/or Chapter 26. The amendments are adopted under Project Number 22470.

The commission received no comments on the proposed amendments.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

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

§22.33. Tariff Filings.

- (a) **Applicability and classification.** This section shall apply to undocketed applications by utilities to change their tariffs. Such tariff filings shall be classified as "electric tariff filings," "regular telephone tariff filings," or "special telephone tariff filings." Electric tariff filings shall be those applications filed pursuant to §25.241 of this title (relating to Form and Filing of Tariffs). Regular telephone tariff filings shall be those applications filed pursuant to §26.207 of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Provisions). Special telephone tariff filings shall be those applications filed by telecommunications utilities pursuant to §26.212 of this title (relating to Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)), §26.209 of this title (relating to New and Experimental Services), §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), and §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services) or PURA, §§53.251, 53.252, 53.301 - 53.308 or 55.004. This section shall apply unless it is inconsistent with Chapters 25 or 26 of this title, or PURA.
- (b) **Standards for docketing.** Tariff filings, other than a tariff filing made in compliance with a rule or final order of the commission, shall be docketed under the following circumstances:
- (1) if an electric or regular telephone tariff filing would change the revenues received by the utility for an existing service;

- (2) if an electric or regular telephone tariff filing would allow the utility to begin charging for a service previously available but for which there was not a separate charge;
 - (3) if an electric or regular telephone tariff filing would eliminate an existing service to which one or more customers actually subscribe;
 - (4) if an electric or regular telephone tariff filing would increase a customer's bill even though the rate for a particular service is not being changed;
 - (5) if the commission's staff recommends disapproval or approval with modification and the utility requests a hearing; or
 - (6) if the commission receives a request to intervene.
- (c) **Effective date.** Except for tariffs required to be filed pursuant to a commission rule specifying the effective date of such tariffs and for tariffs filed in compliance with a final order of the commission, no electric or regular telephone tariff filing may take effect prior to 35 days after filing unless approved by the presiding officer. The requested effective date will be assumed to be 35 days after filing unless the applicant requests a different date in its application. The presiding officer may suspend the operation of the electric or regular telephone tariff filing for 150 days beyond the effective date, or, with the agreement of the applicant, to a later date.
- (d) **Duties of presiding officer.** The presiding officer may establish reasonable deadlines for comments or recommendations, may issue other orders as necessary to facilitate the processing

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

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

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

§22.305. Compulsory Arbitration.

- (a) **Request for arbitration.** Any party to negotiations concerning a request for interconnection, services or network elements pursuant to §251 of the FTA96 may request arbitration by the commission by filing with the commission's filing clerk 13 copies of a request for arbitration. The request must be received by the commission during the period from the 135th to the 160th day (inclusive) after the date the LEC received the request for negotiation from the other negotiating party. The request for arbitration shall include:
- (1) the name, address and telephone number of each party to the negotiations and the party's designated representative;
 - (2) a description of the parties' efforts to resolve their differences by negotiation;
 - (3) a list of any unresolved issues and the position of each of the parties on each of those issues;
 - (4) a list of the issues that have been resolved by the parties and how such resolution complies with the requirements of the FTA96;
 - (5) if the request concerns a request for interconnection under §26.272 of this title (relating to Interconnection), the material required by §26.272(g) of this title; and
 - (6) the most current version of the interconnection agreement being negotiated by the parties, if any, containing both the agreed language and the disputed language of both parties.

- (b) **Response.** Any non-petitioning party to the negotiation may respond to the request for arbitration by filing 13 copies of the response with the commission's filing clerk and serving a copy on each party to the negotiation. The response must be filed within 25 days after the commission received the request for arbitration. The response shall indicate any disagreement with the matters contained in the request for arbitration and may provide such additional information as the party wishes to present.
- (c) **Selection of arbitrator.** Upon receipt of a complete request for arbitration, an arbitrator shall be selected to act for the commission, unless two or more of the Commissioners choose to hear the arbitration en banc. The parties shall be notified of the commission-designated arbitrator, or of the Commissioners' decision to act as arbitrator themselves. The arbitrator may be advised on legal and technical issues by members of the commission staff designated by the arbitrator. The commission staff members selected to advise the arbitrator shall be identified to the parties.
- (d) **Oath required.** Before an arbitrator may hear any matter, he or she must swear to an oath of office affirming the arbitrator's competence to serve and willingness to judge all proceedings fairly and impartially. The oath shall be administered by a Commissioner or a person designated by the commission to administer oaths.

- (e) **Participation.** Only parties to the negotiation may participate as parties in the arbitration hearing. The arbitrator may allow interested persons to file a statement of position and/or list of issues to be considered in the proceeding.

- (f) **Prehearing conference; challenges.** As soon as practical after his or her selection, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. At the prehearing conference, parties should be prepared to raise any challenges to the appointment of the arbitrator or the arbitrability of any issue. If such challenges are not raised at the first prehearing conference, they shall be deemed waived by the parties. The arbitrator shall serve on the parties orders ruling on challenges within 10 working days of the first prehearing conference.

- (g) **Notice.** The arbitrator shall make arrangements for the arbitration hearing, which may not be scheduled earlier than 35 days after the commission receives a complete request for arbitration. The arbitrator shall notify the parties, not less than 10 working days before the hearing, of the date, time, and location of the hearing.

- (h) **Record of hearing.** The arbitration hearing shall be open to the public. If any party requests it, a stenographic record shall be made of the hearing by an official court reporter appointed by the commission. It is the responsibility of the party desiring the stenographic record to arrange for the official reporter to be present. A party may purchase a copy of the transcript from the

official reporter at rates set by the commission. The court reporter shall provide the transcript and exhibits in a hearing to the arbitrator at the time the transcript is provided to the requesting party. If no court reporter is requested by a party, the arbitrator shall record the proceedings and maintain the official record and exhibits. Each party to the arbitration hearing shall be responsible for its own costs of participation in the arbitration process.

- (i) **Hearing procedures.** The parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the hearing. The arbitrator may temporarily close the arbitration hearing to the public to hear evidence containing information filed as confidential under §22.306 of this subchapter (relating to Confidential Information). The arbitrator shall close the hearing only if there is no other practical means of protecting the confidentiality of the information.
- (j) **Rules applicable.** The rules of privilege and exemption recognized by Texas law shall apply to arbitration proceedings under this subchapter. The Texas Rules of Civil Procedure, Texas Rules of Civil Evidence, and Subchapters A-O of this chapter are not applicable to proceedings under this subchapter unless specifically referenced in this subchapter.
- (k) **Authority of arbitrator.** The arbitrator has broad discretion in conducting the arbitration hearing and has the authority given to a presiding officer pursuant to §22.202 of this title (relating to Presiding Officer).

- (l) **Time for hearing.** The arbitration hearing shall be conducted expeditiously and in an informal manner. Unless additional time is allowed by the commission or additional information is requested by the arbitrator, the hearing may not exceed five working days.
- (m) **Prefiled evidence.** Parties to the hearing shall provide their direct cases to the arbitrator at least five working days prior to the hearing unless the arbitrator establishes a different deadline. Eighteen copies of the direct case shall be filed with the commission filing clerk and a copy shall be provided to each of the other parties to the hearing at the same time it is provided to the arbitrator. The prepared direct case shall include all of the party's direct evidence, including written direct testimony of all of its witnesses and all exhibits that the party intends to offer. The prepared case shall present the entirety of the party's direct evidence on each of the issues in controversy and shall serve as the party's complete direct case. Except as provided in §22.306 of this title (relating to Confidential Information), all materials filed with the commission or provided to the arbitrator shall be considered public information under the Open Records Act, Texas Gov't. Code, §552.001, *et. seq.*
- (n) **Decision point list (DPL).** At the arbitrator's request, the parties shall develop a DPL before the start of the hearing that includes the specific issues to be decided in the compulsory arbitration, the parties' position on each issue and reference to the parties' testimony relevant to that issue. The DPL may be amended before the close of the arbitration hearing, provided that

the opposing party has a reasonable opportunity to present evidence on any issue to be added to the DPL.

- (o) **Cross-examination.** Each witness presenting written direct testimony shall be available for cross-examination by the other parties to the arbitration. The arbitrator shall judge the credibility of each witness and the weight to be given his or her testimony based upon his or her response to cross-examination. If the arbitrator determines that a witness' responses are evasive or non-responsive to the questions asked, the arbitrator may disregard the witness' testimony on the basis of a lack of credibility.

- (p) **Clarifying questions.** The arbitrator or a staff member identified as an advisor to the arbitrator may ask clarifying questions at any point during the proceeding and may direct a party or a witness to provide additional information as needed to fully develop the record of the proceeding. If a party fails to present information requested by the arbitrator, the arbitrator shall render a decision on the basis of the best information available from whatever source derived.

- (q) **Briefs.** The arbitrator may require the parties to submit post-hearing briefs or written summaries of their positions. The arbitrator shall determine the filing deadline and any limitations on the length of such submissions.

- (r) **Time for decision.** The arbitrator shall endeavor to issue a final decision on the arbitration within 30 days after the conclusion of the hearing. The arbitrator shall issue a final decision not later than nine months after the date the LEC received the request for negotiation under the FTA96.
- (s) **Decision.** The final decision and report of the arbitrator shall be based upon the record of the arbitration hearing. The arbitrator may agree with the positions of one or more of the parties on any or all issues or may offer an independent resolution of the issues. The final decision and report of the arbitrator shall include:
- (1) a ruling on each of the issues presented for arbitration by the parties;
 - (2) a statement of any conditions imposed on the parties to the agreement in order to comply with the provisions of FTA96 §252(c);
 - (3) a statement of how the final decision meets the requirements of FTA96 §251, including any regulations adopted by the FCC pursuant to §251;
 - (4) the rates for interconnection, services, and/or network elements established according to FTA96 §252(d);
 - (5) a schedule for implementation of the terms and conditions by the parties to the agreement; and
 - (6) a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision, unless the arbitration is conducted by two or more of the Commissioners acting as the arbitrator.

- (t) **Distribution.** The final decision and report of the arbitrator shall be filed with the commission as a public record and shall be mailed by first class mail to all parties of record in the arbitration.

This agency hereby certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §22.33 relating to Tariff Filings and §22.305 relating to Compulsory Arbitration are hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 31st DAY OF AUGUST 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman