PROJECT NO. 36987

RULEMAKING PROCEEDING TO AMEND PROCEDURAL RULES §22.52(a), §22.75(d) AND §22.104(b)	**§**	**PUBLIC UTILITY COMMISSION**
	§	**OF TEXAS**
	§	

ORDER ADOPTING AMENDMENTS TO §§22.52, 22.75, AND 22.104 AS APPROVED AT THE JULY 30, 2009 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to §22.52, relating to Notice in Licensing Proceedings; and §22.104, relating to Motions to Intervene with no changes to the proposed text as published in the June 12, 2009 issue of the *Texas Register* (34 TexReg 24). The commission adopts amendments to §22.75, relating to Examination and Correction of Pleadings and Documents with changes to the proposed text as published in the June 12, 2009 issue of the *Texas Register* (34 TexReg 24). The amendments will facilitate the processing of applications to grant or amend electric certificates of convenience and necessity (CCNs). These amendments are adopted under Project Number 36987.

The commission received comments on the proposed amendments from South Texas Electric Cooperative (STEC), Entergy Texas, Inc. (ETI), Oncor Electric Delivery Company, LLC (Oncor), Steering Committee of Cities Served by Oncor (Cities), LCRA Transmission Services Corporation (LCRA TSC), Wind Energy Transmission Texas, LLC (WETT), Cross Texas Transmission, LLC (Cross Texas), Lone Star Transmission, LLC (Lone Star), Sharyland Utilities, LP (Sharyland), Electric Transmission Texas, LLC (ETT), AEP Texas North Company and AEP Texas Central Company (AEP Texas). Reply comments were also received from STEC.

§22.52(a)

STEC opposed the amendment of §22.52(a), which would result in the reduction of newspaper notice from two times to one, on the basis that newspaper notice could be important to landowners who are not properly identified on county tax rolls and that their failure to be noticed by newspaper publication could result in landowners intervening late in CCN proceedings or being denied the due process of notice. Cities agreed with these comments, also noting that the proposed amendment would apply to all CCN applications, not just those for competitive renewable energy zone (CREZ) projects, and that newspaper notice could be important for parties interested in intervening in such proceedings who are not directly affected landowners. ETI commented that it agreed with the amendment to §22.52(a) on the basis that the reduction of two newspaper notices to one would result in cost savings for utilities and avoid unnecessary duplication of notice given to affected landowners who also receive mailed notice. Oncor, WETT, Cross Texas, Lone Star, ETT, and AEP Texas concurred with this comment. In reply, STEC commented that cost savings is not a relevant justification for the amendment as the cost of notice is relatively small to the CCN process and additional costs could be incurred if landowners that did not receive publication notice attempted to intervene late or dismiss a CREZ CCN proceeding.

Commission Response

Mail notice to interested persons is superior to providing those persons notice by publication in a newspaper. Section 22.52(a) requires a CCN applicant to provide mail notice to interested persons. Although STEC raises the hypothetical example of a landowner not receiving direct mail notice because his or her ownership interest is not

properly recorded on a county tax roll, it is the responsibility of counties to properly maintain their tax rolls and the responsibility of landowners to notify counties of their ownership interests. The county tax rolls are the most reasonable source for a CCN applicant to identify directly affected landowners. In addition, §22.52(a)(3)(E) provides that if the applicant finds that a directly affected landowner has not received notice, the applicant must provide notice to the landowner by priority mail. The commission concludes that the likelihood that an interested person who did not receive mail notice would learn of the CCN docket for the first time by reading the second publication of newspaper notice is too low to justify the cost of that notice.

§22.104(b)

STEC opposed the amendment of §22.104(b), which would result in the reduction of the intervention deadline in CREZ CCN proceedings from 45 to 30 days after filing, on the basis that it might not allow adequate time for landowners to intervene and could reduce the opportunity for settlement of CCN issues between landowners and utilities. Cities commented that the presiding officer already has discretion to change the intervention deadline in individual proceedings and thus the rule is unnecessary. Cities also noted that CCN cases proceed during the intervention period, that the reduction of the intervention deadline might not result in a day for day shortening of the length of the proceeding, and that only 15 days would be saved by the amendment. Oncor commented that it agreed that the amendment to §22.104(b), changing the intervention deadline in CREZ CCN applications from 45 to 30 days after the application is filed, was necessary and appropriate to effectuate the expedited timeline for approval of CREZ CCN applications. WETT, Cross Texas, Lone Star, ETT and AEP Texas concurred with this

comment. In reply, STEC commented that the reduction of time for intervention could limit opportunities for settlement of CREZ CCN proceedings.

Commission Response

The commission disagrees that changing the intervention deadline from 45 to 30 days will have an adverse affect on the rights of intervenors in CREZ CCN proceedings. Although the commission's procedural rules do allow for the presiding officer to modify the intervention deadline in some circumstances, the direct mail and publication notices that a CCN applicant must promptly serve upon filing its application are required to state the intervention deadline. This makes it infeasible for the presiding officer to shorten the deadline in the docket because many potential intervenors would have been given notice of a 45-day deadline and would therefore have a strong basis to intervene by that intervention date, even if it is later shortened by the presiding officer. The commission disagrees that 15 days is a negligible time savings in a CREZ CCN procedural schedule, which by statute is compressed. The intervention deadline is the date by which all interested persons must be prepared to begin addressing the application. As a result, subsequent deadlines imposed on intervenors should be measured from this date. An increase of 15 days from the intervention deadline may be used to expand time for important elements of a CCN docket, including the time for discovery, direct testimony, post-hearing briefs, and exceptions to the presiding officer's proposal for decision. Finally, the commission does not agree that the modification of the intervention deadline will have a deleterious impact on settlement discussions in CREZ CCN dockets. Settlement is an ongoing process in any CCN docket

and cannot be finalized before the intervention deadline in any circumstance, because only after that date can all potential parties to such a settlement be known.

§22.104(d)

STEC opposed the amendment of §22.75(d), which would require the presiding officer to dismiss without prejudice a CREZ CCN application that was materially deficient, on the basis that the rule is unnecessary as the current rules require the 180-day timeline to run only once any material deficiencies are corrected. WETT, Cross Texas, Lone Star, ETT, and AEP Texas concurred with this comment, observing that the commission has long interpreted statutory deadlines for CCN proceedings to begin once a materially sufficient application is filed, not at the time the initial application is filed. Specifically, Public Utility Regulatory Act (PURA) §37.057 requires the commission to approve or deny non-CREZ applications no later than one year after the application is filed and the commission's rules provide that this deadline begins only with the filing of a *complete* application. WETT, Cross Texas, Lone Star, ETT, and AEP Texas acknowledge that PURA §39.203(e) contains a provision deeming CREZ CCNs approved if not ruled on by the 181st day after filing whereas PURA §37.057 does not, but do not agree with the proposition that this changes the interpretation of whether an application has to be complete or without material deficiencies for the statutory deadline to begin running. Sharyland agreed with this interpretation of PURA in its comments, noting that the dismissal of CREZ CCN applications could cause delay or disruption to other CREZ projects as well. Oncor commented that the proposed amendment of §22.75(d) requiring the presiding officer to dismiss without prejudice CREZ CCN applications containing material deficiencies was an effective

method of ensuring that the 180-day statutory deadline for approval of CREZ CCN applications will be met.

Commission Response

The commission does not agree that the statutory procedural requirements for CCN proceedings created by PURA §37.057 and §39.203(e) are necessarily identical. PURA §37.057 provides that a party may seek a writ of mandamus to compel the commission to rule on a CCN that has not been approved or denied one year after the application was filed. PURA §39.203(e) states that "[*n]otwithstanding any other law*, including Section 37.057" a CREZ CCN must be approved or denied by the 181st day following the filing of its application or "the application is *approved*." (Emphasis added). Thus, the express statutory consequence of the commission failing to meet the CREZ CCN deadline differs significantly from the consequence provided for other transmission CCN cases. In addition, even if a court were to interpret the one-year deadline in PURA §37.057 as not being affected by whether the application was materially sufficient when filed, in a mandamus proceeding the court could consider whether the application was materially sufficient when filed in determining what deadline to impose on the commission to act on the application.

The commission concludes that there is significant uncertainty as to whether the judiciary would adopt the position advocated in some comments that the 180-day deadline in §39.203(e) does not commence until the filing of a materially sufficient application. The consequences of the commission adopting this interpretation and then being reversed on

appeal would be potentially severe. If the commission were to issue its final order after the 180th day after a materially insufficient application was filed, the applicant's preferred route apparently would be deemed approved even if the commission decided that an alternative route should be used. The landowners directly affected by the preferred route could then have a transmission line placed on their property that the commission decided should not have been placed there. In addition, the commission may have decided against the preferred route because of such factors as environmental impact and community values. As a result, the commission concludes that it should avoid this risk by issuing a final order, including possibly an order of dismissal, within 180 days of the filing of the application, regardless of whether the application was materially sufficient.

LCRA TSC opposed the amendment of §22.75(d) on the basis that the requirement of dismissal by the presiding officer upon the finding of a material deficiency in a CREZ CCN application could result in less efficient CCN proceedings. Specifically, LCRA TSC observed that there has not been a specific definition by the commission of what constitutes a "material deficiency" and that litigation over that definition could be exacerbated by the amendment. LCRA TSC further commented that relatively minor errors or omissions in a CCN application could possibly be determined to be material deficiencies, thus requiring that the application be dismissed and refiled instead of subjected to simple corrections that could be made quickly and without disturbance to the CCN proceeding. WETT, Cross Texas, Lone Star, ETT, and AEP Texas agreed with these comments, offering additional examples of minor issues that could possibly be construed as material deficiencies. LCRA TSC proposed an alternative amendment to §22.75(d), specifically that if the presiding officer determined that a CREZ CCN application contained a

material deficiency an order would be issued requiring the applicant to correct the deficiency immediately. Only if the material deficiency were not corrected within 10 days would the application be dismissed without prejudice. Sharyland and STEC commented that they supported LCRA TSC's proposal as an alternative to the proposed amendment. WETT, Cross Texas, and Lone Star offered a similar alternative amendment that would allow the applicant to correct identified material deficiencies within 15 days. ETT and AEP Texas similarly proposed that applications with material deficiencies be corrected within 15 days or be dismissed.

Commission Response

The commission agrees that CREZ CCN applications should not be dismissed for minor errors or omissions that can be quickly corrected through supplemental filings by the applicant. The commission also agrees that there is not a definition of what constitutes a "material deficiency" and that it is not in the interest of expediting the CREZ CCN process to create opportunities for protracted litigation over that definition. The commission concludes that the alternative procedure proposed by LCRA TSC for correcting identified material deficiencies has some merit, but LCRA TSC's proposed overall timeline for this procedure is too long, considering that under the current rules the presiding officer does not have to rule on whether an application contains material deficiencies until 35 days after it is filed. Therefore the commission has changed §22.75(d) to require pleadings identifying deficiencies in a CREZ CCN application to be filed no later than 14 days after the application is filed, with the applicant's response due seven days after such a pleading is filed. The presiding officer must then issue an order finding material deficiencies no later than 28 days after application is filed, and allow the applicant 7 days to correct such

deficiencies. Only if the applicant fails to timely correct any material deficiencies found by the presiding officer will the CREZ CCN application be dismissed without prejudice. The commission concludes that this modified amendment to §22.75(d) addresses the concerns raised by LCRA TSC and others without unduly affecting intervenors' and Staff's ability to review and respond to CREZ CCN applications.

All comments, including any not specifically referenced herein, were fully considered by the commission.

These amendments are proposed under PURA, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008), which requires the commission to adopt rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §14.052, which requires the commission to adopt rules governing practice and procedure before the commission and, as applicable, the utility division of the State Office of Administrative Hearing (SOAH); and PURA §39.203(e), which requires that in any CCN proceeding brought under Chapter 37 to construct or enlarge transmission or transmission-related facilities under §39.203(e), the commission shall issue a final order before the 181st day after the date the application is filed.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, and 39.203(e).

§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 the Central Records Division. 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.

(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 pursuant to the Public Utility Regulatory Act §39.203(e)) and that a letter requesting intervention should be received by the commission by that date.

(B) The notice shall further describe in clear, precise language the geographic area for which the certificate is being requested and the location of all preferred and alternative routes of the proposed facility. This description shall refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

(C) The notice shall state a location where a map may be reviewed and from whom a copy of the map may be obtained. The map shall clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the preferred locations and alternative locations of the proposed facility, and shall reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

(D) Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published, the county or counties in which the newspaper(s) is or are of general circulation, the dates upon which the notice was published, and a copy of the notice as published. Proof of publication shall be submitted to the commission as soon as available.

(2) Applicant shall, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, and the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. The notice shall contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, and counties shall specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification shall state such entities will have 20 days to intervene.

(3) Applicant shall, 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, including the preferred location and any alternative location of the proposed facility. 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.

(5) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.

(6) Upon entry of a final, appealable order by the commission approving an application, the utility shall provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection shall be provided to the commission's staff.

(A) If the owner's land is directly affected by the approved route, the notice shall consist of a copy of the final order.

(B) If the owner's land is not directly affected by the approved route, the notice shall consist of a brief statement that the land is no longer the subject of a pending proceeding and will not be directly affected by the facility.

(b) **Notice in telephone licensing proceedings.** In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant shall give notice in the following ways:

(1) Applicants shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY)

may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice shall be in the form of a publisher's affidavit, which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

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

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

§22.75. Examination and Correction of Pleadings and Documents.

(a) **Construction of pleadings and documents.** All documents shall be construed so as to do substantial justice.

(b) **Procedural sufficiency of pleadings and documents.**

(1) Except for motions for rehearing and replies to motions for rehearing, the filing clerk shall not accept documents that do not comply with §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).

(2) All pleadings and documents that do not comply in all material respects with other sections of this chapter, shall be conditionally accepted for filing. Upon notification by the presiding officer of a deficiency in a pleading or document, the responsible party shall correct or complete the pleading or document in accordance with the notification. If the responsible party fails to correct the deficiency, the pleading or document may be stricken from the record.

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

(1) Motions to find a rate change application materially deficient shall be filed no later than 21 days after an application is filed. Such motions shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find a rate change application materially

deficient shall be filed no later than five working days after such motion is received.

(2) If within 35 days after filing of a rate change application, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.

(3) If the presiding officer determines that material deficiencies exist in an application, the presiding officer shall issue a written order within 35 days of the filing of the application specifying a time within which the applicant shall amend its application and correct the deficiency. The effective date of the proposed rate change will be 35 days after the filing of a sufficient application. The statutory deadlines shall be calculated based on the date of filing the sufficient application.

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

(1) Motions to find an application for certificate of convenience and necessity for transmission line materially deficient shall be filed no later than 21 days after an application is filed. Such motions shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application for certificate of convenience and necessity for transmission line materially deficient shall be filed no later than five working days after such motion is received.

(2) If, within 35 days after filing of an application for certificate of convenience and necessity for transmission line, the presiding officer has not issued a written order

concluding that material deficiencies exist in the application, the application shall be deemed sufficient.

(3) If the presiding officer determines that 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 pursuant to Public Utility Regulatory Act §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 pursuant to §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 pursuant to §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.

§22.104. 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 pursuant to 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 (PFD) or Proposed Order (PO) issued. For late interventions, other than those pursuant to paragraph (4) of this subsection, the procedures in subparagraphs (A) - (B) of this paragraph apply:

(A) Agenda ballot. Upon receipt of a motion to intervene after the PFD or PO has been issued, the Policy Development Division shall send separate ballots to each commissioner to determine whether the motion to intervene will be considered at an open meeting. The Policy Development Division shall notify the parties by letter whether a commissioner by individual

ballot has added the motion to intervene to an open meeting agenda, but will not identify the requesting commissioner(s).

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

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 amendments to §22.52, relating to Notice in Licensing Proceedings and §22.104, relating to Motions to Intervene are hereby adopted with no changes to the text as proposed and amendments to §22.75, relating to Examination and Correction of Pleadings and Documents are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF AUGUST 2009.

PUBLIC UTILITY COMMISSION OF TEXAS

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BARRY T. SMITHERMAN, CHAIRMAN

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DONNA L. NELSON, COMMISSIONER

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KENNETH W. ANDERSON, JR., COMMISSIONER

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