

PROJECT NO. 36987

**RULEMAKING RELATING TO ELECTRIC § PUBLIC UTILITY COMMISSION
CERTIFICATE OF CONVENIENCE AND §
NECESSITY PROCEDURES § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §§22.52, 22.75, AND 22.104
AS APPROVED AT THE MAY 21, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §22.52, relating to Notice in Licensing Proceedings; §22.75, relating to Examination and Correction of Pleadings and Documents; and §22.104, relating to Motions to Intervene. The proposed amendments will facilitate the processing of applications to grant or amend electric certificates of convenience and necessity (CCNs). Project Number 36987 is assigned to this proceeding.

Andres Medrano, Attorney, Legal Division, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rules.

Mr. Medrano has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended rules will be more efficient electric CCN proceedings. The proposed amendments include a reduction in the number of times notice of a CCN proceeding is published from two times to one time. Because notice of the proceeding is mailed to affected persons under §22.52, the commission believes that it is appropriate to limit newspaper notice to one-time publication. In addition, the proposed amendments include a reduction of the intervention period from 45 to 30 days for an application for certificate of convenience and necessity filed pursuant to an order issued pursuant to Public

Utility Regulatory Act (PURA) §39.203(e). PURA §39.203(e) imposes a compressed schedule for an application filed pursuant to that section; it requires that the commission issue a final order before the 181st day after the application is filed with the commission, compared to the one-year deadline contemplated by PURA §37.057 for all other electric transmission CCN proceedings. Also because of the 180-day deadline under PURA §39.203(e), the rule amendments require that the presiding officer dismiss without prejudice (rather than permit an amendment) an application that contains a material deficiency if the application is filed pursuant to an order issued pursuant to PURA §39.203(e). The amendments will probably result in a net reduction of economic costs to persons required to comply with the amendments. The amendments will reduce an applicant's costs by required newspaper notice once rather than twice. The amendments will require an applicant whose application is dismissed to reapply and provide notice of the second application, but that cost can be avoided if the applicant does not file an application with a material deficiency. The amendment concerning dismissal of an application is unlikely to affect a small business or micro-business, because the amendment applies only to applications filed pursuant to an order issued pursuant to PURA §39.203(e). In addition, because of the statutorily-imposed 180-day deadline, reducing the adverse effect of the amendment on small businesses and micro-businesses is infeasible.

Mr. Medrano has also determined that for each year of the first five years the proposed amendments are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code § 2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, June 30, 2009, beginning at 10:00 a.m. The request for a public hearing must be received within 30 days after publication of the rule.

Initial comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Reply comments may be submitted within 28 days after publication. Sixteen copies of comments on the amendments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed amended rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 36987.

This amendment is 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 once each week for two consecutive weeks beginning with~~ 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.

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(B) - (D) (No change.)

(2) - (6) (No change.)

(b) (No change.)

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§22.75. Examination and Correction of Pleadings and Documents.

(a) - (c) (No change.)

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

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(1) - (2) (No change.)

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

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(4) If the presiding officer determines that a material deficiency exists in an application of certificate of convenience and necessity filed pursuant to Public Utility Regulatory Act §39.203(e), the presiding officer shall dismiss the application without prejudice.

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(e) (No change.)

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§22.104. Motions to Intervene.

(a) (No change.)

(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.

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(c) - (d) (No change.)

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This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 22ND DAY OF MAY 2009 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**