

PROJECT NO. 54844

**MINOR AND CONFORMING RULE
UPDATES 2023**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

CHAPTER 22

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §22.51, §22.52, AND §22.142
AS APPROVED AT THE APRIL 27, 2023 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §22.51 relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C – E; Chapter 51, §51.009; and Chapter 53, Subchapters C – E, Proceedings; §22.52, relating to Notice in Licensing Proceedings; and §22.142 relating to Limitations on Discovery and Protective Orders.

The proposed amendments are administrative in nature to update contact resources used by individuals with hearing or speech difficulties and also make other minor and conforming amendments.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

- (1) the proposed rules will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;

- (3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rules will not, in effect, create a new regulation, because it is replacing a similar regulation;
- (6) the proposed rules will repeal an existing regulation, but it will replace that regulation with a similar regulation;
- (7) the same number of individuals will be subject to the proposed rules' applicability as were subject to the applicability of the rule it is being proposed to replace; and
- (8) the proposed rules will not affect this state's economy.

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Public Benefits

Iliana De La Fuente, Attorney, Rules and Projects Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Iliana De La Fuente has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be to provide individuals with hearing or speech difficulties with accurate agency contact resources. There

will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with these sections as proposed. Any economic costs would vary from person to person and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed sections will outweigh these costs.

Iliana De La Fuente has also determined that for each year of the first five years the proposed sections 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 §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by May 26, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by May 26, 2023. Comments should be organized in a

manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. All comments should refer to Project Number 54844, Chapter 22.

Statutory Authority

These amendments are proposed under the Public Utility Regulatory Act §14.002 and §14.052, which provides the Public Utility 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.

§22.51. Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C - E; Chapter 51, §51.009; and Chapter 53, Subchapters C - E, Proceedings.

(a) **Notice in a proceeding seeking a rate increase.** In proceedings under PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E involving the commission's original jurisdiction over a utility's proposed increase in rates, the applicant must give notice in the following manner:

(1) **Publication of notice.** The applicant must publish notice of its statement of intent to change rates in a conspicuous form and place at least once a week for four consecutive weeks prior to the effective date of the proposed rate change, in a newspaper having general circulation in each county containing territory affected by the proposed rate change. The published notice must contain the following information:

(A)-(E) (No change.)

(F) the following language: "Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas (commission) as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission."

- (2) **Notice by mail.** The applicant must mail notice of its statement of intent to change rates to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language must be printed in prominent lettering: "Notice of Rate Change Request." The notice must meet the requirements of paragraph (1) of this subsection. Whenever possible, the established intervention deadline must be included in the notice.
 - (3) **Notice to municipalities.** The applicant must mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate change.
- (b) **Notice in PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E proceeding seeking a rate decrease.** In proceedings initiated pursuant to PURA, Chapter 36, Subchapters C and E; Chapter 51, §51.009; or Chapter 53, Subchapters C and E in which a rate reduction that does not involve a rate increase for any customer is sought, the applicant must give notice in the following manner:
 - (1) (No change.)
 - (2) **Notice by mail to affected customers.** The applicant must mail notice of the proposed rate decrease to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language must be printed in prominent lettering: "Notice of Rate Decrease Request." The notice must contain the following information:

(A)-(E) (No change.)

(F) the following language: “Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas (commission) as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission.”

(3) **Notice to municipalities.** The applicant must mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate decrease.

(c) (No change.)

(d) **Affidavits regarding notice.** The applicant must submit affidavits attesting to the provision of the notice required or ordered pursuant to this section within a reasonable time and by such date as may be established by the presiding officer.

(1) **Publisher’s affidavits.** Proof of publication of notice must be made in the form of a publisher’s affidavit which must 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.

- (2) **Affidavit for notice to affected customers.** If notice to affected customers has been provided, an affidavit attesting to the provision of notice to affected customers must specify the dates of the provision of such notice; the means by which such notice was provided; and the affected customer classes to which such notice was provided.
- (3) **Affidavit for notice to municipality.** An affidavit attesting to the provision of notice to municipalities must specify the dates of the provision of notice and the identity of the individual cities to which such notice was provided.

§22.52. Notice in Licensing Proceedings.

- (a) **Notice in electric licensing proceedings.** In all electric licensing proceedings except minor boundary changes, the applicant must give notice in the following ways:
- (1) Applicant must 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 must identify the commission's docket number and the style assigned to the case by Central Records. In electric transmission line cases, the applicant must 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 must identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice must 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 must include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice must 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 must 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 must 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 must 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 must state a location where a detailed routing map may be reviewed. The map must 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 must 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 must be in the form of a publisher's affidavit which must 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 must be submitted to the commission as soon as available.

- (E) The applicant must 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 must be provided in the form of an affidavit to the commission, which must specify the date the information was mailed or otherwise provided to TPWD, and must provide a copy of the cover letter or other documentation that confirms that the information was provided to TPWD.
- (2) Applicant must, 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, the county government(s) of all counties in which any portion of the proposed facility or requested territory is located, and the Department of Defense Siting Clearinghouse. In addition, the applicant must, 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 must 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, the Department of Defense Siting Clearinghouse, and the Office of Public Utility Counsel must 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 must 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 must state such entities will have 20 days to intervene.

- (3) Applicant must, 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 must 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 must 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 must 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 must 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 must immediately advise the commission by written pleading and must 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 must state that the person has fifteen days from the date of

delivery to intervene. The utility must immediately file a supplemental affidavit of notice with the commission.

- (4) The utility must 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 must 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. The utility must also provide written notice to the Department of Defense Siting Clearinghouse of the public meeting. In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility must 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. In the event that no public meeting is held, the utility must provide written notice to the Department of Defense Siting Clearinghouse of the planned filing of an application prior to completion of the routing study.
- (5) Failure to provide notice in accordance with this section will 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 must provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection must be provided to the commission's staff.

- (A) If the owner's land is directly affected by the approved route, the notice must consist of a copy of the final order.
 - (B) If the owner's land is not directly affected by the approved route, the notice must 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 must 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 must give notice in the following ways:
 - (1) Applicants must 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 must 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 must 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 may contact the commission through Relay Texas at 1-800-735-2989. 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 must be in the form of a publisher’s affidavit, which must 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 must be submitted to the commission as soon as available.

- (2) Applicant must also mail notice of its application, which must 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 must 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 must be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice

to counties must 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 will be cause for day-for-day extension of deadlines for intervention.

§22.142. Limitations on Discovery and Protective Orders.

- (a) **Limitation of discovery requests.** The presiding officer may limit discovery, by order, to protect a party against unreasonable or unwarranted discovery requests.
- (1) (No change.)
- (2) Any person from whom discovery is sought may file a motion for a protective order, specifying the grounds on which a protective order is justified. Motions or responses must include affidavits, discovery pleadings, or other pertinent documents to support the allegations made therein.
- (3)-(4) (No change.)
- (b) (No change.)
- (c) **Protection of confidential or proprietary information.** The presiding officer may issue a protective order governing the production of confidential or proprietary information as is appropriate in each proceeding before the commission. The order must be in the form adopted by the commission as the standard protective order. In addition, the parties may enter into agreements regarding protection of confidential or proprietary information. Entry of a protective order is not a determination that any documents produced under the protective order are proprietary or confidential.
- (d) **Limitations on requests for information.**
- (1) Before setting limitations on RFIs, the presiding officer must consider the factors set out in subparagraphs (A)-(K) of this paragraph.
- (A) - (K) (No change.)
- (2) For purposes of calculating the number of RFIs, each answer is considered a separate request for information.

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

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

**ISSUED IN AUSTIN, TEXAS ON THE 27TH DAY OF APRIL 2023 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**