

Subchapter F. PARTIES.

§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 to participate as parties in such proceedings.
- (b) **Time for filing motion.** Motions to intervene must 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 a certificate of convenience and necessity (CCN) filed under Public Utility Regulatory Act §39.203(e) or an application for a CCN for a new transmission facility subject to PURA §37.057, motions to intervene must be filed within 30 days from the date the application is filed with the commission. The motion must 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 have all the rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.
- (d) **Late intervention.**
 - (1) **Criteria for granting late intervention.** A motion to intervene that was not timely filed may be granted by the presiding officer. In acting on a late filed motion to intervene, the presiding officer will 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) **Limitations on intervention.** The presiding officer may impose limitations on the participation of an intervenor to avoid delay and prejudice to the other parties.
 - (3) **Record and procedural schedule.** Except as otherwise ordered, an intervenor must accept the procedural schedule and the record of the proceeding as it existed at the time of filing the motion to intervene.
 - (4) **Intervention as a matter of right.** 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 will 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 allowed by paragraph (4) of this subsection, the procedures in subparagraphs (A) and (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's Office of Policy and Docket Management (OPDM) will 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. OPDM will 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.

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- (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 will 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 will be heard, the motion will be placed on the latest of the dates specified by the ballots. The time for ruling on the motion expires three days after the date of the open meeting, unless extended by action of the commission.