

PROJECT NO. 56253

REVIEW OF §22.104

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER ADOPTING AMENDMENTS TO 16 TAC §22.104

The Public Utility Commission of Texas (commission) adopts 16 Texas Administrative Code (TAC) §22.104, relating to Motions to Intervene. The commission adopts the rule with no changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1803). The amended rule facilitates the implementation of PURA §37.057, as amended by Senate Bill (SB) 1076, enacted by the 88th Texas Legislature (R.S.), which reduced the time for the commission to approve new transmission facility certificate of convenience and necessity (CCN) to 180 days. Specifically, amended §22.104 changes the intervention deadline from 45 days to 30 days after the date an application is filed in a proceeding involving an application for a CCN for a new transmission facility that is subject to PURA §37.057. The amended rule also makes minor clerical and grammatical changes. The rule is adopted in Project No. 56253. The rule will not be republished.

The commission received comments on the proposed rule from the Lower Colorado River Authority (LCRA), Oncor Electric Delivery Company LLC (Oncor), and the Office of Public Utility Counsel (OPUC).

§22.104(b)

Proposed §22.104(b) reduced the intervention deadline from 45 to 30 days from the date an application is filed for a CCN application for a new transmission facility subject to PURA §37.057.

OPUC opposed changing the intervention deadline from 45 days to 30 days for CCN applications for a new transmission facility subject to PURA § 37.057. Oncor and LCRA supported changing the intervention deadline as proposed.

OPUC opposed the proposed rule and recommended the commission retain the existing 45-day deadline for intervention in new transmission facility CCN proceedings. For consistency, OPUC also recommended making a corresponding revision to §22.52(a), relating to Notice in Licensing Proceedings, that would revert to a preexisting version of the rule that required notice of a 45-day intervention deadline in these proceedings. OPUC commented that while SB 1076 reduced the timeline for CCN applications from 360 days to 180 days, a corresponding reduction to the intervention deadline is unnecessary and unsupported by statute. Specifically, the timeline reduction would undermine the ability of affected persons and other stakeholders to intervene in new transmission CCN cases. OPUC emphasized that no evidence was presented, in this rulemaking or in other rulemakings implementing SB 1076, to indicate that any internal review processes are adversely affected by the existing 45-day intervention period or would otherwise become more efficient from the proposed reduction. OPUC commented that the intervention deadline reduction would reduce a landowner's capability to defend its property rights in proposed CCN cases. OPUC highlighted that requests for intervention in commission proceedings

frequently require professional assistance if the interested party is unfamiliar with the process. OPUC remarked that there are numerous ordinary and foreseeable circumstances that may delay a potentially interested party from checking the mail or responding to a mailed CCN notice that renders the shortened timeframe even more impractical for intervention.

Oncor and LCRA, by contrast, supported the proposed rule and commented that it provides essential clarity regarding the intervention period. These commenters also emphasized that a revised intervention period is necessary to facilitate transmission line CCN applications within the 180-day period required by SB 1076.

Commission Response

The commission declines to modify the rule to retain the existing 45-day deadline for intervention in new transmission facility CCN proceedings as recommended by OPUC. The commission agrees with Oncor and LCRA that the revised intervention period is required to enable the commission to review new facility transmission line CCN applications within the condensed 180-day statutory timeline for such proceedings. This modification is also, as noted by OPUC, consistent with the commission's modifications to §22.52(a).

The commission does not agree with OPUC that a 45-day intervention deadline is necessary to protect a landowner's capability to defend its property rights in proposed CCN cases. The commission is updating the landowner brochure for CCN proceedings under project no. 55648 to ensure landowners are provided with accurate information about these proceedings. Moreover, the commission has recently established its Office of Public

Engagement to assist members of the public when engaging with the commission, including individuals affected by CCN proceedings. Finally, when appropriate, the presiding officer has the ability to grant late intervention in CCN proceedings.

The amended rule is adopted under the following provisions of PURA: §14.002 and §14.052, which provide 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; and §37.057 which requires the commission to approve or deny an application for a certificate for a new transmission facilities not later than the 180th day after the date the application is filed.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.052; 37.057.

§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.
- (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.

This agency 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 §22.104, Motions to Intervene, is hereby adopted with no changes to the text as proposed.

Signed at Austin, Texas the _____ day of APRIL 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER