

Subchapter G. PREHEARING PROCEEDINGS.

§22.123. Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission.

(a) Appeal of an interim order.

- (1) **Availability of appeal.** Appeals are available for any interim order of the presiding officer that immediately prejudices a substantial or material right of a party or materially affects the course of the hearing. Appeals are not available for evidentiary rulings. Interim orders are not subject to exceptions or motions for rehearing.
- (2) **Procedure for appeal.** If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer must so indicate on the record at the time of the oral ruling and must promptly issue the written order. Any appeal to the commission from an interim order must be filed within ten days of the issuance of the written order or the appealable oral ruling when no written order is to be issued. The appeal must be served on all parties by hand delivery, electronic mail, or by overnight courier delivery.
- (3) **Contents.** An appeal must specify the reasons why the interim order is unjustified or improper and how it immediately prejudices a substantial or material right of a party or materially affects the course of the hearing.
- (4) **Responses.** Any response to an appeal must be filed within five working days of the filing of the appeal.
- (5) **Motion for stay.** Pending a ruling by the commissioners, the presiding officer may, upon motion, grant a stay of the interim order. A motion for a stay must specify the basis for a stay. Good cause must be shown for granting a stay. The mere filing of an appeal does not stay the interim order or any applicable procedural schedule.
- (6) **Agenda ballot.** Upon the filing of an appeal, the Office of Policy and Docket Management must send a separate ballot to each commissioner to determine whether the commission will consider the appeal at an open meeting. Untimely motions will not be balloted. The Office of Policy and Docket Management must notify the parties whether a commissioner by individual ballot has added the appeal to an open meeting agenda but will not identify the requesting commissioner or commissioners.
- (7) **Denial or granting of appeal.**
 - (A) If no commissioner has placed an appeal on the agenda of an open meeting by agenda ballot within 20 days after the filing of an appeal, the appeal is deemed denied.
 - (B) If any commissioner has voted by agenda ballot in favor of considering the appeal, the appeal will be placed on the agenda of the next regularly scheduled open meeting or such other meeting as the commissioner may direct by the agenda ballot. If two or more commissioners vote to consider the appeal, but differ as to the date the appeal will be heard, the appeal must be placed on the latest of the dates specified by the ballots. At the open meeting, the commission will either rule on the appeal or extend time to act on it.
- (8) **Reconsideration of appeal by presiding officer.** The presiding officer may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal before a commission decision on the appeal. The presiding officer must notify the commission of its decision to treat the appeal as a motion for reconsideration.

(b) Motion for reconsideration of interim order issued by the commission.

- (1) **Availability of motion for reconsideration.** Motions for reconsideration are available for any interim order of the commission that immediately prejudices a substantial or material right of a party or materially affects the course of the hearing. Motions for reconsideration may only be filed by a party to the proceeding and are not available for evidentiary rulings. Interim orders are not subject to exceptions or motions for rehearing.
- (2) **Procedure for motion for reconsideration.** If the commission does not intend to reduce an oral ruling to a written order, the commission will so indicate on the record at the time of the oral ruling. A motion for reconsideration of an interim order issued by the commission must be filed within five working days of the issuance of the written interim

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order or the oral interim ruling. The motion for reconsideration must be served on all parties by delivery, electronic mail, or by overnight courier delivery.

- (3) **Content.** A motion for reconsideration must specify the reasons why the interim order is unjustified or improper.
- (4) **Responses.** Any response to a motion for reconsideration must be filed within five working days of the filing of the motion.
- (5) **Agenda ballot.** Upon the filing of a motion for reconsideration, the Office of Policy and Docket Management must send a separate ballot to each commissioner to determine whether the commission will consider the motion at an open meeting. The Office of Policy and Docket Management must notify the parties whether a commissioner by individual ballot has added the motion to an open meeting agenda but will not identify the requesting commissioner or commissioners.
- (6) **Denial or granting of motion.**
 - (A) If no commissioner has placed a motion for reconsideration on the agenda for an open meeting by agenda ballot within 20 days after the filing of the motion, the motion is deemed denied.
 - (B) If any commissioner has voted by agenda ballot in favor of considering the motion, the motion will be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the commissioner may direct by the agenda ballot. If two or more commissioners vote to consider the motion, but differ as to the date the motion will be heard, the motion must be placed on the latest of the dates specified by the ballots. At the open meeting, the commission will either rule on the motion or extend time to act on it.