

PROJECT NO. 56705

**REVIEW OF §§ 22.123, 22.181, AND
22.262**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

**PROPOSAL FOR PUBLICATION OF
AMENDMENTS TO §§22.123, 22.181, AND 22.262**

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §22.123, relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission; §22.181, relating to Dismissal of a Proceeding; and §22.262, relating to Commission Action After a Proposal for Decision.

The proposed amendments to §22.123 clarify that appeals for evidentiary rulings are prohibited and replacing service for an appeal or motion of reconsideration from facsimile transmission to service by electronic mail. The proposed amendments to §22.123 also increase the time period before an appeal or motion for reconsideration is denied if not placed on an open meeting agenda from ten days to 20 days.

The proposed amendments to §22.181 specify that the 20-day default timeline to respond to a motion to dismiss may be revised by the presiding officer and add failure to prosecute or failure to amend an application as grounds for an administrative law judge to dismiss a proceeding without issuing a proposal for decision. The proposed amendments also clarify that an order from an administrative law judge dismissing a proceeding under the revised provisions is a final order of the commission and is subject to motions for rehearing under §22.264 of this title, relating to

Rehearing, and clarifies the authority of the presiding officer to grant a request to withdraw an application in certain instances.

The proposed amendments to §22.262 specify that a request for oral argument must be filed no later than seven days – as opposed to seven working days – before the open meeting at which the commission is scheduled to consider the case, and that two days prior to an open meeting, the Office of Policy and Docket Management will file a notice to the parties regarding whether the request for oral argument has been granted.

The proposed amendments also revise all instances of “Policy Development Division” to properly refer to the “Office of Policy and Docket Management” in each rule as well as make minor and conforming changes consistent with the commission’s current drafting practices.

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 create a new regulation;

(6) the proposed rules will expand, limit, or repeal an existing regulation;

(7) the proposed rules will not change the number of individuals subject to the rule's applicability;
and

(8) the proposed rules will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

David Hrcir, Assistant Commission Counsel, Office of Policy and Docket Management has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal

implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Hrnair 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 sections will be enhancing the efficiency of processing commission dockets. There will not be any probable economic costs to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed sections are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §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 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 July 25, 2024. 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 July 25, 2024. 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. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 56705.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.052, which requires the commission shall adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001, 14.002, 14.052.

§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 other than~~ evidentiary rulings. Interim orders ~~are not~~shall not be subject to exceptions or ~~motions application~~ for rehearing ~~prior to issuance of a proposal for decision~~.
- (2) **Procedure for appeal.** If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer ~~must~~shall so indicate on the record at the time of the oral ruling and ~~must~~shall promptly issue the written order. Any appeal to the commission from an interim order ~~must~~shall 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~~shall be served on all parties by hand delivery, electronic mail~~facsimile transmission~~, or by overnight courier delivery.
- (3) **Contents.** An appeal ~~must~~shall specify the reasons why the interim order is unjustified, or improper, and how it~~is~~ 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~~shall 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~~shall specify

the basis for a stay. Good cause ~~must~~shall be shown for granting a stay. The mere filing of an appeal ~~does~~shall not stay the interim order or ~~any applicable~~the procedural schedule.

- (6) **Agenda ballot.** Upon ~~the~~ filing of an appeal, the ~~Office of Policy and Docket Management must~~~~Policy Development Division shall~~ send ~~a~~ separate ~~ballot~~ballots to each commissioner to determine whether ~~the commissioner~~they will consider the appeal at an open meeting. ~~Untimely motions will not be balloted. The Office of Policy and Docket Management must~~~~The Policy Development Division shall~~ notify the parties ~~by letter~~whether a commissioner by individual ballot has added the appeal to an open meeting agenda, but will not identify the requesting ~~commissioner~~or ~~commissioners~~ commissioner(s).

(7) **Denial or granting of appeal.**

- (A) If ~~after ten days of the filing of an appeal,~~ no commissioner has, ~~by agenda ballot,~~ placed ~~an~~the 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~~balloted in favor of considering the appeal, ~~the appeal will it shall~~ 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 in the event~~ two or more commissioners vote to consider the appeal, but differ as to the date the appeal shall be heard, the appeal ~~must~~shall be placed on the latest of the dates specified by the ballots. ~~The time for ruling on the appeal shall expire three days after the date of the meeting, unless extended by action of the commission.~~

(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~~~~prior to~~ a commission decision on the appeal. The presiding officer ~~must~~~~shall~~ 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~~other than~~ evidentiary rulings. Interim orders are~~shall~~ not ~~be~~ subject to exceptions ~~prior to issuance of a proposal for decision~~ or motions for rehearing ~~prior to the issuance of a final order~~.

(2) **Procedure for motion for reconsideration.** If the commission does not intend to reduce an oral ruling to a written order, the commission will~~shall~~ 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~~shall~~ be filed within five working days of the issuance of the written interim order or the oral interim ruling. The motion for reconsideration must~~shall~~ be served on all parties by ~~hand~~-delivery, electronic mail~~facsimile transmission~~, or by overnight courier delivery.

(3) **Content.** A motion for reconsideration must~~shall~~ specify the reasons why the interim order is unjustified or improper.

- (4) **Responses.** Any response to a motion for reconsideration ~~must~~shall be filed within ~~five~~three 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~~~~Policy Development Division shall~~ send a separate ballot to each commissioner to determine whether the commissioner~~they~~ will consider the motion at an open meeting. The Office of Policy and Docket Management ~~must~~~~Policy Development Division shall~~ notify the parties ~~by letter~~ whether a commissioner by individual ballot has added the motion to an open meeting agenda, but will not identify the requesting commissioner ~~or commissioner~~~~or commissioner(s)~~.
- (6) **Denial or granting of motion.**
- (A) If ~~after five working days of the filing of a motion~~ no commissioner has, ~~by agenda ballot,~~ placed atthe 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~~balloted~~ in favor of considering the motion, the motion will~~it shall~~ 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~~~~in the event~~ two or more commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion ~~must~~shall be placed on the latest of the dates specified by the ballots. ~~The time for ruling on the motion shall expire three days after the open meeting, unless extended by action of the commission.~~

§22.181. Dismissal of a Proceeding.

(a) - (d) (No change.)

(e) **Motion for dismissal, responses, and replies.** Dismissal of a proceeding or one or more issues within a proceeding may be made upon the motion of the presiding officer or the motion of any party.

(1) A party's motion for dismissal must specify at least one of the grounds for dismissal identified in subsection (d) of this section. The motion must include a statement that explains the basis for the dismissal and if necessary:

(A) - (B) (No change.)

(2) A presiding officer's motion ~~must~~ shall be provided by written order or stated in the record and must specify one or more grounds for dismissal identified in subsection (d) of this section and a clear and concise statement of the material facts supporting the dismissal.

(3) The party that initiated the proceeding ~~and/or~~ any other ~~affected~~-party ~~has~~ shall ~~have~~ 20 days from the date of receipt to respond to a motion to dismiss unless the presiding officer specifies otherwise. The response must contain a statement of reasons the party contends the motion to dismiss should not be granted, and if necessary

(A) - (B) (No change.)

(4) (No change.)

(f) **Action on a motion to dismiss.** Action on a motion to dismiss ~~must~~shall conform to this subsection.

(1) If a hearing on the motion to dismiss is held, that hearing ~~must~~shall be confined to the issues raised by the motion to dismiss.

(2) If the administrative law judge determines that all issues within a proceeding should be dismissed, the administrative law judge must prepare a proposal for decision in accordance with §22.261 of this title (relating to Proposals for Decision) to that effect, unless the reason for dismissal is solely one of the following:

(A) the withdrawal of an application under subsection (g)(1), ~~or~~ (2), or (3) of this section; or

(B) either failure to prosecute under subsection (d)(6) of this section or failure to amend an application under subsection (d)(7) of this section, or both, and the dismissal is without prejudice.

(3) For dismissal under paragraphs (2)(A) and (2)(B) of this subsection, ~~in which case~~ the administrative law judge may issue an order dismissing the proceeding. An order issued under this paragraph is a final order of the commission and is subject to motions for rehearing under §22.264 of this title (relating to Rehearing).

(4) The commission ~~will~~shall consider ~~at~~the proposal for decision ~~recommending~~or motion for rehearing on an order of dismissal as soon as is practicable.

~~(5)(3)~~ If the commission determines that all issues within a proceeding should be dismissed, the commission will issue an order subject to motions for rehearing under §22.264 of this title ~~(relating to Rehearing)~~.

~~(6)(4)~~ If the administrative law judge determines that one or more, but not all, issues within a proceeding should be dismissed, the administrative law judge may issue a proposal for interim decision or an interim order dismissing such issues. An interim order issued by the administrative law judge resulting in partial dismissal is subject to appeal or reconsideration under §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission). If the commission determines that one or more, but not all, issues within a proceeding should be dismissed, the commission may issue an interim order dismissing such issues. An interim order issued by the commission resulting in partial dismissal is subject to appeal or reconsideration under §22.123 of this title. ~~An order of the administrative law judge dismissing a proceeding under paragraph (2) of this subsection based solely upon the withdrawal of an application under subsection (g)(1) or (2) of this section is the final order of the commission and is subject to motions for rehearing under §22.264 of this title.~~

(g) **Withdrawal of application.** An application may be withdrawn only in accordance with this subsection.

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

(3) The presiding officer may grant a request to withdraw an application with or without prejudice after a proposed order or proposal for decision has been issued

if the request to withdraw is filed by the applicant and the applicant's application would be granted by the proposed order or proposal for decision.

~~(4)~~(3) A request to withdraw an application with or without prejudice after a proposed order or proposal for decision has been issued that is filed by an applicant to whom the result of the proposed order or proposal for decision is adverse; may be granted only upon a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

~~(5)~~(4) A request to withdraw an application with or without prejudice after the application has been placed on an open meeting agenda for consideration of an appeal of an interim order, a request for certified issues, or a preliminary order with threshold legal or policy issues may be granted only upon a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

~~(6)~~(5) If a request to withdraw an application is granted, the presiding officer ~~must~~shall issue an order of dismissal stating whether the dismissal is with or without prejudice. If the presiding officer finds good cause, the order of dismissal under this paragraph ~~must~~shall not be with prejudice, unless the applicant requests dismissal with prejudice. Such order must, if applicable, specify the facts on which good cause is based and the basis of the dismissal and is the final order of the commission subject to motions for rehearing under §22.264 of this title.

§22.262. Commission Action After a Proposal for Decision.

- (a) (No change.)
- (b) **Reasons to Be in Writing.** The commission ~~will~~shall state in writing the specific reason and legal basis for its determination under subsection (a) of this section.
- (c) **Remand.** The commission may remand the proceeding for further consideration.
 - (1) (No change.)
 - (2) If ~~on remand~~, additional evidence is admitted on remand that results in a substantial revision of the proposed decision or the underlying facts, an amended or supplemental proposal for decision or proposed order must be filed~~shall be prepared~~. If an amended or supplemental proposal for decision is filed~~prepared~~, the provisions of §22.261(d) of this title (relating to Proposal for Decision) apply. Exceptions and replies must~~shall~~ be limited to discussions, proposals, and recommendations in the supplemental proposal for decision.
- (d) **Oral Argument Before the Commission.**
 - (1) Any party may request oral argument before the commission ~~before~~prior to the final disposition of any proceeding.
 - (2) Oral argument may~~shall~~ be allowed at the commission's discretion~~of the commission~~. The commission may limit the scope and duration of oral argument. The party bearing the burden of proof has the right to open and close oral argument.
 - (3) A request for oral argument must~~shall~~ be filed as made in a separate written pleading, ~~filed with the commission's filing clerk~~. The request must~~shall~~ be filed no later than

3:00 p.m. ~~seven days before the open meeting at on the seventh working day~~ which the commission is scheduled to consider the case.

- (4) Upon the filing of a motion for oral argument, the Office of Policy and Docket Management ~~must~~ Policy Development Division shall send a separate ~~ballot~~ ballots to each commissioner to determine whether the commission will hear oral argument at an open meeting. An affirmative vote by one commissioner is required to grant oral argument. ~~Two~~ Not more than two days before the commission is scheduled to consider the case, the Office of Policy and Docket Management will file a notice to the parties regarding ~~parties may contact the Policy Development Division to determine~~ whether a request for oral argument has been granted.
- (5) The absence or denial of a request for oral argument ~~does~~ shall not preclude the commissioners from asking questions of any party present at the open meeting.

(e) (No change.)

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 13th DAY OF JUNE 2024 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA GONZALES**