

## Subchapter J. SUMMARY PROCEEDINGS.

### §22.181. Dismissal of a Proceeding.

- (a) **Dismissal of a proceeding.** Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding for any reason specified in this section.
- (b) **Dismissal of issues within a proceeding.** Upon the motion of the presiding officer or the motion of any party, the presiding officer may dismiss or may recommend that the commission dismiss, with or without prejudice, one or more issues within a proceeding for any reason specified in this section.
- (c) **Dismissal without hearing.** A dismissal under this section requires a hearing unless the facts necessary to support the dismissal are uncontested or are established as a matter of law.
- (d) **Reasons for dismissal.** Dismissal of a proceeding or one or more issues within a proceeding may be based on one or more of the following reasons:
  - (1) lack of jurisdiction;
  - (2) moot questions or obsolete petitions;
  - (3) res judicata;
  - (4) collateral estoppel;
  - (5) unnecessary duplication of proceedings;
  - (6) failure to prosecute;
  - (7) failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient;
  - (8) failure to state a claim for which relief can be granted;
  - (9) gross abuse of discovery consistent with §22.161(b)(2) of this title (relating to Sanctions);
  - (10) withdrawal of an application consistent with subsection (g) of this section; or
  - (11) other good cause shown.
- (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) A statement that sets forth the material facts that support the motion; and
    - (B) An affidavit that supports the motion and that includes evidence that is not found in the then-existing record.
  - (2) A presiding officer's motion must 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 any other party has 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) A statement that refers to each material fact identified in the motion to dismiss as uncontested that the responding party contends is contested; and
    - (B) An affidavit that supports the response to the motion to dismiss and that includes evidence the party relies upon to establish contested issues of fact. The affidavit may include evidence that is not found in the then-existing record.
  - (4) Replies to a response to a motion to dismiss may be made only by leave of and as directed by the presiding officer.

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- (f) **Action on a motion to dismiss.** Action on a motion to dismiss must conform to this subsection.
- (1) If a hearing on the motion to dismiss is held, that hearing must 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), (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 such that it is sufficient after repeated determinations that the application is insufficient 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, 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 consider a proposal for decision recommending dismissal as soon as is practicable.
  - (5) 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.
  - (6) 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.
- (g) **Withdrawal of application.** An application may be withdrawn only in accordance with this subsection.
- (1) A party that initiated a proceeding may withdraw its application without prejudice to refile of same, at any time before that party has presented its direct case. A party may agree to withdraw its application with prejudice.
  - (2) After the presentation of its direct case, but prior to the issuance of a proposed order or proposal for decision, a party may request to withdraw its application with or without prejudice, and withdrawal may be granted only upon a finding of good cause by the presiding officer.
  - (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) 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) 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

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request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

- (6) If a request to withdraw an application is granted, the presiding officer must 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 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.