

1 SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS.

2 §1.1. Purpose, Scope, and Conflict with Special Rules.

3 (a) Purpose. This chapter establishes a system for practice and procedure before the Railroad  
4 Commission of Texas that will enable the just disposition of proceedings and public participation in  
5 contested case proceedings pursuant to the Administrative Procedure Act, Texas Government Code,  
6 Chapter 2001.

7 (b) Scope. This chapter governs the institution, conduct, and determination of Commission  
8 proceedings required or permitted by law, whether instituted by order of the Commission or by the filing  
9 of an application, complaint, petition, or any other pleading. This chapter does not and shall not be  
10 construed to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the  
11 Commission or the substantive rights of any person or agency.

12 (c) Special rules. The Commission may adopt special rules of practice and procedure that apply  
13 only to proceedings concerning a specific division. Special rules may be adopted when a division has  
14 unique requirements that are not accommodated by these rules. If a special rule conflicts with the rules in  
15 this chapter, the special rule shall control.

16  
17 §1.2. Definitions.

18 The following words and terms, when used in this chapter, shall have the following meanings,  
19 unless the context clearly indicates otherwise.

20 (1) Affected party or person--A party or person that has a personal justiciable or  
21 administratively cognizable interest related to a legal right, duty, privilege, power, or economic interest.  
22 An interest common to members of the general public does not qualify. A governmental entity or agency  
23 with express authority under applicable statutes and regulations over issues contemplated by the  
24 contested case may qualify as an affected party or person.

25 (2) Agency--A board, commission, department, or other entity created under Texas law  
26 that has statewide jurisdiction and makes rules or determines contested cases, other than an agency  
27 wholly funded by federal appropriations, the legislature, the courts, and institutions of higher education.

28 (3) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001,  
29 as it may be amended.

30 (4) Applicant--A person who by written application, including appeals, seeks a remedy  
31 from the Commission.

1 (5) Authorized representative-- The individual designated in writing as representing any  
2 person or party before the Commission pursuant to these rules, including an attorney authorized to  
3 practice law in the State of Texas.

4 (6) Business day -- A calendar day that is not a Saturday, Sunday, or official state or  
5 federal holiday.

6 (7) Commission--The Railroad Commission of Texas acting through a majority of the  
7 Commissioners or through a Commission employee to whom the Commissioners have delegated  
8 authority.

9 (8) Commissioner--One of the elected or appointed members of the Railroad  
10 Commission of Texas.

11 (9) Complainant--A person who files a complaint with the Commission as specified in  
12 §1.24 of this title (relating to Complaint Proceedings), regarding an act or omission of the Commission or  
13 a person subject to the Commission's jurisdiction.

14 (10) Contested case--A proceeding in which the legal rights, duties, or privileges of a  
15 party are to be determined by the Commission pursuant to the APA after an opportunity for adjudicative  
16 hearing, as specified in Subchapter G of this chapter (relating to Hearings).

17 (11) Director--The individual appointed by the Commission who is in charge of a  
18 division or section within the Commission. Subject to Commission directive or other Commission rules,  
19 a director may delegate the director's authority to another Commission employee.

20 (12) Division--An operating or administrative unit of the Commission.

21 (13) Docket -- To assign a docket number to and create a file for a contested case.

22 (14) Docket number--A reference number assigned by the appropriate division or the  
23 Hearings Division to a contested case and used to identify that case.

24 (15) Docket Services Section--The section within the Hearings Division, under the  
25 supervision of the Hearings Director, that is responsible for administering docketed cases pursuant to this  
26 chapter.

27 (16) Examiner or hearings examiner-- An individual appointed by the Commission to  
28 conduct hearings, including an administrative law judge, a technical examiner, and other designated  
29 employees of the Commission.

30 (17) Final order--The Commission's final written disposition of a contested case,  
31 whether affirmative, negative, injunctive, or declaratory.

1 (18) Hearings Division--The division responsible for scheduling, conducting, and  
2 preparing recommendations on hearings concerning matters within the Commission's jurisdiction.

3 (19) Intervenor--A person, other than an applicant, complainant, petitioner, protestant, or  
4 respondent, who is admitted as a party to a contested case pursuant to §1.37 of this title (relating to  
5 Intervention).

6 (20) License--The whole or a part of a permit, certificate, approval, registration, or  
7 similar form of permission issued or granted by the Commission.

8 (21) Office of General Counsel--The division responsible for providing legal advice to  
9 the Commission, comprising the Enforcement Section and the General Counsel Section.

10 (22) Party--A person named or admitted as an applicant, complainant, petitioner,  
11 intervenor, protestant, or respondent in a contested case before the Commission.

12 (23) Person--An individual, corporation, business trust, estate, trust, partnership, limited  
13 liability company, association, joint venture, government, governmental subdivision, agency,  
14 instrumentality, public corporation, or any other legal or commercial entity.

15 (24) Petitioner--A person who by written petition, including appeals, seeks a remedy  
16 from the Commission.

17 (25) Pleading--A written document submitted in a contested case by a person or  
18 authorized representative setting forth allegations of fact, legal arguments, claims, requests for relief, or  
19 other matters. Pleadings may take the form of applications, petitions, complaints, protests, exceptions,  
20 replies, motions, responses or answers, or other requests for action.

21 (26) Proceeding--A formal hearing, investigation, inquiry, rulemaking, or other fact-  
22 finding or decision-making process.

23 (27) Protestant--A person opposing an application or petition submitted to the  
24 Commission.

25 (28) Protested contested case--A contested case in which a party appears and contests or  
26 opposes the relief sought, including relief sought in applications, petitions, show-cause proceedings, or  
27 complaints.

28 (29) Register--The Texas Register established by Acts of 1975, 64th Legislature,  
29 codified in Texas Government Code, Chapter 2002.

30 (30) Respondent--A person against whom any complaint has been filed, who is under  
31 formal investigation by the Commission, or who is the subject of a show-cause proceeding.

1 (31) Rule--A Commission statement of general applicability that implements, interprets,  
2 or prescribes law or policy, or that describes the Commission's procedure or practice requirements. The  
3 term includes a newly adopted rule and the amendment or repeal of an existing a rule but does not  
4 include statements concerning only the internal management or organization of the Commission and not  
5 affecting private rights or procedures.

6 (32) Rulemaking--The process to adopt a new rule or to amend or repeal an existing rule  
7 pursuant to Texas law.

8 (33) Show-cause proceeding--A formal opportunity for a respondent to present evidence  
9 challenging allegations made against the respondent or to oppose a proposed action concerning the  
10 respondent.

11 (34) Telephony -- Includes conventional telephonic communication, Voice over Internet  
12 Protocol (VoIP) communication, and all forms of digital audio and audio/video tele-conferencing.

13  
14 §1.3. Exceptions and Suspension of Rules.

15 (a) The Commission, the Hearings Director, or the examiner may grant exceptions to the  
16 provisions of this chapter upon a showing of good cause and if necessary in the interest of justice.

17 (b) The Commission may suspend the operation of one or more of its general or special rules of  
18 practice and procedure if it finds that there exists a public emergency or imperative public necessity.

19 (c) The Commission may waive any fee established by one or more of its general or special rules  
20 of practice and procedure for good cause shown, except those fees required by statute.

21  
22 §1.4. Violation of Procedural Rules.

23 In addition to any other penalties authorized by law or by Commission rule, the violation of any  
24 general or special rule of practice and procedure shall be sufficient cause for the Commissioners, after  
25 notice and hearing, to enter an order holding the offender in contempt or subjecting the offender to just,  
26 reasonable, and lawful disciplinary action.

27  
28 §1.5. Conduct and Decorum.

29 Parties, authorized representatives, witnesses, and other participants in Commission proceedings  
30 shall conduct themselves with proper dignity, courtesy, civility, and respect for the Commission, the  
31 director, the examiner, and all other participants. Disorderly conduct will not be tolerated. A violator of

1 this rule may be excluded from the proceeding by the examiner for such period as is just and may be  
2 subject to such other just, reasonable, and lawful disciplinary action as the Commission may prescribe.

3  
4 §1.6. Recording and Broadcasting of Hearings.

5 Coverage of a hearing through broadcasting, televising, recording, live-streaming, or  
6 photographing is permitted upon prior approval of the Hearings Director. The request for approval shall  
7 specify the type of coverage to be conducted at the hearing. Requests may be denied or approved with  
8 restrictions if the Hearings Director finds coverage will unduly distract participants, interfere with the  
9 hearings process, or impair the dignity of the hearing.

10  
11 §1.7 Ex Parte Communications.

12 (a) Ex parte communications are prohibited in contested cases as provided in the APA and other  
13 applicable rules including the Texas Disciplinary Rules of Professional Conduct.

14 (b) Each party shall provide all other parties with a copy of all documents submitted to an  
15 examiner.

16 (1) The attachment of a certificate of service stating that a document was served on a  
17 party creates a rebuttable presumption that the named party was provided a copy.

18 (2) Failure to provide a copy to all other parties may result in rejection and return of the  
19 document without consideration.

20  
21 §1.8. Testimony under Oath or Affirmation.

22 Testimony in all contested cases shall be presented under oath or affirmation administered by an  
23 examiner, Commissioner, or court reporter.

24  
25 §1.9. Computation and Extensions of Time in Contested Cases.

26 (a) In computing any period of time prescribed or permitted by the Hearings Director, the  
27 examiner, a rule or an order of the Commission, or any applicable statute:

28 (1) the day of the act, event, or default from which the period of time begins to run shall  
29 not be included;

30 (2) the last day of the period being computed shall be included, unless it is a Saturday,  
31 Sunday, weekday on which the Commission has officially closed prior to 5 p.m. due to weather or other

1 exigency, or an official state or federal holiday, in which event the period shall continue to run until 5  
2 p.m. on the next day that is not a Saturday, Sunday, or an official state or federal holiday except as  
3 otherwise provided by statute; and

4 (3) Saturdays, Sundays, and official state or federal holidays shall not be counted for  
5 any purpose in any time period of five days or less in these rules.

6 (b) Unless otherwise provided by statute or special rule, the time for filing any pleading or other  
7 document may be extended upon the granting of a motion for extension of time. The motion shall:

8 (1) be filed with the Docket Services Section prior to the applicable deadline;

9 (2) show that there is good cause for an extension of time and that the need for the  
10 extension is not caused by the negligence, indifference, or lack of diligence of the person, party, or  
11 authorized representative filing the motion; and

12 (3) be served in accordance with §1.45 of this title (relating to Service in Protested  
13 Contested Cases).

14  
15 §1.10. Commissioner Private Interest in Decision.

16 (a) A Commissioner with a personal or private interest in a measure, proposal or decision  
17 pending before the Commission shall publicly disclose the fact to the Commission in an open meeting.  
18 The Commissioner may not vote or otherwise participate in the decision. The disclosure shall be entered  
19 in the minutes of the meeting.

20 (b) In this section, “personal or private interest” has the same meaning as is given to it under  
21 Texas Government Code, §572.058.

22  
23 SUBCHAPTER B. INITIATION OF CONTESTED CASE PROCEEDING.

24  
25 §1.21. Filings with Commission Division Directors.

26 All applications, petitions, complaints, and other documents relating to any proceeding to be  
27 initiated before the Commission shall be filed with the appropriate division director in accordance with  
28 that division’s filing requirements and any applicable statute or regulation. Such documents, including  
29 notices of protest and answers, shall be deemed filed only when they are actually received and are  
30 accompanied by any required filing fee.

1 §1.22. Docketing.

2 (a) The appropriate director shall docket a case originating in that division and transfer the case  
3 if protested to the Hearings Division.

4 (b) The Hearings Division may decline to accept a transferred case, docket a case, accept a filing,  
5 or set a hearing in instances where there has been a failure to substantially conform to the rules in this  
6 chapter.

7 (c) The Docket Services Section shall:

8 (1) notice the initial date and time and the location of the hearing;

9 (2) assign the examiners for the docketed case; and

10 (3) create forms and practices for the administration of its duties.  
11

12 §1.23. Filings with the Hearings Division.

13 (a) After a contested case has been docketed or an application has been transferred to the  
14 Hearings Division for a contested case proceeding, all subsequent pleadings and other documents related  
15 to the case shall be filed with the Docket Services Section.

16 (b) Pleadings and related documents filed with the Hearings Division shall be deemed filed only  
17 when they are actually received by the Docket Services Section and are accompanied by any required  
18 filing fee. The time and date of filing shall be determined by the file stamp affixed on the pleading or  
19 related document by the Docket Services Section.

20 (c) Except as provided in subsection (e) of this section, pleadings shall be filed as follows:

21 (1) If the pleading contains 10 or fewer pages including exhibits, it may be filed by fax,  
22 email, or other approved electronic transmission with the Docket Services Section. If a party or  
23 authorized representative elects to file a pleading by email, the party or authorized representative agrees  
24 to be served by email and affirmatively consents to the release and disclosure of the email address.

25 (2) Pleadings longer than 10 pages shall be filed in hard copy with the Docket Services  
26 Section, unless the examiner or Hearings director informs the parties in writing that they may file all  
27 documents pursuant to paragraph (1) of this subsection.

28 (d) Pleadings and related documents shall be considered timely filed if received and file stamped  
29 by the Docket Services Section on or before 5 p.m. of the filing deadline. Pleadings filed after 5 p.m.  
30 local time of the Commission shall be deemed filed the first business day following. Pleadings filed by  
31 fax, email, or other approved electronic transmission shall be considered filed at or before 5 p.m. local

1 time if the complete pleading is received at or before 5 p.m. local time.

2 (e) Exceptions and replies, and motions for rehearing and replies to motions for rehearing shall  
3 be filed pursuant to §1.122 of this title (relating to Filing of Exceptions and Replies) and §1.128 (relating  
4 to Rehearing), respectively.

5  
6 §1.24. Complaint Proceedings.

7 (a) Filing of complaint. Complaints relating to matters within the Commission's jurisdiction shall  
8 be in writing and contain a detailed description of the allegations against the respondent. The  
9 complainant shall serve the complaint on the respondent and simultaneously file it with the applicable  
10 division of the Commission. The division receiving the complaint shall transfer it to the Hearings  
11 Division. If the complainant amends the complaint, the complainant shall serve the amended complaint  
12 on the respondent and simultaneously file it with the Docket Services Section.

13 (b) Burden of proof. The complainant in a complaint proceeding shall have the burden of proof  
14 which is a preponderance of the evidence. In the interest of justice, the examiner may modify the burden  
15 of proof pursuant to §1.110 of this title (relating to Burden of Proof).

16 (c) Notice of complaint. In response to a complaint, the Commission shall issue a notice to the  
17 respondent stating:

18 (1) the respondent has no less than 15 days from the date of service to either file an  
19 answer or request a hearing to contest the allegations of the original complaint; and

20 (2) that a default order may be entered against the respondent if the respondent fails to  
21 answer, request a hearing, or appear at the hearing, if a hearing is requested.

22 (d) Respondent's answer.

23 (1) The respondent shall answer the complaint in writing, by either specifically denying  
24 the material allegations of the complaint or alleging an affirmative defense. Alternatively, the respondent  
25 may request a hearing which shall serve as a general denial of the allegations in the original complaint.

26 (2) If the complaint is thereafter amended, the time period for the filing and service of  
27 the answer shall, unless otherwise ordered, run from the service of such amended complaint. The original  
28 answer shall be considered as the answer to the amended complaint unless a new answer is filed in  
29 response to the amended complaint.

30 (e) Default order. If the respondent fails to answer, request a hearing, or appear at the hearing,  
31 the examiner may find the respondent to be in default and prepare a default final order to be presented to

1 the Commission without further notice.

2 (f) Dismissal for lack of jurisdiction of Commission or standing of complainant.

3 (1) If the examiner finds, either on the face of the complaint or after motion of the  
4 respondent, that the Commission lacks jurisdiction or the complainant lacks standing, the Hearings  
5 Director or the Commissioners shall dismiss the complaint as to such allegation or complainant.

6 (2) Any dismissal order entered by the Hearings Director is subject to review by an  
7 appeal to the Commissioners. The appeal shall follow the same requirements set forth in §1.38(e) of this  
8 title (relating to Interim Rulings and Appeals of Interim Rulings).

9  
10 §1.25. Show-Cause Proceedings.

11 (a) In response to a written complaint or on the Commission's own motion, the Commission or  
12 the Hearings Director may issue a notice commanding a person subject to the Commission's jurisdiction  
13 to appear at a public hearing and show cause why the person should not be compelled to do the act  
14 required, or refrain from doing an act, or why the Commission should not take the proposed action.

15 (b) The respondent in a show-cause proceeding shall have the burden of proof which is a  
16 preponderance of the evidence.

17 (c) On the respondent's failure to appear at the hearing or meet its burden of proof, the  
18 respondent may be compelled to do the act required or to refrain from doing an act, or the Commission  
19 may take the proposed action.

20  
21 §1.26. Contested Cases Brought by the Enforcement Section.

22 (a) Commencement of a contested case.

23 (1) Enforcement contested cases are commenced when a division of the Commission  
24 refers the matter to the Enforcement Section of the Office of General Counsel and the Enforcement  
25 Section assigns a docket number to the case. Before filing a complaint, the Commission may offer to  
26 settle the case through an agreed order.

27 (2) If the Commission does not offer to settle, or the terms of the offer are not timely met  
28 by the respondent, the Commission will send the original complaint to the respondent by certified and  
29 regular first-class mail. In cases against foreign or non-resident respondents, the complaint will also be  
30 sent to the resident agent listed on the respondent's most recently filed Organization Report (Form P-5).  
31 The complaint will be accompanied by a letter alleging that the respondent has violated Commission

1 rules or statutes as set forth in the original complaint; that the respondent may, within 30 days of the date  
2 of service, file an answer or request a hearing to contest the allegations of the original complaint; and that  
3 the respondent may wish to hire an attorney or other authorized representative or choose to appear on its  
4 own behalf. The letter will notify the respondent that if, on 31st day after the date of service, it has not  
5 entered into an agreed order, filed an answer to the original complaint, or requested a hearing, a default  
6 final order may thereafter be issued against respondent without further notice. Concurrent with the  
7 complaint, the Commission may make an offer to settle the case through an agreed order.

8 (3) When there is actual pollution or injury to the public health and safety, or an  
9 imminent threat thereof, a hearing may be set and notice of the hearing sent with the original complaint.  
10 The notice will state that if the respondent fails to appear at the hearing, a default final order may be  
11 issued against respondent without further notice as specified in subsection (d) of this section.

12 (b) Filing of answer or request for hearing; setting of hearing. A request for hearing made by the  
13 respondent shall serve as a general denial of the allegations in the original complaint. An answer or  
14 request for hearing is timely if filed with the Docket Services Section before the matter is included on an  
15 open meeting agenda of the Commission that has been posted with the Secretary of State. Except in  
16 cases brought under subsection (a)(3) of this section, the Enforcement Section will coordinate with the  
17 Docket Services Section to set a hearing on a date at least 30 days after receipt of a timely answer or  
18 hearing request, unless the case is disposed of by other means.

19 (c) Notice of hearing. Notices of hearing will be sent along with the original complaint to  
20 respondents or their authorized representatives in all cases brought under subsection (a)(3) of this  
21 section. In all other cases, notices of hearing will be sent, along with a current Enforcement Section  
22 pleading, only after the respondent or its authorized representative has timely filed a request for hearing  
23 or an answer. The notice will be sent to the address from which the request or answer was received, and  
24 will state that if the respondent fails to appear at the hearing, a default final order may be issued against  
25 respondent without further notice as specified in subsection (d) of this section.

26 (d) Default order upon failure to answer, request hearing, or appear at hearing.

27 (1) If the respondent fails to timely answer the original complaint, request a hearing, or  
28 appear at a scheduled hearing, a default final order may be issued by the Commission without further  
29 notice.

30 (2) Default final orders will contain findings of fact and conclusions of law sufficient to  
31 support the relief ordered.

1 (3) No default final order shall be issued until the Commission has access to the proof of  
2 service of the original complaint or the notice of hearing, or the returned certified mail containing the  
3 complaint or the notice, has been on file with the Commission for 15 days, exclusive of the day of receipt  
4 and day of issuance. Default final orders need not be individually signed in each case by the  
5 Commissioners if the case is listed by docket number and summarized on a Master Default Order.

6 (e) Non-applicability of this section to emergency situations. The existing power of the  
7 Commission to remedy and seek reimbursement for remediation of any condition which threatens the  
8 public health and safety, or to order an operator to remedy said condition, shall not be affected by this  
9 section.

10 (f) When the Enforcement Section alleges a violation of Texas Natural Resources Code, §91.143,  
11 relating to false information filed with the Commission, if the records that are subject of the proceeding  
12 are incorrect, there is a presumption that the respondent filed the record knowing it to be incorrect. The  
13 presumption may be rebutted by competent evidence.

14  
15 §1.27. Classification and Alignment of Parties.

16 (a) Parties to contested cases before the Commission are defined in §1.2 of this title (relating to  
17 Definitions). If there is an error in a party's designation in its pleadings, the examiner may assign a party  
18 an appropriate designation.

19 (b) The examiner may align parties according to the nature of the proceeding.  
20

21 §1.28. Parties and Authorized Representatives.

22 (a) Any party may appear individually or through an authorized representative.

23 (b) Authorized representatives shall:

24 (1) file a notice of representation with the Docket Services Section that contains the  
25 representative's mailing address, telephone number, and, if applicable, fax number and email address;

26 (2) advise their clients and witnesses of applicable requirements of conduct and  
27 decorum;

28 (3) comply with §1.7 of this title (relating to Ex Parte Communications).

29 (c) If an authorized representative's authority is challenged, the authorized representative must  
30 file documents that evidence authority to appear as the party's representative.

31 (d) An authorized representative seeking to withdraw shall file a motion to withdraw and shall

1 provide in the motion a mailing address, telephone number, and, if applicable, fax number and email  
2 address for the party or substitute representative. A party's authorized representative shall remain as such  
3 until the motion to withdraw is granted by the examiner.

4 (e) If an authorized representative includes an email address in the notice of representation, the  
5 authorized representative agrees to be served by email and affirmatively consents to the release and  
6 disclosure of the email address.

7  
8 SUBCHAPTER C. PLEADINGS, MOTIONS, AND OTHER DOCUMENTS.

9  
10 §1.31. Classification of Pleadings.

11 (a) Pleadings filed in contested case proceedings before the Commission shall be designated as  
12 one of the following: application, petition, complaint, notice of protest, answer, motion, exception, or  
13 response or reply to one of the preceding pleadings. If there is an error in the designation of a pleading,  
14 the examiner or the Hearings Director may determine the appropriate status in the proceeding and treat it  
15 accordingly.

16 (b) Requests for discovery and responses thereto shall not be classified as pleadings and shall  
17 become a part of the administrative record in a contested case only when offered as evidence, or when  
18 part of a request for an order compelling a discovery response, or a reply thereto.

19 (c) Pleadings shall be liberally construed. As applicable, the Commission, Hearings Director,  
20 or examiner may construe a document as a pleading if the intent of the filing or document is evident.

21  
22 §1.32. Form and Content of Pleadings.

23 (a) Unless otherwise permitted or required by Commission rules or by statute, a pleading shall  
24 contain a statement of the pleading's objectives, a concise statement of supporting facts, and a specific  
25 request for relief.

26 (b) Pleadings that are filed in hard copy shall be printed on white paper that is 8 1/2 inches wide  
27 and 11 inches long, with at least one-inch margins, or on the appropriate Commission form. The text  
28 shall only be on one side of the paper and shall be double or one and one-half spaced, except that  
29 footnotes and lengthy quotations may be single spaced. Exhibits attached to a pleading shall be the same  
30 size as pleadings or folded to that size.

31 (c) Each pleading shall be signed by the party or its authorized representative. When a copy of

1 the signed document has been filed, the party or its authorized representative shall maintain the original  
2 document for examination by the Commission , the examiner, the Hearings or appropriate division  
3 director, or any party to the proceedings, should a question arise as to its authenticity.

4 (d) A pleading shall contain:

5 (1) the filing party's business address, telephone number, and, if applicable, fax number  
6 or email address, or if filed by its authorized representative, the authorized representative's business  
7 address, telephone number, and, if applicable, the authorized representative's Texas state bar number,  
8 email address, and fax number; and

9 (2) a certification pursuant to §1.45 of this title (relating to Service in Protested  
10 Contested Cases).

11 (e) If a party or authorized representative includes its email address or fax number in a pleading,  
12 the party consents to be served by email or fax and affirmatively consents to the release and disclosure of  
13 the email address.

14  
15 §1.33. Correction of Pleadings.

16 If the appropriate director or examiner finds that a pleading does not substantially comply in all  
17 material respects with the Commission's rules, notice of the deficiency or deficiencies will be provided to  
18 the filing party. Unless precluded by operation of law, the party who filed the pleading shall thereafter  
19 have the right to file a corrected pleading. The filing of a corrected pleading shall not be permitted to  
20 delay any proceeding unless the appropriate director or the examiner determines based on evidence  
21 submitted by the filing party that such delay is necessary to prevent an injustice or to protect the public  
22 interest.

23  
24 §1.34. Amended or Supplemental Pleadings.

25 (a) Pleadings may be amended or supplemented when permitted by statute or when justice so  
26 requires.

27 (b) Unless the Commission, the Hearings Director, or the examiner approves and issues  
28 additional notice as required by law, an application, petition, or complaint, upon which original notice of  
29 hearing has been issued, may not be amended so as to broaden or enlarge the scope thereof.

30  
31 §1.35. Responsive Pleadings and Emergency Action.

1 (a) Any responsive pleading shall be filed by a party within 10 days after filing of the pleading to  
2 which the response is made or as ordered by the examiner.

3 (b) A responsive pleading to a complaint filed under this chapter shall be filed by the respondent  
4 within 20 days after service of the complaint.

5 (c) The Commissioners, the Hearings Director, or the examiner may take action on a pleading  
6 before the deadline for filing responsive pleadings only in an emergency that presents a risk of imminent  
7 pollution, waste, or injury to persons or real or personal property. Action taken under such conditions is  
8 subject to modification based on a timely responsive pleading.

9  
10 §1.36. Motions.

11 (a) A motion shall be filed with the Docket Services Section, unless dictated into the record  
12 during the pendency of a hearing, and shall state the relief sought and the specific reasons for the motion.  
13 If the motion is based upon alleged facts that are not a matter of record, it may, in the examiner's  
14 discretion, be supported by an affidavit. Motions shall be served in accordance with §1.45 of this title  
15 (relating to Service in Protested Contested Cases). Notice of action on any motion shall be served  
16 promptly on all parties.

17 (b) A motion is timely filed if filed with the Docket Services Section before the contested case is  
18 included on an open meeting agenda of the Commission that has been posted with the Secretary of State.

19  
20 §1.37. Intervention.

21 (a) Any person who has a justiciable or administratively cognizable interest and who is not an  
22 applicant, petitioner, complainant, respondent, or protestant and who desires to be designated as a party  
23 in any contested case before the Commission may file a petition for leave to intervene no later than five  
24 days prior to the hearing date.

25 (b) The examiner or the Hearings Director shall promptly act on all petitions for leave to  
26 intervene. All interventions shall be subject to a motion to strike for having been improperly admitted.

27  
28  
29 §1.38. Interim Rulings and Appeals of Interim Rulings.

30 (a) Relief through interim ruling. Prior to presentation of a contested case to the Commission at  
31 an open meeting, a party may seek, through an examiner, or Hearings Director, as appropriate, relief

1 through interim ruling, but that ruling shall not be considered of the same nature as a final decision. An  
2 interim ruling shall not be subject to exceptions or motions for rehearing. For purposes of this section,  
3 the term interim ruling includes orders issued pursuant to §1.55 of this title (relating to Discovery  
4 Orders) and final actions taken by Commission staff to deny an application or other requested relief for  
5 which no other avenue of appeal is provided by Commission rules.

6 (b) Evidentiary rulings. An evidentiary ruling by an examiner is not an interim ruling and is not  
7 appealable to the Commission pending the issuance by the examiner of a proposal for decision. Such  
8 rulings include, but are not limited to, reopening the record of a hearing for additional evidence, before a  
9 proposal for decision is issued.

10 (c) Interim ruling to suspend license.

11 (1) In this section, "license" includes the whole or a part of a Commission permit,  
12 certificate, approval, registration, or similar form of permission required by law.

13 (2) When an interim ruling suspends a license because an imminent peril to the public  
14 health, safety, or welfare requires emergency action, the examiner or Hearings Director shall incorporate  
15 a factual and legal basis establishing that imminent peril in the interim ruling.

16 (3) Unless expressly provided otherwise by statute, the Commission shall initiate the  
17 proceedings for revocation of the license or other action not later than the 30th day after the interim  
18 ruling is signed.

19 (d) Appeal of interim ruling.

20 (1) Except as provided in paragraph (2) of this subsection, any party aggrieved by an  
21 interim ruling may appeal that ruling to the Commission and seek a stay if the party files a written appeal  
22 within 10 days of the date the interim ruling is signed or stated in the record. Untimely appeals shall not  
23 be forwarded by examiners to the Commissioners, pursuant to subsection (e) of this section. If, by the  
24 46th day after the date the interim ruling is signed or stated in the record, the Commission has not signed  
25 a written order ruling on the appeal, then the appeal shall be deemed denied and any granted stay is lifted.

26 (2) In all gas utility proceedings brought or conducted under Texas Utilities Code,  
27 Chapters 102, 103, 104, and 121, any party aggrieved by an interim ruling may appeal that ruling to the  
28 Commission and seek a stay if the party files a written appeal within five days of the date the interim  
29 ruling is signed or stated in the record. Untimely appeals shall not be forwarded by examiners to the  
30 Commissioners, pursuant to subsection (e) of this section. If, by the 20th day after the date the interim  
31 ruling is signed or stated in the record, the Commission has not signed a written order ruling on the

1 appeal, then the appeal shall be deemed denied and any granted stay is lifted.

2 (3) In all proceedings, the appealing party shall serve the appeal in accordance with  
3 §1.45 of this title (relating to Service in Protested Contested Cases) on the same day the appeal is filed  
4 with the Docket Services Section.

5 (4) Any response to an appeal must be filed with the Docket Services Section and served  
6 in accordance with §1.45 of this title within 10 days of the date the appeal of the interim ruling was filed.

7 (5) Pending action on the appeal of the interim ruling, the Hearings Director or the  
8 examiner may grant a stay of the interim ruling.

9 (e) Procedure on appeal. The Commissioners may consider and rule on an appeal on or after the  
10 day following the day the response to the appeal is due. An order on an appeal from an interim ruling  
11 shall not be subject to motions for rehearing pending issuance of the proposal for decision and signing of  
12 the final order. Any issue in an appeal that has been deemed denied by operation of law may be raised  
13 again in exceptions to the proposal for decision. When a timely appeal is filed under this section, the  
14 examiner shall:

15 (1) forward to each Commissioner a copy of the appeal along with a cover memorandum  
16 showing the date the appeal was filed, the date replies are due, and the date on which the appeal will be  
17 deemed denied if no Commission action is taken;

18 (2) forward to each Commissioner a copy of all replies to appeals of interim rulings  
19 which may be filed, and of any stay of the interim ruling granted by the Hearings Director; and

20 (3) upon the request of any one Commissioner, immediately schedule the appeal for  
21 consideration by the Commission at an open meeting, and cause proper notice to be given to all parties.

22  
23 **SUBCHAPTER D. NOTICE AND SERVICE.**

24  
25 **§1.41. Notice of Application in Contested Cases.**

26 Notice of application for contested cases shall be given in accordance with applicable law, rule,  
27 or order of the Commission.

28  
29 **§1.42. Notice of Hearing.**

30 (a) In a contested case, each party is entitled to an opportunity:

31 (1) for hearing after reasonable notice of not less than 10 days; and

1 (2) to respond and to present evidence and argument on each issue involved in the case.

2 (b) Each notice of hearing shall include the following:

3 (1) a statement of the time, place, and nature of the hearing;

4 (2) a statement of the legal authority and jurisdiction under which the hearing is to be  
5 held;

6 (3) a reference to the particular sections of the statutes and rules involved;

7 (4) a short, plain statement of the factual matters asserted; and

8 (5) any other statements required by law or directed by the Commission.

9 (c) If the Commission or a party is unable to state the factual matters in detail at the time the  
10 notice is served, the initial notice may be limited to a statement of the issues involved. On timely written  
11 application, a more definite and detailed statement of the facts shall be submitted in writing to the  
12 Hearings Division, which shall issue an amended notice not less than seven days prior to the date set for  
13 the hearing.

14 (d) In a proceeding in which the Commission has the burden of proof, if the Commission intends  
15 to rely on a section of a statute or rule not previously referenced in the notice of hearing, the Hearings  
16 Division shall amend the notice to refer to the section of the statute or rule not less than seven days  
17 before the date set for the hearing. This subsection does not prohibit the Commission from filing an  
18 amended notice of hearing after the hearing has commenced. If the Commission files an amended notice  
19 of hearing after the hearing has commenced, the examiner shall grant a continuance of at least seven days  
20 at the request of any other party.

21  
22 §1.43. Notice by Publication.

23 (a) When an applicant in a proceeding is unable, after due diligence, to identify the address of  
24 any person who is required to be notified of an application, complaint, or hearing, the applicant must  
25 publish notice of the application, complaint, or hearing.

26 (1) The applicant shall publish the Commission's notice of application or notice of  
27 hearing in a newspaper of general circulation in the county or counties where the land or facility that is  
28 the subject of the application or hearing is located, or as directed by the appropriate director or examiner  
29 to give adequate notice to affected persons. The applicant shall publish such notice once per week for  
30 four consecutive weeks. The first publication shall be published at least 28 days before the protest  
31 deadline in a notice of application or the hearing date in a notice of hearing.

1           (2) The applicant must file proof of publication in the form of a publisher's affidavit or  
2 present at a hearing a copy of the newspaper notice along with testimony by a person with personal  
3 knowledge of the publication details.

4           (b) In determining whether notice by publication is appropriate, the examiner may consider  
5 whether an applicant used due diligence in attempting to identify the address of any person who is  
6 required to be notified of an application, complaint, or hearing.

7  
8 §1.44. Notice of Protest.

9           A notice of protest may be filed when the notice of application, notice of hearing, or a  
10 Commission rule sets forth the requirements for filing such notice, or as provided by order of the  
11 Commission instituting the proceeding.

12  
13 §1.45. Service in Protested Contested Cases.

14           (a) Service requirements. A copy of any pleading or document filed in a protested contested case  
15 shall be served by a party as follows:

16           (1) On the same day a party files a document with the Commission, the party shall serve  
17 a copy on every other party and any other person required by the Hearings Division. If a party is  
18 represented by an authorized representative, service shall be made on that representative; and

19           (2) All filings shall include a certification that copies have been served on all persons  
20 described in paragraph (1) of this subsection. The certification shall include the date and manner of  
21 service and the names and addresses of all persons served. If a person is served by fax or email, the  
22 certification shall include the person's fax number or email, as applicable.

23           (b) Methods of service.

24           (1) A pleading or document may be served by hand delivering a copy to the person to be  
25 served, or by first class, certified, or registered mail, commercial delivery service, fax, email, or by such  
26 other manner as the Commission may require.

27           (A) Service by mail or commercial delivery service shall be complete upon  
28 deposit of the document postpaid and properly addressed to the person's last known address with the  
29 United States Postal Service or a commercial delivery service.

30           (B) Service by fax shall be sent to the person's current fax number and is  
31 complete on the date of the fax. Fax transmissions completed after 5 p.m. local time of the recipient shall

1 be deemed served on the first day following that is not a Saturday, Sunday, or official state or federal  
2 holiday.

3 (C) Personal service may be effectuated by hand delivering a copy to the person  
4 to be served and is complete on the date of delivery. Personal service completed after 5 p.m. local time of  
5 the recipient shall be deemed served on the first day following that is not a Saturday, Sunday, or official  
6 state or federal holiday.

7 (D) Service by email may be used if the person to be served consents to be  
8 served by email pursuant to §1.28 or §1.32 of this title (relating to Parties and Authorized  
9 Representatives and Form and Content of Pleadings, respectively). If the person elects to be served by  
10 email, the person affirmatively consents to the release and disclosure of the email address. Email service  
11 is complete on the date of the email transmission. An email received after 5 p.m. local time of the  
12 recipient shall be deemed served on the first business day following.

13 (2) Proof of service. The filing party or authorized representative shall certify  
14 compliance with this rule in writing over signature and on the filed instrument. A certificate showing  
15 service shall be prima facie evidence of the fact of service. In cases of personal service, the certificate  
16 shall state when the pleading or motion was served and the manner of service. The recitations in the  
17 certificate are prima facie evidence of the facts cited in the certificate.

18 (c) Service by mail or commercial delivery service. Unless otherwise directed by the examiner  
19 or Hearings Director, when a party is required to do some act within a prescribed time period following  
20 service of a pleading, motion, or discovery document described in §1.51 of this title (relating to Forms  
21 and Scope of Discovery in Contested Cases) and the pleading, motion, or discovery document is served  
22 by mail or commercial delivery service, three days shall be added to the prescribed response period.

23 (d) Failure to serve. The serving party has the burden of proving the date and time of service.  
24 The failure of a party to serve a pleading or filed document on another party or person as required by this  
25 section may be sufficient grounds for the Hearings Director or the examiner to strike the pleading or filed  
26 document, or to take other appropriate action. A party may offer evidence or testimony that a notice or  
27 document was not received, or if service was by mail, that it was not received within three days from the  
28 date of mailing, and upon so finding, the examiner or Hearings Director may extend the time for taking  
29 the action required of the party or grant other appropriate relief.

30 (e) Service by the Commission.

31 (1) For documents served on a party with an active or delinquent organization report on

1 file pursuant to §3.1 of this title (relating to Organization Report; Retention of Records; Notice  
2 Requirements), the Commission shall serve documents by:

3 (A) first class mail to the address shown on the most recently filed organization  
4 report or the most recently filed letter notification of change of address, in which case the document is  
5 presumed received if the document is not returned to the Commission;

6 (B) certified mail to the address described in subparagraph (A) of this paragraph,  
7 in which case service is effective upon:

8 (i) acceptance of the item by any person at the address;

9 (ii) initial failure to claim or refusal to accept the item by any person at  
10 the address prior to its eventual return to the Commission by the United States Postal Service; or

11 (iii) return of the item to the Commission by the United States Postal  
12 Service bearing a notation such as "addressee unknown," "no forwarding address," "forwarding order  
13 expired," or any similar notation indicating that the organization's mailing address shown on the most  
14 recently filed organization report or address change notification letter is incorrect; or

15 (C) personal service or registered or certified mail to the address described in  
16 subparagraph (A) of this paragraph for revocation, suspension, annulment, or withdrawal of a license.

17 (2) For documents served on all other parties, unless otherwise required by law, the  
18 Commission shall serve documents in accordance with subsection (b) of this section.

19  
20 SUBCHAPTER E. DISCOVERY.

21 §1.51. Forms and Scope of Discovery in Protested Contested Cases.

22 (a) Permissible forms of discovery by parties are:

23 (1) oral depositions of a party or a nonparty;

24 (2) written interrogatories to a party;

25 (3) requests to a party for admission of facts or the genuineness or identity of documents  
26 or things;

27 (4) requests to a party for production, examination, and copying of documents or other  
28 tangible materials;

29 (5) requests to a party for entry upon and examination of real or personal property, or  
30 both; and

31 (6) requests to a party for disclosures pursuant to Texas Rule of Civil Procedure 194.

1 (b) The scope of discovery shall be the same as provided by the Texas Rules of Civil Procedure  
2 and shall be subject to the constraints provided therein for privileges, objections, protective orders, and  
3 duty to supplement as well as the constraints provided in the APA.  
4

5 §1.52. Service and Filing of Discovery Requests and Responses.

6 (a) Requests for discovery and responses shall be served using a method of service authorized by  
7 §1.45 of this title (relating to Service in Protested Contested Cases) and should not be filed with the  
8 Commission.

9 (b) If the parties disagree on the scheduling or scope of the deposition, a deposition request and  
10 proposed deposition discovery order shall be filed with the Docket Services Section and the examiner  
11 will set the matter for consideration at a prehearing conference.

12 (c) The deposition shall be returned to the Commission as provided in the APA, §2001.100.

13 (d) Except for good cause shown, all requests for discovery shall be served at least 20 days prior  
14 to the hearing unless otherwise agreed by the parties.  
15

16 §1.53. Deadlines for Responses to Discovery Requests.

17 Responses to discovery requests shall be served within 14 days after the date of the request. The  
18 examiner or the Hearings Director may alter this deadline on the request of any party.  
19

20 §1.54. Requests for Admission.

21 Except as otherwise provided in §1.53 of this title (relating to Deadlines for Responses to  
22 Discovery Requests), requests for admission shall be governed by the applicable provisions of the Texas  
23 Rules of Civil Procedure. Each matter for which an admission is requested shall be separately stated. If a  
24 written answer or objection to a request for admission is not timely served, the request is deemed  
25 admitted without necessity of a Commission order. The requests for admission document must clearly set  
26 forth this provision for deemed admissions, in bold print or by underlining, in a conspicuous location to  
27 fairly inform the responding party of the consequences of a failure to respond within the prescribed time  
28 period. The examiner may permit withdrawal or amendment of responses and deemed admissions upon a  
29 showing of good cause.  
30

31 §1.55. Discovery Orders.

1 (a) Motion to compel. Unless otherwise ordered, a party alleging another party's failure to  
2 comply with discovery requests shall file a sworn motion to compel with the Docket Services Section at  
3 least 10 days prior to the hearing on the merits. The motion shall certify that the requesting party made a  
4 good faith effort to resolve the matter with the non-moving party prior to filing the motion.

5 (b) Deposition discovery orders. The Hearings Director or the examiner is authorized to issue a  
6 subpoena to take a deposition, which shall require that the witness appear and produce, at the time the  
7 deposition is taken, books, records, papers, or other objects that may be necessary and proper for the  
8 purposes of the proceeding.

9 (c) Other discovery orders. The Hearings director or the examiner may issue protective orders,  
10 orders compelling discovery responses, and orders creating a discovery control plan. Requests for  
11 discovery orders shall contain a sworn statement that, after due diligence, the desired information cannot  
12 be obtained through informal means, and that good cause exists for requiring discovery. The Hearings  
13 Director or the examiner may conduct in camera inspections of materials when requested by a party or  
14 when necessary to determine facts required to issue appropriate discovery orders. The request for a  
15 discovery order may be denied:

16 (1) if the request is untimely or unduly burdensome in light of the complexity of the  
17 proceeding;

18 (2) if the requesting party has failed to exercise due diligence;

19 (3) if the discovery would result in undue cost to the parties or unnecessary delay in the  
20 proceeding;or

21 (4) for other good cause in the interest of justice.

22 (d) Review by Commissioners. Any discovery order issued by the examiner or the Hearings  
23 Director is subject to review by an appeal to the Commissioners. Any party that chooses to appeal a  
24 discovery order shall follow the requirements set forth in §1.38 of this title (relating to Interim Rulings  
25 and Appeals of Interim Rulings). A discovery order does not constitute a final order or decision.

26 (e) Compliance. The Commission may enforce compliance with any discovery order or  
27 subpoena pursuant to Texas Government Code §§2001.089, 2001.094, and 2001.201, and the Texas  
28 Natural Resources Code, §81.053 and §81.064, or as otherwise permitted by law.

29  
30 §1.56. Alignment of Municipal Intervenors for Purposes of Discovery.

31 (a) This section applies to proceedings initiated pursuant to Texas Utilities Code, §103.055 and

1 §104.102.

2 (b) Municipal intervenors, whether participating as a single municipality or a coalition of  
3 municipalities, are presumed to share a common interest in a proceeding such that alignment of  
4 municipal intervenors as a single party for purposes of discovery is appropriate. The examiner shall order  
5 alignment of municipal intervenors at the earliest reasonable opportunity so as to avoid unnecessary  
6 duplication of effort and to allow aligned parties an adequate opportunity to coordinate discovery efforts  
7 in an efficient manner.

8 (c) To overcome the presumption of alignment, a municipality or municipal coalition must file a  
9 motion to realign in whole or in part. In ruling on such a motion, the presiding officer shall consider  
10 whether good cause exists to grant the motion to realign in whole or in part including consideration of the  
11 following:

12 (1) whether the municipal intervenors are taking opposing positions regarding the  
13 utility's request for relief;

14 (2) whether the municipal intervenors have sufficiently different positions on one or  
15 more issues to justify realignment on such issues;

16 (3) whether granting the motion will create unnecessary inefficiencies or duplication of  
17 effort;

18 (4) whether granting the motion will result in undue costs to the parties;

19 (5) the effect of granting the motion on the parties and the public interest;

20 (6) whether granting the motion will serve the interest of justice; and

21 (7) any other relevant factors as determined by the presiding officer.  
22

23 §1.57. Limitations on Discovery Requests.

24 (a) This section applies to proceedings brought pursuant to Texas Utilities Code, §103.055 and  
25 §104.102.

26 (b) Upon request by a party, the presiding officer may limit discovery, by order, in the interest of  
27 efficiency and justice.

28 (c) For purposes of calculating the number of requests for information (RFIs), each request or  
29 subpart shall be considered a separate RFI. Absent a showing of good cause, a reasonable limitation on  
30 RFIs propounded to a party is no more than 600 total RFIs, with no more than 75 RFIs propounded by a  
31 single party in one calendar week. Commission staff and presiding officers are not subject to these

1 discovery limitations when Commission staff or the presiding officers issue the RFIs.

2 (d) With regard to discovery propounded by a municipality or municipal coalition, to the extent  
3 that the utility first filed its request for relief at the municipal level and a municipal party has requested  
4 that the discovery propounded at the municipal level be updated, and the Commission is now considering  
5 the utility's request on appeal from the municipal forum, the number of RFIs (inclusive of subparts) that  
6 the municipality propounded at the municipal level shall count towards the total number of permissible  
7 RFIs a municipality may serve on the utility during the Commission proceeding on appeal, unless the  
8 utility updated its test year when filing its appeal.

9 (e) If a party is not required to answer a question due to a sustained objection or withdrawal, that  
10 question may not be included in the calculation of the propounding party's RFI limit. However, if the  
11 presiding officer determines that a party is intentionally propounding frivolous, irrelevant, or otherwise  
12 objectionable requests, the question shall be included in the calculation of that propounding party's RFI  
13 limit.

14 (f) As set forth in the Texas Rules of Civil Procedure 196 and 198, there shall be no limitation  
15 with regard to requests for production and inspection, or requests for admission.

16 (g) The party propounding discovery shall separately characterize its discovery as an RFI, a  
17 Request for Production and Inspection, or a Request for Admission.

18  
19 SUBCHAPTER F. EVIDENCE.

20 §1.61. Rules of Evidence.

21 The Texas rules of evidence and Texas law with regard to evidence in nonjury civil cases shall  
22 apply in contested cases. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. When  
23 necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not  
24 admissible thereunder may nevertheless be admitted by the examiner (except where precluded by statute)  
25 if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The  
26 rules of privilege recognized by law shall apply in Commission proceedings. Objections to evidentiary  
27 offers may be made and shall be noted in the record.

28  
29 §1.62. Official Notice.

30 (a) Facts noticeable. Official notice may be taken of judicially cognizable facts, and notice may  
31 be taken of generally recognized facts within the area of the Commission's specialized knowledge.

1 (b) Motions for official notice and opportunity to respond. A party's motion for official notice  
2 must be made or filed prior to the conclusion of the evidentiary hearing. The motion must specify the  
3 facts, material, records, or documents encompassed in the motion. A party who opposes the motion shall  
4 have the opportunity to contest the requested action.

5 (c) Notification of materials noticed. The examiner on his or her own motion, or the Commission  
6 on its own motion, may propose to take official notice of facts, material, records, or documents  
7 authorized by the APA, §2001.090. The parties will be given the opportunity to contest the proposed  
8 action and shall be notified of the facts, material, records, or documents officially noticed before, during,  
9 or after the hearing by the Commission.

10  
11 §1.63. Documentary Evidence.

12 A copy or excerpt of a document may be admitted as evidence if the original is not readily  
13 available and if authenticity is established by competent evidence. When numerous or duplicative  
14 documents are offered, the examiner may limit those admitted to a number of documents which are  
15 typical and representative. The examiner may require the offering party to abstract or summarize relevant  
16 data from documents and present the abstracts or summaries in exhibit form. All parties shall have the  
17 right to examine the documents abstracted or summarized.

18  
19 §1.64. Written Testimony.

20 (a) Admissibility. When a proceeding will be expedited and the interests of the parties will not be  
21 substantially prejudiced, direct testimony may be offered in written form. The written testimony of a  
22 witness on direct examination, either in narrative or question and answer form, may be offered as an  
23 exhibit and incorporated into the record without the written testimony being read. A witness who is  
24 offering written testimony shall be sworn and shall identify the written testimony as a true and accurate  
25 representation of what the testimony would be if the witness were to testify orally, after which the  
26 witness shall submit to voir dire and cross-examination. Written testimony shall be subject to the same  
27 evidentiary objections as oral testimony.

28 (b) Prefiling. The Commission, the Hearings Director, or an examiner may require or permit  
29 written testimony and exhibits to be filed and served on all parties at a specified date prior to the hearing.  
30 Failure to prefile written testimony and exhibits if required under this section shall be sufficient cause for  
31 the examiner to rule such evidence, which was to be included in the testimony and exhibits, inadmissible

1 or for other appropriate action to be taken as may be just and reasonable.

2  
3 §1.65. Exhibits.

4 (a) Form. Exhibits to be offered in evidence at a hearing shall be of a size which will not unduly  
5 encumber the record. Whenever practicable, exhibits shall conform to the size requirements established  
6 by §1.32 of this title (relating to Form and Content of Pleadings). The pages of each exhibit shall be  
7 numbered consecutively.

8 (b) Tender and service. The original or a true and correct copy of each exhibit offered in  
9 evidence shall be identified and tendered for inclusion in the record. Copies of the exhibit shall be  
10 furnished to the examiners and to each party prior to or at the time the exhibit is offered in evidence.

11 (c) Excluded exhibits. If an exhibit is offered, objected to, and excluded, the examiner may  
12 determine whether or not the party offering the exhibit wishes to withdraw the offer; if so, the examiner  
13 shall permit the return of the exhibit to the party. If the excluded exhibit is not withdrawn, it shall be  
14 given an exhibit number for identification, shall be endorsed by the examiner with the ruling, and shall be  
15 included in the record for the purpose of preserving an exception.

16 (d) Late exhibits. Unless specifically requested and permitted by the Commissioners, the  
17 Hearings Director, or the examiner, no exhibit shall be filed in any proceeding after the hearing has been  
18 completed. If the filing of a late-filed exhibit is permitted, copies shall be served on all parties, and each  
19 party will have the opportunity to respond and submit additional relevant responsive evidence.

20  
21 §1.66. Written Objections Not Required.

22 Written objections to rulings made by the examiner during a hearing are not required. It shall be  
23 sufficient that the party make a timely objection and state the grounds for the objection on the record.

24  
25 §1.67. Offers of Proof.

26 (a) When the examiner excludes evidence, the party offering the evidence shall be permitted to  
27 make an offer of proof prior to the close of the hearing.

28 (1) The party may make the offer in question and answer form, or by dictating or  
29 submitting in writing the substance of the proposed evidence.

30 (2) The examiner may direct the manner in which the offer is made and may ask  
31 questions if necessary to conclude that the evidence would be as represented.

1           (3) The examiner and opposing parties shall be entitled to cross-examine any witness  
2 testifying on an offer of proof.

3           (b) The examiner may direct that offers of proof be transcribed separately and that reporter's  
4 costs be assessed against the proponent of the evidence, subject to the Commissioners' review of the  
5 examiner's ruling.

6  
7 §1.68. Confidential Materials.

8           (a) Applicability of the Public Information Act. All records, data, and information filed with the  
9 Commission are subject to the Texas Public Information Act, Texas Government Code, Chapter 552. If  
10 the Commission receives a third party request for materials that have been marked confidential pursuant  
11 to subsection (b) or (c) of this section, the Commission will notify the filing party of the request in  
12 accordance with the provisions of the Texas Public Information Act so that the party can take action with  
13 the Office of the Attorney General to oppose release of the materials.

14           (b) Filing confidential materials in a hearing before the Hearings Division.

15           (1) A party filing material in a hearing before the Hearings Division that the party  
16 contends to be confidential by law shall file the materials with the Docket Services Section by delivering  
17 them in a sealed and labeled container, accompanied by an explanatory cover letter. The cover letter shall  
18 identify the docket number and the style of the case, explain the nature of the sealed materials, and  
19 specify the relief sought. The outside of the container shall identify the docket number, the style of the  
20 case, the name of the submitting party, and be marked "CONFIDENTIAL AND UNDER SEAL" in bold  
21 print at least one inch in size. The front page of each portion of confidential material shall be marked  
22 "confidential." Confidential material shall not be filed by fax. A party who elects to file confidential  
23 material electronically shall notify the Docket Services Section prior to filing such material.

24           (2) A party may file a motion to seal the record if it has filed confidential materials in  
25 accordance with paragraph (1) of this subsection. In the motion, the party shall describe the materials it  
26 contends to be confidential by law, indicate the specific provision of law that exempts the material from  
27 disclosure, and request that the examiner order the described materials to be sealed. The examiner may,  
28 after consideration at hearing, order the described materials to be sealed, subject to any determination by  
29 the Office of the Attorney General and as further described in subsection (a) of this section.

30           (3) Confidential materials filed with the Hearings Division will be retained until the  
31 contested case is no longer appealable and in accordance with the Commission's retention policy.

1 (c) Filing confidential materials with the Commission other than in a hearing.

2 (1) A party filing material with a division of the Commission other than the Hearings  
3 Division that the party contends to be confidential by law shall file the materials with the applicable  
4 division by delivering them in a sealed and labeled container accompanied by an explanatory cover letter.  
5 The cover letter shall explain the nature of the sealed materials. The outside of the container shall  
6 identify the name of the submitting party and be marked "CONFIDENTIAL AND UNDER SEAL" in  
7 bold print at least one inch in size. The front page of each portion of confidential material shall be  
8 marked "confidential." Confidential material shall not be filed by fax. A party who elects to file  
9 confidential material electronically shall notify the applicable division prior to filing such material.

10 (2) Confidential materials filed under this subsection will be retained in accordance with  
11 the Commission's retention policy.

12  
13 SUBCHAPTER G. HEARINGS.

14 §1.101. Examiner's Powers and Duties.

15 (a) For any assigned case and subject to any limitations imposed by law or by Commission rule,  
16 the examiner shall have broad discretion in regulating the course and conduct of the hearing. The  
17 examiner's authority includes, but is not limited to, the following authority:

- 18 (1) to administer oaths and affirmations;
- 19 (2) to issue subpoenas to compel the attendance of witnesses and the production of  
20 papers and documents;
- 21 (3) to authorize the taking of depositions and issue discovery orders;
- 22 (4) to call and examine witnesses;
- 23 (5) to receive evidence;
- 24 (6) to rule upon the admissibility of evidence and amendments to pleadings;
- 25 (7) to limit the number of witnesses whose testimony would be merely cumulative;
- 26 (8) to set reasonable times within which a party may testify, cross-examine witnesses, or  
27 present evidence;
- 28 (9) to impose sanctions;
- 29 (10) to maintain order in a hearing;
- 30 (11) to recess any hearing;
- 31 (12) to issue a proposal for decision, including proposed findings of fact and

1 conclusions of law and a recommended order;

2 (13) to reopen the record when justice requires;

3 (14) to amend the proposal for decision or recommended order, or both;

4 (15) to issue a supplemental or amended proposal for decision and proposed order;

5 (16) to review the jurisdiction of the Commission and standing of parties as it pertains to  
6 a contested case;

7 (17) to issue orders relating to hearing, prehearing and posthearing matters; and

8 (18) to take other permissive action which is necessary for a fair, just, and proper  
9 hearing.

10 (b) If at any time the examiner is unable to continue to serve, the Hearings Director may appoint  
11 another examiner to perform any remaining functions without the necessity of repeating previous  
12 proceedings.

13 (c) At their discretion, the Commissioners may preside over contested cases pursuant to this  
14 section.

15  
16 §1.102. Sanctioning Authority.

17 (a) In the interest of justice, and after notice and opportunity for hearing, an order imposing  
18 sanctions may be issued by the Commissioners, the Hearings Director, or the examiner for:

19 (1) abuse of the discovery process, including failure to comply with a discovery order or  
20 subpoena issued by the Commission for deposition or production of books, records, papers, or other  
21 objects;

22 (2) filing a motion or pleading that is determined to be groundless and brought:

23 (A) in bad faith;

24 (B) for the purpose of harassment; or

25 (C) for any other improper purpose, such as to cause unnecessary delay or  
26 increase in the cost of the proceeding; or

27 (3) failure to obey an order of the Commissioners, the Hearings Director, or the  
28 examiner.

29 (b) The order imposing sanctions may:

30 (1) disallow any further discovery of any kind or of a particular kind by the sanctioned  
31 party;

1 (2) require the party, the party's authorized representative, or both to obey the discovery  
2 order;

3 (3) require the party, the party's authorized representative, or both to pay reasonable  
4 expenses, including attorney fees, incurred by reason of the party's noncompliance;

5 (4) direct that the matters for which the discovery order was made shall be deemed  
6 admitted in accordance with the claim of the party obtaining the order;

7 (5) refuse to allow the sanctioned party to support or oppose designated claims or  
8 defenses or prohibit the party from introducing designated matters in evidence;

9 (6) strike pleadings or parts thereof or abate further proceedings until the order is  
10 obeyed;

11 (7) disallow in whole or in part requests for relief by the offending party and exclude  
12 evidence in support of those requests; or

13 (8) dismiss the action or proceeding or any part thereof or render a decision by default  
14 against the sanctioned party.

15 (c) Any order imposing sanctions issued by the examiner or the Hearings Director is subject to  
16 review by an appeal to the Commissioners. The appeal shall be filed with the Docket Services Section,  
17 which will forward the pleading to the Commissioners and the Hearings Director.

18  
19 §1.103. Prehearing and Posthearing Conferences.

20 (a) The Hearings Director or examiner may direct the parties, the parties' authorized  
21 representatives, or both, to appear at a prehearing or posthearing conference to consider the following, as  
22 may be applicable:

23 (1) motions and other preliminary matters relating to the proceeding, including  
24 discovery;

25 (2) settlement of the case or simplification of the issues;

26 (3) amendment of pleadings;

27 (4) admissions or stipulations which will avoid the unnecessary introduction of evidence;

28 (5) limitations on the number of witnesses;

29 (6) time to be allotted to each party for presentation of its direct case or for cross-  
30 examination at the hearing;

31 (7) procedures to be followed at the hearing; and

1 (8) other matters that may aid in the disposition of the proceeding.

2 (b) For any ruling not disclosed on the record, the examiner shall notify the parties in writing of  
3 the disposition of a matter considered at a prehearing or posthearing conference.

4  
5 §1.104. Stipulations.

6 The examiners will not consider any stipulation or agreement unless it is in writing and signed by  
7 the parties or their authorized representatives, or dictated into the record during the course of the  
8 proceeding. This section does not limit a party's ability to waive or modify by stipulation any right or  
9 privilege afforded by these rules, unless otherwise precluded by law.

10  
11 §1.105. Continuances.

12 (a) A motion for continuance shall:

13 (1) be in writing and served in accordance with §1.45 of this title (relating to Service in  
14 Protested Contested Cases;

15 (2) be filed not less than five business days prior to the hearing, except for good cause  
16 shown;

17 (3) set forth the specific grounds for which the moving party seeks continuance;

18 (4) make reference to all similar motions filed in the proceeding; and

19 (5) state whether all parties agree with the relief requested.

20 (b) A continuance will not be granted based on the need for discovery if discovery requests have  
21 not previously been served upon the person from whom discovery is sought, except when necessary due  
22 to surprise or discovery of facts or evidence previously undisclosed despite the diligence of the moving  
23 party.

24 (c) The moving party shall confer with all other parties regarding the motion and establish  
25 mutually agreeable calendar dates on which the parties are available.

26 (d) A motion for continuance shall be acted upon by the examiner or Hearings Director, subject  
27 to Commission review.

28 (e) If the motion is filed less than five business days prior to the hearing, the moving party shall  
29 state good cause for the failure to timely file and immediately notify all parties and the assigned court  
30 reporter of the disposition of the motion.

1 §1.106. Consolidation and Joint Hearings.

2 When two or more applications, petitions, or other proceedings involve common questions of law  
3 or fact, the appropriate division director, the Hearings Director or the examiner may consolidate the  
4 proceedings or direct that there be a joint hearing without formal consolidation and may take other action  
5 to avoid unnecessary costs or delay and to ensure due process.

6  
7 §1.107. Dismissal.

8 The Commissioners or the Hearings Director may dismiss, with or without prejudice, any  
9 proceeding under such conditions and for such reasons as are found to be just and reasonable, including  
10 the following:

- 11 (1) failure to prosecute;  
12 (2) unnecessary duplication of proceedings or res judicata;  
13 (3) withdrawal;  
14 (4) moot questions or obsolete petitions;  
15 (5) lack of jurisdiction; or  
16 (6) if necessary in the interest of justice.

17  
18 §1.108. Place and Nature of Hearings.

19 All hearings shall be open to the public and, except as otherwise required by law, shall be held in  
20 Austin. The Commissioners or the Hearings Director may designate another place of hearing if for good  
21 cause and in the public interest.

22  
23 §1.109. Hearing Procedures.

24 (a) Opening the hearing. The examiner shall call the hearing to order and make a concise  
25 statement of its scope and purposes. All parties shall then enter their appearances. Thereafter, parties  
26 may make motions or opening statements.

27 (b) Order of procedure. Parties shall be permitted to make opening statements, offer direct  
28 evidence, cross-examine witnesses, and present supporting arguments. The party having the burden of  
29 proof shall be entitled to open and close. When several proceedings are heard on a consolidated record or  
30 when the proceeding has been initiated by the Commission, the examiner shall designate who may open  
31 and close. The examiner shall determine at what stage intervenors will be permitted to offer evidence.

1 The examiner may direct that closing arguments be made in writing. The examiner may alter the order of  
2 procedure if necessary for efficient conduct of the hearing.

3 (c) Voir dire. Voir dire examination to evaluate the qualifications of a witness to testify may be  
4 permitted but will not be substituted for cross-examination.

5 (d) Rebuttal. The petitioner, applicant, or complainant may rebut evidence and argument  
6 presented by protestants or intervenors. The examiner may allow additional rebuttal from other parties.

7 (e) Additional evidence. The Commissioners, Hearings Director, or examiner may subpoena  
8 records or may call upon or subpoena for additional evidence on any issue any party, person, or employee  
9 of the Commission who is not assigned to render a decision or to make findings of fact and conclusions  
10 of law for additional evidence on any issue. Additional evidence shall not be admitted without an  
11 opportunity for examination, objection, and rebuttal by all parties.

12  
13 §1.110. Burden of Proof.

14 Generally, the party seeking affirmative relief shall have the burden of proof. An examiner may  
15 reassign the burden of proof and shall serve copies of the decision on all parties. In reassigning the  
16 burden of proof, the examiner may consider:

- 17 (1) the classification of the parties;  
18 (2) the parties' access to information pertinent to the merits of the case;  
19 (3) the party seeking affirmative relief;  
20 (4) the party seeking to change the status quo;  
21 (5) whether a party would be required to prove a negative; and  
22 (6) the nature of the relief that is requested.

23  
24 §1.111. Reporters and Transcripts.

25 (a) Request for transcript. When requested by the Commission, the examiner, or a party, a  
26 certified shorthand reporter shall make a verbatim record and transcript of the hearing.

27 (b) Assessment of costs. The cost of the original transcripts shall be assessed to all parties  
28 equally unless otherwise directed by the examiner or required by law.

29 (c) Charges. The Commission shall approve rates to be charged by reporters for appearances,  
30 original transcripts, and copies. The rates shall not exceed rates authorized by law to be paid to court  
31 reporters in Texas district courts.

1 §1.112. Proceedings by Telephony.

2 (a) The examiner may sua sponte or upon granting the timely written motion of a party order that  
3 all or part of a prehearing or posthearing conference or hearing be conducted by telephony.

4 (b) A party may file a motion to appear at a prehearing or posthearing conference or a hearing by  
5 telephony as follows:

6 (1) The motion shall be in writing, shall be filed with the Docket Services Section and  
7 served in accordance with §1.45 of this title (relating to Service in Protested Contested Cases) not less  
8 than 10 days prior to the proceeding at which the party wishes to appear remotely, and shall include the  
9 pertinent telephone number(s) and/or other connection instructions.

10 (2) If the motion is to conduct only a portion of the proceeding by telephony, the  
11 requesting party shall identify the relevant portion of the proceeding to be conducted by telephony.

12 (3) Any reply to a motion shall be made in writing and shall be filed with the Docket  
13 Services Section and served in accordance with §1.45 of this title within five days of service of the  
14 motion.

15 (4) Upon agreement of the parties or a finding of good cause, the examiner may modify  
16 the times for filing a motion for an appearance by telephony and/or replies to such a motion.

17 (c) Unless a timely objection is filed by another party, the examiner may grant the motion if:

18 (1) the moving party will not present any evidence as part of its direct case other than the  
19 oral testimony of that party or a single party representative; and

20 (2) the motion is to appear by telephony for which the Commission has all necessary  
21 equipment and technology.

22 (d) If a timely objection is filed, the objecting party has the burden of showing how the requested  
23 relief will unduly burden the proceeding or unfairly prejudice the objecting party.

24 (e) If the moving party will present any evidence other than the oral testimony of that party or a  
25 single party representative or requests a method of telephony for which the Commission does not have all  
26 necessary equipment and technology, and no timely objection is filed, the examiner shall consider the  
27 factors in subsection (f) of this section and issue a ruling on the motion. If a timely objection is filed, the  
28 moving party shall have the burden of showing that the requested relief will not unduly burden the  
29 proceeding or unfairly prejudice any party and the examiner shall issue a ruling taking into consideration  
30 the arguments of the parties and the factors in subsection (f) of this section.

31 (f) In considering whether conducting all or part of a prehearing or posthearing conference or

1 hearing by telephony is feasible, the examiner shall ensure that the proceeding will provide due process  
2 and will be fair, and shall take into account the following factors:

- 3 (1) whether a party's request is timely;
- 4 (2) whether all parties to a protested proceeding have agreed in writing to conducting all  
5 or part of the proceeding by telephony;
- 6 (3) equipment and technology constraints;
- 7 (4) the number of parties;
- 8 (5) the number of witnesses;
- 9 (6) the number and type of exhibits;
- 10 (7) the distance of the parties or witnesses from Austin;
- 11 (8) the nature of the hearing;
- 12 (9) the testimony to be offered; and
- 13 (10) any other pertinent factors which may affect the proceeding.

14 (g) The examiner shall issue a ruling within a reasonable time period prior to the proceeding  
15 stating whether the proceeding will be conducted, in whole or in part, by telephony and serve prompt  
16 written notice of the ruling on all parties.

17 (h) The Commission may consider the following events to constitute a failure to appear and  
18 grounds for default or dismissal:

- 19 (1) failure to connect or answer for more than 10 minutes after the scheduled time for the  
20 proceeding;
- 21 (2) failure to be ready to proceed with the proceeding after 10 minutes of the scheduled  
22 time; and
- 23 (3) a party's intentional disconnection.

24 (i) In the event of accidental disconnection of one or more parties to the proceeding or other  
25 technical issues, the examiner shall immediately recess the hearing and attempt to re-establish the  
26 connection or connections.

27  
28 SUBCHAPTER H. DECISION.

29  
30 §1.121. Proposals for Decision.

- 31 (a) In a contested case, if a majority of the Commissioners have not heard the case or read the

1 record, the decision, if adverse to a party other than the Commission, may not be made until:

2 (1) a proposal for decision is served on each party; and

3 (2) an opportunity is afforded to each adversely affected party to file exceptions and  
4 present briefs to the Commission.

5 (b) The proposal for decision must contain a statement of the reasons for the proposed decision  
6 and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the  
7 person who conducted the hearing or by one who has read the record.

8 (c) The parties may waive the requirements of subsections (a) and/or (b) of this section by  
9 written stipulation.

10 (d) The examiner may direct a party to draft and submit proposed findings of fact and  
11 conclusions of law. The examiner may limit the request for proposed findings or conclusions to any  
12 particular issue or issues of fact. The party's proposed findings of fact and conclusions of law shall be  
13 supported by concise and explicit statements of underlying facts developed from the record with specific  
14 record references. If the examiner requires the filing of proposed findings of fact or conclusions of law,  
15 the Commissioners shall rule on each proposed finding and conclusion. If the examiner permits but does  
16 not require a party to submit proposed findings of fact or conclusions of law, a ruling on the proposed  
17 findings or conclusions is not required.

18 (e) When a proposal for decision is issued, a copy of the proposal shall be served promptly on  
19 each party or its authorized representative.

20 (f) An examiner may make clerical amendments or typographical corrections to a previously  
21 served proposal for decision or proposed order without serving the amendment or correction on the  
22 parties or allowing additional exceptions or replies. When substantive amendments are necessary prior  
23 to presentation at conference, an examiner shall serve the amended proposal for decision and proposed  
24 order on the parties and specify the time period for the filing of exceptions and replies. Amendments  
25 adopted by the Commission shall be noted with specificity in the Commission's final order.

26  
27 §1.122. Filing of Exceptions and Replies.

28 (a) Any party may, within 15 days after the date of service of a proposal for decision, file  
29 exceptions to the proposal for decision. Replies to such exceptions may be filed by any other party within  
30 10 days after the deadline for filing such exceptions. Either party may file a case summary with the  
31 party's exceptions or replies.

1 (1) Exceptions and replies shall be filed with the Docket Services Section by hand  
2 delivery, first class, certified or registered mail, or commercial delivery service. The number of copies  
3 filed will be determined by the examiner as stated in the notice to the parties issued with the proposal for  
4 decision. Exceptions, replies, and case summaries may not be filed by fax or email unless permitted by  
5 the examiner or Hearings director.

6 (2) All copies shall be unstapled and three-hole punched for a three-ring binder.

7 (3) The filing party shall serve the exceptions or replies in accordance with §1.45 of this  
8 title (relating to Service in Protested Contested Cases).

9 (b) The examiner, or the parties by agreement with the examiner's approval, may lengthen or  
10 shorten the time periods set out in this section if good cause is shown. A request for extension of time  
11 within which to file exceptions or replies shall be filed with the examiner and copies shall be served by  
12 the party making such a request in accordance with §1.45 of this title. The examiner shall promptly notify  
13 the parties of any action taken and shall grant the request only if good cause is shown.

14 (c) The Commissioners may consider the case as soon as:

15 (1) the time for filing exceptions and replies expires; or

16 (2) the exceptions and replies are filed, if filed before the filing deadline.

17 (d) Additional filings shall not be made and will not be accepted or considered after an item has  
18 been included on a Commission open meeting agenda posted with the Secretary of State unless the filing:

19 (1) exclusively concerns material circumstances or events that arose after the item was  
20 posted; or

21 (2) was requested by the Commissioners, the Hearings Director, or the examiner.

22  
23 §1.123. Commission Action.

24 (a) At an open meeting, the Commissioners may:

25 (1) adopt, modify, or reject the examiner's proposed findings of fact and conclusions of  
26 law in whole or in part;

27 (2) remand the proceeding for further consideration by the same examiner or a different  
28 examiner;

29 (3) direct the examiner to further consider the case with or without reopening the  
30 hearing.

31 (b) If, on remand by the Commissioners, additional evidence is received which results in a

1 substantial change of the examiner's recommendation for final action, an amended proposal for decision  
2 shall be prepared and circulated to the parties, unless a majority of the Commission has held the hearing  
3 or read the record. If an amended proposal for decision is prepared, all parties shall have the right to file  
4 exceptions, replies, and briefs.

5  
6 §1.124. Oral Argument before the Commission.

7 (a) Any party may request oral argument on a matter before the Commissioners by filing the  
8 request with the Docket Services Section as part of a party's exceptions, replies to exceptions, motion for  
9 rehearing, or reply to a motion for rehearing. A party may not orally request the opportunity to make oral  
10 argument at a Commission open meeting.

11 (b) Oral argument may be allowed at the discretion of the Commissioners. Failure of the  
12 Commissioners to grant a request for oral argument shall be deemed denial of the request.

13 (c) The Commissioners may request that parties to any proceeding present oral argument.

14 (d) If the Commissioners will hear oral argument, the Commissioners shall determine the date,  
15 time, and order of the oral argument. The Commissioners may:

16 (1) request that parties focus their arguments on particular issues in the case;

17 (2) determine the sequence in which parties will proceed, and which party, if any, may  
18 close;

19 (3) impose time limits on all speakers;

20 (4) limit or exclude unduly repetitious arguments and presentations;

21 (5) require that one representative present the information and position of closely aligned  
22 persons or entities; and

23 (6) set deadlines for filing additional information or written briefs in the case.

24 (e) Persons who need special equipment or assistance and who have a special request concerning  
25 the presentation of comments or oral argument should contact the secretary of the Commission at least 48  
26 hours prior to the start of the open meeting to ensure that they are provided with the necessary special  
27 equipment or assistance. Failure to make such a request will not preclude a person from providing  
28 comment or oral argument. A special request includes:

29 (1) presentation of video or audio recordings; and/or

30 (2) use of audio or visual aids.

31 (f) The Commissioners will accept unsolicited comments from elected officials when they are

1 acting in their official capacities.

2  
3 §1.125. Interim Orders Entered by the Commissioners.

4 When an interim order is provided for by law, a request for an interim order will be presented to  
5 the Commissioners for consideration at an open meeting. An interim order shall not be considered a final  
6 Commission decision. Interim orders are not appealable and shall not be subject to exceptions or motions  
7 for rehearing, as provided by the APA or the rules in this chapter.

8  
9 §1.126. Final Decisions and Orders.

10 (a) A final decision or final order adverse to any party in a contested case shall be in writing and  
11 shall be signed by two or more Commissioners. Final decisions or final orders shall include findings of  
12 fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be  
13 accompanied by a concise and explicit statement of the underlying facts supporting the findings. If in  
14 accordance with §1.121 of this title (relating to Proposals for Decision) a party submits proposed findings  
15 of fact or conclusions of law as required by the examiner, the decision shall include a ruling or order on  
16 each proposed finding. All parties shall be notified of any decision or order pursuant to subsections (b)  
17 and (c) of this section.

18 (b) When a decision or order in a contested case that may become final under Texas Government  
19 Code, §2001.144 is signed or when an order ruling on a motion for rehearing is signed, the Commission  
20 shall deliver or send a copy of the decision or order to each party in accordance with subsection (c) of  
21 this section. The Commission shall keep a record documenting the provisions of the notice provided to  
22 each party.

23 (c) Methods of notice. The Commission shall notify each party to a contested case of any  
24 decision or order of the Commission in the following manner:

25 (1) personally;

26 (2) if agreed to by the party to be notified, by email to the party's current email address or  
27 fax number of the party's authorized representative, or of the party if the party is not represented; or

28 (3) by first class, certified, or registered mail, or commercial delivery service sent to the  
29 last known address of the party's authorized representative or of the party if the party is not represented.

30  
31 §1.127. Effective Date.

1           A decision or order becomes final as provided in §1.130 of this title (relating to Finality of  
2 Decisions or Orders). The effective date of a decision or order is the date it is signed by a majority of the  
3 Commissioners, unless otherwise stated in the order and subject to a motion for rehearing. The effective  
4 date shall be incorporated into the body of the decision.

5  
6 §1.128. Motions for Rehearing.

7           (a) Motions for rehearing, if filed, must be filed by a party not later than the 25th day after the  
8 decision or order that is the subject of the motion is signed, unless the time for filing the motion for  
9 rehearing has been extended under subsection (e) of this section. A motion for rehearing must identify  
10 with particularity the findings of facts or conclusions of law that are the subject of the complaint and any  
11 evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis  
12 for the claimed error. On filing of the motion for rehearing, copies of the motion shall be served on all  
13 other parties in accordance with §1.45 of this title (relating to Service in Protested Contested Cases).

14           (b) Replies to motions for rehearing must be filed not later than the 40th day after the date the  
15 decision or order that is subject of the motion is signed, or not later than the 10th day after the date a  
16 motion for rehearing is filed if the time for filing the motion for rehearing has been extended by an  
17 agreement or by a written Commission order. On filing of the reply, copies of the reply shall be served on  
18 all other parties in accordance with §1.45 of this title.

19           (c) Motions for rehearing and replies to motions for rehearing may not be filed by fax or email  
20 unless permitted by the examiner or the Hearings director. The number of copies required to be filed will  
21 be determined by the examiner as noted in the notice to the parties issued with the proposal for decision.  
22 All copies shall be unstapled and three-hole punched for a three-ring binder.

23           (d) Commissioners shall act on a motion for rehearing not later than the 55th day after the date  
24 the decision or order that is the subject of the motion is signed or the motion for rehearing is overruled by  
25 operation of law.

26           (e) The deadline for filing a motion for rehearing may be extended as follows:

27           (1) The Commission may, on its own initiative or on the motion of any party for cause  
28 shown, by written order, extend the period of time for filing these motions and replies and for taking  
29 Commission action, provided that the Commission extends the time or takes the action not later than the  
30 10th day after the date the period for filing a motion or reply or taking agency action expires. An  
31 extension shall not extend the period for Commission action beyond the 100th day after the date the

1 decision or order that is the subject of the motion is signed. In the event of an extension, the motion for  
2 rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed  
3 date, on the 100th day after the decision or order that is the subject of the motion is signed;

4 (2) The parties may, by agreement and with the approval of the Commission, provide for  
5 a modification of the time periods provided in this section; or

6 (3) Pursuant to Texas Government Code, §2001.142.

7 (f) A subsequent motion for rehearing is not required after the Commission rules on a motion for  
8 rehearing unless the order disposing of the original motion for rehearing:

9 (1) modifies, corrects, or reforms in any respect the decision or order that is the subject  
10 of the complaint, other than a typographical, grammatical, or other clerical change identified as such by  
11 the agency in the order, including any modification, correction, or reformation that does not change the  
12 outcome of the contested case; or

13 (2) vacates the decision or order that is the subject of the motion and provides for a new  
14 decision or order.

15 (g) A subsequent motion for rehearing required by subsection (f) of this section must be filed not  
16 later than the 25th day after the date the order disposing of the original motion for rehearing is signed.

17  
18 §1.129. Effect of Order Granting Rehearing.

19 An order granting a motion for rehearing vacates the preceding final order. When the  
20 Commission renders a new final decision, a motion for rehearing directed to the new decision is a  
21 prerequisite to appeal.

22  
23 §1.130. Finality of Decisions or Orders.

24 (a) A decision or order in a contested case is final:

25 (1) if a motion for rehearing is not filed on time, on the expiration of the period for filing  
26 a motion for rehearing;

27 (2) if a motion for rehearing is filed on time, on the date:

28 (A) the order denying the motion for rehearing is signed; or

29 (B) the motion is overruled by operation of law;

30 (3) if the Commission finds that an imminent peril to the public health, safety, or welfare  
31 requires immediate effect of a decision or order, on the date the decision or order is signed, provided that

1 the agency incorporates in the decision or order a factual and legal basis establishing an imminent peril to  
2 the public health, safety, or welfare; or

3 (4) on:

4 (A) the date specified in the decision or order for a case in which all parties  
5 agree to the specified date in writing or on the record; or

6 (B) if the agreed specified date is before the date the decision or order is signed,  
7 the date the decision or order is signed.

8 (b) If a decision or order is final under subsection (a)(3) of this section, the Commission shall  
9 recite in the decision or order the finding made under that subsection and the fact that the decision or  
10 order is final and effective on the date signed.

11  
12 §1.131. Administrative Record.

13 The party appealing the Commission's order shall pay to the Commission the cost of preparing  
14 the original or a certified copy of the record prior to it being transmitted to the reviewing court at rates  
15 approved by the Office of the Attorney General of Texas. When more than one party appeals the  
16 Commission's order, the cost of the preparation of the record shall be divided equally among the  
17 appealing parties or as agreed by the parties.

18  
19 SUBCHAPTER I. PERMIT PROCESSING. NO CHANGE

20  
21 SUBCHAPTER J. RULEMAKING.

22 §1.301. Petition for Adoption of Rules.

23 (a) An interested person may petition the Commission requesting adoption of a rule. Petitions  
24 shall be in writing and filed with the Office of General Counsel.

25 (b) Each petition must state the name and address of the petitioner.

26 (c) Each petition shall include:

27 (1) a brief explanation of the proposed rule;

28 (2) the text of the proposed rule prepared in a manner to indicate the words to be added  
29 or deleted from the current text, if any;

30 (3) a statement of the statutory or other authority under which the rule is proposed to be  
31 promulgated; and

1                   (4) a justification for adoption of the rule.

2           (d) For the purposes of this section, an interested person must be:

3                   (1) a resident of this state;

4                   (2) a business entity located in this state;

5                   (3) a governmental subdivision located in this state; or

6                   (4) a public or private organization located in this state that is not a state agency.

7           (e) The Office of General Counsel shall review all petitions for compliance with this section. If  
8 rejected, the petitioner may file a corrected petition that complies with the requirements of this section.

9           (f) Upon receipt of a petition that complies with the requirements of this section, the Office of  
10 General Counsel shall present the petition to the Commissioners with a recommendation on whether a  
11 rulemaking proceeding should be initiated.

12           (g) The Commissioners shall either deny the petition or approve initiation of rulemaking  
13 proceedings in accordance with the APA and these rules. The Commission may modify any proposed  
14 rule to ensure that it conforms to the format of Commission rules, adequately addresses the subject matter  
15 of the petition, and conforms to the filing requirements of the Texas Register.