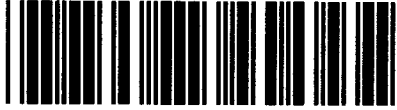




Control Number: 39316



Item Number: 2

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OPEN MEETING COVER SHEET

MEETING DATE: June 17, 2011
DATE DELIVERED: June 10, 2011
AGENDA ITEM NO.: 25
CAPTION: Project No. 39316
ACTION REQUESTED: Discussion and possible action with respect to Rulemaking Proceeding to Amend P.U.C Proc. R. 22.183, Failure to Attend Hearing and Disposition by Default.
(Staff's Proposal for Publication)

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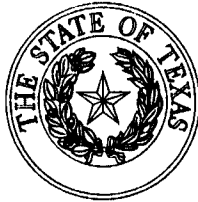
11 JUN 10 PM 1:45
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Commissioner

Brian Lloyd
Executive Director



Rick Perry
Governor

Public Utility Commission of Texas

Date: June 10, 2011

To: Chairman Barry T. Smitherman
Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.

From: Jason Haas, Legal Division

Subject: June 17, 2011 Open Meeting, Agenda Item 25: **Project No. 39316** -
*Rulemaking Proceeding to Amend PUC Proc. R. 22.183, Failure to Attend
Hearing and Disposition By Default* - Staff's Proposal for Publication

Attached for your review and approval is Staff's Proposal for Publication in Project No. 39316, *Rulemaking Proceeding to Amend PUC Proc. R. 22.183, Failure to Attend Hearing and Disposition By Default*. Currently, PUC procedural rules require that a hearing must be held before the presiding officer can issue a default order if the party that does not have the burden of proof fails to appear before the Commission. Staff's proposed amendment would allow the presiding officer to issue a proposal for decision or default final order if the party that does not have the burden of proof fails to timely request a hearing after receiving notice of the opportunity for a hearing. This will reduce the administrative burden on the PUC and SOAH before issuing a default order and allow for the more efficient processing of cases.

If you have any questions, please contact Jason Haas at 936-7295.

1 PROJECT NO. 39316

2 RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION
AMEND PUC PROC. R. 22.183, §
FAILURE TO ATTEND HEARING § OF TEXAS
AND DISPOSITION BY DEFAULT §

3 (STAFF RECOMMENDATION)
4 PROPOSAL FOR PUBLICATION OF AMENDMENT TO § 22.183 FOR
5 CONSIDERATION AT THE JUNE 17, 2011 OPEN MEETING
6
7

8 The Public Utility Commission of Texas (commission) proposes amending § 22.183, relating to
9 Failure to Attend Hearing and Disposition by Default. The proposed amendment will allow the
10 presiding officer to issue a default order if the party that does not bear the burden of proof fails to
11 respond to the notice for an opportunity for hearing. Currently, §22.183 allows disposition by
12 default only if a hearing is held and the party fails to appear for the hearing. Project Number
13 39316 is assigned to this proceeding.

14
15 Jason Haas, Legal Division, has determined that for each year of the first five-year period the
16 amendment is in effect there will be no fiscal implications for state or local government as a
17 result of enforcing or administering the section. Mr. Haas has determined that for each year of
18 the first five years the amendment is in effect the public benefit anticipated as a result of
19 enforcing the amendment will be more efficient processing of proceedings before the
20 commission. Currently, the commission must hold a hearing, and only if the party fails to attend
21 the hearing can the presiding officer issue a default order. The amendment will allow the
22 presiding officer to issue a default order if the party fails to respond to the notice that the party
23 has the opportunity for a hearing, reducing the administrative burden before issuing a default
24 order. There will be no adverse economic effect on small businesses or micro-businesses as a

1 result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required.
2 There is no anticipated economic cost to persons who are required to comply with the
3 amendment as proposed.

4

5 Mr. Haas has also determined that for each year of the first five years the amendment is in effect
6 there should be no effect on a local economy, and therefore no local employment impact
7 statement is required under Administrative Procedure Act (APA), Texas Government Code
8 §2001.022.

9

10 The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to
11 the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's
12 offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas
13 78701. The request for a public hearing must be received within 30 days after publication.

14

15 Initial comments on the amendment may be submitted to the Filing Clerk, Public Utility
16 Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-
17 3326, within 30 days after publication. Sixteen copies of comments on the proposed amendment
18 are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted
19 within 45 days after publication. Comments should be organized in a manner consistent with the
20 organization of the amended rule. The commission invites specific comments regarding the
21 costs associated with, and benefits that will be gained by, implementation of the amended rule.
22 The commission will consider the costs and benefits in deciding whether to adopt the
23 amendment. All comments should refer to Project Number 39316.

1

2 This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code
3 Annotated §14.002 and §14.052 (Vernon 2007 and Supp. 2010) (PURA) and Administrative
4 Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 & Supp. 2010), which
5 require the commission to adopt procedural rules.

6

7 Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and 14.052, and APA
8 §2001.004.

9

1 **~~§22.183. Failure to Attend Hearing and Disposition by Default.~~**

2
3 (a) ~~**Disposition by default**~~**Default.** ~~If a~~A default occurs when a party who does not have the
4 burden of proof fails to appear for~~request a hearing within 30 days after service of notice of an~~
5 opportunity for a hearing,~~the presiding officer may proceed in that party's absence on a default~~
6 basis.~~In the proposal for decision or final order, the factual allegations listed in the notice of~~
7 hearing will be deemed admitted.

8
9 (b) ~~**Notice of default proceeding**~~**Default order.** ~~Any~~Upon default, the presiding officer
10 may issue a default order; - either a proposal for decision or a final order; - disposing of the
11 proceeding without a hearing. A default order requires adequate proof that~~proceeding under this~~
12 section requires adequate proof of the following:

13 (1) ~~Proof that proper notice of hearing was provided to the defaulting party pursuant to~~
14 ~~Tex. Gov't Code, Chapter 2001. Such notice must have~~The notice of the opportunity
15 for a hearing included a disclosure in at least twelve-point, bold-face type, that the
16 factual allegations listed in the notice could be deemed admitted, and the relief sought
17 in the notice of hearing might be granted by default, if the defaulting party fails to
18 appear at the~~timely request a hearing; or~~and

19 (2) ~~If it is not possible to prove actual receipt of notice, a hearing may proceed on a~~
20 default basis if there is credible evidence that~~The notice of opportunity for a hearing~~
21 was sent by certified mail to:

1 (A) ~~the notice of hearing was sent by certified mail, return receipt requested to the~~
2 party's last known address in the commission's records, if the party has a
3 license, certificate, or registration approved by the commission; and

4 (B) ~~the notice of hearing was sent by certified mail, return receipt requested to the~~
5 registered agent for process for the party on file with the Secretary of State, if
6 the party does not have a license, certificate, or registration approved by the
7 commission and is registered with the Secretary of State; or

8 (C) an address for the party identified after reasonable investigation, if
9 subparagraphs (A) and (B) do not apply.

10
11 (c) ~~Admission of evidence~~Exceptions and replies. Any party may file exceptions to a
12 default proposal for decision and replies to exceptions pursuant to § 22.261(d) of this title
13 (relating to Proposals for Decision).~~The party with the burden of proof shall submit evidence to~~
14 ~~the presiding officer in accordance with the requirements of this section.~~

15
16 (d) ~~Motions to set aside a default for rehearing.~~ Any party may file a motion for rehearing
17 to a default final order pursuant to § 22.264 of this title (relating to Rehearing). ~~Not later than 10~~
18 ~~days after the hearing has concluded, if a dismissal, proposal for decision, or a proposed final~~
19 ~~order has not been issued, a party may file a motion to set aside a default and reopen the record.~~
20 ~~The presiding officer may grant the motion, set aside the default and reopen the record for good~~
21 ~~cause shown.~~

22

1 (e) ~~Default proposal for decision or order~~**Late hearing request.** If a party requests a
2 hearing after the deadline to request a hearing, but before a default order has become final, the
3 presiding officer may grant the request for good cause shown.~~Upon the failure of the defaulting~~
4 ~~party to appear at the hearing, the presiding officer may issue a default proposal for decision or~~
5 ~~final order, as applicable. Parties may file exceptions and replies to exceptions to a default~~
6 ~~proposal for decision pursuant to § 22.261 of this title (relating to Proposals for Decision) and~~
7 ~~may file a motion for rehearing to a default final order pursuant to § 22.264 of this title (relating~~
8 ~~to Rehearing).~~

1 This agency hereby certifies that the proposal has been reviewed by legal counsel and
2 found to be within the agency’s legal authority to adopt.

3

4 **ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF _____ 2011 BY THE**
5 **PUBLIC UTILITY COMMISSION OF TEXAS**
6 **ADRIANA A. GONZALES**

7
8