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OPEN MEETING COVER SHEET

MEMORANDUM AND PROPOSAL FOR PUBLICATION

MEETING DATE:	March 7, 2024
DATE DELIVERED:	March 1, 2024
AGENDA ITEM NO.:	#30
CAPTION:	Project No. 56253 – <i>Review of §22.104</i>
DESCRIPTION:	Memo and Proposal for Publication

Public Utility Commission of Texas

Memorandum

TO: Chairman Thomas Gleeson
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson

FROM: Mackenzie Arthur, Rules and Projects

DATE: March 1, 2024

RE: March 7, 2024 Open Meeting – Agenda Item No. 30
Project No. 56253 *Review of §22.104*

Please find attached to this memorandum Commission Staff's proposal for publication in the above-referenced project for consideration at the March 7, 2024, Open Meeting.

Commission Staff proposes amendments to 16 Texas Administrative Code (TAC) §22.104, relating to Motions to Intervene. The purpose of these proposed changes is to facilitate the implementation of PURA §37.057, as amended by Senate Bill (SB) 1076, enacted by the 88th Texas Legislature (R.S.), which reduced the time for the commission to approve new transmission facility certificates of convenience and necessity (CCN) to 180 days and to align §22.104 with other commission rules. Specifically, the proposed amendments will change the intervention deadline from 45 days to 30 days for proceedings involving applications for a CCN for a new transmission facility that is subject to PURA §37.057. Commission Staff's proposal also makes minor clerical and grammatical changes to the rule.

Commission Staff recommends the Commission approve this draft for publication in the *Texas Register*.

PROJECT NO. 56253

REVIEW OF §22.104

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PUBLIC UTILITY COMMISSION

OF TEXAS

**(STAFF RECOMMENDATION)
PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §22.104
FOR CONSIDERATION AT THE MARCH 7, 2024 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §22.104, relating to Motions to Intervene. The amendment will facilitate the implementation of PURA §37.057, as amended by Senate Bill (SB) 1076, enacted by the 88th Texas Legislature (R.S.), which reduced the time for the commission to approve new transmission facility certificate of convenience and necessity (CCN) to 180 days and aligns §22.104 with other commission rules. Specifically, the proposed amendment will change the intervention deadline from 45 days to 30 days for proceedings involving applications for a CCN for a new transmission facility that is subject to PURA §37.057. Commission Staff's proposal also makes minor clerical and grammatical changes to the rule. Project number 56253 is assigned to this proceeding.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation, but will adjust the deadline associated with an existing regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Mackenzie Arthur, Attorney, Rules and Projects Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Public Benefits

Mr. Arthur has also determined that for each year of the first five years the proposed section are in effect the public benefit anticipated as a result of enforcing the section will be consistency for intervention deadlines across commission rules. There will not be any significant anticipated economic costs to persons who are required to comply with the section as proposed.

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by April

11, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by April 11, 2024. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 56253.

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

Statutory Authority

The amendment is proposed under the Public Utility Regulatory Act §14.002 and §14.052, which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and §37.057 which requires the commission to approve or deny an application for a certificate for a new transmission facilities not later than the 180th day after the date the application is filed.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.052; §37.057.

1 **§22.104. Motions to Intervene.**

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3 (a) **Necessity for filing motion to intervene.** Applicants, complainants, and respondents, as
4 defined in §22.2 of this title (relating to Definitions), are necessary parties to proceedings
5 which they have initiated or which have been initiated against them, and need not file
6 motions to intervene ~~in order~~ to participate as parties in such proceedings.

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8 (b) **Time for filing motion.** Motions to intervene ~~must~~shall be filed within 45 days from the
9 date an application is filed with the commission, unless otherwise provided by statute,
10 commission rule, or order of the presiding officer. For an application for a certificate of
11 convenience and necessity (CCN) filed under Public Utility Regulatory Act §39.203(e) or
12 an application for a CCN for a new transmission facility subject to PURA §37.057, motions
13 to intervene ~~must~~shall be filed within 30 days from the date the application is filed with the
14 commission. The motion ~~must~~shall be served upon all parties to the proceeding and upon
15 all persons that have pending motions to intervene.

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17 (c) **Rights of persons with pending motions to intervene.** Persons who have filed motions
18 to intervene ~~shall~~ have all the rights and obligations of a party pending the presiding
19 officer's ruling on the motion to intervene.

20

21 (d) **Late intervention.**

(1) **Criteria for granting late intervention.** A motion to intervene that was not timely filed may be granted by the presiding officer. In acting on a late filed motion to intervene, the presiding officer ~~will~~shall consider:

(A) any objections that are filed;

(B) whether the movant had good cause for failing to file the motion within the time prescribed;

(C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention;

(D) whether any disruption of the proceeding might result from permitting late intervention; and

(E) whether the public interest is likely to be served by allowing the intervention.

(2) **Limitations on intervention.** The presiding officer may impose limitations on the participation of an intervenor to avoid delay and prejudice to the other parties.

(3) **Record and procedural schedule.** Except as otherwise ordered, an intervenor ~~must~~shall accept the procedural schedule and the record of the proceeding as it existed at the time of filing the motion to intervene.

(4) **Intervention as a matter of right.** In an electric licensing proceeding in which a utility did not provide direct notice to an owner of land directly affected by the requested certificate, late intervention ~~will~~shall be granted as a matter of right to such a person, provided that the person files a motion to intervene within 15 days of actually receiving the notice. Such a person should be afforded sufficient time to prepare for and participate in the proceeding.

(5) **Late intervention after ~~p~~Proposal for ~~d~~Decision (PFD) or ~~p~~Proposed ~~o~~Order (PO) issued.** For late interventions, other than those allowed by paragraph (4) of this subsection, the procedures in subparagraphs (A) and- (B) of this paragraph apply:

(A) **Agenda ballot.** Upon receipt of a motion to intervene after the PFD or PO has been issued, the ~~commission's~~Commission Office of Policy Advising and Docket Management-Division (OPDM) ~~will~~shall send separate ballots to each commissioner to determine whether the motion to intervene will be considered at an open meeting. An affirmative vote by one commissioner is required for consideration of a motion to intervene at an open meeting. ~~OPDM~~The Commission Advising and Docket Management Division ~~will~~shall notify the parties by letter whether a commissioner by individual ballot has added the motion to intervene to an open meeting agenda, but will not identify the requesting ~~commissioner~~commissioner(s).

(B) **Denial.** If after five working days of the filing of a motion to intervene, which has been filed after the ~~PFD~~Proposal for Decision or ~~PO~~Proposed Order has been issued, no commissioner has by agenda ballot, placed the motion on the agenda of an open meeting, the motion is deemed denied. If any commissioner has balloted in favor of considering the motion, it ~~will~~shall be placed on the agenda of the next regularly scheduled open meeting or such other meeting as the commissioners may direct by the agenda ballot. In the event two or more commissioners vote to consider the motion, but differ as to the date the motion ~~will~~shall be heard, the motion

1 ~~will~~ shall be placed on the latest of the dates specified by the ballots. The
2 time for ruling on the motion ~~express~~ shall ~~expire~~ three days after the date of
3 the open meeting, unless extended by action of the commission.
4

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

3

4 **ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF MARCH 2024 BY THE**
5 **PUBLIC UTILITY COMMISSION OF TEXAS**
6 **ADRIANA GONZALES**