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OPEN MEETING COVER SHEET

MEMORANDUM AND PROPOSAL FOR PUBLICATION

MEETING DATE:	September 18, 2025
DATE DELIVERED:	September 16, 2025
AGENDA ITEM NO.:	#20
CAPTION:	Project No. 58402 – CY2025 Updates to Chapter 22 – Procedural Rules, Subchapters K-O (Proposal for Publication)
DESCRIPTION:	Memo and Proposal for Publication

Public Utility Commission of Texas

Memorandum

TO: Chairman Thomas Gleeson
Commissioner Kathleen Jackson
Commissioner Courtney Hjaltman

FROM: Mackenzie Arthur, Rules & Projects

DATE: September 16, 2025

RE: September 18, 2025 Open Meeting – Agenda Item No. 20
Project No. 58402 *CY2025 Updates to Chapter 22 Procedural Rules, Subchapters K-O (Proposal for Publication)*

Please find attached to this memorandum Commission Staff's proposal for publication in the above-referenced project for consideration at the September 18, 2025 Open Meeting. Commission Staff proposes amendments to 16 rules and one repeal of a rule in 16 Texas Administrative Code (TAC) Chapter 22 Subchapters K through O. These proposed changes are the third of three omnibus proposals Commission Staff recommends as part of our Chapter 22 rule review, as required by Texas Government Code § 2001.039. These three projects are in addition to a procedural rule package the Commission adopted last year and the ongoing update of our filing rules. The Commission's formal readoption of its full Chapter 22 Rules will remain in Project No. 56574.

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

Guidance for interested commenters on scope of rule review projects:

Project 58402: The scope of this rulemaking project is limited to consideration of the rule amendments and rule repeal proposed in this draft, additional modifications to these rules that are reasonably related to the proposed changes, and other minor and nonsubstantive amendments. Additional substantive amendments to these rules are not within the scope of this proceeding.

Project 56574: This is the Commission's formal rule review project. This is the preferred location for filing new substantive recommendations on our procedural rules that were not already submitted in response to the preliminary call for comments in this project. Comments associated with this project were due September 10, 2025.

Commission Staff greatly appreciates the efforts of commenters to locate their comments in the requested location. This will greatly assist Commission Staff to efficiently process the comments in this rule review effort, which already contemplates amendments to over fifty procedural rules.

PROJECT NO. 58402

**CY2025 UPDATES TO CHAPTER 22 – § PUBLIC UTILITY COMMISSION
PROCEDURAL RULES, §
SUBCHAPTERS K-O § OF TEXAS**

(STAFF RECOMMENDATION)

**PROPOSAL FOR PUBLICATION OF REPEAL AND AMENDMENTS
IN CHAPTER 22 PROCEDURAL RULES**

1 The Public Utility Commission of Texas (commission) proposes 16 amendments and one repeal
2 in the Chapter 22 procedural rules. The scope of this rulemaking proceeding is limited to
3 consideration of the proposed rule amendments, additional modifications to these rules that are
4 reasonably related to the proposed changes, and other minor and nonsubstantive amendments.
5 Substantive amendments to these rules not related to the proposed changes are not within the scope
6 of this proceeding.

7
8 The proposed amendments and repeal are listed in order as follows (Subchapters K-O): Subchapter
9 K, §22.201, Place and Nature of Hearings, §22.204, relating to Transcript and Record, §22.205,
10 relating to Briefs, §22.207, relating to Referral to State Office of Administrative Hearings;
11 Subchapter L, §22.221, relating to Rules of Evidence in Contested Cases, §22.225, relating to
12 Written Testimony and Accompanying Exhibits, §22.228, relating to Stipulation of Facts;
13 Subchapter M, §22.241, relating to Investigations, §22.244, relating to Review of Municipal Rate
14 Actions, §22.246, relating to Administrative Penalties, repeal of §22.248, relating to Retail Public
15 Utilities; Subchapter N, §22.261, relating to Proposals for Decision, §22.262, relating to
16 Commission Action After a Proposal for Decision, §22.263, relating to Final Orders, §22.264,
17 relating to Rehearing Subchapter O, §22.281, relating to Initiation of Rulemaking, and §22.282,
18 relating to Notice and Public Participation in Rulemaking Procedures.

Rule Review Stakeholder Recommendations

On May 3, 2025, commission staff filed a preliminary notice and request for comments which was published in the *Texas Register* on May 17, 2024, at 49 TexReg 3635. . Comments were received from the Alliance for Retail Markets (ARM) and the Texas Energy Association for Marketers (TEAM), collectively (REP Coalition); Entergy Texas, Inc. (Entergy); the Lower Colorado River Authority and LCRA Transmission Services Corporation (LCRA); the Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company, LLC (Oncor); the Steering Committee of Cities Served by Oncor (OCSC); Texas Association of Water Companies, Inc. (TAWC); the Texas Rural Water Association (TRWA); Texas-New Mexico Power Company (TNMP); and Vistra Corporation (Vistra). Based upon filed comments and an internal review by commission staff, the commission proposes the following rule changes.

The proposed changes would amend §22.201, relating to Place and Nature of Hearings, to permit the presiding officer to authorize hearings and prehearing conferences to be conducted virtually and to require hearings held at the State Office of Administrative Hearings to be conducted in accordance with commission rules.

The proposed changes would amend §22.204, relating to Transcript and Record to, following an objection to a change to the record, require any change to the record to only be made as ordered by the presiding officer.

1 The proposed changes would amend §22.205, relating to Briefs, to require briefs to conform with
2 the formatting requirements of §22.72, relating to Form Requirements for Documents Filed with
3 the Commission, specify page number limitations with and without attachments, authorize the
4 presiding officer to require parties to address certain issues or address issues in a specific order or
5 format, and provide information regarding legal authorities that are not readily accessible by the
6 commission.

7
8 The proposed changes would amend §22.207, relating to Referral to State Office of Administrative
9 Hearings to specify that the utility division of SOAH will conduct prehearing conferences and
10 hearings related to contested cases before the commission, other than a prehearing conference
11 conducted by a commission administrative law judge or a hearing conducted by one or more
12 commissioners.

13
14 The proposed changes would amend §22.221, relating to Rules of Evidence in Contested Cases to
15 specify that testimony and responses to requests for information by an opposing party that an
16 intervenor or commission staff plans to introduce as part of its direct case must be filed at the time
17 the intervenor or commission staff files its written direct testimony. The proposed changes
18 eliminate the requirement for the presiding officer to establish a date for filing of deposition
19 testimony and requests for information that an applicant plans to introduce as part of its direct case.

20 The proposed changes remove the requirement for deposition testimony and responses to requests
21 for information that a party plans to introduce in support of its rebuttal case to be filed at the time
22 the party files its written rebuttal testimony. The proposed changes also require utilities that file
23 an application for a CCN or an amendment to a CCN for a new electric transmission facility to file

1 written testimony and exhibits supporting its direct case on the same date that the application is
2 filed with the commission. Additionally, the proposed changes specify that, for any contested case
3 that is not a major rate proceeding nor a CCN or CCN amendment proceeding for an electric
4 transmission facility, the prefiling of written testimony and exhibits at the time the filing is made
5 is not required unless otherwise required by statute or rule. The proposed changes clarify that a
6 witness must submit to cross-examination, clarifying questions, redirect examination, and recross-
7 examination, unless the right to cross-examine the witness is waived by all parties and accepted
8 by the presiding officer. The proposed changes also authorize the presiding officer to allow the
9 substitution of a witness or voir dire examination where appropriate.

10
11 The proposed changes would amend §22.225, relating to Written Testimony and Accompanying
12 Exhibits, to clarify that the requirement to file deposition testimony and responses to requests for
13 information by an opposing party that is planned to be introduced as part of a direct case with
14 written direct testimony applies to intervenors or commission staff. The proposed changes also
15 entail clarifications regarding objections to rebuttal testimony, certain requirements for prefiled
16 written testimony and exhibits for direct cases involving certificate of convenience and necessity
17 (CCN) applications or CCN amendments, prefiled testimony requirements for contested cases that
18 are neither major rate proceedings nor CCN or CCN amendment proceedings, and waiver of the
19 right to cross-examine witnesses.

20
21 The proposed changes would amend §22.228, relating to Stipulation of Facts, to revise the term
22 “settlement” with the term “stipulation.”

23

1 The proposed changes would amend §22.241, relating to Investigations to specify that the
2 commission may at any time institute formal investigations on its own motion, or the motion of
3 commission staff, into any matter within the commission's jurisdiction.

4
5 The proposed changes would amend §22.244, relating to Review of Municipal Electric Rate
6 Actions, to clarify references to the commission's Office of Policy and Docket Management.

7
8 The proposed changes would amend §22.246, relating to Administrative Penalties to authorize a
9 notice of violation or continuing violation to be given by e-mail as an alternative to certified mail
10 and, if such an e-mail does not exist, for the commission executive director or their designee to
11 make reasonable efforts to notify the person who is alleged to have committed the violation. The
12 proposed changes would also revise the calculation of load proportions for the distribution and
13 disgorgement of excess revenue. Additionally, if the commission determines that wholesale
14 electric market participants other than those specified by rule are affected by excess revenues, or
15 a different distribution method of such revenues is appropriate, the revisions authorize the
16 commission to require the independent organization to distribute excess revenues to affected
17 wholesale market participants using a different distribution method in the same or subsequent
18 proceeding.

19
20 The proposed changes would amend §22.261, relating to Proposals for Decision to authorize
21 commission counsel, in addition to the presiding officer, to establish a deadline for submitting
22 proposed corrections or clarifications and to direct or authorize parties to draft and submit
23 proposed findings of fact and conclusions of law. The proposed changes would also authorize

1 commission counsel or the presiding officer to specify a time period in which parties may file
2 exceptions to a proposal for decision. The proposed changes would limit replies to be filed in
3 response to filed exceptions. The proposed changes also authorize commission counsel or the
4 presiding officer to require issues be addressed in a specified order or according to a specified
5 format and, for good cause shown, to allow additional time to file exceptions or replies.

6
7 The proposed changes would amend §22.262, relating to Commission Action After a Proposal for
8 Decision to extend the deadline to file a request for oral argument with the commission from 3:00
9 PM to 5:00 PM seven days before the open meeting at which the commission is scheduled to
10 consider the case.

11
12 The proposed changes would amend §22.263, relating to Final Orders, to clarify that final order
13 notification requirements will follow the Texas Administrative Procedure Act and §22.74, relating
14 to Service of Pleadings and Documents, to the extent that §22.74 does not conflict with the APA.

15
16 The proposed changes would amend §22.264, relating to Rehearing, to clarify references to the
17 commission's Office of Policy and Docket Management.

18
19 The proposed changes would amend §22.281, relating to Initiation of Rulemaking to clarify that
20 suggested new rules or amendments that do not comply with the requirements of §22.281,
21 including any rulemaking suggestion made in a contested case proceeding, would be construed as
22 policy recommendations and would not be processed as a formal rulemaking petition. The
23 proposed changes would require petitions for rulemaking to be submitted to a general project for

1 petitions for rulemaking and provide that commission staff will open such a project each calendar
2 year and post the control number on the commission's website. The proposed changes would
3 further specify that commission staff may file a memo in the project for rulemaking petitions that
4 establishes comment deadlines for responding to a petition for rulemaking and otherwise
5 establishes a 21-day deadline for comments if such a memo is not filed. The proposed changes
6 would also delete certain requirements related to publication of a rulemaking notice for publication
7 with the Texas Register and explicitly authorizes commission staff, in consideration or
8 development of new rules or amendments to existing rules, to host workshops, publish questions
9 for comment, or draft rules language for comment.

10
11 The proposed changes would amend §22.282, relating to Notice and Public Participation in
12 Rulemaking Procedures replaces the requirement for the solicitation of comments through the
13 Texas Register with a requirement to solicit comments through the commission filing system. The
14 proposed changes would also authorize commission staff to extend comment or public hearing
15 deadlines, request reply comments, and to provide additional comment filing instructions. The
16 proposed changes would authorize commission staff to provide a final recommendation on a
17 proposed rule to be filed in the rulemaking proceeding at least seven days prior to the date on
18 which the commission is scheduled to consider the matter unless another date is specified.
19 Additionally, the revisions would specify that the failure of staff to provide such a final
20 recommendation within seven days prior to the date on which the commission is scheduled to
21 consider the matter does not preclude the commission from considering the recommendation or
22 taking action in the rulemaking project. The proposed changes remove the requirement for
23 commission staff to notify all commenters on a proposed rule of the filing of staff's final

1 recommendation. The proposed changes also authorize commission staff to withdraw a rule on its
2 own motion if necessary to facilitate the expeditious republication of proposed amendments to that
3 rule.

4
5 The proposed changes would make minor and conforming changes to the aforementioned rules
6 and to §22.225, relating to Written Testimony and Accompanying Exhibits; §22.244, relating to
7 Review of Municipal Rate Actions; §22.263, relating to Final Orders; and §22.264, relating to
8 Rehearing.

9
10 ***Growth Impact Statement***

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

14 (1) the proposed rules will not create a government program and will not eliminate a government
15 program;

16 (2) implementation of the proposed rules will not require the creation of new employee positions
17 and will not require the elimination of existing employee positions;

18 (3) implementation of the proposed rules will not require an increase and will not require a decrease
19 in future legislative appropriations to the agency;

20 (4) the proposed rules will not require an increase and will not require a decrease in fees paid to
21 the agency;

22 (5) the proposed rules will not create a new regulation;

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

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

and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed 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

Davida Dwyer, Deputy Director, Office of Policy and Docket Management, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Dwyer has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient and clear rules of practice and procedure for matters before the commission. There will be probable economic costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

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; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §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 November 14, 2025. 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 November 15, 2025. **Comments must be organized by rule section in sequential order, and each comment must clearly designate which section is being commented on.** The commission invites specific comments regarding the effects of the proposed rule, including the costs associated with, and benefits that will be gained by the proposed amendments and repeal. The commission also requests any data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The commission will consider the information submitted by commenters and the costs and benefits of implementation in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 58402.

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 proposed amendments and repeal are proposed for publication under PURA § 14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002 and PURA §14.052 and Texas Water Code § 13.041(b), which provide the commission with the authority to adopt and enforce rules reasonably required in the exercise of

its powers and jurisdiction, including rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

For rules relating to Evidence and Exhibits in Contested Cases under Subchapter L §§22.221-22.228

Amended §§22.221-228 are proposed under Texas Government Code, Subchapter D § 2001.081-103 which govern the usage of and procedures for evidence, witnesses and discovery for contested cases held at agencies of the State of Texas.

For rules relating to Hearings under Subchapter K §§22.201-22.207

Amended §§22.201-22.207 are proposed under Texas Government Code Chapter 2001, Subchapter C §§2001.051-2001.062 which establish minimum standards of uniform practice and procedure for contested cases held at agencies of the State of Texas.

§22.207, relating to Referral to State Office of Administrative Hearings

Amended §22.207 is also proposed under PURA §15.023 which provides the commission with the authority to assess and impose an administrative penalty against a regulated person that violates PURA, or a rule or order adopted by the commission in accordance with PURA.

§22.241, relating to Investigations

Amended §22.241 is proposed under PURA §12.201 which requires the commission to prepare and publicize information of public interest describing the functions of the commission and the

commission's procedures by which a complaint is filed with and resolved by the commission. PURA §12.201 also requires the commission to, by rule, establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. Amended §22.241 is also proposed under PURA § 15.051 which authorizes an affected person to complain to the regulatory in writing by a public utility in violation or claimed violation of a law that the regulatory authority has jurisdiction to administer or of an order, ordinance, or rule of the regulatory authority, and requires the commission to, for a reasonable period preserve information about each complaint filed with the commission that the commission has authority to resolve. Amended §22.241 is also proposed under PURA § 17.157 which authorizes the commission to resolve disputes between a retail customer and a billing utility, service provider, telecommunications utility, retail electric provider, or electric utility, including the investigation of alleged violations.

§22.244, relating to Review of Municipal Rate Actions

Amended §22.244 is proposed under PURA Chapter 33, Subchapter C §§33.051-33.055 which governs the appeal of municipal ratemaking orders to the commission.

§22.246, relating to Administrative Penalties

Amended §22.246 is proposed under PURA Chapter 15, Subchapter B §15.021-15.033 and Texas Water Code Chapter 13, Subchapter K §§13.411-13.419 which collectively establish the commission's enforcement authority to enjoin, investigate, or require compliance from a person or entity in violation or alleged violation of statute or commission rules, including the commission's authority to impose and assess administrative penalties.

§22.248, relating to Retail Public Utilities

Amended §22.248 is repealed in accordance with HB 1600 (83R), SB 567 (83R) and Texas Water Code Chapter 13 which transferred regulatory jurisdiction of the rates, operations, and services of retail public utilities from the Texas Commission on Environmental Quality to the commission.

§22.261, relating to Proposals for Decision and §22.262, relating to Commission Action After a Proposal for Decision

Amended §22.261 and §22.262 are proposed under Texas Government Code § 2001.062 which governs the requirements and procedures for a state agency to examine the record in a contested case and issue proposals for decision.

For rules relating to Decision and Orders under Subchapter N §§22.261-22.264

Amended §§22.261-22.264 are proposed under Texas Government Code Chapter 2001, Subchapter F §§2001.141-2001.147 which establish the requirements and procedures, including notice obligations, associated with the issuance of final decisions and orders by a state agency in a contested case, including the procedures for prerequisites to appeal and requirements for motions for rehearing.

§22.281, relating to Initiation of Rulemaking and §22.282, relating to Notice and Public Participation in Rulemaking Procedures.

1 Amended §22.281 and §22.282 are proposed under Texas Government Code §§2001.004-007 and
2 Subchapter B §§2001.021-2001.041 which establish general rulemaking requirements and
3 procedures, including notice obligations, for agencies of the State of Texas

4
5 Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas
6 Water Code § 13.041(b); PURA §12.201, §15.051, §17.157; PURA Chapter 15, Subchapter B
7 §15.021-15.033 and Texas Water Code Chapter 13, Subchapter K §§13.411-13.419; PURA
8 Chapter 33, Subchapter C §§33.051-33.055; Texas Government Code Chapter 2001, §§2001.004-
9 007 and Subchapter B §§2001.021-2001.041, Subchapter C §§2001.051-2001.062, Subchapter D
10 § 2001.081-103, Subchapter F §§2001.141-2001.147; and HB 1600 (83R) and SB 567 (83R) and
11 Texas Water Code Chapter 13

1 **§22.201. Place and Nature of Hearings.**

2
3 (a) Commission-held hearings. All commission-held hearings will be held in person and in
4 Austin, unless the commission determines that it is in the public interest to hold a hearing
5 elsewhere or virtually. The presiding officer may, by written order, authorize a prehearing
6 conference to be conducted virtually.

7
8 (b) Hearings held at SOAH. A hearing held at SOAH will be conducted in accordance with
9 commission rules.

10
11 ~~All evidentiary hearings shall be held in Austin, unless the commission determines that it is~~
12 ~~in the public interest to hold a hearing elsewhere. The commission may, when it is in the public~~
13 ~~interest, hold regional hearings to obtain public comment.~~

1 **§22.204. Transcript and Record.**

2
3 (a) **Preparation of Transcript.** When requested by any party to a proceeding, a stenographic
4 record of all proceedings before a presiding officer in any prehearing conference or
5 hearing, including all evidence and argument, ~~must~~shall be made by an official reporter
6 appointed by the commission. It is the responsibility of the party desiring the stenographic
7 record to arrange for the official reporter to be present.

8
9 (b) **Purchase of Copies.** A party may purchase a copy of the transcript from the official
10 reporter ~~at rates set by the commission.~~

11
12 (c) **Corrections to Transcript.** Proposed written corrections of purported errors in a transcript
13 ~~must~~shall be filed and served on each party of record, the official reporter, and the presiding
14 officer within a reasonable time after the discovery of the error. The presiding officer may
15 establish time limits for proposing corrections. If no party objects to the proposed
16 corrections within 12 days after filing, the presiding officer may direct that the official
17 reporter correct the transcript as appropriate. In the event that the presiding officer or a
18 party disagrees on suggested corrections, the presiding officer may hold a post-hearing
19 conference and take evidence and argument to determine whether, and in what manner, the
20 record ~~must~~shall be changed. Following an objection to a change to the record, any change
21 to the record may only be made as ordered by the presiding officer.

22
23 (d) **Filing of Transcript and Exhibits.** The court reporter ~~must~~shall serve the transcript and
24 exhibits in a proceeding on the presiding officer at the time the transcript is provided to the
25 requesting party. The presiding officer ~~will~~shall maintain the transcript and exhibits until
26 they are filed with Central Records~~the commission filing clerk~~. If no court reporter is
27 requested by a party, the presiding officer ~~will~~shall maintain the official record and exhibits
28 until they are filed with Central Records~~the commission filing clerk~~. The original record
29 and exhibits ~~must~~shall be filed with Central Records~~the commission filing clerk~~ promptly
30 after issuance of a proposal for decision.

31

1 (e) **Contents of Record.** The record in a contested case comprises those items specified in the
2 APA.

3

4

1 **§22.205. Briefs.**

2
3 (a) Briefs must conform, where practicable, to the requirements established for formatting
4 pleadings in this chapter, including requirements for citations in § 22.72 (relating to Form
5 Requirements for Documents Filed with the Commission).

6 (1) Unless the presiding officer or commission counsel provides otherwise, briefs must
7 not exceed 35 pages including citations without attachments.

8 (A) Briefs may include up to an additional 40 pages of attachments, but may not
9 exceed a total of 75 pages with citations and attachments.

10 (B) Briefs in excess of ten pages must contain a table of contents with page
11 numbers stated.

12 (2) The presiding officer may require parties to address certain issues or address issues
13 in a specific order or format.

14
15 (b) If a legal authority cited in the briefs is not readily accessible, a copy of the legal authority
16 must be provided upon request. Such legal authorities may include slip opinions,
17 unpublished opinions, memorandum opinions, or documents from other jurisdictions that
18 are not readily accessible to the commission.

19
20 ~~Briefs shall conform, where practicable, to the requirements set forth for formatting pleadings in~~
21 ~~this chapter. Briefs in excess of ten pages shall contain a table of contents with page~~
22 ~~numbers stated. The presiding officer may require parties to address certain issues, or~~
23 ~~address issues in a specific order or format. If the legal authority cited in the briefs is not~~
24 ~~contained in the commission library, a copy of the legal authority shall be provided at the~~
25 ~~time the brief is filed~~

1 **§22.207. Referral to State Office of Administrative Hearings.**

2
3 (a) ~~The utility division of SOAH will~~ ~~the State of Office of Administrative Hearings shall~~
4 conduct prehearing conferences and hearings related to contested cases before the
5 commission, other than a prehearing conference conducted by a commission administrative
6 law judge or a hearing conducted by one or more commissioners.

7 (1) ~~The~~ ~~At the time SOAH receives jurisdiction of a proceeding, the~~ commission
8 will ~~shall~~ provide to the SOAH administrative law judge a list of issues or areas that
9 must be addressed.

10 (2) ~~At any time, In addition,~~ the commission may identify and provide to the SOAH
11 administrative law judge ~~at any time~~ additional issues or areas that must be
12 addressed. The commission will ~~shall~~ send a request for setting or hearing, or
13 request for assignment of SOAH administrative law judge to SOAH in sufficient
14 time to allow resolution of the proceeding prior to the expiration of any
15 jurisdictional deadline.

16
17 (b) ~~To~~ ~~In order to~~ give the commission sufficient time to consider a proposal for decision, the
18 commission may specify the length of time prior to the expiration of a jurisdictional
19 deadline by which the SOAH administrative law judge will ~~shall~~ issue a proposal for
20 decision.

21

1 **§22.221. Rules of Evidence in Contested Cases.**

2

3 (a) **Texas rulesRules of civil-evidence apply.** The Texas Rules of ~~Civil~~-Evidence as applied
4 in nonjury civil cases in the courts of Texas ~~must~~shall be followed in contested cases.
5 Irrelevant, immaterial, or unduly repetitious evidence ~~must~~shall be excluded. When
6 necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of
7 ~~Civil~~-Evidence, evidence not admissible under those rules may be admitted, except where
8 precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons
9 in the conduct of their affairs.

10

11 (b) **Rules of privilege and exemption.** The rules of privilege and exemption recognized by
12 Texas law ~~shall~~-apply.

13

14 (c) **Objections.** Objections to evidentiary offers may be made, ~~must~~shall be ruled upon, and
15 ~~must~~shall be noted in the record. Failure to object to evidence at the time it is offered
16 constitutes a waiver of all objections to the evidence.

17

18 (d) **Formal exceptions not required.** Formal exceptions to rulings made by the presiding
19 officer during a hearing are not required. It ~~is~~shall be sufficient that the party notified the
20 presiding officer of the grounds for the objection and desired ruling.

21

22 (e) **Public comment.** Public comment is not part of the evidentiary record of a contested case.

23

24

§22.225. Written Testimony and Accompanying Exhibits.

(a) Prefiling of testimony, exhibits, and objections.

- (1) Unless otherwise ordered by the presiding officer upon a showing of good cause, the written direct and rebuttal testimony and accompanying exhibits of each witness ~~must~~shall be prefiled. Deposition testimony and responses to requests for information by an opposing party that ~~an intervenor or commission staff~~a party plans to introduce as part of its direct case ~~must~~shall be filed at the time the ~~intervenor or commission staff~~party files its written direct testimony. ~~The presiding officer shall establish a date for filing of deposition testimony and requests for information that an applicant plans to introduce as part of its direct case.~~
- ~~(2) Deposition testimony and responses to requests for information that a party plans to introduce in support of its rebuttal case shall be filed at the time the party files its written rebuttal testimony.~~
- ~~(2)(3)~~ A party is not required to prefile documents it intends to use during cross-examination except that the presiding officer may require parties to identify documents that may be used during cross examination if it is necessary for the orderly conduct of the hearing.
- ~~(3)(4)~~ Objections to prefiled direct or rebuttal testimony and exhibits, including deposition testimony and responses to requests for information, ~~must~~shall be filed on dates established by the presiding officer and ~~will~~shall be ruled upon before or at the time the prefiled testimony and accompanying exhibits are offered. ~~Objections to prefiled rebuttal testimony shall be filed according to the schedule ordered by the presiding officer.~~
- ~~(4)(5)~~ Nothing in this section ~~precludes~~shall preclude a party from using discovery responses in its direct or rebuttal case even if such responses were not received prior to the applicable deadline for prefiling written testimony and exhibits.
- ~~(5)(6)~~ The prefiled testimony schedule in a major rate proceeding ~~must~~shall be established as set out in this subsection.

- 1 (A) Any utility filing an application to change its rates in a major rate
2 proceeding ~~mustshall~~ file the written testimony and exhibits supporting its
3 direct case on the same date that such statement of intent to change its rates
4 is filed with the commission. As set forth in §22.243(b) of this title (relating
5 to Rate Change Proceedings), the prefiled written testimony and exhibits
6 ~~mustshall~~ be included in the rate filing package filed with the application.
- 7 (B) Other parties in the proceeding ~~mustshall~~ prefile written testimony and
8 exhibits according to the schedule set forth by the presiding officer. Except
9 for good cause shown or upon agreement of the parties, ~~the~~ commission
10 staff representing the public interest may not be required to file earlier than
11 seven days prior to hearing.
- 12 (C) The presiding officer ~~willshall~~ establish dates for filing of rebuttal
13 testimony.

14 (6) Utilities filing an application for a certificate of convenience and necessity (CCN),
15 or an amendment to a CCN, for a new electric transmission facility must file written
16 testimony and exhibits supporting its direct case on the same date that the
17 application is filed with the commission.

18 (7) For any contested case that is not a major rate proceeding nor a CCN or CCN
19 amendment proceeding for an electric transmission facility, the applicant is not
20 required to prefile written testimony and exhibits at the time the filing is made
21 unless otherwise required by statute or rule.

22 ~~(7) For electric and telecommunication rate proceedings, the presiding officer shall~~
23 ~~establish a prefiled testimony schedule for PURA chapter 36, subchapter D or~~
24 ~~chapter 53, subchapter D rate cases and for cases other than major rate proceedings.~~
25 ~~In proceedings that are not major rate proceedings, notice of intent proceedings,~~
26 ~~applications for certificates of convenience and necessity for new generating plant,~~
27 ~~or applications for fuel reconciliations, the applicant is not required to prefile~~
28 ~~written testimony and exhibits at the time the filing is made unless otherwise~~
29 ~~required by statute or rule.~~

30 ~~(8) For all water and sewer matters filed under TWC chapters 12 or 13, the presiding~~
31 ~~officer shall establish a prefiled testimony schedule. The applicant is not required~~

~~to prefile written testimony and exhibits at the time the filing is made unless otherwise required by statute or rule.~~

~~(9) Utilities filing an application for construction of a transmission facility that has been designated by the Electric Reliability Council of Texas (ERCOT) independent system operator as critical to the reliability of the ERCOT system and to be considered on an expedited basis, shall file written testimony and exhibits supporting its direct case on the same date that the application is filed with the commission. This requirement shall also apply to transmission lines located in other reliability councils or administered by other independent system operators provided such councils have a process for designation of critical transmission lines.~~

~~(8)(10)~~ The times for prefiling set out in this section may be modified by the presiding officer upon a showing of good cause.

~~(9)(11)~~ Late-filed testimony may be admitted into evidence if the testimony is necessary for a full disclosure of the facts and admission of the testimony into evidence would not be unduly prejudicial to the legal rights of any party. A party that intends to offer late-filed testimony into evidence mustshall, at the earliest opportunity, inform the presiding officer, who willshall establish reasonable procedures and deadlines regarding such testimony.

(b) **Admission of prefiled testimony.** Unless otherwise ordered by the presiding officer, direct and rebuttal testimony mustshall be received in written form. The written testimony of a witness on direct examination or rebuttal, either in narrative or question and answer form, may be received as an exhibit and incorporated into the record without the written testimony being read into the record. A witness who is offering written testimony mustshall be sworn and mustshall be asked whether the written testimony is a true and accurate representation of what the testimony would be if the testimony were to be given orally at the time the written testimony is offered into evidence. The witness mustshall submit to cross-examination, clarifying questions, redirect examination, and recross-examination, unless the right to cross-examine the witness is waived by all parties and accepted by the presiding officer. The presiding officer may allow substitution of a witness or voir dire examination where appropriate. Written testimony isshall be subject to the

1 same evidentiary objections as oral testimony. Timely prefilings of written testimony and
2 exhibits, if required under this section or by order of the presiding officer, is a prerequisite
3 for admission into evidence.
4

- 5 (c) **Supplementation of prefiled testimony and exhibits.** Oral or written supplementation
6 of prefiled testimony and exhibits may be allowed prior to or during the hearing provided
7 that the witness is available for cross-examination. The presiding officer may exclude such
8 testimony if there is a showing that the supplemental testimony raises new issues or
9 unreasonably deprives opposing parties of the opportunity to respond to the supplemental
10 testimony. The presiding officer may admit the supplemental testimony and grant the
11 parties time to respond.
12

- 13 (d) **Tender and service.** On or before the date the prefiled written testimony and exhibits are
14 due, parties must file such testimony and exhibits in accordance with the requirements of
15 shall file the number of copies required by §22.71 of this title (relating to Commission
16 Filing Requirements and Procedures~~Filing of Pleadings, Documents and Other Materials)~~,
17 or other commission rule or order, of the testimony and exhibits with Central Records and
18 must~~the commission filing clerk and shall~~ serve a copy upon each party.
19

- 20 (e) **Withdrawal of evidence.** Any exhibit offered and admitted in evidence may not be
21 withdrawn except with the agreement of all parties and approval of the presiding officer.
22

1 **§22.228. Stipulation of Facts.**

2
3 No stipulation of facts between the parties or their authorized representatives will~~shall~~ be
4 admitted into evidence unless it has been reduced to writing and signed by the parties or their
5 authorized representatives or, upon leave of the presiding officer, dictated into the record during
6 a prehearing conference or hearing at which all parties to the agreement are present, have waived
7 the right to be present, or have received reasonable notice that the stipulation~~settlement~~ will be
8 read into the record at that prehearing conference or hearing.

1 **§22.241. Investigations.**

2 **(a) Commission investigations.**

3 (1) The commission may at any time institute formal investigations on its own motion,
4 or the motion of commission staff, into any matter within the commission's
5 jurisdiction~~the commission's staff~~. Orders and pleadings initiating investigations
6 will~~shall~~ specify the matters to be investigated, and will~~shall~~ be served upon the
7 person being investigated.

8 (2) Notice of commission-instituted investigations of specific persons subject to
9 commission regulation and investigative proceedings affecting such persons as a
10 class will be served upon all affected persons under investigation. The commission
11 will~~shall~~ post notice with the *Texas Register* of prehearing conferences and
12 hearings. The presiding officer may require additional notice.

13 **(b) Show cause orders in complaint proceeding.** The presiding officer, either upon his or
14 her own motion or upon receipt of written complaint, may at any time after appropriate
15 notice has been given, summon any person within the commission's jurisdiction to
16 appear in a public hearing and show cause why such person should not be compelled to
17 comply with any applicable statute, rule, regulation, or general order with which the
18 person is allegedly not in compliance. All hearings in such show cause proceedings
19 will~~shall~~ be conducted in accordance with the provisions of this chapter.

20
21 **(c) No limitations.** Nothing in this section limit~~shall be construed to limit~~ the commission's
22 authority to investigate persons subject to the commission's jurisdiction
23
24

1 **§22.244. Review of Municipal Electric Rate Actions.**

2
3 (a) **Contents of petitions.** In addition to any information required by statute, petitions for
4 review of municipal rate actions filed under PURA §33.052 or §§33.101 - 33.104 ~~must~~shall
5 contain the original petition for review with the required signatures and following
6 additional information.

7 (1) Each signature page of a petition ~~must~~shall contain in legible form above the
8 signatures the following:

9 (A) A statement that the petition is an appeal of a specific rate action of the
10 municipality in question;

11 (B) The date of and a concise description of that rate action;

12 (C) A statement designating a specific individual, group of individuals, or
13 organization as the signatories' authorized representative; and

14 (D) A statement that the designated representative is authorized to represent
15 the signatories in all proceedings before the commission and appropriate
16 courts of law and to do all things necessary to represent the signatories in
17 those proceedings.

18 (2) The printed or typed name, telephone number, street or rural route address, and
19 facsimile transmission number, if available, of each signatory ~~must~~shall be
20 provided. Post office box numbers are not sufficient. In appeals relating to PURA
21 §§33.101 - 33.104, the petition ~~must~~shall list the address of the location where
22 service is received if the address differs from the residential address of the
23 signatory.

24
25 (b) **Signatures.** A signature ~~must~~shall be counted only once, regardless of the number of bills
26 the signatory receives. The signature ~~must~~shall be of the person in whose name service is
27 provided or such person's spouse. The signature ~~must~~shall be accompanied by a statement
28 indicating whether the signatory is appealing the municipal rate action as a qualified voter

of that municipality under PURA §33.052, or as a customer of the municipality served outside the municipal limits under PURA §§33.101 - 33.104.

(c) **Validity of petition and correction of deficiencies.** The petition ~~must~~shall include all of the information required by this section, legibly written, for each signature in order for the signature to be deemed valid. The presiding officer may allow the petitioner a reasonable time of up to 30 days from the date any deficiencies are identified to cure any defects in the petition.

(d) **Verification of petition.** Unless otherwise provided by order of the presiding officer, the following procedures ~~must~~shall be followed to verify petitions appealing municipal rate actions filed under PURA §33.052 and §§33.101 - 33.104.

(1) Within 15 days of the filing of an appeal of a municipal rate action, the Office of Policy and Docket Management ~~must~~Commission Advising and Docket Management Division shall send a copy of the petition to the respondent municipality with a directive that the municipality verify the signatures on the petition.

(2) Within 30 days after receipt of the petition from the Office of Policy and Docket Management ~~Commission Advising and Docket Management Division~~, the municipality ~~must~~shall file with the commission a statement of review, together with a supporting written affidavit sworn to by a municipal official.

(3) The period for the municipality's review of the signatures on the petition may be extended by the presiding officer for good cause.

(4) Failure of the municipality to timely submit the statement of review ~~must~~shall result in all signatures being deemed valid, unless any signature is otherwise shown to be invalid or is invalid on its face.

(5) Objections by the municipality to the authenticity of signatures ~~must~~shall be set out in its statement of review and ~~will~~shall be resolved by the presiding officer.

(e) **Disputes.** Any dispute over the sufficiency or legibility of a petition ~~will~~shall be resolved by the presiding officer by interim order.

§22.246. Administrative Penalties.

(a) **Scope.** This section addresses enforcement actions related to administrative penalties or disgorgement of excess revenues only and does not apply to any other enforcement actions that may be undertaken by the commission or ~~the~~ commission staff.

(b) **Definitions.** The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise:

- (1) **Affected wholesale electric market participant** -- An entity, including a retail electric provider (REP), municipally owned utility (MOU), or electric cooperative, that sells energy to retail customers and served load during the period of the violation.
- (2) **Excess revenue** -- As defined in §25.503 of this title (relating to Oversight of Wholesale Market Participants).
- (3) **Executive director** -- The executive director of the commission or the executive director's designee.
- (4) **Person** -- Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.
- (5) **Violation** -- Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), the Texas Water Code (TWC), commission rule, or commission order.
- (6) **Continuing violation** -- Except for a violation of PURA chapter 17, 55, or 64, and commission rules or commission orders adopted or issued under those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.

(c) **Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.**

(1)- Each day a violation continues or occurs is a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2)- The administrative penalty for each separate violation of PURA or of a rule or order adopted under PURA may not exceed the limits established by §25.8 of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers).

(3)- The amount of the administrative penalty must be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts to correct the violation;

(F) adherence to an applicable voluntary mitigation plan approved by the commission under §25.504 of this title (relating to Wholesale Market Power in the Electric Reliability Council of Texas Power Region); and

(G) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.

(d)- Amount of administrative penalty for violations of the TWC or a rule or order adopted under chapter 13 of the TWC.

(1) Each day a violation continues may be considered a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed \$5,000 per day.

(3)- The amount of the penalty must be based on:

- (A) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;
- (B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
- (C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;
- (D) any economic benefit gained through the violations;
- (E) the amount necessary to deter future violations; and
- (F) any other matters that justice requires.

(e)- **Initiation of investigation.** Upon receiving an allegation of a violation or of a continuing violation, the executive director will determine whether an investigation should be initiated.

(f) **Report of violation or continuing violation.** If, based on the investigation undertaken in accordance with subsection (e) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.

(1) **Contents of the report.** The report must state the facts on which the determination is based and a recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the administrative penalty and, if applicable under §25.503 of this title, a recommendation that excess revenue be disgorged.

(2) **Notice of report.**

- (A) Within 14 days after the report is issued, the executive director will give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report. The notice must~~may~~ be given by regular, ~~or~~ certified mail, or email to the mailing address or email address maintained in the commission's records.

If no such addresses exist, the executive director or executive director's designee will make reasonable efforts to notify the person who is alleged to have committed the violation.

(B)- For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, within ten days after the report is issued, the executive director will, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.

(C) The notice must include:

- (i) a brief summary of the alleged violation or continuing violation;
- (ii) a statement of the amount of the recommended administrative penalty;
- (iii) a statement recommending disgorgement of excess revenue, if applicable, under §25.503 of this title;
- (iv) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the administrative penalty, or both the occurrence of the violation or continuing violation and the amount of the administrative penalty;
- (v) a copy of the report issued to the commission under this subsection; and
- (vi) a copy of this section, §22.246 of this title (relating to Administrative Penalties).

(D)- If the commission sends written notice to a person by mail addressed to the person's mailing address as maintained in the commission's records, the person is deemed to have received notice:

- (i) on the fifth day after the date that the commission sent the written notice, for notice sent by regular mail; or
- (ii) on the date the written notice is received or delivery is refused, for notice sent by certified mail.

(g)- **Options for response to notice of violation or continuing violation.**

(1)- **Opportunity to remedy.**

(A)- This paragraph does not apply to a violation of PURA chapters 17, 55, or 64; PURA §35.0021 or §38.075; or chapter 13 of the TWC; or of a commission rule or commission order adopted or issued under those chapters or sections.

(B)- Within 40 days of the date of receipt of a notice of violation set out in subsection (f)(2) of this section, the person against whom the administrative penalty or disgorgement may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent must be evidenced in writing, under oath, and supported by necessary documentation.

(C)- If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no administrative penalty will be assessed against the person who is alleged to have committed the violation.

(D)- If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director will make a determination as to what further proceedings are necessary.

(E)- If the executive director determines that the alleged violation is a continuing violation, the executive director will institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.

(2) **Payment of administrative penalty, disgorged excess revenue, or both.** Within 20 days after the date the person receives the notice set out in subsection (f)(2) of this section, the person may accept the determination and recommended

administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option is selected, the person must take all corrective action required by the commission. The commission by written order will approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue or order a hearing on the determination and the recommended penalty.

(3)- **Request for hearing.** Not later than the 20th day after the date the person receives the notice set out in subsection (f)(2) of this section, the person may submit to the executive director a written request for a hearing on any or all of the following:

- (A) the occurrence of the violation or continuing violation;
- (B) the amount of the administrative penalty; and
- (C) the amount of disgorged excess revenue, if applicable.

(4)- **Failure to respond.** If the person fails to timely respond to the notice set out in subsection (f)(2) of this section, the commission by order will approve the determination and impose the recommended penalty or order a hearing on the determination and the recommended penalty.

(5) **Opportunity to remedy a weather preparedness violation.**

(A)- This paragraph applies to a violation of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections.

(B)- PURA §15.024(c), as written, does not apply to a violation of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections. This paragraph implements PURA §15.024(c), as modified by PURA §15.023(a), §35.0021(g), and §38.075(d), for violations of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections.

(C)- The commission may impose an administrative penalty against an entity regulated under PURA §35.0021 or §38.075 that violates those sections, or a commission rule or order adopted under those sections, except:

- (i) the commission will assess a penalty for a violation of PURA §35.0021, §38.075, or a commission rule adopted under those

1 sections if the entity against which the penalty may be assessed does
2 not remedy the violation within a reasonable amount of time; and,
3 (ii) the commission will not assess a penalty for a violation of PURA
4 §35.0021, §38.075, or a commission rule or order adopted or issued
5 under those sections if the violation was accidental or inadvertent,
6 and the entity against which the penalty may be assessed remedies
7 the violation within a reasonable period of time.

8 (D) For purposes of this paragraph, the following provisions apply unless a
9 provision conflicts with a commission rule or order adopted under PURA
10 §35.0021 or §38.075, in which case, the commission rule or order applies.

11 (i) Not all violations to which this paragraph applies can be remedied.
12 Subparagraph (C)(i) and (ii) of this paragraph do not apply to a
13 violation that cannot be remedied.

14 (ii) For purposes of subparagraph (C)(i) and (ii) of this paragraph, an
15 entity that claims to have remedied an alleged violation and, if
16 applicable, that the alleged violation was accidental or inadvertent
17 has the burden of proving its claim to the commission. Proof that an
18 alleged violation has been remedied and, if applicable, that the
19 alleged violation was accidental or inadvertent must be evidenced in
20 writing, under oath, and supported by necessary documentation.

21 (iii) An entity that remedies a violation that is discovered during an
22 inspection by the independent organization certified under PURA
23 §39.151 for the ERCOT power region prior to the deadline provided
24 to that entity by the independent organization in accordance with
25 PURA §35.0021 or §38.075 is deemed to have remedied that
26 violation in a reasonable period of time.

27 (iv) If the independent organization certified under PURA §39.151 has
28 not provided an entity with a deadline, the executive director will
29 determine whether the deadline can be remedied and, if so, the
30 deadline for remedying a violation within a reasonable period of
31 time. The executive director will provide the entity with written

notice of the violation and the deadline for remedying the violation within a reasonable period of time. This notice does not constitute notice under subsection (f)(2) of this section unless it fulfills the other requirements of that subsection. However, the provisions of subsection (f)(2)(D) of this section apply to notice under this clause.

(v) The executive director will determine if and when a report should be issued to the commission under subsection (f) of this section and will make a determination as to what further proceedings are necessary.

(vi)- If the executive director determines that the alleged violation was not remedied within a reasonable period of time or is a continuing violation, the executive director will issue a report to the commission under subsection (f) of this section and will institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.

(vii)- If the commission determines that the deadline for remedying a violation provided by the independent organization certified under PURA §39.151 or determined by the executive director is unreasonable, the commission will determine what the deadline should have been. The commission will use this updated deadline to determine the applicability of subparagraph (C)(i) and (ii) of this paragraph and, if appropriate, as a factor in determining the magnitude of administrative penalty to impose against the entity for the violation.

(h) **Settlement conference.** A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

(1) If a settlement is reached:

(A) the parties must file a report with the executive director setting forth the factual basis for the settlement;

(B) the executive director will issue the report of settlement to the commission; and

(C) the commission by written order will approve the settlement.

(2) If a settlement is reached after the matter has been referred to ~~SOAH~~the State Office of Administrative Hearings, the matter will be returned to the commission. If the settlement is approved, the commission will issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.

(i) **Hearing.** If a person requests a hearing under subsection (g)(3) of this section, or the commission orders a hearing under subsection (g)(4) of this section, the commission will refer the case to SOAH under §22.207 of this title (relating to Referral to State Office of Administrative Hearings) and give notice of the referral to the person. For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order will assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing, the case will then proceed as set forth in paragraphs (1)-(5) of this subsection.

(1)- The commission will provide the SOAH administrative law judge a list of issues or areas that must be addressed.

(2)- The hearing must be conducted in accordance with the provisions of this chapter and notice of the hearing must be provided in accordance with the Administrative Procedure Act.

(3)- The SOAH administrative law judge will promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

(A)- the occurrence of the alleged violation or continuing violation;

(B)- whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA chapters 17, 55, or 64; of a

commission rule or commission order adopted or issued under those chapters; or of chapter 13 of the TWC; and

(C)- the amount of the proposed administrative penalty and, if applicable, disgorged excess revenue.

(4)- Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A)- determine that a violation or continuing violation has occurred and impose an administrative penalty and, if applicable, disgorged excess revenue;

(B)- if applicable, determine that a violation occurred but that, as permitted by subsection (g)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no administrative penalty will be imposed; or

(C)- determine that no violation or continuing violation has occurred.

(5)- Notice of the commission's order issued under paragraph (4) of this subsection must be provided under the Government Code, chapter 2001 and §22.263 of this title (relating to Final Orders) and must include a statement that the person has a right to judicial review of the order.

(j) **Parties to a proceeding.** The parties to a proceeding under chapter 15 of PURA relating to administrative penalties or disgorgement of excess revenue will be limited to the person who is alleged to have committed the violation or continuing violation and the commission, including the independent market monitor. This does not apply to a subsequent proceeding under subsection (k) of this section.

(k) **Distribution of Disgorged Excess Revenues.** Disgorged excess revenues must be remitted to an independent organization, as defined in PURA §39.151. The independent organization must distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred to be used to reduce costs or fees incurred by retail electric customers. ~~The load of any market participants that are no longer active at the time of the distribution will be removed prior to calculating the load proportions of the affected wholesale electric market participants~~

1 ~~that are still active.~~ However, if the commission determines other wholesale electric
2 market participants are affected or a different distribution method is appropriate, the
3 commission may direct require the independent organization to distribute the excess
4 revenue to affected wholesale market participants using a different distribution method in
5 the same or ~~commission staff to open a subsequent proceeding to address those issues.~~

6 (1)- No later than 90 days after the disgorged excess revenues are remitted to the
7 independent organization, the monies must be distributed to affected wholesale
8 electric market participants active at the time of distribution, or the independent
9 organization must, by that date, notify the commission of the date by which the
10 funds will be distributed. The independent organization must include with the
11 distributed monies a communication that explains the docket number in which the
12 commission ordered the disgorged excess revenues, an instruction that the monies
13 must be used to reduce costs or fees incurred by retail electric customers, and any
14 other information the commission orders.

15 (2)- The commission may require any affected wholesale electric market participants
16 receiving disgorged funds to demonstrate how the funds were used to reduce the
17 costs or fees incurred by retail electric customers.

18 (3)- Any affected wholesale electric market participant receiving disgorged funds that
19 is affiliated with the person from whom the excess revenue is disgorged must
20 distribute all of the disgorged excess revenues directly to its retail customers and
21 must provide certification under oath to the commission.
22

1 **§22.248. Retail Public Utilities. [REPEALED]**

2

1 **§22.261. Proposals for Decision.**

2
3 (a) **Requirement and Contents of Proposal for Decision.** In a contested case, if a
4 majority of the commissioners has not heard the case or read the record, the
5 commission may not issue a final order, if adverse to a party other than the
6 Commission, until a proposal for decision is served on all parties. The proposal for
7 decision ~~will~~shall be prepared by the presiding ~~officer~~officer(s) who conducted the
8 hearing or who have read the record. The proposal for decision ~~will~~shall include a
9 proposed final order, a statement of the reasons for the proposed decision, and
10 proposed findings of fact and conclusions of law in support of the proposed final order.
11 Any party may file exceptions to the proposed decision in accordance with subsection
12 (d) of this section. The presiding officer may supplement or amend a proposal for
13 decision in response to the exceptions or replies submitted by the parties or upon the
14 presiding officer's own motion. Making corrections or minor revisions of a proposal
15 for decision is not considered issuance of an amended or supplemental proposal for
16 decision.

17
18 (b) **Procedures Regarding Proposed Orders.** If the presiding officer's recommendation
19 is not adverse to any party, the recommendation may be made through a proposed
20 order containing findings of fact and conclusions of law. The proposed order ~~must~~shall
21 be served on all parties, and the commission counsel or presiding officer ~~will~~shall
22 establish a deadline for submitting proposed corrections or clarifications.

23
24 (c) **Findings and Conclusions.** The commission counsel or presiding officer may direct
25 or authorize the parties to draft and submit proposed findings of fact and conclusions
26 of law. The commission is not required to rule on findings of fact and conclusions of
27 law that are not required or authorized.

28
29 (d) **Exceptions and Replies.**

30 (1) **Who may file.** Any party may file exceptions to the Proposal for Decision within
31 the time period specified by commission counsel or the presiding officer~~the~~

1 ~~presiding officer~~. If any party files exceptions, the opportunity ~~will~~shall be
2 afforded to all parties to respond within a time period set by the commission
3 counsel or presiding officer. Replies may only be filed in response to filed
4 exceptions.

5 **(2)Presentation.** The presiding officer or commission counsel may require that issues
6 be addressed in a specified order or according to a specified format. Proposed
7 findings and conclusions may be submitted in conjunction with exceptions and
8 replies. The evidence and law relied upon ~~will~~shall be stated with particularity,
9 and any evidence or arguments relied upon ~~will~~shall be grouped under the
10 exceptions or replies to which they relate.

11 **(3)Request for Extension.** A request for extension of time within which to file
12 exceptions or replies ~~must~~shall be filed with Central Records~~the commission~~
13 ~~filing clerk~~ and served on all parties. The presiding officer or commission counsel
14 may allow additional time for good cause shown. If additional time is allowed
15 for exceptions, reasonable additional time ~~will~~shall be allowed for replies.

16

1 **§22.262. Commission Action After a Proposal for Decision.**

2
3 (a) **Commission Action.** The commission may change a finding of fact or conclusion of law
4 made by the administrative law judge or vacate or modify an order issued by the
5 administrative law judge only if the commission:

6 (1) determines that the administrative law judge:

7 (A) did not properly apply or interpret applicable law, commission rules or
8 policies, or prior administrative decisions; or

9 (B) issued a finding of fact that is not supported by a preponderance of the
10 evidence; or

11 (2) determines that a commission policy or a prior administrative decision on which
12 the administrative law judge relied is incorrect or should be changed.

13
14 (b) **Reasons to Be in Writing.** The commission will state in writing the specific reason and
15 legal basis for its determination under subsection (a) of this section.

16
17 (c) **Remand.** The commission may remand the proceeding for further consideration.

18 (1) The commission may direct that further consideration by an administrative law
19 judge be accomplished with or without reopening the hearing and may limit the
20 issues to be considered.

21 (2) If additional evidence is admitted on remand that results in a substantial revision of
22 the proposed decision or the underlying facts, an amended or supplemental proposal
23 for decision or proposed order must be filed. If an amended or supplemental
24 proposal for decision is filed, the provisions of §22.261(d) of this title (relating to
25 Proposal for Decision) apply. Exceptions and replies must be limited to
26 discussions, proposals, and recommendations in the supplemental proposal for
27 decision.

28
29 (d) **Oral Argument Before the Commission.**

30 (1) Any party may request oral argument before the commission before the final
31 disposition of any proceeding.

- 1 (2) Oral argument may be allowed at the commission's discretion. The commission
2 may limit the scope and duration of oral argument. The party bearing the burden
3 of proof has the right to open and close oral argument.
- 4 (3) A request for oral argument must be filed as a separate written pleading. The
5 request must be filed no later than 5:00~~3:00~~ p.m. seven days before the open
6 meeting at which the commission is scheduled to consider the case.
- 7 (4) Upon the filing of a motion for oral argument, the Office of Policy and Docket
8 Management must send a separate ballot to each commissioner to determine
9 whether the commission will hear oral argument at an open meeting. An
10 affirmative vote by one commissioner is required to grant oral argument. Two days
11 before the commission is scheduled to consider the case, the Office of Policy and
12 Docket Management will file a notice to the parties regarding whether a request for
13 oral argument has been granted.
- 14 (5) The absence or denial of a request for oral argument does not preclude the
15 commissioners from asking questions of any party present at the open meeting.
- 16
- 17 (e) **Commission Not Limited.** This section does not limit the commission in the conduct of
18 its meetings to the specific types of action outlined in this section.
- 19

1 **§22.263. Final Orders.**

2
3 **(a) Form and Content.**

4 (1) A final order of the commission ~~will~~shall be in writing and signed by a majority of
5 the commissioners.

6 (2) A final order ~~will~~shall include findings of fact and conclusions of law separately
7 stated and may incorporate findings of fact and conclusions of law proposed within
8 a proposal for decision.

9 (3) Findings of fact, if set forth in statutory language, ~~will~~shall be accompanied by a
10 concise and explicit statement of the underlying facts supporting the findings.

11 (4) The final order ~~will~~shall comply with the requirements of §22.262~~(b)~~ of this title
12 (relating to Commission Action After a Proposal for Decision).

13
14 (b) **Notice.** Parties ~~will~~shall be notified of the commission's final order as required by the
15 APA and §22.74 of this title (relating to Service of Pleadings and Documents) to the extent
16 that provision does not conflict with the APA.

17
18 (c) **Effective Date of Order.** Unless otherwise stated, the date a final order is signed is the
19 effective date of that order, and such date ~~will~~shall be stated therein.

20
21 (d) **Date That an Order is Signed.** An order is signed on the date shown on the order. If a
22 sworn motion filed under APA §2001.142(c) is granted, with or without commission
23 action, then, regardless of the date shown on the order, the date that the commission's order
24 is considered to be signed ~~is~~shall be the date specified in that sworn motion as the date that
25 the movant received the order or obtained actual knowledge of the order. If more than one
26 sworn motion is granted, then the date that the commission's order is considered to be
27 signed is the latest date specified in any such granted motions.

28
29 (e) **Reciprocity of Final Orders Between States.** After reviewing the facts and the issues
30 presented, a final order may be adopted by the commission even though it is inconsistent
31 with the commission's procedural or substantive rules provided that the final order, or the

1 portion thereof that is inconsistent with commission rules, is a final order, or a part thereof,
2 rendered by a regulatory agency of some state other than the State of Texas and provided
3 further that the number of customers in Texas affected by the final order is no more than
4 the lesser of either 1,000 customers or 10% of the total number of customers of the affected
5 utility.
6

1
2 **§22.264. Rehearing.**
3

4 (a) Motions for rehearing, replies thereto, and commission action on motions for rehearing
5 ~~are~~shall be governed by the APA. Only a party to a proceeding before the commission
6 may file a motion for rehearing.
7

8 (b) All motions for rehearing ~~must~~shall state the claimed error with specificity. If an ultimate
9 finding of fact stated in statutory language is claimed to be in error, the motion for rehearing
10 ~~must~~shall state all underlying or basic findings of fact claimed to be in error and ~~must~~shall
11 cite specific evidence which is relied upon as support for the claim of error.
12

13 (c) A motion for rehearing or a reply to a motion for rehearing is untimely if it is not filed by
14 the deadlines specified in APA §2001.146 or, if the commission extends the time to file
15 such motion or reply or approves a time agreed to by the parties, the date specified in the
16 order of the commission extending time or approving the time.
17

18 (d) A motion by a party to extend time related to a motion for rehearing must be filed no less
19 than ten days before the end of the time period that the party seeks to extend or it is
20 untimely. Such motion must state with specificity the reasons the extension is justified.
21

22 (e) Upon the filing of a timely motion for rehearing or a timely motion to extend time, the
23 Office of Policy and Docket Management must~~Commission Advising and Docket~~
24 ~~Management Division shall~~ send separate ballots to each commissioner to determine
25 whether they will consider the motion at an open meeting. Untimely motions ~~will~~shall not
26 be balloted. An affirmative vote by one commissioner is required for consideration of a
27 motion for rehearing or a motion to extend time at an open meeting. If no commissioner
28 votes to add a timely motion to extend time to an open meeting for consideration, the
29 motion is overruled ten days after the motion is filed.
30

- 1 (f) If the commission extends time to act on a motion for rehearing, the Office of Policy and
2 Docket Management~~Commission Advising and Docket Management Division~~ shall send
3 separate ballots to each commissioner to determine whether they will consider the motion
4 for rehearing at a subsequent open meeting. An affirmative vote by one commissioner is
5 required to place the motion for rehearing on an open meeting agenda.
6
- 7 (g) A party that files a motion for rehearing or a reply to a motion for rehearing must~~shall~~
8 deliver a copy of the motion or reply to every other party in the case.
9

1 **§22.281. Initiation of Rulemaking.**

2
3 (a) **Petition for Rulemaking.** Any interested person, as defined by the APA, may petition the
4 commission requesting the adoption of a new rule or the amendment of an existing rule.

5 (1) The petition ~~must~~shall be in writing and ~~must~~shall be submitted to the project
6 opened under paragraph (2) of this subsection. The petition must include a brief
7 explanation of the rule, each reason~~the reason(s)~~ the new or amended rule should
8 be adopted, the statutory authority for such a rule or amendment, and complete
9 proposed text for the rule. The proposed text for the rule ~~must~~shall indicate by
10 striking through the words, if any, to be deleted from the current rule and by
11 underlining the words, if any, to be added to the current rule. A suggested new rule
12 or rule amendment that does not comply with each of the requirements of this
13 section, including any rulemaking suggestion made in a contested case proceeding,
14 will be construed as a policy recommendation and will not be processed as a formal
15 rulemaking petition.

16 (2) Each calendar year, commission staff will open a general project for petitions for
17 rulemaking and post the control number on the commission's website.

18 (3) Commission staff may file a memo in the general project opened under paragraph (2)
19 of this subsection establishing a deadline for interested persons to file comments in
20 response to the petition for rulemaking or designating a new control number for the
21 submission of comments. Commission staff may relocate any relevant filings from
22 the general control number to the new project. If commission staff does not file a
23 memo under this paragraph, comments on a petition for rulemaking may be filed in
24 the general project and the deadline for submitting comments on the petition is 21
25 days after the date the petition is filed.

26 ~~(2) — Upon receipt of a petition for rulemaking, the commission shall submit a notice for~~
27 ~~publication in the "In Addition" section of the Texas Register. The notice shall include~~
28 ~~a summary of the petition, the name of the individual, organization or entity that~~
29 ~~submitted the petition, and notification that a copy of the petition will be available for~~
30 ~~review and copying in the commission's central records. Comments on the petition~~
31 ~~shall be due 21 days from the date of publication of the notice. Failure to publish a~~

~~notice of a petition for rulemaking in the Texas Register shall not invalidate any
commission action on the petition for rulemaking.~~

(4)(3) Within 60 days after submission of a petition that fully complies with the
requirements of paragraph (1) of this subsection, the commission will~~shall~~ either
deny the petition in writing, stating its reasons for the denial, or initiate a
rulemaking proceeding.

(b) **Commission Initiated Rulemaking.** The commission may initiate rulemaking
proceedings on its own motion. Nothing in this section ~~precludes~~shall preclude the
~~commission general counsel or~~ commission staff from consideration or development of
new rules or amendments to existing rules, including hosting workshops or publishing
questions or draft rules language for comment, without express direction from the
commission.

§22.282. Notice and Public Participation in Rulemaking Procedures.

(a) **Initial Comments.** Prior to ~~the publication of publishing~~ a proposed rule or ~~initiation of initiating~~ an amendment to an existing rule, the commission ~~or commission staff~~ may solicit comments on the need for a rule and potential scope of the rule by ~~filing a request for comments on the commission filing system publication of a notice of rulemaking project in the "In Addition" section of the Texas Register. A notice filed pursuant to this section shall contain a brief description and statement of the intended objective of the proposed rule and indicate if a draft of the proposed rule is available for review by interested persons.~~ Unless otherwise prescribed by the commission ~~or commission staff~~, any comments concerning the rulemaking project ~~mustshall~~ be submitted within 30 days from the date the request for comments is filed. The commission ~~or commission staff~~ may hold workshops or public hearings on the rulemaking project.

(b) **Notice.** The commission may initiate a rulemaking project by publishing notice of the proposed rule in accordance with Tex. Gov't Code §§ 2001.021 - 2001.037.

(c) **Public Comments.** Prior to the adoption of any rule, the commission ~~willshall~~ afford all interested persons a reasonable opportunity to submit data, views, or arguments in writing. Written comments must be filed within 30 days of the date the proposed rule is published in the *Texas Register* unless the commission establishes a different date for submission of comments. The commission may also establish a schedule for reply comments if it determines that additional comments would be appropriate or helpful in reaching a decision on the proposed rule. Commission staff may provide an extension to the comment deadline, request reply comments, or provide additional comment filing instructions in a rulemaking project.

(d) **Public Hearing.** The commission ~~or commission staff~~ may schedule workshops or public hearings on the proposed rule. Commission staff will hold a public hearing.~~An opportunity for public hearing shall be granted~~ if requested by at least 25 persons, by a governmental

subdivision or agency, or by an association having at least 25 members. The request for public hearing must be made no later than 30 days after the date the proposed rule is published in the *Texas Register*, unless the commission establishes a different date for requesting a public hearing. Commission staff may provide an extension to the public hearing request deadline.

- (e) **Staff Recommendation.** Staff's final recommendation will, if practicable, ~~shall~~ be filed in the rulemaking proceedings submitted to the commission and filed in central records at least seven days prior to the date on which the commission is scheduled to consider the matter, unless some other date is specified by the commission. If commission staff does not file its final recommendation at least seven days prior to the date on which the commission is scheduled to consider the matter, the commission may still consider the recommendation or take action in the rulemaking project. Staff will notify all persons who have filed comments concerning the proposed rule of the filing of staff's final recommendation.

- (g) **Final Adoption.** Following consideration of comments, the commission will issue an order adopting, adopting as amended, or withdrawing the rule within six months after the date of publication of the proposed rule or the rule is automatically withdrawn. Commission staff may withdraw a rule on its own motion if necessary to facilitate the expeditious republication of proposed amendments to that rule.

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

3

4 **ISSUED IN AUSTIN, TEXAS ON THE ____ DAY OF _____ 202_ BY THE**
5 **PUBLIC UTILITY COMMISSION OF TEXAS**
6 **ANDREA GONZALES**