

**TITLE 16 ECONOMIC REGULATION
PART 1 RAILROAD COMMISSION OF TEXAS
CHAPTER 1 PRACTICE AND PROCEDURE
SUBCHAPTER A DEFINITIONS AND GENERAL
PROVISIONS**

§1.1 Purpose, Scope, and Conflict with Other Rules

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

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

(c) It is the policy of the Commission to encourage the fair and prompt resolution of internal and external disputes under the Commission's jurisdiction through alternative dispute resolution (ADR). ADR includes any procedure or combination of procedures described by Texas Civil Practice and Remedies Code Chapter 154, such as mediation, arbitration, and mini-trial.

(d) This chapter sets forth the general rules of practice and procedure for proceedings before the Commission. If a general provision of these rules conflicts with a statutory or other special provision governing the same proceeding, and the conflict is irreconcilable, then the special provision controls.

Source Note: The provisions of this §1.1 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.2 Definitions

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

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

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

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

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

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

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

(7) Commissioner--One of the elected or appointed members of the Railroad Commission of Texas.

(8) Complainant--A person who files a complaint with the Commission as specified in §1.23 of this title

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(relating to Complaint Proceedings), regarding an act or omission of the Commission or a person subject to the Commission's jurisdiction.

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

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

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

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

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

(14) Docket Services Section--The section within the Hearings Division, under the supervision of the Hearings Director, that administers docketed cases pursuant to this chapter.

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

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

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

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

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

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

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

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

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

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

(25) Proceeding--A formal hearing, investigation, inquiry, rulemaking, or other fact-finding or decision-making

process.

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

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

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

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

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

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

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

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

Source Note: The provisions of this §1.2 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.3 Exceptions and Suspension of Rules

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

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

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

Source Note: The provisions of this §1.3 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.4 Violation of Procedural Rules

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

Source Note: The provisions of this §1.4 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.5 Conduct and Decorum

Parties, authorized representatives, witnesses, and other participants in Commission proceedings shall conduct themselves with proper dignity, courtesy, civility, and

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respect for the Commission, the director, the examiner, and all other participants. Disorderly conduct will not be tolerated. A violator of this rule may be excluded from the proceeding by the examiner for such period as is just and may be subject to such other just, reasonable, and lawful disciplinary action as the Commission may prescribe.

Source Note: The provisions of this §1.5 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.6 Recording and Broadcasting of Hearings

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

Source Note: The provisions of this §1.6 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.7 Ex Parte Communications

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

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

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

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

Source Note: The provisions of this §1.7 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.8 Testimony under Oath or Affirmation

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

Source Note: The provisions of this §1.8 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.9 Computation and Extensions of Time in Contested Cases

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

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

(2) the last day of the period being computed shall be included, unless it is a Saturday, Sunday, weekday on which the Commission has officially closed prior to 5 p.m. due to weather or other exigency, or an official state or federal holiday, in which event the period shall continue to run until 5 p.m. on the next business day except as otherwise provided by statute; and

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

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

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

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

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

Source Note: The provisions of this §1.9 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.10 Commissioner Private Interest in Decision

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

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

Source Note: The provisions of this §1.10 adopted to be effective August 21, 2017, 42 TexReg 4131

SUBCHAPTER B INITIATION OF CONTESTED CASE PROCEEDING

§1.21 Filings with Commission Division Directors

(a) All applications, petitions, complaints, and other documents relating to any proceeding to be initiated before the Commission shall be filed with the appropriate division director in accordance with that division's filing requirements and any applicable statute or regulation. Such documents, including notices of protest and answers, shall be presumed filed on the date they are actually received only if accompanied by any required filing fee. The Commission may decline to accept a document for filing if it does not comply with applicable requirements.

(b) If an application, petition, complaint, or other document requires further consideration after division processing but prior to final Commission action, the division shall transfer the matter to the Hearings Division.

Source Note: The provisions of this §1.21 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.22 Filings with the Hearings Division

(a) Once a party has notice that a division has transferred a contested case to the Hearings Division, the party shall file all subsequent pleadings and other documents related to the case with the Docket Services Section.

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

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

(1) If the pleading contains 10 or fewer pages including exhibits, it may be filed by fax, email, or other approved electronic transmission with the Docket Services Section. If a party or authorized representative elects to file a pleading by email, the party or authorized representative

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agrees to be served by email and affirmatively consents to the release and disclosure of the email address.

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

(d) Unless the examiner sets the filing deadline at a time earlier than 5 p.m., pleadings and related documents shall be considered timely filed if received and file stamped by the Docket Services Section on or before 5 p.m. of the filing deadline. Pleadings filed after 5 p.m. local time of the Commission shall be deemed filed the following business day. Pleadings filed by fax, email, or other approved electronic transmission shall be considered filed at or before 5 p.m. local time if the complete pleading is received at or before 5 p.m. local time. If the examiner sets the filing deadline at a time earlier than 5 p.m., pleadings and related documents shall be considered filed at the time indicated by the file stamp.

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

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

Source Note: The provisions of this §1.22 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.23 Complaint Proceedings

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

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

(c) Notice of complaint. When a complaint is filed, the Commission shall forward the complaint to the respondent and attach a letter stating:

(1) the respondent has 20 days from the date of the letter to either file an answer or request a hearing to contest the allegations of the original complaint; and

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

(d) Respondent's answer.

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

(2) If the complaint is thereafter amended, the time

period for the filing and service of the answer shall, unless otherwise ordered, run from the service of such amended complaint. The original answer shall be considered as the answer to the amended complaint unless a new answer is filed in response to the amended complaint.

(e) Default order. If the respondent fails to answer, request a hearing, or appear at the hearing, the examiner may find the respondent to be in default and prepare a default final order to be presented to the Commission without further notice.

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

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

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

(g) Retail customers served by a gas utility as defined in Texas Utilities Code §§101.003(7), (8), and 121.001 - 121.006, must first attempt an informal resolution pursuant to §7.45 of this title (relating to Quality of Service) before pursuing a claim against a gas utility under this section.

Source Note: The provisions of this §1.23 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.24 Show-Cause Proceedings

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

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

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

Source Note: The provisions of this §1.24 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.25 Contested Cases Brought by the Enforcement Section

(a) Commencement of a contested case.

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

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

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

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

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

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

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

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

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

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

(e) Non-applicability of this section to emergency situations. The existing power of the Commission to remedy

and seek reimbursement for remediation of any condition which threatens the public health and safety, or to order an operator to remedy said condition, shall not be affected by this section.

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

Source Note: The provisions of this §1.25 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.26 Classification and Alignment of Parties

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

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

Source Note: The provisions of this §1.26 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.27 Parties and Authorized Representatives

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

(b) Authorized representatives shall:

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

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

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

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

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

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

Source Note: The provisions of this §1.27 adopted to be effective August 21, 2017, 42 TexReg 4131

SUBCHAPTER C PLEADINGS, MOTIONS, AND OTHER DOCUMENTS

§1.31 Classification of Pleadings

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

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accordingly.

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

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

Source Note: The provisions of this §1.31 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.32 Form and Content of Pleadings

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

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

(c) Each pleading shall be signed by the party or its authorized representative. When a copy of the signed document has been filed, the party or its authorized representative shall maintain the original document for examination by the Commission, the examiner, the Hearings or appropriate division director, or any party to the proceedings, should a question arise as to its authenticity.

(d) A pleading shall contain:

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

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

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

Source Note: The provisions of this §1.32 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.33 Correction of Pleadings

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

Source Note: The provisions of this §1.33 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.34 Amended or Supplemental Pleadings

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

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

Source Note: The provisions of this §1.34 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.35 Responsive Pleadings and Emergency Action

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

(b) A responsive pleading to a complaint filed under this chapter shall be filed by the respondent within 20 days of the date of the Commission's letter notifying the respondent of the complaint.

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

Source Note: The provisions of this §1.35 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.36 Motions

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

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

Source Note: The provisions of this §1.36 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.37 Intervention

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

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

Source Note: The provisions of this §1.37 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.38 Interim Rulings and Appeals of Interim Rulings

(a) Relief through interim ruling. Prior to presentation of a contested case to the Commission at an open meeting, a party may seek, through an examiner, or Hearings Director, as appropriate, relief through interim ruling, but that ruling shall not be considered of the same nature as a final decision.

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An interim ruling shall not be subject to exceptions or motions for rehearing. For purposes of this section, the term interim ruling includes orders issued pursuant to §1.55 of this title (relating to Discovery Orders) and final actions taken by Commission staff to deny an application or other requested relief for which no other avenue of appeal is provided by Commission rules.

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

(c) Interim ruling to suspend license.

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

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

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

(d) Appeal of interim ruling.

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

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

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

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

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

(e) Procedure on appeal. The Commissioners may consider and rule on an appeal on or after the day following the day the response to the appeal is due. An order on an

appeal from an interim ruling shall not be subject to motions for rehearing pending issuance of the proposal for decision and signing of the final order. Any issue in an appeal that has been deemed denied by operation of law may be raised again in exceptions to the proposal for decision. When a timely appeal is filed under this section, the examiner shall:

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

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

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

Source Note: The provisions of this §1.38 adopted to be effective August 21, 2017, 42 TexReg 4131

SUBCHAPTER D NOTICE AND SERVICE

§1.41 Notice of Application in Contested Cases

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

Source Note: The provisions of this §1.41 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.42 Notice of Hearing

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

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

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

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

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

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

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

(4) either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition; and

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

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

(d) In a proceeding in which the Commission has the burden of proof, if the Commission intends to rely on a section of a statute or rule not previously referenced in the notice of hearing, the Hearings Division shall amend the notice to refer to the section of the statute or rule not less than seven days before the date set for the hearing. This

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subsection does not prohibit the Commission from filing an amended notice of hearing after the hearing has commenced. If the Commission files an amended notice of hearing after the hearing has commenced, the examiner shall grant a continuance of at least seven days at the request of any other party.

Source Note: The provisions of this §1.42 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.43 Notice by Publication

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

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

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

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

Source Note: The provisions of this §1.43 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.44 Notice of Protest

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

Source Note: The provisions of this §1.44 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.45 Service in Protested Contested Cases

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

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

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

(b) Methods of service.

(1) A pleading or document may be served by hand delivering a copy to the person to be served, or by first class,

certified, or registered mail, commercial delivery service, fax, email, or by such other manner as the Commission may require.

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

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

(C) Personal service may be effectuated by hand delivering a copy to the person to be served and is complete on the date of delivery. Personal service completed after 5 p.m. local time of the recipient shall be deemed served on the following business day.

(D) Service by email may be used if the person to be served consents to be served by email pursuant to §1.27 or §1.32 of this title (relating to Parties and Authorized Representatives, and Form and Content of Pleadings, respectively). If the person consents to be served by email, the person affirmatively consents to the release and disclosure of the email address. Email service is complete on the date of the email transmission. An email received after 5 p.m. local time of the recipient shall be deemed served on the following business day.

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

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

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

(e) Service by the Commission.

(1) For documents served on a party with an active or delinquent organization report on file pursuant to §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements), the Commission shall serve documents by:

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

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

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

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

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

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

(2) For documents served on all other parties, unless otherwise required by law, the Commission shall serve documents in accordance with subsection (b) of this section.
Source Note: The provisions of this §1.45 adopted to be effective August 21, 2017, 42 TexReg 4131

SUBCHAPTER E DISCOVERY

§1.51 Forms and Scope of Discovery in Protested Contested Cases

(a) Permissible forms of discovery by parties are:

- (1) oral depositions of a party or a nonparty;
- (2) written interrogatories to a party;
- (3) requests to a party for admission of facts or the genuineness or identity of documents or things;
- (4) requests to a party for production, examination, and copying of documents or other tangible materials;
- (5) requests to a party for entry upon and examination of real or personal property, or both; and
- (6) requests to a party for disclosures pursuant to Texas Rule of Civil Procedure 194.

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

Source Note: The provisions of this §1.51 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.52 Discovery Requests and Responses

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

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

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

Source Note: The provisions of this §1.52 adopted to be

§1.53 Request for Deposition

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

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

Source Note: The provisions of this §1.53 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.54 Requests for Admission

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

Source Note: The provisions of this §1.54 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.55 Discovery Orders

(a) Discovery orders generally. The Hearings director or the examiner may issue protective orders, orders compelling discovery responses, and orders creating a discovery control plan. Requests for discovery orders shall contain a sworn statement that, after due diligence, the desired information cannot be obtained through informal means, and that good cause exists for requiring discovery. The request for a discovery order may be denied:

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

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

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

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

(b) Motion to compel. Unless otherwise ordered, a party alleging another party's failure to comply with discovery requests shall file a sworn motion to compel with the Docket Services Section at least 10 days prior to the hearing on the merits.

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

(d) In camera inspection. The Hearings Director or the examiner may conduct in camera inspections of materials when requested by a party or when necessary to determine facts required to issue appropriate discovery orders.

(e) Review by Commissioners. Any discovery order issued by the examiner or the Hearings Director is subject to

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review by an appeal to the Commissioners. Any party that chooses to appeal a discovery order shall follow the requirements set forth in §1.38 of this title (relating to Interim Rulings and Appeals of Interim Rulings). A discovery order does not constitute a final order or decision.

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

Source Note: The provisions of this §1.55 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.56 Alignment of Municipal Intervenors for Purposes of Discovery

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

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

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

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

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

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

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

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

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

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

Source Note: The provisions of this §1.56 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.57 Limitations on Discovery Requests

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

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

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

presiding officers issue the RFIs.

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

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

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

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

Source Note: The provisions of this §1.57 adopted to be effective August 21, 2017, 42 TexReg 4131

SUBCHAPTER F EVIDENCE

§1.61 Rules of Evidence

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

Source Note: The provisions of this §1.61 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.62 Official Notice

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

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

(c) Notification of materials noticed. The examiner on his or her own motion, or the Commission on its own motion, may propose to take official notice of facts, material,

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records, or documents authorized by the APA, §2001.090. The parties will be given the opportunity to contest the proposed action and shall be notified of the facts, material, records, or documents officially noticed before, during, or after the hearing by the Commission.

Source Note: The provisions of this §1.62 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.63 Documentary Evidence

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

Source Note: The provisions of this §1.63 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.64 Written Testimony

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

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

Source Note: The provisions of this §1.64 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.65 Exhibits

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

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

(c) Excluded exhibits. If an exhibit is offered, objected to, and excluded, the examiner may determine whether or not the party offering the exhibit wishes to withdraw the offer; if so, the examiner shall permit the return of the exhibit to the

party. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the examiner with the ruling, and shall be included in the record for the purpose of preserving an exception.

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

Source Note: The provisions of this §1.65 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.66 Written Objections Not Required

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

Source Note: The provisions of this §1.66 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.67 Offers of Proof

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

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

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

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

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

Source Note: The provisions of this §1.67 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.68 Confidential Materials

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

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

(1) A party filing material in a hearing before the Hearings Division that the party contends to be confidential by law shall file the materials with the Docket Services Section by delivering them in a sealed and labeled container, accompanied by an explanatory cover letter. The cover letter shall identify the docket number and the style of the case, explain the nature of the sealed materials, and specify the relief sought. The outside of the container shall identify the docket number, the style of the case, the name of the

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submitting party, and be marked "CONFIDENTIAL AND UNDER SEAL" in bold print at least one inch in size. The front page of each portion of confidential material shall be marked "confidential." Confidential material shall not be filed by fax. A party who elects to file confidential material electronically shall notify the Docket Services Section prior to filing such material.

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

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

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

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

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

Source Note: The provisions of this §1.68 adopted to be effective August 21, 2017, 42 TexReg 4131

SUBCHAPTER G HEARINGS

§1.101 Examiner's Powers and Duties

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

- (1) to administer oaths and affirmations;
- (2) to issue subpoenas to compel the attendance of witnesses and the production of papers and documents;
- (3) to authorize the taking of depositions and issue discovery orders;
- (4) to call and examine witnesses;
- (5) to receive evidence;
- (6) to rule upon the admissibility of evidence and amendments to pleadings;
- (7) to limit the number of witnesses whose testimony would be merely cumulative;
- (8) to set reasonable times within which a party may testify, cross-examine witnesses, or present evidence;
- (9) to impose sanctions;

- (10) to maintain order in a hearing;
- (11) to recess any hearing;
- (12) to issue a proposal for decision, including proposed findings of fact and conclusions of law and a recommended order;
- (13) to reopen the record when justice requires;
- (14) to amend the proposal for decision or recommended order, or both;
- (15) to issue a supplemental or amended proposal for decision and proposed order;
- (16) to review the jurisdiction of the Commission and standing of parties as it pertains to a contested case;
- (17) to issue orders relating to hearing, prehearing and posthearing matters; and
- (18) to take other permissive action which is necessary for a fair, just, and proper hearing.

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

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

Source Note: The provisions of this §1.101 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.102 Sanctioning Authority

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

- (1) abuse of the discovery process, including failure to comply with a discovery order or subpoena issued by the Commission for deposition or production of books, records, papers, or other objects;
- (2) filing a motion or pleading that is determined to be groundless and brought:
 - (A) in bad faith;
 - (B) for the purpose of harassment; or
 - (C) for any other improper purpose, such as to cause unnecessary delay or increase in the cost of the proceeding; or
- (3) failure to obey an order of the Commissioners, the Hearings Director, or the examiner.

(b) The order imposing sanctions may:

- (1) disallow any further discovery of any kind or of a particular kind by the sanctioned party;
- (2) require the party, the party's authorized representative, or both to obey the discovery order;
- (3) require the party, the party's authorized representative, or both to pay reasonable expenses, including attorney fees, incurred by reason of the party's noncompliance;
- (4) direct that the matters for which the discovery order was made shall be deemed admitted in accordance with the claim of the party obtaining the order;
- (5) refuse to allow the sanctioned party to support or oppose designated claims or defenses or prohibit the party from introducing designated matters in evidence;
- (6) strike pleadings or parts thereof or abate further proceedings until the order is obeyed;
- (7) disallow in whole or in part requests for relief by the offending party and exclude evidence in support of those requests; or
- (8) dismiss the action or proceeding or any part thereof or render a decision by default against the sanctioned

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party.

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

Source Note: The provisions of this §1.102 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.103 Prehearing and Posthearing Conferences

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

- (1) motions and other preliminary matters relating to the proceeding, including discovery;
- (2) settlement of the case or simplification of the issues;
- (3) amendment of pleadings;
- (4) admissions or stipulations which will avoid the unnecessary introduction of evidence;
- (5) limitations on the number of witnesses;
- (6) time to be allotted to each party for presentation of its direct case or for cross-examination at the hearing;
- (7) procedures to be followed at the hearing; and
- (8) other matters that may aid in the disposition of the proceeding.

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

Source Note: The provisions of this §1.103 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.104 Stipulations

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

Source Note: The provisions of this §1.104 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.105 Continuances

(a) A motion for continuance shall:

- (1) be in writing and served in accordance with §1.45 of this title (relating to Service in Protested Contested Cases);
- (2) be filed not less than five business days prior to the hearing, except for good cause shown;
- (3) set forth the specific grounds for which the moving party seeks continuance;
- (4) make reference to all similar motions filed in the proceeding; and
- (5) state whether all parties agree with the relief requested.

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

(c) The moving party shall confer with all other parties

regarding the motion and establish mutually agreeable calendar dates on which the parties are available.

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

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

Source Note: The provisions of this §1.105 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.106 Consolidation and Joint Hearings

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

Source Note: The provisions of this §1.106 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.107 Dismissal

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

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

Source Note: The provisions of this §1.107 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.108 Place and Nature of Hearings

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

Source Note: The provisions of this §1.108 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.109 Hearing Procedures

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

(b) Order of procedure. Parties shall be permitted to make opening statements, offer direct evidence, cross-examine witnesses, and present supporting arguments. The party having the burden of proof shall be entitled to open and close. When several proceedings are heard on a consolidated record or when the proceeding has been initiated by the Commission, the examiner shall designate who may open and close. The examiner shall determine at what stage intervenors will be permitted to offer evidence. The examiner may direct that closing arguments be made in writing. The examiner may alter the order of procedure if necessary for efficient conduct of the hearing.

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

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

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

Source Note: The provisions of this §1.109 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.110 Burden of Proof

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

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

Source Note: The provisions of this §1.110 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.111 Reporters and Transcripts

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

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

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

Source Note: The provisions of this §1.111 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.112 Proceedings by Telephony

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

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

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

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

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

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

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

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

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

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

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

(f) In considering whether conducting all or part of a prehearing or posthearing conference or hearing by telephony is feasible, the examiner shall ensure that the proceeding will provide due process and will be fair, and shall take into account the following factors:

(1) whether a party's request is timely;

(2) whether all parties to a protested proceeding have agreed in writing to conducting all or part of the proceeding by telephony;

(3) equipment and technology constraints;

(4) the number of parties;

(5) the number of witnesses;

(6) the number and type of exhibits;

(7) the distance of the parties or witnesses from

Austin;

(8) the nature of the hearing;

(9) the testimony to be offered; and

(10) any other pertinent factors which may affect the proceeding.

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

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

(1) failure to connect or answer for more than 10 minutes after the scheduled time for the proceeding;

(2) failure to be ready to proceed with the

proceeding after 10 minutes of the scheduled time; and

(3) a party's intentional disconnection.

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

Source Note: The provisions of this §1.112 adopted to be effective August 21, 2017, 42 TexReg 4131

SUBCHAPTER H DECISION

§1.121 Proposals for Decision

(a) In a contested case, if a majority of the Commissioners have not heard the case or read the record, the decision, if adverse to a party other than the Commission, may not be made until:

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

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

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

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

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

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

(f) An examiner may amend or correct a previously served proposal for decision or proposed order and shall serve the amendment or correction on the parties. Exceptions and replies are not permitted in response to a clerical or typographical correction. When substantive amendments are necessary prior to presentation at conference, an examiner shall specify the time period for the filing of exceptions and replies. Amendments adopted by the Commission shall be noted with specificity in the Commission's final order.

Source Note: The provisions of this §1.121 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.122 Filing of Exceptions and Replies

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

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

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

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

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

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

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

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

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

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

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

Source Note: The provisions of this §1.122 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.123 Commission Action

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

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

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

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

(b) If, on remand by the Commissioners, additional evidence is received which results in a substantial change of the examiner's recommendation for final action, an amended proposal for decision shall be prepared and circulated to the parties, unless a majority of the Commission has held the hearing or read the record. If an amended proposal for decision is prepared, all parties shall have the right to file exceptions, replies, and briefs.

Source Note: The provisions of this §1.123 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.124 Oral Argument before the Commission

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

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meeting.

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

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

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

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

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

(3) impose time limits on all speakers;

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

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

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

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

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

(2) use of audio or visual aids.

(f) The Commissioners will accept unsolicited comments from elected officials when they are acting in their official capacities.

Source Note: The provisions of this §1.124 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.125 Interim Orders Entered by the Commissioners

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

Source Note: The provisions of this §1.125 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.126 Final Decisions and Orders

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

(b) When a decision or order in a contested case that may become final under Texas Government Code,

§2001.144 is signed or when an order ruling on a motion for rehearing is signed, the Commission shall deliver or send a copy of the decision or order to each party in accordance with subsection (c) of this section. The Commission shall keep a record documenting the provisions of the notice provided to each party.

(c) Methods of notice. The Commission shall notify each party to a contested case of any decision or order of the Commission using at least one of the following methods of service:

(1) personal service;

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

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

(4) service by a method required by a rule or order of the Commission.

Source Note: The provisions of this §1.126 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.127 Effective Date

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

Source Note: The provisions of this §1.127 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.128 Motions for Rehearing

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

(b) Replies to motions for rehearing must be filed not later than the 40th day after the date the decision or order that is subject of the motion is signed, or not later than the 10th day after the date a motion for rehearing is filed if the time for filing the motion for rehearing has been extended pursuant to subsection (e) of this section. On filing of the reply, copies of the reply shall be served on all other parties in accordance with §1.45 of this title.

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

(d) Commissioners shall act on a motion for rehearing not later than the 55th day after the date the decision or order

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that is the subject of the motion is signed or the motion for rehearing is overruled by operation of law.

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

(1) The Commission may, on its own initiative or on the motion of any party for cause shown, by written order, extend the period of time for filing these motions and replies and for taking Commission action, provided that the Commission extends the time or takes the action not later than the 10th day after the date the period for filing a motion or reply or taking agency action expires. An extension shall not extend the period for Commission action beyond the 100th day after the date the decision or order that is the subject of the motion is signed. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, on the 100th day after the decision or order that is the subject of the motion is signed;

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

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

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

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

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

(g) A subsequent motion for rehearing required by subsection (f) of this section must be filed not later than the 25th day after the date the order disposing of the original motion for rehearing is signed unless the deadline for filing the motion has been extended pursuant to applicable law.

Source Note: The provisions of this §1.128 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.129 Effect of Order Granting Rehearing

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

Source Note: The provisions of this §1.129 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.130 Finality of Decisions or Orders

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

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

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

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

(B) the latest filed motion for rehearing is overruled by operation of law;

(3) if the Commission finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision or order, on the date the decision or order is signed, provided that the agency incorporates in the decision or order a factual and legal basis establishing an

imminent peril to the public health, safety, or welfare; or
(4) on:

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

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

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

Source Note: The provisions of this §1.130 adopted to be effective August 21, 2017, 42 TexReg 4131

§1.131 Administrative Record

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

Source Note: The provisions of this §1.131 adopted to be effective August 21, 2017, 42 TexReg 4131

SUBCHAPTER I PERMIT PROCESSING

§1.201 Time Periods for Processing Applications and Issuing Permits Administratively

(a) Applicability. This rule applies to the permits listed in Column A of Table 1 of this section. For purposes of this rule, the term "permit" includes any authorization issued administratively by the Commission, through the Oil and Gas Division, the Gas Services Division, the Surface Mining and Reclamation Division, or the Rail/LP-Gas/Pipeline Safety Division, and required by the Commission either to engage in or conduct a specific activity or to deviate from requirements, standards, or conditions in statutes or Commission rules and for which the median processing time exceeds seven days.

Figure: 16 TAC §1.201(a) [See Figure at end of this document.]

(b) Completeness. An application is complete when the division or section shown in Column B of Table 1 has determined that the application contains information addressing each application requirement of the regulatory program and all information necessary to initiate the final review by the division or section processing the application. For purposes of this section, certain applicants, as shown in Column D of Table 1, are required to have an approved organization report (Form P-5) on file with the Commission in order for an application to be complete.

(c) Time periods.

(1) The date a permit application is received under this section is the date the application reaches the designated division or section within a division as shown in Column B of Table 1.

(2) The division or section shown in Column B of Table 1 shall process permit applications in accordance with the time periods shown in Columns F and G of Table 1 for a particular permit. Time periods are counted on the basis of calendar days.

(3) The Initial Review Period, shown in Column F

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of Table 1, begins on the date the designated division or section receives the application and ends on the date the division or section gives written notice to the applicant indicating that either:

(A) the application is complete and accepted for filing; or

(B) the application is incomplete, as described in paragraph (4) of this subsection.

(4) If the division or section determines that an application is incomplete, the division or section shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. The Initial Review Period shall start again each time the division or section receives a supplemental filing relating to an incomplete application. After the second supplemental submission, if the application is complete, the division or section shall administratively rule on the application; if the application is still incomplete, the division or section shall administratively deny the application. The division or section specifically does not have the authority to accept or review any other additional supplemental submissions. The division or section shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands. The applicant may withdraw the application.

(5) The Final Review Period, shown in Column G of Table 1, begins on the date the division or section makes a determination under paragraph (3)(A) of this subsection and ends on the date the permit is:

(A) administratively granted;

(B) administratively denied; or

(C) docketed as a contested case proceeding if the application is neither administratively granted nor administratively denied.

(6) An applicant whose application has been administratively denied may request a hearing by filing a written request for a hearing addressed to the division or section processing the application, within 30 days of the date the application is administratively denied.

(7) Within seven days of either docketing an application under paragraph (5)(C) of this subsection or receiving a written request for a hearing under paragraph (6) of this subsection, the division or section processing the application shall forward the file and any request for hearing, including any memoranda or notes explaining or describing the reasons for docketing or administrative denial, to the Docket Services Section of the Office of General Counsel. The Office of General Counsel shall process the application as prescribed in subsection (e) of this section.

(d) Complaint procedure.

(1) An applicant may complain directly to the Executive Director if a division or section does not process an application within the applicable time periods shown in Columns F and G of Table 1, and may request a timely resolution of any dispute arising from the claimed delay. All complaints shall be in writing and shall state the specific relief sought, which may include the full reimbursement of the fee paid in that particular application process, if any, as shown in Column E of Table 1. As soon as possible after receiving a complaint, the Executive Director shall notify the appropriate division director of the complaint.

(2) Within 30 days of receipt of a complaint, the division director of the division or section processing the

application that is the subject of the complaint shall submit to the Executive Director a written report of the facts relating to the processing of the application. The report shall include the division director's explanation of the reason or reasons the division or section did or did not exceed the established time periods. If the Executive Director does not agree that the division or section has violated the established periods or finds that good cause existed for the division or section to have exceeded the established periods, the Executive Director may deny the relief requested by the complaint.

(3) For purposes of this section, good cause for exceeding the established period means:

(A) the number of permit applications to be processed by the division or section exceeds by at least 15 percent the number of permit applications processed by that division or section in the same quarter of the previous calendar year;

(B) the division or section must rely on another public or private entity to process all or part of the permit application received by the agency, and the delay is caused by that entity; or

(C) other conditions exist that give the division or section good cause for exceeding the established period, including but not limited to circumstances such as personnel shortages, equipment outages, and other unanticipated events or emergencies.

(4) The Executive Director shall make the final decision and provide written notification of the decision to the applicant and the division or section within 60 days of receipt of the complaint.

(e) Hearings. If an application is docketed as a contested case proceeding, it is governed by the time periods in this chapter (relating to Practice and Procedure) once the application has been filed with the Docket Services Section of the Office of General Counsel.

Source Note: The provisions of this §1.201 adopted to be effective May 14, 2001, 26 TexReg 3482; amended to be effective January 9, 2002, 27 TexReg 138; amended to be effective May 13, 2004, 29 TexReg 4469

SUBCHAPTER J RULEMAKING

§1.301 Petition for Adoption of Rules

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

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

(c) Each petition shall include:

(1) a brief explanation of the proposed rule;

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

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

(4) a justification for adoption of the rule.

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

(1) a resident of this state;

(2) a business entity located in this state;

(3) a governmental subdivision located in this state;

or

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

(e) The Office of General Counsel shall review all

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petitions for compliance with this section. If rejected, the petitioner may file a corrected petition that complies with the requirements of this section.

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

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

Source Note: The provisions of this §1.301 adopted to be effective August 21, 2017, 42 TexReg 4131

Figure: 16 TAC §1.201(a)

Table 1. Initial and Final Review Periods for Permits Issued by the Railroad Commission of Texas,
For Which Median Permit Processing Time Exceeds Seven Days

A	B	C	D	E	F	G
Rule and Permit All references are to Title 16, Tex. Admin. Code	Division, Section Receiving Application	Application Form Title or Number	Form P-5 Required?	Fee	Initial Review Period	Final Review Period
§3.6 (SWR 6), Application for Multiple Completion- Multiple Completion Authorization	Oil and Gas Division, Permitting/ Production Services Section	W-4; W-4A; W-5; W-6	Yes	None	60	10
§3.8 (SWR 8), Water Protection- Non-Commercial, Non-Centralized Pit Permit	Oil and Gas Division, Environmental Services Section	H-11	Yes	None	30	30
§3.8 (SWR 8), Water Protection- Commercial or Centralized Pit Permit	Oil and Gas Division, Environmental Services Section	H-11 and Supplemental Information Sheet for Commercial Facilities	Yes	None	45	45
§3.8 (SWR 8), Water Protection- Non-Commercial, Non-Centralized Land Spreading	Oil and Gas Division, Environmental Services Section	Application Information for Land Spreading Permit (Water Based Drilling Fluid and Associated Cuttings Only)	Yes	None	30	30
§3.8 (SWR 8), Water Protection- Non-Commercial, Non-Centralized Land Treatment Permit	Oil and Gas Division, Environmental Services Section	Application Information for Land Treatment	Yes	None	30	30
§3.8 (SWR 8), Water Protection- Commercial or Centralized Land Spreading	Oil and Gas Division, Environmental Services Section	Application Information for Land Spreading Permit (Water Based Drilling Fluid and Associated Cuttings Only)	Yes	None	45	45
§3.8 (SWR 8), Water Protection- Commercial or Centralized or Land Treatment Permit	Oil and Gas Division, Environmental Services Section	Application Information for Land Treatment	Yes	None	45	45

§3.8 (SWR 8), Water Protection- Waste Hauler Permit	Oil and Gas Division, Environmental Services Section	WH-1 WH-2 WH-3	Yes	\$100	30	15
§3.8 (SWR 8), Water Protection- Hydrostatic Test Discharge Permit	Oil and Gas Division, Environmental Services Section	Permit Application for Discharge of Hydrostatic Test Water	Yes	\$300 (see fn. 1)	15	15
§3.8 (SWR 8), Water Protection-All other discharges	Oil and Gas Division, Environmental Services Section	Application for a Permit to Discharge Produced Water to Inland Waters	Yes	\$300 (see fn. 1)	30	30
§3.8 (SWR 8), Water Protection-All other discharges	Oil and Gas Division, Environmental Services Section	Application for a Permit to Discharge Produced Water to the Gulf of Mexico from a Non-Land Based Facility	Yes	\$300 (see fn. 1)	30	30
§3.8 (SWR 8), Water Protection-All other discharges	Oil and Gas Division, Environmental Services Section	Application for a Permit to Discharge Gas Plant Effluent	Yes	\$300 (see fn. 1)	30	30
§3.8 (SWR 8), Water Protection- Minor Permit for One-Time Annular Disposal of Drilling Fluid	Oil and Gas Division, Field Operations Section	Written request	Yes	None	16	15
§3.9 (SWR 9), Disposal Wells- Disposal Well Permits	Oil and Gas Division, Environmental Services Section	W-14	Yes	\$100; \$150 per exception	30	15
§3.10 (SWR 10), Restriction of Production of Oil and Gas from Different Strata- Authority to Commingle	Oil and Gas Division, Permitting/ Production Services Section	Rule 10 Exception Data Sheet	Yes	\$50	14	21
§3.23 (SWR 23), Vacuum Pumps- Authorization to Use Vacuum Pump	Oil and Gas Division, Permitting/ Production Services Section	Written request	Yes	None	7	21
§3.38 (SWR 38), Well Densities- Density Exception	Oil and Gas Division, Permitting/	Written request	Yes	\$200	7	21

	Production Services Section					
§3.41 (SWR 41), Application for New Oil or Gas Field Designation and/or Allowable- New Oil or Gas Field Designation and/or Allowable	Oil and Gas Division, Permitting/ Production Services Section	P-7	Yes	None	14	7
§3.43 (SWR 43), Application for Temporary Field Rules- Temporary Field Rules	Oil and Gas Division, Permitting/ Production Services Section	Written request	Yes	None	7	30
§3.46 (SWR 46), Fluid Injection into Productive Reservoirs- Injection Permit	Oil and Gas Division, Environmental Services Section	H-1 H-1A	Yes	\$200 per well; \$150 per exception	30	15
§3.46 (SWR 46), Fluid Injection into Productive Reservoirs- Injection Permit with Authorization to Inject Fresh Water	Oil and Gas Division, Environmental Services Section	H-7	Yes	None	30	15
§3.46 (SWR 46), Fluid Injection into Productive Reservoirs- Area Permit	Oil and Gas Division, Environmental Services Section	H-1S	Yes	\$200 per well; \$150 per exception	45	45
§3.48 (SWR 48), Capacity Oil Allowables for Secondary or Tertiary Recovery Projects- Capacity Oil Allowables	Oil and Gas Division, Permitting/ Production Services Section	Written request	Yes	None	7	21
§3.50 (SWR 50), Enhanced Oil Recovery Projects-Approval and Certification for Tax Incentive- Certificate for Recovered Oil Tax Rate	Oil and Gas Division, Permitting/ Production Services Section	H-12	Yes	None	7	25
§3.50 (SWR 50) Enhanced Oil Recovery Projects-Approval and Certification for Tax Incentive- Approval Concurrent With Recovered Oil Tax Rate	Oil and Gas Division, Permitting/ Production Services Section	H-12	Yes	None	7	25
§3.50 (SWR 50), Enhanced Oil Recovery Projects-Approval and Certification for Tax	Oil and Gas Division, Permitting/	H-13	Yes	None	7	25

Incentive- Positive Production Response Certificate	Production Services Section					
§§3.57 (SWR 57), Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials, and 3.78 (SWR 78), Fees, Performance Bonds and Alternate Forms of Financial Security Required to Be Filed- Reclamation Plant Permit and Associated Financial Assurance	Oil and Gas Division, Permitting/ Production Services Section	R-9	Yes	None	30	90
§3.70 (SWR 70), Pipeline Permits Required- Permit to Operate a Pipeline	Gas Services Division, License and Permit Section	Form T-4	Yes	None	21	15
§3.81 (SWR 81), Brine Mining Injection Wells- Brine Mining Injection Permit	Oil and Gas Division, Environmental Services Section	H-2	Yes	\$200 per well	30	30
§3.78 (SWR 78), Fees, Performance Bonds and Alternate Forms of Financial Security Required to Be Filed- Financial Assurance for Commercial Facility Permitted Under Rule 8	Oil and Gas Division, Environmental Services Section	None	Yes	None	45	45
§3.83 (SWR 83), Tax Exemption for Two-and Three-year Inactive Wells- Certification of Inactivity	Oil and Gas Division, Permitting/ Production Services Section	Written request	Yes	None	20	45
§3.93 (SWR 93), Water Quality Certification- 401 Certification	Oil and Gas Division, Environmental Services Section	None. Application made pursuant to requirements of federal permitting entity.	Yes	None	30	15
§3.95 (SWR 95), Underground Storage of Liquid or Liquefied Hydrocarbons in a Salt Formation- Permit to Create, Operate, and Maintain an Underground Hydrocarbon Storage Facility	Oil and Gas Division, Environmental Services Section	H-4	Yes	\$200 per well	45	45
§3.96 (SWR 96), Underground Storage of Gas in Production or	Oil and Gas Division,	H-1 H-4	Yes	\$200 per well	45	45

Depleted Reservoirs- Permit to Operate a Gas Storage Project	Environmental Services Section					
§3.97 (SWR 97), Underground Storage of Gas in Salt Formations- Permit to Create, Oper-ate, and Maintain an Underground Gas Storage Facility	Oil and Gas Division, Environmental Services Section	H-4	Yes	\$200 per well	45	45
§3.101 (SWR 101), Certification for Severance Tax Exemption for Gas Produced from High-Cost Gas Wells- Area Designation	Oil and Gas Division, Permitting/ Production Services Section	Written Request	Yes	None	7	45
§9.10, Rules Examination- LPG Employee Exam	Gas Services Division, License and Permit Section	LPG Form 16	No	\$20 per employee exam; \$50 per management exam	30	N/A
§9.27, Application for an Exception to a Safety Rule- LPG Rule Exception	Rail/LP-Gas/Pipeline Safety Division	LPG Form 25	No	Original-\$50; re-submission-\$30	21	21
§9.54, Commission-Approved Outside Instructors- LPG Outside Instructor Application	Alternative Fuels Research and Education Division	Written request	No	\$300	14	10
§9.101, Filings Required for Stationary LP-Gas Installations- LPG Plan Review	Rail/LP-Gas/Pipeline Safety Division	LPG Form 500	No	Original-\$50; re-submission-\$30	21	21
§11.93, Elements of Permit Application- New Permit Application	Surface Mining and Reclamation Division	SMRD Form 1U	No	\$200	120	30
§11.97, Renewal- Permit Renewal	Surface Mining and Reclamation Division	SMRD Form 1U	No	None	60	30
§11.98, Transfer- Permit Transfer	Surface Mining and Reclamation Division	SMRD Form 2U	No	None	60	30

§11.114, Revision on Motion or with Consent- Permit Revision	Surface Mining and Reclamation Division	SMRD Form 1U	No	\$200	120	30
§§11.131-11.137, Notice of Exploration Through Overburden Removal; Content of Notice; Extraction of Minerals; Removal of Minerals; Lands Unsuitable for Surface Mining; Notice of Exploration Involving Hole Drilling; Permit- Uranium Exploration	Surface Mining and Reclamation Division	SMRD Form 3U	No	None	30	30
§§11.138 and 11.139, Reclamation and Plugging Requirements; Reporting- Test-Hole Transfer	Surface Mining and Reclamation Division	SMRD Form 36U	No	None	30	30
§§11.205, 11.206, Changes in Coverage; Release or Reduction of Bonds- Bond Adjustment	Surface Mining and Reclamation Division	SMRD Form 42U, 43U, 44U, 46U	No	None	60	30
§12.110, General Requirements: Exploration of less than 250 Tons- Coal Exploration < 250 Tons	Surface Mining and Reclamation Division	SMRD-3C	No	None	30	30
§12.111, General Requirements: Exploration of More than 250 Tons- Coal Exploration > 250 Tons	Surface Mining and Reclamation Division	SMRD-4C	No	None	120	30
§12.148, Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments- Design Plans	Surface Mining and Reclamation Division	None	No	None	60	30
§12.205, In Situ Processing Activities- In Situ Coal Gasification	Surface Mining and Reclamation Division	SMRD-5C	No	None	120	30
§12.216, Criteria for Permit Approval or Denial- New Mine Permit	Surface Mining and Reclamation Division	SMRD-1C	No	\$5000	120	30
§12.226, Permit Revisions- Permit Revision-Administrative	Surface Mining and Reclamation Division	SMRD-2C SMRD-1C	No	\$500	60	30
§12.226, Permit Revisions- Permit Revision-Significant	Surface Mining and Reclamation Division	SMRD-1C	No	\$500	120	30

§§12.227-12.230, Permit Renewals: General Requirements; Permit Renewals: Completed Applications; Permit Renewals: Terms; Permit Renewals: Approval or Denial- Permit Renewal	Surface Mining and Reclamation Division	SMRD-1C	No	\$3000	60	30
§§12.227-12.230, Permit Renewals: General Requirements; Permit Renewals: Completed Applications; Permit Renewals: Terms; Permit Renewals: Approval or Denial- Permit Renewal/Revision	Surface Mining and Reclamation Division	SMRD-1C	No	\$3000	120	30
§§12.231-12.233, Transfer, Assignment, or Sale of Permit Rights: General Requirements; Transfer, Assignment or Sale of Permit Rights: Obtaining Approval; Requirements for New Permits for Persons Succeeding to Rights Granted under a Permit- Permit Transfer	Surface Mining and Reclamation Division	SMRD-1C	No	\$500	60	30
§12.307, Adjustment of Amount- Bond Adjustment	Surface Mining and Reclamation Division	SMRD-42(C), 43(C), 44(C), 45(C), 46(C), 47(C)	No	None	60	30
§12.351, Hydrologic Balance: Transfer of Wells- Test-Hole Transfer	Surface Mining and Reclamation Division	SMRD-36C	No	None	30	30
§12.707, Certification- Blaster Certification	Surface Mining and Reclamation Division	Blaster Certificate Application	No	None	60	30
§13.35, Application for an Exception to a Safety Rule- CNG Rule Exception	Rail/LP-Gas/Pipeline Safety Division	CNG Form 1025	No	Original-\$50; re-submission-\$30	21	21
§13.70, Examination Requirements and Renewals- CNG Employee Exam	Gas Services Division, License and Permit Section	CNG Form 1016	No	\$20 per employee exam; \$50 for management exam	10	N/A

§14.2019, Certification Requirements- LNG Employee Exam	Gas Services Division, License and Permit Section	LNG Form 2016	No	\$20 per employee exam; \$50 for management exam	10	N/A
§14.2040, Filings and Notice Requirements for Stationary LNG Installations- LNG Plan Review	Rail/LP-Gas/Pipeline Safety Division	LNG Form 2500	No	Original-\$50; re-submission-\$30	21	21
§14.2052, Application for an Exception to a Safety Rule- LNG Rule Exception	Rail/LP-Gas/Pipeline Safety Division	LNG Form 2025	No	Original-\$50; re-submission-\$30	21	21
Tex. Rev. Civ. Stat. Ann. art. 6559f- Clearance Deviation Authorization	Rail/LP-Gas/Pipeline Safety Division	Application for Authorization to Deviate from Terms of the Texas Clearance Laws	No	\$25	30	30

1 For discharges to waters of the state.