The seal of the Public Utility Commission of Texas is a circular emblem. It features a central five-pointed star surrounded by a wreath of olive and oak branches. The words "PUBLIC UTILITY COMMISSION" are inscribed around the perimeter of the seal, with "TEXAS" at the bottom. The seal is rendered in a light gray, semi-transparent style.

# **Contested Case and Rulemaking 101**

*February 27, 2015*

*Chairman Donna L. Nelson*

*Public Utility Commission of Texas*

# PUC Authority

- **Quasi-judicial**

- The Commission decides contested cases. Like judges, Commissioners are bound by ex parte laws, which restrict us to information in the record, when making decisions in contested cases.

- **Quasi-legislative**

- The Commission holds public hearings and conducts rulemakings to establish substantive rules.

# The Interchange

PUC InterChange - Contrac x

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Public Utility Commission of Texas  
USER: GUEST - 168.39.76.209

FILINGS

Filings for 42636

Case Style: COMMISSION COMMENTS ON PROPOSED EPA RULE ON GREENHOUSE GAS EMISSIONS FOR EXISTING GENERATING UNITS

Item	File Stamp	Party	Description
1	7/1/2014	PUC COMPETITIVE MARKETS	CONTROL NUMBER REQUEST FORM RE: COMMISSION COMMENTS ON PROPOSED EPA RULE ON GREENHOUSE GAS EMISSIONS FOR EXISTING GENERATING UNITS
2	7/3/2014	PUC CADM	PUBLIC NOTICE OF WORKSHOP
3	7/7/2014	PUC CADM	ACKNOWLEDGEMENT OF RECEIPT; FILE NAME: 0703.052
4	7/30/2014	PUC CADM	PUBLIC NOTICE OF CHANGE OF ADDRESS FOR WORKSHOP
5	7/30/2014	CHAIRMAN NELSON	LETTER REGARDING WORKSHOP
6	7/30/2014	PUC CADM	ACKNOWLEDGEMENT OF RECEIPT - FILE NAME: 0729C.052
7	7/30/2014	PUC COMPETITIVE MARKETS	WORKSHOP AGENDA
8	8/1/2014	PUC COMPETITIVE MARKETS	WORKSHOP WILL BE HELD ON FRIDAY, AUGUST 15, 2014, IN JOHN H. REGAN STATE OFFICE BLDG, AT 9:00 A.M.
9	8/13/2014	PUC COMPETITIVE MARKET	REVISED WORKSHOP AGENDA
10	8/15/2014	MIKE NASSI	LEGAL FLAWS IN EPAS' 111(D) RULE PROPOSAL
11	8/15/2014	MIKE NASSI	AN ASSESSMENT OF THE IMPACT OF EPA'S 11(D) ON TEXAS
12	8/18/2014	TEXAS PUBLIC POLICY FOUNDATION	EPA'S CLEAN POWER PLAN: THE TEXAS ELECTRICITY MARKET & ENERGY EFFICIENCY
13	8/18/2014	SWEPCO	REMARKS OF VENITA MCCOLLON-ALLEN
14	8/18/2014	EAST TEXAS ELECTRIC COOPERATIVE, INC.	PRESENTATION AT AUGUST 15, 2014 WORKSHOP
15	8/19/2014	TEXAS INDUSTRIAL ENERGY CONSUMERS	PUCT WORKSHOP PRESENTATION IN PROJECT 42636 BY CHARLES S. GRIFFEY ON BEHALF OF TIEC
16	8/20/2014	ERCOT	ERCOT'S PRESENTATIONS AS PRESENTED AT THE COMMISSION'S AUGUST 15, 2014 WORKSHOP
17	8/20/2014	LUMINANT ENERGY COMPANY LLC	COMMENTS ON PROPOSED EPA RULE
18	8/20/2014	ERCOT	ADDITIONAL SUMMARY DOCUMENT; PROPOSED ENVIRONMENTAL REGULATIONS AND FUTURE ELECTRIC RELIABILITY
19	8/20/2014	FIRST SOLAR, INC.	PRESENTATION FOR THE PUCT WORKSHOP ON PROPOSED EPA GREENHOUSE GAS RULE
20	8/20/2014	PUC COMPETITIVE MARKETS	WORKSHOP PRESENTATION AUGUST 15, 2014
21	8/20/2014	ELECTRIC UTILITY MARKETING MANAGERS OF TEXAS	COMMENTS ON PROPOSED EPA RULE REGARDING GREENHOUSE GAS EMISSIONS FOR EXISTING GENERATING UNITS
22	8/20/2014	APEX COMPRESSED AIR ENERGY STORAGE	PRESENTATION BY JACK FARLEY
23	8/20/2014	CLEARRESULT	PRESENTATION BY MICHELE NEGLEY
24	8/20/2014	CLEARRESULT	TEXAS ECONOMIC IMPACT OF ENERGY EFFICIENCY PROGRAMS ADMINISTERED BY INVESTOR-OWNED UTILITIES
25	8/29/2014	RUSK COUNTY ELECTRIC COOPERATIVE	COMMENTS
26	9/2/2014	KENNEDY REPORTING SERVICE	OPEN MEETING WORKSHOP 08/15/14
27	9/3/2014	PUBLIC CITIZEN	COMMENTS
28	9/4/2014	LOWER COLORADO RIVER AUTHORITY	COMMENTS OF PHIL WILSON, GENERAL MANAGER
29	9/5/2014	CENTERPOINT ENERGY HOUSTON ELECTRIC LLC ET AL	JOINT COMMENTS
30	9/5/2014	SOUTHWESTERN PUBLIC SERVICE COMPANY	COMMENTS ON THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSED LLL(D) RULE
31	9/5/2014	CLEARRESULT	COMMENTS
32	9/5/2014	ENVIRONMENTAL DEFENSE FUND INC	COMMENTS
33	9/5/2014	NUCLEAR INNOVATION NORTH AMERICA LLC	COMMENTS
34	9/5/2014	COGENERATION INDUSTRIES COUNCIL	COMMENTS
35	9/5/2014	SOLAR ENERGY INDUSTRIES ASSOCIATION	COMMENTS
36	9/5/2014	LUMINANT ENERGY COMPANY LLC	RESPONSE TO REQUEST FOR COMMENTS
37	9/5/2014	TEXAS INDUSTRIAL ENERGY CONSUMERS	POST-WORKSHOP COMMENTS
38	9/5/2014	TEXAS SOLAR POWER ASSOCIATION	COMMENTS IN RESPONSE TO ISSUES DISCUSSED IN THE AUGUST 15 WORKSHOP

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# Contested Cases

- Almost every case proceeding before the Commission is a “contested case.”  
Contested Cases are given Docket Numbers.
- There are several “routine” types of contested cases that are usually unprotested that are processed by the Docket Management division.

# Contested Cases

- Potential parties are given notice of the petition or application pursuant to Commission rules.
- Contested cases that require an evidentiary hearing must be heard by the Commissioners or referred to the State Office of Administrative Hearings (SOAH).
- The Government Code requires the Commission to provide a list of issues and areas that must be addressed in the proceeding. The PUC accomplishes this by issuing a “Preliminary Order.”

# When to Get Involved in a Contested Case

- The ALJ will issue a procedural schedule that includes a deadline for intervention.
- If you do not intervene, then you cannot participate in the hearing. You must have standing to intervene.
- A person has standing to intervene if that person:
  - Has a right to participate which is expressly conferred by statute, commission rule or order or other law.
  - Has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.

# Contested Cases

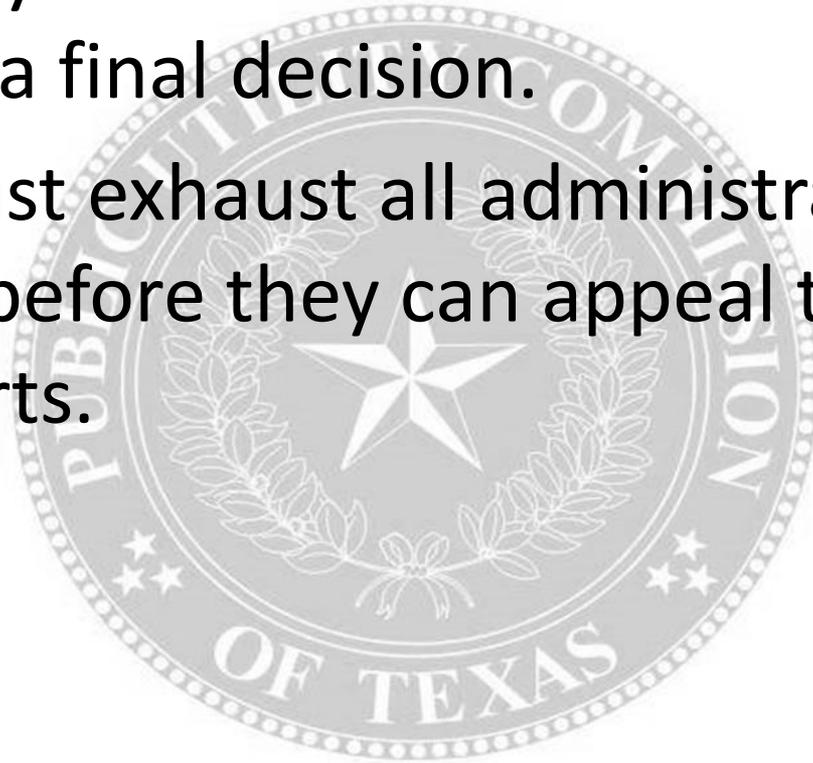
- If a case is referred to SOAH, the SOAH Administrative Law Judge (ALJ) conducts the evidentiary hearing and prepares a Proposal for Decision.
- The Proposal for Decision includes the ALJ's recommendation on all contested issues, and proposed findings of fact and conclusions of law.
- Parties may file exceptions and replies to exceptions to the PFD.

# Contested Cases

- If the case went to SOAH, Commissioners evaluate the PFD and either approve it or modify it as they see fit. The final decision is memorialized in a “final order.”
- A final decision must be rendered not later than the 60<sup>th</sup> day after the final hearing is closed, with some exceptions.

# Contested Cases

- Parties may file motions for rehearing up to 20 days after a final decision.
- Parties must exhaust all administrative remedies before they can appeal the decision in the courts.



# Contested Cases and Ex Parte Rules

- The Government Code prohibits a member or employee of a state agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case from directly or indirectly communicating with a state agency, person, party, or a representative of those entities, except on notice and opportunity for each party to participate.
- The prohibition technically applies to discussions involving issues of fact or law in a contested case with *any* person, even if the person is not affiliated with the case.
- Commissioners *can* communicate on procedural matters (e.g., hearing dates and deadlines).
- Commission Staff participates as a party, representing the public interest, and can communicate with other parties.

# Rulemakings

- Implement, interpret, or prescribe law or policy.
- Are assigned a Project Number.
- Describe the procedure or practice requirements of a state agency.
- Are initiated as needed, either by staff or at the request of a Commissioner.
- Can be petitioned for by persons outside the Commission.

# Notice of Rulemakings Proposal for Publication

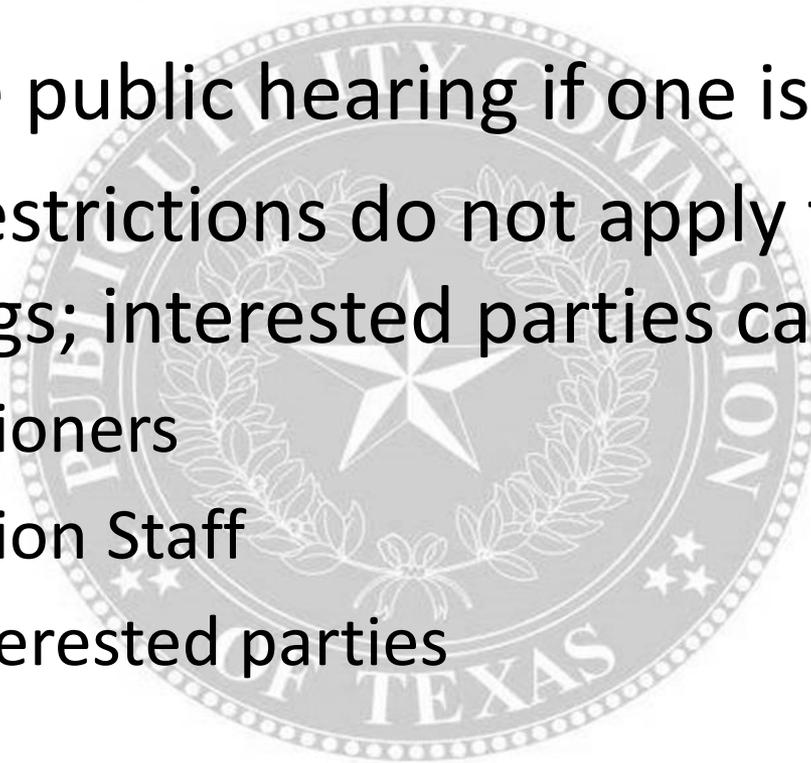
- All proposed rulemakings must be noticed in the Texas Register at least 30 days prior to adoption by the Commission.
- Notice must include:
  - Brief explanation of the rule.
  - Fiscal note for each of the next five years.
  - Public benefit of the rule for the next five years.
  - Local employment impact.
  - Request for comments.
  - Text of the proposed rule.
  - Statutory authority which the rule is adopted.

# Rulemakings: Public Comment

- The Attorney General recommends a 30 day period for public comment.
- Public comment may be through oral testimony or in writing.
- A public hearing is usually automatically scheduled if there are controversial issues.
- A public hearing **must** be held if requested by:
  - At least 25 persons.
  - A governmental subdivision or agency or an association having at least 25 members.

# How to Get Involved in Rulemakings

- Submit comments.
- Attend the public hearing if one is held.
- *Ex parte* restrictions do not apply to rulemakings; interested parties can talk to:
  - Commissioners
  - Commission Staff
  - Other interested parties



# Order Adopting a Rule

The order must include:

- Names of interested persons who filed comments and their positions.
- Summaries of the comments and the agency's agreement or disagreement to the comments.
- Summary of the factual basis and the rule as adopted.
- Statutory authority and the interpretation of the provisions that authorize the rule.
- Certification that the rule has been reviewed by legal counsel.

# Rulemakings

- Are effective 20 days after being submitted to the Secretary of State, except in unique circumstances.
- All state agencies are required to have a plan on file with the Secretary of State for continual review of its rules.
  - Rules must be reviewed at least every four years.
  - The review assesses whether the reason for originally adopting the rule continues to exist.

