

Subchapter K. HEARINGS.

§22.203. Order of Procedure.

- (a) **Opening the evidentiary hearing.** The presiding officer shall open the hearing by making a concise statement of its scope and purposes and by taking appearances of each party or the party's authorized representative.

- (b) **Order of procedure in evidentiary hearings.**
 - (1) The party with the burden of proof on the whole proceeding shall be entitled to open and to close. Parties shall be allowed to make opening statements. Following opening statements, if any, the party with the burden of proof shall be allowed to proceed with its direct case. Opposing parties shall be allowed to cross-examine each witness, consistent with any order aligning parties. Each party shall then present its case and witnesses will be subjected to cross-examination. Unless otherwise ordered by the presiding officer for good cause, the commission staff representing the public interest shall be the last party to present a direct case.
 - (2) Redirect or recross examination will be limited to matters raised in the round of examination immediately preceding the redirect or recross examination.
 - (3) The party with the burden of proof may rebut evidence presented by opposing parties after all parties have presented their direct cases. Rebuttal may be afforded other parties at the presiding officer's discretion, provided that the party with the burden of proof shall be entitled to make the closing presentation, which may include surrebuttal.
 - (4) The presiding officer may allow supplemental rebuttal only to the extent that the party with the burden of proof could not have reasonably anticipated the need for such evidence in time to file it with the party's main rebuttal case. Oral supplemental rebuttal may be allowed, provided that the testimony is in response to matters first brought up in cross examination of a nonapplicant witness and only to the extent that the applicant could not have reasonably anticipated the need for such evidence in time to file it in written form. If a party intends to present supplemental rebuttal, it shall state in writing or on the record at the beginning of the presentation of its rebuttal case which witnesses will be presenting supplemental rebuttal, the general subject of the supplemental rebuttal, the evidence which the supplemental rebuttal is intended to rebut, and which rebuttal, if any, will be oral rather than written. Written supplemental rebuttal, if allowed, shall be filed no later than five working days after the date the evidence being rebutted was admitted. Oral supplemental rebuttal shall be limited to evidence offered to rebut evidence admitted less than five working days before the oral supplemental rebuttal is offered. Any exhibits offered during oral supplemental rebuttal shall be distributed to the presiding officer and the parties at the beginning of the applicant's rebuttal case, unless otherwise ordered by the presiding officer. A party may be exempted from the requirements of this subparagraph only upon a showing that compliance is not feasible.
 - (5) After parties have completed the presentation of evidence, and have been afforded the opportunity to cross-examine the other parties' witnesses, closing statements shall be allowed. Such statements shall be made either in writing or orally at the presiding officer's discretion.
 - (6) The presiding officer may question any witness testifying in a case. A party may raise an evidentiary objection to any question asked by the presiding officer, and the presiding officer shall rule on any such objection.
 - (7) Subject to the requirements of APA, the presiding officer may call upon any party for further material or relevant evidence on any issue before issuing a proposal for decision. The additional evidence shall not be admitted without an opportunity for inspection, objection, and cross-examination by all parties, and rebuttal by the party with the burden of proof on the whole proceeding.