

basis. This requirement will allow commission staff and affected landowners sufficient time to review the evidence prior to a hearing or commission decision; and

- (3) Clarify and correct references to other commission rules.

The commission received one comment on the proposed amendment from TXU Electric Company (TXU). TXU commented that additional issues not addressed in the applicant's prefiled testimony and exhibits may be raised by an intervenor or by the commission and included in the list of issues to be addressed at hearing as part of an Order of Referral and/or Preliminary Order. TXU proposed adding language to new paragraph (8) stating that nothing in the proposed rule shall prohibit the applicant from filing supplemental direct testimony addressing topics in a preliminary order that were not previously addressed in the applicant's direct testimony.

The commission concludes that the additional language proposed by TXU is unnecessary and inappropriate. The commission notes that the proposed rule mirrors the filing requirements for a major rate case and the commission is not aware of the problem described by TXU ever arising in that context. Instead, at new paragraph (10), the proposed rule contemplates additional testimony being filed at the discretion of the presiding officer. Finally, should specific directions to address additional issues be necessary, such directions could be incorporated into the Order of Referral and/or Preliminary Order itself.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2001) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 39.151, 39.152 and 39.155.

§22.225. Written Testimony and Accompanying Exhibits.**(a) Prefiling of testimony, exhibits, and objections.**

- (1) Unless otherwise ordered by the presiding officer upon a showing of good cause, the written direct and rebuttal testimony and accompanying exhibits of each witness shall be prefiled. Deposition testimony and responses to requests for information by an opposing party that a party plans to introduce as part of its direct case shall be filed at the time the party files its written direct testimony. The presiding officer shall establish a date for filing of deposition testimony and requests for information that an applicant plans to introduce as part of its direct case.
- (2) Deposition testimony and responses to requests for information that a party plans to introduce in support of its rebuttal case shall be filed at the time the party files its written rebuttal testimony.
- (3) A party is not required to prefile documents it intends to use during cross-examination except that the presiding officer may require parties to identify documents that may be used during cross examination if it is necessary for the orderly conduct of the hearing.
- (4) Objections to prefiled direct testimony and exhibits, including deposition testimony and responses to requests for information, shall be filed on dates established by the presiding officer and shall be ruled upon before or at the time the prefiled testimony and accompanying exhibits are offered. Objections to

prefiled rebuttal testimony shall be filed pursuant to the schedule ordered by the presiding officer.

- (5) Nothing in this section shall preclude a party from using discovery responses in its direct or rebuttal case even if such responses were not received prior to the applicable deadline for pre-filing written testimony and exhibits.
- (6) The testimony pre-filing schedule in a major Public Utility Regulatory Act, Chapter 36, Subchapter C or E, or Chapter 53, Subchapter C or E rate proceeding shall be established as set out in this subsection.
 - (A) Any utility filing an application to change its rates in a major rate proceeding shall file the written testimony and exhibits supporting its direct case on the same date that such statement of intent to change its rates is filed with the commission. As set forth in §22.243(b) of this title (relating to Rate Change Proceedings), the prefiled written testimony and exhibits shall be included in the rate filing package filed with the application.
 - (B) Other parties in the proceeding shall prefile written testimony and exhibits according to the schedule set forth by the presiding officer. Except for good cause shown or upon agreement of the parties, the commission staff representing the public interest may not be required to file earlier than seven days prior to hearing.
 - (C) The presiding officer shall establish dates for filing of rebuttal testimony.
- (7) The presiding officer shall establish a pre-filing schedule for Public Utility Regulatory Act, Chapter 36, Subchapter D or Chapter 53, Subchapter D rate cases

and for cases other than major rate proceedings. In proceedings that are not major rate proceedings, notice of intent proceedings, applications for certificates of convenience and necessity for new generating plant, or applications for fuel reconciliations, the applicant is not required to prefile written testimony and exhibits at the time the filing is made unless otherwise required by statute or rule.

- (8) Utilities filing an application for construction of a transmission facility that has been designated by the Electric Reliability Council of Texas (ERCOT) independent system operator as critical to the reliability of the ERCOT system and to be considered on an expedited basis, shall file written testimony and exhibits supporting its direct case on the same date that the application is filed with the commission. This requirement shall also apply to transmission lines located in other reliability councils or administered by other independent system operators provided such councils have a process for designation of critical transmission lines.
- (9) The times for pre-filing set out in this section may be modified upon a showing of good cause.
- (10) Late-filed testimony may be admitted into evidence if the testimony is necessary for a full disclosure of the facts and admission of the testimony into evidence would not be unduly prejudicial to the legal rights of any party. A party that intends to offer late-filed testimony into evidence shall, at the earliest opportunity, inform the presiding officer, who shall establish reasonable procedures and deadlines regarding such testimony.

- (b) **Admission of prefiled testimony.** Unless otherwise ordered by the presiding officer, direct and rebuttal testimony shall be received in written form. The written testimony of a witness on direct examination or rebuttal, either in narrative or question and answer form, may be received as an exhibit and incorporated into the record without the written testimony being read into the record. A witness who is offering written testimony shall be sworn and shall be asked whether the written testimony is a true and accurate representation of what the testimony would be if the testimony were to be given orally at the time the written testimony is offered into evidence. The witness shall submit to cross-examination, clarifying questions, redirect examination, and recross-examination. The presiding officer may allow voir dire examination where appropriate. Written testimony shall be subject to the same evidentiary objections as oral testimony. Timely prefilings of written testimony and exhibits, if required under this section or by order of the presiding officer, is a prerequisite for admission into evidence.
- (c) **Supplementation of prefiled testimony and exhibits.** Oral or written supplementation of prefiled testimony and exhibits may be allowed prior to or during the hearing provided that the witness is available for cross-examination. The presiding officer may exclude such testimony if there is a showing that the supplemental testimony raises new issues or unreasonably deprives opposing parties of the opportunity to respond to the supplemental testimony. The presiding officer may admit the supplemental testimony and grant the parties time to respond.

- (d) **Tender and service.** On or before the date the prefiled written testimony and exhibits are due, parties shall file the number of copies required by §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials), or other commission rule or order, of the testimony and exhibits with the commission filing clerk and shall serve a copy upon each party.
- (e) **Withdrawal of evidence.** Any exhibit offered and admitted in evidence may not be withdrawn except with the agreement of all parties and approval of the presiding officer.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §22.225 relating to Written Testimony and Accompanying Exhibits is hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 1st DAY OF MARCH 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman