

Subchapter E. PLEADINGS AND OTHER DOCUMENTS.

§22.71. Filing of Pleadings, Documents, and Other Materials.

- (a) **Applicability.** This section applies to all pleadings as defined in §22.2 of this title (relating to Definitions) and the following documents:
- (1) All documents filed relating to a rulemaking proceeding.
 - (2) Applications.
 - (3) Letters or memoranda relating to any item with a control number.
 - (4) Reports required by PURA, commission rules or request of the commission.
 - (5) Discovery requests and responses.
- (b) **File with the commission filing clerk.** Except as provided in §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission), all pleadings and documents required to be filed with the commission shall be filed with the commission filing clerk, and shall state the control number on the heading, if known.
- (c) **Number of items to be filed.** Unless otherwise provided by this chapter or ordered by the presiding officer, the number of copies to be filed, including the original, are as follows:
- (1) applications, petitions, and complaints: ten copies;
 - (2) applications for expanded local calling: seven copies;
 - (3) applications for certificates of operating authority (COAs) or service provider certificates of operating authority (SPCOA), amendments to COA or SPCOA applications, and all pleadings or documents related to the applications for COAs or SPCOAs: seven copies;
 - (4) applications for certification of retail electric providers or for registration of power generation companies, self-generators or aggregators: seven copies;
 - (5) tariffs:
 - (A) for review under §22.33 of this title (relating to Tariff Filings), including discovery responses for tariffs filed under §22.33 of this title: six copies;
 - (B) related to docketed proceedings: ten copies;
 - (C) related to discovery responses in docketed proceedings: four copies; and
 - (D) filed by a water supply or sewer service corporation under §24.21 of this title (relating to Form and Filing of Tariffs): two copies;
 - (6) exceptions, replies, interim appeals, requests for oral argument, and other documents addressed to the commissioners: 19 copies;
 - (7) testimony and briefs: 11 copies, except that in contested cases transferred to the State Office of Administrative Hearings, parties must file 13 copies of testimony and briefs;
 - (8) rate, fuel factor, and fuel reconciliation filing packages: 11 copies;
 - (9) applications for certificates of convenience and necessity, amendments to certificates of convenience and necessity (including petitions for decertification), and service area exceptions: seven copies;
 - (10) discovery requests: five copies;
 - (11) discovery responses: four copies;
 - (12) reports required by PURA, the TWC, or the commission's Substantive Rules: four copies;
 - (13) comments to proposed rulemakings: 16 copies; and
 - (14) other pleadings and documents: ten copies, except that in contested cases transferred to SOAH, parties must file 12 copies of other pleadings and documents.
- (d) **Confidential material:**
- (1) A party providing materials designated as confidential shall deliver them to Central Records in an enclosed, sealed and labeled envelope (the confidential envelope). The confidential envelope shall not include any non-confidential materials unless directly related to and essential for clarity of the confidential material. Each copy of confidential material shall be provided in a separate sealed and labeled envelope. Parties shall notify the Central Records filing clerk at the time of submission of any documents to be file-stamped whether the submission includes any confidential material. If the confidential envelope does not meet the requirements of subparagraph (A)(i)-(vii) of this paragraph, both the confidential envelope and

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any document directly related to the confidential material will be immediately returned to the submitting party without being filed-stamped. If the confidential envelope meets the requirements of subparagraph (A)(i)-(vii) of this paragraph, Central Records shall accept it. No submitting party shall deliver any confidential materials directly to commission staff. Confidential documents related to settlement negotiations shall be submitted in conformance with paragraph (4) of this subsection. Confidential documents submitted for *in camera* review shall be submitted in conformance with paragraph (5) of this subsection.

- (A) The confidential envelope shall contain confidential material related only to a single proceeding. All confidential material, including that submitted in diskette or CR-ROM format, shall be provided in a 10 X 13 inch manila clasp envelope. A larger envelope shall be permitted only when necessary as a result of the document’s size as detailed in §22.72(b)(2) of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). All envelopes shall be identified with a label containing the information required in clauses (i)-(viii) of this subparagraph:
 - (i) the word “CONFIDENTIAL” in bold print and all capitals at least one-half inch in size;
 - (ii) the control number, if available;
 - (iii) the style of the proceeding;
 - (iv) the name of the submitting party;
 - (v) Brief description of contents, i.e., Response to (Name of RFI requestor)’s First RFI No. 1-1;
 - (vi) Bate Stamped or consecutive page number range of documents enclosed;
 - (vii) Number and quantity of envelopes: If the confidential material fits into one envelope, each copy would be marked *one of one*. If the confidential material requires two envelopes, each copy would be marked *one of two* and *two of two*; and
 - (viii) any other markings as required by the individual protective orders in each proceeding.
- (B) The submitting party’s label shall substantially conform to the following form, with changes as necessary to comply with any individual protective order applicable to the proceeding, and shall be securely taped or adhered only to the front of the confidential envelope:

CONFIDENTIAL

DOCKET NO. _____
 STYLE: _____

 SUBMITTING PARTY: _____
 BRIEF DESCRIPTION OF CONTENTS: _____

 BATE STAMP OR SEQUENTIAL PAGE NUMBER RANGE:
 _____ TO _____
 ENVELOPE # _____ OF _____
 ADDITIONAL INFORMATION REQUIRED BY PROTECTIVE ORDER:

 DATE SUBMITTED TO COMMISSION: _____

- (C) The confidential materials shall:
 - (i) have each page of the confidential material marked *confidential* or as required by the individual protective orders in each proceeding;
 - (ii) meet the requirements of §22.72(g) of this title;

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- (iii) have each page, including any cover letters or divider pages, sequentially numbered and the sequential numbers shall be easily distinguishable from any other numbering the submitting party uses for internal purposes;
 - (iv) be stapled or secured in a pressboard letter folder or binder, and not loose, rubber banded, paper clipped or in a three-ring binder.
 - (D) Unless otherwise provided by this chapter or the presiding officer, confidential material submitted as evidence at hearings shall follow the procedures set forth in this paragraph.
- (2) Unless otherwise provided by this chapter or order of the presiding officer the number of copies of confidential material delivered to the commission shall be as follows:
 - (A) related to arbitrations: two copies;
 - (B) related to discovery: two copies;
 - (C) related to contested cases transferred to the SOAH: two copies to Central Records and one copy delivered directly to SOAH;
 - (D) related to any other proceeding: two copies; and
 - (E) related to request for proposal for goods and/or services: one copy
- (3) Unless otherwise provided by this chapter or order of the presiding officer, all confidential material shall be delivered to Central Records. All commission employees receiving confidential materials through Central Records, or otherwise handling or routing confidential materials for any purpose, shall sign an agreement not to open any sealed containers marked as confidential under paragraph (1) of this subsection. Confidential materials shall not be filed with the commission electronically unless specific arrangements are made and agreed to by the parties involved on a case-by-case basis.
 - (A) Materials related to arbitrations. Central Records will maintain one file copy that is not accessible to the public or commission staff and one copy that may be viewed by parties who have signed an agreement to abide by the protective order in the proceeding. The party who provides the confidential material must deliver one copy of confidential materials not related to discovery to the commission's arbitrators assigned to the matter.
 - (B) Material related to contested cases transferred to SOAH and other docketed proceedings. Central Records will maintain one file copy that is not accessible to the public or commission staff and one copy that may be viewed by parties who have signed an agreement to abide by the protective order in the proceeding. Parties who have signed an agreement to abide by the protective order in the proceeding may view the copy of the confidential material maintained by Central Records. The party who provides the confidential material will be responsible for delivering one copy of confidential materials not related to discovery to SOAH.
 - (C) Request for proposal for goods and/or services. Confidential material related to a request for proposal for goods and/or services will be delivered to the commission's Agency Counsel or the Agency Counsel's authorized representative.
 - (D) Notwithstanding subparagraphs (A)-(C) of this paragraph, commission employees in the Commission Advising and Docket Management Division and in the commissioners' offices shall sign one confidentiality and non-disclosure agreement applicable to all proceedings. Employees in the Commission Advising and Docket Management Division that are assigned to a matter and employees in the commissioners' offices may view and check out confidential material for that matter maintained by Central Records and may disclose such information to other employees in the Commission Advising and Docket Management Division that are assigned to the matter and to employees in the commissioners' offices.
- (4) **Settlement negotiations.** Confidential materials related to settlement negotiations shall be delivered to Central Records. Confidential materials related to settlement negotiations shall not be considered part of the official record and shall not be logged into the commission's agency information system (AIS). The party submitting confidential materials for settlement negotiations is responsible for ensuring that the materials are properly labeled as required by subparagraphs (A) and (B) of this paragraph. Confidential materials that are not properly

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labeled will not be accepted by Central Records. Central Records will ensure that the materials are delivered to the staff person identified on the label.

- (A) Confidential material related to settlement negotiations shall be delivered in a sealed envelope identified with a label containing the information in clauses (i)-(v) of this subparagraph:
- (i) the words SETTLEMENT NEGOTIATIONS and CONFIDENTIAL in bold print and all capitals at least one-half inch in size;
 - (ii) the control number;
 - (iii) the style of the proceeding;
 - (iv) name of submitting party; and
 - (v) name of the staff person assigned to the proceeding who is to receive the confidential material.
- (B) The submitting party's label shall substantially conform to the following form and shall be securely taped or adhered only to the front of the confidential envelope:

**SETTLEMENT
NEGOTIATIONS
CONFIDENTIAL**

DOCKET NO. _____

STYLE: _____

SUBMITTING PARTY: _____

COMMISSION STAFF PERSON TO RECEIVE MATERIAL: _____

DATE SUBMITTED TO COMMISSION: _____

- (5) ***In camera* review.** One copy of confidential materials related to *in camera* review shall be delivered to Central Records. Confidential materials related to *in camera* review shall not be considered part of the official record and shall not be logged into the commission's agency information system (AIS). The party submitting confidential materials for *in camera* review is responsible for ensuring that the materials are properly labeled as required by subparagraphs (A) and (B) of this paragraph. Confidential materials that are not properly labeled will not be accepted by Central Records. Central Records will ensure that the materials are delivered to the administrative law judge or arbitrator assigned to the proceeding.
- (A) Confidential material related to *in camera* review shall be delivered in a sealed envelope identified with a label containing the information in clauses (i) - (v) of this subparagraph:
- (i) the words IN CAMERA REVIEW and CONFIDENTIAL in bold print and all capitals at least one-half inch in size;
 - (ii) the control number;
 - (iii) the style of the proceeding;
 - (iv) name of submitting party; and
 - (v) name of the administrative law judge or arbitrator assigned to the proceeding.
- (B) The submitting party's label shall substantially conform to the following form and shall be securely taped or adhered only to the front of the confidential envelope:

IN CAMERA REVIEW CONFIDENTIAL

DOCKET NO. _____

STYLE: _____

SUBMITTING PARTY: _____

ADMINISTRATIVE LAW JUDGE or ARBITRATOR:

SUBMITTED TO COMMISSION: _____

- (6) Working copies of confidential material shall be maintained, destroyed, or returned to the providing party in conformance with the individual protective orders in each proceeding. Record copies of confidential material shall be maintained or destroyed as required by the commission's Records Retention Schedule as approved by the Texas State Library and Archives Commission.
- (e) **Receipt by the commission.** Pleadings and any other documents shall be deemed filed when the required number of copies and the electronic copy, if required, in conformance with §22.72 of this title are presented to the commission filing clerk for filing. Reports that are exempt from being filed with the commission filing clerk under §22.72 of this title shall be deemed received when a record containing the data from the report is created in the system used by the commission to store the report. The commission filing clerk shall accept pleadings and documents if the person seeking to make the filing is in line by the time the pleading or document is required to be filed.
- (f) **No filing fee.** No filing fee is required to file any pleading or document with the commission.
- (g) **Office hours of Central Records and the commission filing clerk.**
The office hours of Central Records are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days, except on Fridays and open meeting days. On Fridays, Central Records will close for all purposes from noon to 1:00 p.m. On open meeting days, Central Records will open at 8:00 a.m., and the commissioners and the Commission Advising and Docket Management Division may file items related to the open meeting on behalf of the commissioners between the hours of 8:00 a.m. and 9:00 a.m. No other filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m. The commissioners and the Commission Advising and Docket Management Division shall provide the filing clerk with an extra copy of all documents filed under this subsection for public access.
- (h) **Filing deadline.** All documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.
- (i) **Filing deadlines for documents addressed to the commissioners.**
(1) Except as provided in paragraph (2) of this subsection, all documents from parties addressed to the commissioners relating to any proceeding that has been placed on the agenda of an open meeting shall be filed with the commission filing clerk no later than seven days prior to the open meeting at which the proceeding will be considered provided that no party is prejudiced by the timing of the filing of the documents. Documents that are not filed before the deadline

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and do not meet one of the exceptions in paragraph (2) of this subsection, will be considered untimely filed, and may not be reviewed by the commissioners in their open meeting preparations.

- (2) The deadline established in paragraph (1) of this subsection does not apply if:
 - (A) The documents have been specifically requested by one of the commissioners;
 - (B) The parties are negotiating and such negotiation requires the late filing of documents;
or
 - (C) Good cause for the late filing exists. Good cause must clearly appear from specific facts shown by written pleading that compliance with the deadline was not reasonably possible and that failure to meet the deadline was not the result of the negligence of the party. The finding of good cause lies within the discretion of the commission.
- (3) Documents filed under paragraph (2) of this subsection shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.