

PROJECT NO. 25341

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| RULEMAKING TO AMEND | § | PUBLIC UTILITY COMMISSION |
| PROCEDURAL RULE(S) IN | § | |
| SUBCHAPTER E, PLEADINGS AND | § | OF TEXAS |
| OTHER DOCUMENTS | § | |

**ORDER ADOPTING AMENDMENTS TO §22.71 AS APPROVED
AT THE JUNE 20, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §22.71, relating to Filing of Pleadings, Documents, and Other Materials with changes to the proposed text as published in the April 5, 2002 *Texas Register* (27 TexReg 2669). The amendment clarifies the procedures that parties must follow to submit confidential materials to the commission; the result will be greater protection of confidential materials and a lesser administrative burden associated with protecting such materials. The rule requires parties to deliver confidential materials to the commission's Central Records in sealed, standard sized envelopes with labels that conform closely to the standard set forth in the rule. The confidential documents submitted shall be reviewed to determine whether the submissions conform to the standard provided for by this section; submissions that fail to comply shall be rejected. The rule also addresses the treatment of materials related to settlement negotiations and *in camera* review. This amendment was adopted under Project Number 25341, *Rulemaking to Amend Procedural Rules in Subchapter E, Pleadings and Other Documents*.

A public hearing on the amendment was held at commission offices on May 14, 2002. Representatives from AT&T Communication of Texas, LP (AT&T); Office of Public Utility Counsel (OPUC); Southwestern Bell Telephone, L.P. (SWBT); Reliant Energy, Inc. (Reliant Energy); Reliant Resources,

Inc. (RRI); and Verizon attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed amendment from American Electric Power (AEP); Entergy Gulf States Services, Inc. (EGSI); Oncor Electric Delivery Company (Oncor); OPUC; Reliant Energy; RRI; SWBT; Xcel Energy Services, Inc. (Xcel); and Verizon.

The commission received reply comments on the proposed amendment from AEP, EGSI, OPUC, and SWBT.

§22.71(d)

OPUC recommended adding a new subsection with the following language: "Confidential materials provided by a submitting party to other parties shall conform to the provisions of paragraph (1) of this subsection with respect to form, labeling, content, and appearance." OPUC asserted that this language will help other parties protect confidential materials.

The commission rejects this proposed addition. While the commission certainly encourages parties to follow the rule requirements in the exchange of confidential materials, the commission finds that this is not appropriate language for the rule. Parties may desire more flexibility in how they are able to behave vis-à-vis one another.

§22.71(d)(1) — "The confidential envelope shall not include any non-confidential materials"

EGSI, OPUC, Reliant Energy, RRI, and Verizon expressed concern with the requirement that the confidential envelope shall not include any non-confidential materials. These parties reasoned that confidential materials are likely to include some non-confidential information. OPUC recommended adding the following language to the beginning of the second sentence of paragraph one: "Except for unredacted copies of testimony or legal briefing..."

The commission understands that some confidential envelopes will have non-confidential materials interspersed within. The purpose behind the requirement is to preclude parties from submitting clearly non-confidential materials as confidential materials, a problem that arose often under the former rule. The commission expects that parties will exercise some discretion. The commission understands parties' concerns and has modified the rule as follows: "The confidential envelope shall not include any non-confidential materials unless directly related to and essential for clarity of the confidential material." If a small portion of testimony is confidential, while the majority is not confidential, the entire unredacted document should be filed as confidential for readability. The same reasoning holds true for legal briefs. As OPUC commented, this issue is likely to arise only with briefs and testimony, which depend for their readability on being complete. However, SWBT had also expressed concern regarding cost studies. Thus, the commission believes that the change is warranted.

§22.71(d)(1) — "The confidential documents manager for the Legal Division shall review...."

Oncor requested that the commission clarify its intent as to whether there will be only one documents manager at a time in the Legal Division and asked that the rule be amended to include language stating that the documents manager has to sign a protective order or confidentiality agreement prior to handling confidential materials. Oncor asserted that the rule is unclear as to whom should be contacted if materials are rejected and the means by which such materials shall be returned. Accordingly, Oncor recommended that the filing form be amended to include the name and telephone number of a contact person for the filing party and that the rule be clarified to allow the filing party the option of picking up the materials in person rather than having them returned via mail. OPUC supported the principle that the confidential documents manager review submissions to assure that they comply with the rule; however, OPUC inquired as to whether documents would be deemed timely filed as submitted even though such documents do not comply with the rule. If non-complying documents are deemed timely filed, notwithstanding their non-compliance, OPUC asserted that there should be some time limit for re-submitting the documents so as to avoid a situation arising in which a party takes advantage of the system by using the additional time to prepare the filings. In reply comments, SWBT stated that if a party errs in preparing the documents with the result that the documents are rejected, these documents will still be served on all parties to the proceeding. Thus, parties will be able to determine whether a subsequent conforming filing is identical in substance to the incorrectly filed documents. Furthermore, SWBT stated that it is inappropriate to assume that parties practicing before the commission will exercise bad faith. In reply comments, AEP stated that it opposes delaying dissemination of non-

confidential documents based on a finding that the confidential materials associated with it fail to conform to the rule. AEP contended that parties should be given a reasonable time to cure deficiencies; accordingly, AEP asserted that parties should have until 3:00 p.m. the following day to conform the documents to the requirements of the rule. In its reply comments, OPUC reiterated the position that it took during the May 14, 2002 public hearing. OPUC asserted that the filing deadline should be short, rejecting SWBT's proposal that parties be given 24 hours to correct the improperly filed documents. OPUC asserted that parties should be given two hours to make corrections. Finally, OPUC argued that parties should have until 9:30 a.m. the next day to make corrections to larger filings.

There is only one confidential documents manager in the Legal Division. All commission staff who have access to confidential materials, including the confidential documents manager, must sign protective orders and/or confidentiality agreements prior to having access to confidential materials. The commission finds Oncor's suggestion that the rule be amended to include a provision stating that the confidential documents manager must sign a protective order and/or confidentiality agreement prior to having access to confidential materials unnecessary. The commission also rejects Oncor's recommendation that the label be amended to include the name and telephone number for a person to contact if the materials were to be rejected. The confidential documents manager for the Legal Division shall contact whoever is on the service list if the documents are rejected. The commission also rejects Oncor's suggestion that the rule's language be amended to state that a filing party may pick up materials in person. These arrangements can be made on a case-by-case basis and do not need to be specified in the rule. For the first 30 days after this rule has been enacted, the commission realizes that parties are

likely to err; consequently, the commission shall apply a liberal standard in construing the rule for the first 30 days. After this 30 day period elapses, parties will be expected to conform filings to the letter of the rule. Whether parties will be penalized for failing to timely file documents is a decision that properly rests with the Administrative Law Judge (ALJ) assigned to the case. The commission has added the following language to the rule: "Parties shall resubmit any documents returned by either the filing clerk or the confidential documents manager no later than 3:00 p.m. the next working day after notification of the deficiency. Any issue regarding timeliness of the filing shall be addressed by the administrative law judge assigned to the proceeding."

§22.71(d)(1)(A) — "All confidential material shall be submitted in a 9 1/2 X 11 inch manila clasp envelope whenever possible."

AEP, EGSI, Reliant Energy, and SWBT contended that the 9 1/2 X 11 inch manila envelopes is a non-standard size and therefore difficult to procure. SWBT argued that the rule should not require clasp envelopes, since these tend to be more expensive than envelopes with adhesive material. SWBT reasoned that it uses heavy tape to seal its envelopes; therefore, the clasp is unnecessary. Oncor contended that the rule should not specify a size and observed that the qualification "whenever possible" might render the issue moot.

The commission agrees that the 9 1/2 X 11 inch manila envelope is a non-standard size. The rule has been changed to specify that the envelope should be a 10 X 13 inch envelope. The commission rejects

SWBT's request that the rule not require the use of clasp envelopes. The purpose behind requesting that parties use clasp envelopes is that, once opened, they can easily be resecured. Envelopes that use adhesive material, especially heavy tape, cannot be resecured easily once opened and often are destroyed in the opening process, requiring that the commission replace the envelopes. Therefore, the use of clasp envelopes is in the best interests of submitting parties, since their use makes the loss of papers less likely than the use of adhesive envelopes. Parties are requested not to use heavy duty tape or to use an excessive amount of tape to seal envelopes.

The commission rejects Oncor's recommendation that the rule not specify an envelope size. One of the purposes of the amendment is to standardize submissions of confidential information. The room in which confidential materials are stored is small with limited storage space. Envelopes larger than 10 X 13 inches are unlikely to fit in the filing cabinets. The commission notes that the purpose behind the modifier "whenever possible" is to recognize that there might be instances in which parties must use containers other than envelopes to submit confidential materials pursuant to §22.72(b)(2) of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission); however, parties should not interpret the language as carte blanche to provide submissions that fail to conform to the size requirements of this subsection. Therefore, the commission has modified the rule to delete the phrase "whenever possible."

§22.71(d)(1)(A) — "Any confidential information submitted in disk or CD-ROM format shall be placed in a 6 1/2 X 9 1/2 inch manila clasp envelope."

AEP, EGSI, Reliant Energy, and SWBT recommended elimination of the requirement that confidential information submitted in disk or CD-ROM format be placed in a 6 1/2 X 9 1/2 inch manila clasp envelope. The parties seemed to agree that the non-standard envelope size would increase costs and that there is a chance that the envelopes could get lost.

The commission agrees to eliminate this language. However, parties shall submit disks and CD-ROMs containing confidential information in 10 X 13 inch envelopes.

§22.71(d)(1)(A) — "All envelopes shall be identified with a label containing the information required in clauses (i) — (viii) of this subparagraph."

AEP, EGSI, Reliant Energy, and SWBT recommended that the phrase "CONFIDENTIAL AND UNDER SEAL" be shortened to "CONFIDENTIAL." The parties noted that the phrase "UNDER SEAL" is made redundant by the first sentence of subsection (d)(1). These parties also recommended that the one inch requirement be reduced to at least 3/4 inch so that all information can fit on a label with one inch margins. The parties suggested that a line should be added to the label to allow parties to specify the date on which the confidential materials were submitted. SWBT further recommended that subparagraph (A)(iv) be eliminated because subparagraph (A)(v) renders its redundant. During the public hearing, Reliant Energy asked whether parties could designate materials as highly sensitive by including this phrase on the label.

The commission concurs with the suggestion that the phrase "UNDER SEAL" be eliminated and has made changes accordingly. Furthermore, the commission finds that the word "CONFIDENTIAL" need only be in 1/2 inch letters. The rule has been changed to add a line so that parties can indicate the date on which they submitted the confidential materials. The commission rejects SWBT's recommendation that subparagraph (A)(iv) be eliminated. Subparagraph (A)(iv) exists so that Central Records and the confidential documents manager for the Legal Division can quickly identify the party that has provided confidential materials; subparagraph (A)(v) merely provides an example of the manner in which a party should describe the contents of the envelope. A party need not necessarily include its name in the description. Provided that a protective order specifies that documents are to be treated as highly sensitive, the commission does not oppose parties including such designation on the label along with all other information that must be included on a label. Finally, the commission notes that the label obviates the need for parties to provide a letter stating that the materials are confidential.

§22.71(d)(1)(B) — "...and shall be securely taped only to the front of the confidential envelope."

OPUC asserted that the phrase "...and shall be securely taped only to the front of the confidential envelope" should be changed to "...and shall be securely taped or adhered to the front of the confidential envelope."

The commission agrees with the above comment and has changed the rule accordingly.

§22.71(d)(1)(C)(iii) — "...have each page including any cover letters or divider pages, sequentially Bate Stamped, beginning with 000001 or consecutively numbered beginning with '001';"

OPUC argued that this language would preclude parties from using new technology that allows documents to be sequentially numbered. Therefore, OPUC recommended that the commission adopt language indicating that each page could begin with "1." SWBT and EGSI contended that they use their own Bates numbering system; they asserted that it is important to be able to use their numbering system to internally keep track of documents. These parties also argued that the page numbering should not be required to begin with 000001 or 001.

The commission understands that parties use their own numbering system to keep track of documents; therefore, the commission has modified the rule to allow parties to use their own numbering system as long as each page of the document is sequentially numbered and the sequential numbers are easily distinguishable from any other numbering system in the document. Finally, the commission concurs that the page numbers do not have to begin with the number one.

§22.71(d)(3)

OPUC recommended adding the phrase "Except as otherwise provided by this chapter" to the second sentence of this subsection. OPUC reasoned that adding this language will clarify that the confidential

documents manager for the Legal Division and commission staff assigned to the proceeding are authorized to review confidential materials.

The commission rejects this proposed change as unnecessary.

§22.71(d)(4) — "Confidential materials related to settlement negotiations shall be delivered to Central Records..."

This was the most controversial aspect of the proposed amendments. AEP, EGSI, OPUC, Xcel, and SWBT submitted comments on this issue. Comments were also made during the public hearing. These parties expressed concern that subsection (d)(4) would have a chilling effect on settlement negotiations. Parties reasoned that if documents are delivered to Central Records, the documents are more likely to be subject to an Open Records request. This knowledge would deter parties from engaging in commission mediated settlement negotiations. Parties stated that settlement documents should be delivered directly to individuals within the commission who request those documents or need to examine them. Xcel noted that subsection (d)(4) could be interpreted to suggest that parties have to deliver e-mails and faxes to Central Records before these documents can be delivered to and reviewed by commission staff. RRI generally supported the addition of subsection (d)(4) but argued that the rule should explicitly state that commission staff must execute confidentiality agreements before the responding party is required to submit such materials. RRI also recommended the addition of language

to address the situation in which a party provides confidential information related to matters that are not formal rulemakings, projects, or docketed proceedings.

The commission first notes that this subsection serves a security concern. Given current events, the commission does not want documents delivered directly to commission staff. Rather, documents should be delivered to a central location within the commission where they can then be provided to commission staff who are involved in settlement negotiations. Furthermore, this subsection does not state that documents are to be filed in Central Records; the language merely provides that documents are to be delivered to Central Records. Finally, delivery of documents to Central Records does not necessarily render such documents any more vulnerable to disclosure under an Open Records request than documents that have been filed as confidential. Parties must understand that, in working with a state agency, there is always a possibility that a document will be subject to an Open Records request. Nevertheless, to assuage parties' concerns that documents might be filed inadvertently by Central Records, the language of the provision has been changed to require that documents related to settlement negotiations be delivered to the commission's Mail Room. From there, these documents shall be routed to commission staff. The commission appreciates Xcel's concern. In response, the commission affirms that subsection (d)(4) was not intended to include e-mails, faxes, or documents exchanged in face-to-face meetings; these, of course, can be sent directly to commission staff. The purpose behind subsection (d)(4) is to address the treatment of documents that must be delivered to the commission. The commission has changed this subsection such that documents related to settlement negotiations are

to be delivered to the commission's Mail Room. The subsection further provides that the Mail Room shall reject deliveries that are not properly labeled as required by the rule.

The commission rejects RRI's suggestion that language be added to the rule to indicate that commission staff need sign confidentiality agreements before receiving confidential materials. Commission staff may not review confidential materials without signed applicable protective orders or confidentiality agreements. There is no need to include this in the rule. The commission also rejects RRI's suggestion that language be added to the rule to address the situation in which confidential materials are provided in proceedings that are not formal rulemakings, projects, or dockets. This request is outside the scope of this proceeding and may best be addressed on a case-by-case basis.

Proposed §22.71(d)(5) (now (d)(6)) regarding retention of confidential material

AEP stated that it prefers to have the documents returned at the conclusion of the proceedings in question and would require return under the controlling protective order. AEP noted, however, that the rule also references the commission's Record Retention Schedule as controlling. AEP thus requested clarification as to the terms of the schedule.

The commission has modified subsection (d)(6) to clarify that working copies delivered for commission staff are returned or destroyed, as requested by the submitting party, in accordance with the terms of the protective order in each docket. Record copies of confidential material are maintained or destroyed

pursuant to the commission's Records Retention Schedule as approved by the Texas State Library and Archives Commission.

New §22.71(d)(5), *in camera* review

This subsection addresses the procedure that parties must follow to deliver confidential materials for *in camera* review. In the proposed rule, documents submitted for *in camera* review were to be delivered directly to the ALJ assigned to the proceeding. This language was proposed as most *in camera* review documents are submitted to ALJ's at the State Office of Administrative Hearings. However, at times it is necessary for *in camera* review documents to be submitted to ALJs or arbitrators here at the commission. Due to security concerns, parties will not have direct access to the ALJ or arbitrator(s) at the commission. Therefore, the rule has been modified to specify that documents delivered for *in camera* review must be properly and clearly labeled according to the provisions set forth in subsection (d)(5) and delivered to the Mail Room. The Mail Room shall ensure that the documents are delivered to the ALJ or arbitrator(s) identified on the label as being assigned to the proceeding. The Mail Room shall refuse to accept any *in camera* review documents not properly labeled.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2002) (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 and §14.052

§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 filed pursuant to the Public Utility Regulatory Act (PURA) or the commission's substantive rules in Chapter 25 and 26 of this title.
 - (3) Letters or memoranda relating to any item with a control number;
 - (4) Reports pursuant to PURA, commission rules or request of the commission.
 - (5) Discovery requests and responses.
- (b) **File with the commission filing clerk.** 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; and
- (C) related to discovery responses in docketed proceedings: four 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 for transmission lines or boundary changes, certificate of convenience and necessity exemptions, and service area exceptions: seven copies;
- (10) discovery requests: five copies;
- (11) discovery responses: four copies;
- (12) reports filed pursuant to the Public Utility Regulatory Act or the commission's Substantive Rules: four;

- (13) comments to proposed rulemakings: 16; and
 - (14) other pleadings and documents: ten copies, except that in contested cases transferred to the State Office of Administrative Hearings (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 ("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 prior to 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 envelope and any document directly related to the confidential material will be immediately returned to the submitting party without being file-stamped. If the confidential envelope meets the requirements of subparagraph (A)(i) — (vii) of this paragraph, Central Records shall accept it on a provisional basis. The confidential documents manager for the Legal Division shall review the confidential envelope and documents for compliance with subparagraphs (A) - (C) of this paragraph. Any envelope and/or documents that do not meet the requirements of these

subparagraphs will be returned to the submitting party by the confidential documents manager. The submitting party shall be required to bring the envelope and/or materials into compliance with this section and resubmit the envelope and materials through Central Records. Parties shall resubmit any documents returned by either the filing clerk or the confidential documents manager no later than 3:00 p.m. the next working day after notification of the deficiency. Any issue regarding timeliness of the filing shall be addressed by the administrative law judge assigned to the proceeding. No submitting party shall deliver any confidential materials directly to commission staff. Confidential documents related to settlement negotiations shall be submitted pursuant to paragraph (4) of this subsection. Confidential documents submitted for *in camera* review shall be submitted pursuant to 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 CD-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 pursuant to §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 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, i.e., one of one or one of two, two of two (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, 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;
 - (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 pursuant to 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 route one copy to the commission's Policy Development Division for the appeals file and one copy to the commission's Legal Division. Commission staff who have signed an agreement to abide by the protective order in the proceeding may view the copy of the confidential material maintained by the Legal Division.
- (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. Central Records will route the additional copy to the commission's Legal Division. Commission staff who have signed an agreement to abide by the protective order in the proceeding may view the copy of the confidential material maintained by the commission's Legal Division. 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 General Counsel or the General Counsel's authorized representative.
- (4) **Settlement negotiations.** Confidential materials related to settlement negotiations shall be delivered to the commission's Mail Room. 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 pursuant to subparagraphs (A) and (B) of this paragraph. Confidential materials that are not properly labeled will not be accepted by the Mail Room. The Mail Room 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 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 the commission's Mail Room. 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 pursuant to subparagraphs (A) and (B) of this paragraph. Confidential materials that are not properly labeled will not be accepted by the Mail Room. The Mail Room 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 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:

DATE SUBMITTED TO COMMISSION: _____

- (6) Working copies of confidential material shall be maintained, destroyed, or returned to the providing party pursuant to the individual protective orders in each proceeding. Record copies of confidential material shall be maintained or destroyed pursuant to 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. 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 the commission filing clerk.** With the exception of open meeting days, for the purpose of filing documents, the office hours of the commission filing clerk are from 9:00 a.m. to 5:00 p.m., Monday through Friday, on working days.
- (1) On open meeting days, the commissioners and the Policy Development 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. The commissioners and the Policy Development Division shall

provide the filing clerk with an extra copy of all documents filed pursuant to this paragraph for public access.

- (2) Central Records will open at 8:00 a.m. on open meeting days. With the exception of paragraph (1) of this subsection, no filings will be accepted between the hours of 8:00 a.m. and 9:00 a.m.

- (h) **Filing a copy or facsimile copy in lieu of an original.** Subject to the requirements of subsection (c) of this section and §22.72 of this title, a copy of an original document or pleading, including a copy that has been transmitted through a facsimile machine, may be filed, so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding.

- (i) **Filing deadline.** All documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.

- (j) **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 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.

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 §22.71 relating to Filing of Pleadings, Documents and Other Materials is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 28th DAY OF JUNE 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

Rebecca Klein, Chairman

Brett A. Perlman, Commissioner