

PROJECT NO. 25341

RULEMAKING TO AMEND § PUBLIC UTILITY COMMISSION
PROCEDURAL RULE(S) IN §
SUBCHAPTER E § OF TEXAS

**PROPOSAL FOR PUBLICATION AS APPROVED AT THE
MARCH 21, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §22.71, relating to Filing of Pleadings, Documents and Other Materials. The amendment to subsection (d) concerning confidential material is proposed to assure that confidential materials submitted to the commission are in a standardized form and uniformly labeled with a format prescribed by the commission. Furthermore, the proposed amendment more clearly explains the procedures to be followed by parties submitting confidential materials to the commission. Project Number 25341 is assigned to this proceeding.

Nicholas E. Chremos, Attorney, Legal Division has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Chremos has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be improved identification and protection of confidential material submitted to the commission. Furthermore, the proposed amendment should lead to improved standardization in the procedures that parties will follow in submitting confidential information with concomitant reductions in the administrative costs associated with properly

handling these materials. Additionally, because the amendment more clearly explains the procedure for submitting confidential information, there will be less confusion and greater compliance. There is minimal anticipated effect on small businesses or micro-businesses as a result of enforcing this section. There is minimal anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Chremos has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking pursuant to Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, May 14, 2002 at 9:30 a.m. in Hearing Room Gee located on the 7th floor.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 25341.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility 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) — (c) (No change.)

(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. Each copy of confidential material shall be provided in a separate sealed and labeled envelope. 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) and (B) 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. No submitting party shall deliver any confidential materials directly to commission staff, with the exception of documents submitted for *in camera* inspection pursuant to §22.144(g) of this title (relating to Requests for Information and Requests for Admission of Facts). Documents for *in camera* inspection shall be delivered directly to the administrative law judge (ALJ) assigned to the proceeding, or the ALJ's authorized representative.

Confidential documents related to settlement negotiations shall be submitted pursuant to paragraph (4) of this subsection.

Deleted: container, accompanied by an explanatory cover letter. The cover letter shall identify the control number, if available, and style of the proceeding and explain the nature of the sealed materials.

Deleted: container

(A) The confidential envelope shall contain confidential material related only to a single proceeding. All confidential material shall be provided in a 9 1/2 X 11 inch manila clasp envelope whenever possible. 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). 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. All envelopes shall be identified with a label containing the information required in clauses (i) - (vii) of this subparagraph:

(i) the words "CONFIDENTIAL & UNDER SEAL" in bold print at least one inch in size;

(ii) the control number, if available ;

Deleted: identify

Deleted: .

Deleted: .

(iii) the style of the proceeding;

Deleted: and

(iv) the name of the submitting party;

Deleted: . and be marked "CONFIDENTIAL & UNDER SEAL" in bold print at least one inch in size

(v) Brief description of contents, i.e., "{Name of Party}'s 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.

Deleted: include

- (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 only to the front of the confidential envelope:

CONFIDENTIAL & UNDER SEAL

DOCKET NO. _____

STYLE: _____

SUBMITTING PARTY: _____

BRIEF DESCRIPTION OF CONTENTS: _____

BATE STAMP OR CONSECUTIVE PAGE NUMBER RANGE:

_____ TO _____

ENVELOPE # _____ OF _____

ADDITIONAL INFORMATION REQUIRED BY PROTECTIVE ORDER:

(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 Bate Stamped beginning with "000001" or consecutively
numbered beginning with "001";
- (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.

Deleted: Each
Deleted: shall be

(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) — (E) (No change.)

Deleted: 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

Deleted: the commission's

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) — (C) (No change.)

(4) 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 pursuant to subparagraphs (A) and (B) of this paragraph. Central Records will ensure that the materials are delivered to the staff attorney assigned to the proceeding.

(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 & UNDER SEAL" in bold print at least one inch in size;

(ii) the control number;

(iii) the style of the proceeding;

(iv) name of submitting party; and

(v) name of the staff attorney assigned to the proceeding.

(B) The submitting party's label shall substantially conform to the following form and

shall be securely taped only to the front of the confidential envelope:

SETTLEMENT
NEGOTIATIONS

CONFIDENTIAL &
UNDER SEAL

DOCKET NO. _____

STYLE: _____

SUBMITTING PARTY: _____

COMMISSION STAFF ATTORNEY: _____

(5) Confidential materials shall be maintained, destroyed, ~~or~~ returned to the providing party pursuant to the individual protective orders in each proceeding and the ~~commission's~~ Records Retention Schedule as approved by the Texas State Library and Archives Commission.

Deleted: (4)
Deleted: and/or
Deleted: commissions

(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.

Deleted: (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission)

(f) — (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 22nd DAY OF MARCH 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**