

The Public Utility Commission of Texas (commission or PUC) proposes to amend §22.144 relating to Requests for Information and Requests for Admission of Facts. The proposed amendment will clarify and modernize these discovery procedures. Project Number 21248 has been assigned to this proceeding.

The commission proposes to amend §22.144(b)(2) to authorize the transmittal of requests for information by facsimile without a specific agreement from the party, and without direction from the presiding officer, thereby recognizing the widespread use of facsimile transmissions for this purpose in commission contested cases. The commission proposes to amend §22.144(d)(1), (g) and (j) by removing references to superceded rule numbers of the Texas Rules of Civil Procedure. The deletion of specific rule numbers is not intended to either broaden or narrow the scope of the prior rule. The commission proposes to amend §22.144(h)(1) to clarify that non-voluminous material must be filed, not merely "provided". Filing this discovery with the commission's Central Records is specifically required by PUC Procedural Rule §22.71, relating to the filing of pleading, documents and other materials. This change is being made to eliminate any confusion over the filing requirement. Because the non-voluminous material is provided to the commission's Office of Regulatory Affairs as a party in all commission contested cases, the material is subject to disclosure under the Public Information Act, Texas Government Code Chapter 552. Having the material filed in the commission's Central Records provides ready public access, and enables the commission to efficiently meet its obligations under the

Public Information Act. The commission proposes to amend §22.144(h)(1)-(4) to use consistent terms when referring to voluminous material and to require a detailed index and sequential numbering of any voluminous material. New §22.144(k) is proposed to permit the deadlines for the filing of responses, objections, and motions to compel to be modified by agreement of the affected parties, thereby codifying an existing practice.

James Mark Gentle, Assistant General Counsel, 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. Gentle 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 clearer and more flexible discovery rules and the ability to review voluminous materials more quickly by virtue of the newly required index. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Gentle 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.

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. 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 21248.

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

§22.144. Requests for Information and Requests for Admission of Facts.

(a) (No change.)

(b) **Making requests for information.**

(1) (No change.)

(2) **Service.** A copy of each request for information shall be served upon all parties to the proceeding. Requests for information may be served by facsimile transmittal on the recipient of the request if the recipient has a facsimile machine available for use in the proceeding. ~~only by agreement of the party from whom discovery is sought or if authorized by the presiding officer.~~ Requests for information that are received after 3:00 p.m. shall be deemed to have been received the following business day. Responses to requests for information shall be served on the requesting party and any party that has requested, in writing, to be served.

(c) (No change.)

(d) **Objections to requests for information.** Parties shall negotiate diligently and in good faith concerning any discovery dispute prior to filing an objection. The objections shall include a statement that negotiations were conducted diligently and in good faith. If negotiation fails,

objections to requests for information, if any, shall be filed within ten calendar days of receipt of the request for information. The objections shall state the date the request for information was received.

(1) (No change.)

(2) If the objection is founded upon a claim of privilege or exemption under ~~Rule 166(b)(3)~~ of the Texas Rules of Civil Procedure, the objecting party shall file within two working days of the filing of the objections, an index that lists, for each document: the date and title of the document; the preparer or custodian of the information; to whom the document was sent and from whom it was received; and the privilege(s) or exemption(s) that is claimed. A full and complete explanation of the claimed privilege or exemption shall be provided. The index shall be sufficiently detailed to enable the presiding officer to identify the documents from the list provided. The index and explanations shall be public documents and shall be served on all parties who are entitled to receive copies of responses to requests for information under subsection (b)(2) of this section. If a document is to be provided pursuant to the terms of a protective order, the responding party need not comply with the procedures of this paragraph.

(3) – (5) (No change.)

(e) – (f) (No change.)

- (g) **In camera inspection.** If an objection is founded on a claim of privilege or an exemption under ~~Rule 166(b)(3) of~~ the Texas Rules of Civil Procedure, the burden is on the objecting party to request an in camera inspection and to provide the documents for review. Any request shall be filed within three working days of the receipt of the motion to compel. The request shall contain the factual and legal basis to support the claimed exemption or privilege. The objecting party shall review the documents and note with specificity any portions to which the claimed privilege or exemption claim does not apply. The objecting party shall provide the documents to the presiding officer, under seal, no later than one working day after it requests an in camera inspection. Documents submitted for in camera review shall not be filed with the commission filing clerk. Documents submitted for in camera review shall be submitted to the presiding officer and enclosed in a sealed and labeled container accompanied by an explanatory cover letter. The cover letter shall identify the control number and style of the proceeding and explain the nature of the sealed materials. The container shall identify the control number, style of the case, name of the submitting party, and be marked "IN CAMERA REVIEW" in bold print at least one inch in size. Each page for which a privilege is asserted shall be marked "privileged."
- (h) **Production of voluminous material.** The following procedures shall apply to production of voluminous materials:
- (1) Responses to particular questions that consist of less than 100 pages are not voluminous and shall be ~~filed~~~~provided~~ in full.

- (2) Subject to paragraph (3) of this subsection, the responding party shall make available all voluminous ~~material information~~ provided in response to a request for information at a designated location in Austin.
- (3) A party will be released from its obligation to make available the requested voluminous ~~material data~~ at a designated location in Austin, only if the volume of the ~~material data~~ exceeds eight linear feet ~~of documents~~. In that event, the party shall make the ~~material information~~ available where the ~~material is documents are~~ located.
- (4) The party providing the voluminous material shall ~~file with its response a detailed index of the voluminous material responsive to a particular question and shall~~ organize the responses and material to enable parties to efficiently review the ~~material documents~~, including labeling of material by request for information number and subparts ~~and sequentially numbering the material responsive to a particular question.~~ ~~The index shall include:~~
- (A) ~~information sufficient to locate each individual document by page number, file number, and box number;~~
 - (B) ~~the date of each document;~~
 - (C) ~~the title of the document, or, if none exists, a description of the document;~~
 - (D) ~~the name of the preparer of each document; and~~
 - (E) ~~the length of each document.~~

- (i) (No change.)

(j) **Requests for admission of facts.** Requests for admission of facts shall be made in accordance with ~~Rule 169 of~~ the Texas Rules of Civil Procedure.

(k) **Modifications of deadlines.** Modification of the deadlines for responses, objections, and motions to compel may be modified by agreement of the affected parties, by filing a letter or other document evidencing the agreement.

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 23rd DAY OF JUNE 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**