

**PROJECT NO. 27624**

<b>RULEMAKING REGARDING</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>FAILURE TO ATTEND A HEARING</b>	<b>§</b>	
<b>AND DEFAULT SUMMARY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>PROCEEDING</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF NEW §22.183  
AS APPROVED AT THE JUNE 5, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §22.183 relating to Failure to Attend Hearing and Disposition by Default. The proposed new section is necessary to address issues that arise when a party without the burden of proof fails to appear for a properly noticed hearing in a proceeding initiated by the commission's Legal and Enforcement Division and subsequent disposition of the case on a default basis. The disposition by default may include suspension or revocation of any certificates, licenses, or registrations the defaulting party has with the commission but may not include administrative penalties. Project Number 27624 is assigned to this proceeding.

Mr. Christopher Gee, Attorney, Legal and Enforcement 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. Gee 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 the timely conclusion of cases before the commission when a party fails to appear for a hearing. There will be no adverse economic 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. Gee 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 new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 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 27624.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2003) (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; and specifically, §17.052, that grants the commission the authority to adopt and enforce rules to suspend or revoke certificates or registrations for repeated violations of Chapter 17, Customer Protection, or commission rules; §17.102, that grants the commission authority to adopt and

enforce rules that provide for penalties for violations of §17.102, including revocation of certificates or registrations; §17.156, that grants the commission authority to revoke the registration or certificate of telecommunications service providers, retail electric providers, or electric utilities for repeated violations of Chapter 17, subchapter D, Protection Against Unauthorized Charges; §37.059, which grants the commission authority to revoke or amend a certificate of convenience and necessity after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of the certificated area; §39.356, which grants the commission authority to: 1) suspend, revoke, or amend a retail electric provider's certificate for significant violations of Title II of PURA, rules adopted under Title II, or of any reliability standard adopted by an independent organization certified by the commission to ensure reliability of a power region's electrical network, 2) suspend or revoke a power generation company's registration for significant violations of Title II of PURA, rules adopted under Title II, or of any reliability standard adopted by an independent organization certified by the commission to ensure reliability of a power region's electrical network, or 3) suspend or revoke an aggregator's registration for significant violations of Title II of PURA, or rules adopted under Title II; §54.008, which grants the commission authority to revoke or amend certificates of convenience and necessity, certificates of operating authority, or service provider certificates of operating authority after notice and hearing if the commission finds that the certificate holder has never provided or is no longer providing service in all or any part of a certificated area; §54.105, which grants the commission authority to revoke a holder's certificate for failure to comply with PURA, Title II; §55.135, which grants the commission authority to revoke a permit for failure to comply with Chapter 55, subchapter F, Automatic Dial Announcing Devices; §55.306, which grants the commission authority to suspend, restrict, deny

or revoke the registration or certificate of a telecommunications utility for repeated and reckless violations of the commission's telecommunications utility selection rules; §64.052, which grants the commission authority to suspend or revoke certificates or registrations for repeated violations of Chapter 64 or commission rules; §64.102, which grants the commission authority to revoke certificates or registrations for violations of commission rules adopted under §64.102; §64.156, which grants the commission authority to suspend, restrict or revoke the registration or certificate of a telecommunications provider who repeatedly violates Chapter 64, subchapter D, Protection Against Unauthorized Charges; and Local Government Code §283.058, which grant(s) the commission the authority to revoke or amend certificates.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 17.052, 17.102, 17.156, 37.059, 39.356, 54.008, 54.105, 55.135, 55.306, 64.052, 64.102, 64.156; and Local Government Code §283.058

**§22.183. Failure to Attend Hearing and Disposition by Default.**

(a) **Disposition by default.** Disposition by default shall mean the issuance of an order against a party who does not have the burden of proof, in a proceeding initiated by the Legal and Enforcement Division of the commission, in which the allegations against the party are deemed admitted as true, upon the offer of proof that proper notice was provided to the defaulting party. The order may include the suspension or revocation of any certificates, licenses, or registrations the defaulting party has with the commission. The order shall not include the assessment of penalties.

(b) **Failure to appear.**

(1) The commission may proceed in a party's absence with a disposition by default, without further notice, if a party who does not have the burden of proof fails to appear in person or through a duly authorized representative, on the day and time set for hearing.

(2) Failure of a party who does not have the burden of proof to appear at the hearing entitles the commission staff to:

(A) a continuance at the time of the contested case hearing for a reasonable period to be determined by the commission; or

(B) request issuance of a default order by the commission.

(3) If a party who does not have the burden of proof appears at the hearing, the commission may refer the matter to the State Office of Administrative Hearings for an evidentiary hearing.

(4) The commission may fully consider and dispose of the pending matter if notice has been provided in accordance with §22.54 of this title (relating to Notice to Be Provided by the Commission), and Texas Government Code §2001.054.

**(c) Prerequisites for default proceeding.**

(1) The commission gives 30 days notice of the prehearing conference and the hearing on the merits by certified mail, return receipt requested, to the respondent.

(2) At least 30 days has passed since the notice of the prehearing conference and the hearing on the merits was issued under paragraph (1) of this subsection.

(3) The notice of hearing must clearly state that if the respondent fails to appear at the hearing, a default final order may be issued without further notice.

**(d) Admission of evidence.**

(1) The Legal and Enforcement Division shall provide evidence, including, but not limited to, affidavits, exhibits, pleadings, and oral testimony, to support the issuance of the default final order and to demonstrate that the respondent received proper notice under subsection (c)(1) of this section and §22.54 of this title.

(2) If the respondent fails to appear at the hearing, the factual evidence presented under paragraph (1) of this subsection may be admitted.

**(e) Default order.** Default final orders shall contain findings of fact and conclusions of law sufficient to support the relief ordered.

(f) **Motions for rehearing.** Motions for rehearing on default judgments are governed by §22.264 of this title (relating to Rehearing).

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 13<sup>TH</sup> DAY OF JUNE 2003 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**