

# SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, ) RULE AND REGULATION NO. 192  
on its own motion, seeking to )  
amend Title 291, Chapter 1, Rules ) ORDER ADOPTING RULES AND  
of Commission Procedure, to update ) ISSUING CERTIFICATE OF  
the chapter in its entirety. ) ADOPTION  
)  
) ENTERED: November 27, 2018

BY THE COMMISSION:

## O P I N I O N   A N D   F I N D I N G S

On May 10, 2016 the Nebraska Public Service Commission (Commission), issued a Certificate of Adoption in the above-captioned proceeding to amend Title 291, Chapter 1, Rules of Commission Procedure, which effectively updated the chapter entirely and in large part incorporated changes to comport with the Nebraska Model Rules of Agency Procedure (Model Rules) issued July 25, 1994 where applicable, and to incorporate statutory changes. While approval of those rule amendments was pending with the Attorney General's Office, the Commission received notice that proposed legislation was introduced to alleviate some concerns voiced by commenters with respect to the rule amendments governing formal interventions. The Commission requested the Attorney General's Office hold its approval process in abeyance pending the outcome of the legislation.

On April 27, 2017 LB 263 was signed into law. A portion of the bill amended Neb. Rev. Stat. § 75-110 by carving out an exception from the applicability of § 84-912.02, specifically providing that,

(2) For the purposes of granting or denying a petition for intervention, the commission shall be exempt from section 84-912.02.<sup>1</sup>

In light of this statutory change, the Commission requested the return of its proposed rule amendments from the Attorney General's Office so it may consider rule amendments consistent with new law.

On September 9, 2017, the Commission released the proposed amendments attached hereto as "Appendix A" for the limited purpose of considering changes to its rules on intervention. The Commission proposed to make the following changes to its proposed rule amendments:

~~003.04 Formal Intervention in a Contested Case: Subsequent to the initial thirty (30) day period following the publication of an application or petition, if a matter has not been disposed of pursuant to 002.10B, persons seeking to formally intervene in a matter must file with the Commission a petition for formal intervention in compliance with the requirements set forth in section 002.12A2 at least five (5) days before a hearing. The~~

<sup>1</sup> LB 263 (2017) Section 80.

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Hearing Officer must dispose of the petition for formal intervention consistent with 002.12A3 through 002.12A5 except the Hearing Officer shall dispose of the petition at least twenty-four (24) hours prior to the hearing. Any person who has an interest in any proceeding pending before the Commission but who does not desire to file a formal protest, may file a Petition of Formal Intervention. Such person shall be designated as a "formal intervenor", and shall become a party to the proceeding.

003.04A Content: A Petition of Formal Intervention shall set forth the name and address of the intervenor, a statement of the interest of the intervenor in the proceeding, the grounds upon which the intervention is made and shall specify the facts and circumstances relied upon for such intervention.

003.04B: When Filed; Service: A Petition of Formal Intervention shall be filed with the Commission within the timeframe specified in 02.12C1 for the filing of a formal protest. A copy of the Petition of Formal Intervention shall be served upon all parties of record to the proceedings or upon their attorneys of record.

003.04C: Participation in the Proceedings: A formal intervenor shall be entitled to participate in the proceeding to the extent of his/her express interest in the matter. Such participation may include, presentation of evidence and argument, cross-examination of witnesses and submission of rebuttal evidence. As a party, a formal intervenor shall have the right of appeal.

003.05 Informal Intervention in a Contested Case: Subsequent to the initial thirty (30) day period following the publication of an application or petition, if a matter has not been disposed of pursuant to 002.10B, persons seeking to informally intervene in a matter must file with the Commission a petition for informal intervention in compliance with the requirements set forth in section 002.12B at least five (5) days before a hearing. The Hearing Officer must dispose of the petition for informal intervention consistent with 002.12B. Any person may file a Petition of Informal Intervention. Such Petition of Informal Intervention shall set forth the information required in 003.04A above. Any person who files a Petition of Informal Intervention shall be designated as an "Informal Intervenor".

003.05A When Filed: A Petition of Informal Intervention shall be filed not later than fifteen days prior to the date the hearing in the proceeding commences and shall be accompanied by the statement referred to in 003.05C and any exhibits to be offered by the Informal Intervenor's witness at the hearing. A copy of the Petition of Informal Intervention and all accompanying pre-filed material shall be served on all parties to the proceeding, or upon their attorneys of record.

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003.05B Approval by the Commission: Leave to intervene informally shall be granted only if the petitioner addresses issues reasonably pertinent to the issues already presented and does not unduly broaden the scope of the proceeding. If leave is granted by the Commission, the petition becomes an informal intervenor but does not become a party to the proceeding.

003.05C Participation in the Proceedings: Participation by an informal intervenor shall be limited to the presentation of a pre-filed statement of a single witness together with exhibits by such witness, and participation in oral argument submission or briefs. An informal intervenor shall not be permitted to engage in discovery or cross-examine or otherwise interrogate the witnesses in the proceeding called by any party. An informal intervenor providing a statement at a hearing may be subject to cross-examination by the other parties to the proceeding.

A public hearing on the proposed rule amendments was held on April 17, 2018, in Lincoln, Nebraska. The Commission staff presented the rules for approval. Mr. Loel Brooks, representing members of the bar, provided comments which were generally supportive of the proposed rule amendments. No one spoke or provided written comments in opposition to the proposed rule amendments. Subsequently, the Commission removed the word "shall" throughout the proposed rule amendments consistent with the direction given from the Governor's Policy Research Office and replaced it with an acceptable alternative. This change does not require a subsequent hearing as it is not substantive in nature.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the revisions attached hereto as "Appendix A" shall be and they are hereby adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 27th day of November, 2018.

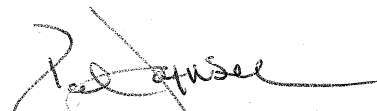

COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION

  
Chair

ATTEST:

  
Executive Director

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APPENDIX A

001 DEFINITIONS: The following definitions apply:

001.01 Applicant means a party or parties who have filed an application with the Commission.

001.02 Application means an initial pleading seeking Commission action.

001.03 Argument means the oral statement of the petitioner or any other party which explains his or her view of the facts and issue to be decided, the law applicable to the question presented, and the reasoning that connects the facts and law.

001.04 Commission means the Nebraska Public Service Commission.

001.05 Common Carrier means a person transporting passengers or goods or providing telecommunications services for hire to the general public at large in Nebraska intrastate commerce.

001.06 Contested Case means a proceeding before the Commission in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the Commission.

001.07 Contract Carrier means a person transporting passengers or goods or providing telecommunications services for hire, other than as a common carrier, in Nebraska intrastate commerce.

001.08 Declaratory Order Proceeding means a proceeding initiated by a petitioner seeking issuance of a binding order by the Commission as to the applicability of specified circumstances to a statute, rule, regulation, or order within the primary jurisdiction of the Commission.

001.09 Departmental Complaint means a complaint filed by a director of a department alleging a violation of a statute, rule or Commission order and seeking relief.

001.10 Executive Director means the designated person in charge of the daily operations of the Commission.

001.11 Ex parte Communication means an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication will not include:

001.11A Communications which do not pertain to the merits of a contested case;

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001.11B Communications required for the disposition of ex parte matters as authorized by law;

001.11C Communications in a ratemaking or rulemaking proceeding except with respect to any proceedings in which the public advocate is a party as set forth in 002.11B; and

001.11D Communications to which all parties have given consent.

001.12 Formal Complaint means a written complaint filed with the Commission alleging a violation of a statute, rule or Commission order and seeking relief.

001.13 Formal Intervenor(s) means an intervenor who files a Petition for Formal Intervention seeking to become a party to a Commission proceeding.

001.14 Hearing Officer means the Commissioner or Commissioners conducting a proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title.

001.15 Informal Intervenor(s) means an intervenor who does not satisfy the requirements of formal intervention or files a satisfactory petition requesting informal intervention status. Informal intervenors are not made parties to the proceeding and their participation is limited.

001.16 Intervenor(s) means persons, political subdivisions, corporations, organizations, or other entities who have or claim to have any interest, legal right, duty, privilege, or immunity, which would be directly affected by the Commission's issuance of a binding order.

001.17 Jurisdictional Utility means a natural gas public utility subject to the jurisdiction of the Commission under the State Natural Gas Regulation Act as defined in section 66-1802(10).

001.18 Motion means an oral or written request addressed to a Hearing Officer or the Commission by any party to a proceeding.

001.19 Necessary Party for Purposes of Petitions for Declaratory Rulings means a person who or an entity which has a specific interest in the applicability of the statute, rule, regulation, or order, as distinguished from a general interest such as may be the concern of the public at large. A necessary party is one which is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.

001.20 Order to Show Cause means an order issued by the Commission directing a person subject to its jurisdiction to appear before

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the Commission and present evidence as to why the Commission should not take a particular action.

001.21 Parties means persons, political subdivisions, corporations, organizations, or other entities subject to the jurisdiction of the Commission who are involved in a proceeding before the Commission according to the procedures set forth in this chapter. In a contested case, party means the person by or against whom a contested case is brought or a person allowed to formally intervene in a contested case.

001.22 Person means an individual, firm, organization, corporation, company, association, partnership, joint stock association, body politic, common carrier, society, legal representative, trustee, receiver, assignee, guardian, executor or administrator.

001.23 Petition means an initial pleading filed by or with the Commission that sets forth a claim and request for Commission action or initiates a proceeding.

001.24 Petitioner(s) means a party or parties who have filed a petition with the Commission seeking issuance of a Commission order.

001.25 Pleading means any petition, application, complaint, intervention, protest, answer, reply, notice, motion, stipulation, objection or order or other formal written document filed in a proceeding before the Commission.

001.26 Protest means any pleading filed in opposition to an application.

001.27 Protestant means a person filing a protest to the granting of an application.

001.28 Public Advocate means the person appointed by the Executive Director to represent the interests of Nebraska citizens and all classes of jurisdictional utility ratepayers, other than high-volume ratepayers, in matters involving jurisdictional utilities and as trial staff before the Commission.

## 002 GENERAL RULES OF PRACTICE AND PROCEDURE:

002.01 Office Hours: Commission office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for holidays as defined by state statute.

002.02 Computation of Time: In computing time prescribed or allowed by these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and

including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period will include the next working day. When the period of time prescribed or allowed is less than five (5) days, intermediate Saturdays, Sundays and holidays will be excluded in the computation.

002.03 Copies: Unless otherwise specified, persons filing a pleading, comments or other filings, must furnish to the Commission an original, a paper copy and an electronic copy either via e-mail or other electronic media.

002.04 Appearances:

002.04A Individual: An individual may appear on his or her own behalf before the Commission.

002.04B On Behalf of Another: An individual may appear on behalf of another person and elicit testimony from witnesses if such individual is admitted to practice law before the Nebraska Supreme Court or is admitted to practice law before the Supreme Court of any other state and has been admitted to practice before the Commission in a proceeding upon a motion by a person admitted to practice before the Nebraska Supreme Court.

002.04C On Behalf of Another by Limited Appearance: An individual who is neither admitted to practice law before the Nebraska Supreme Court nor the Supreme Court of any other state may appear for a governmental subdivision, corporation, association or partnership for the sole purpose of making a statement on behalf of such person, but may not elicit testimony from any other person.

002.05 Pleadings:

002.05A All pleadings must be made on white, letter-sized (8½ x 11) paper and must be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink, and must contain the following information:

002.05A1 A caption specifying the title or nature of the pleading;

002.05A2 Material factual allegations;

002.05A3 The action the Commission is being requested to take;

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002.05A4 The name, mailing address, telephone number and email address of the petitioner, applicant, or complainant;

002.05A5 Signature of the party filing the pleading, or when represented by an attorney, the signature, address, telephone number and bar number of that attorney; and

002.05A6 The name and address of the respondent, if applicable.

002.05B All pleadings must be filed with the Commission at its official office. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Commission.

002.05C Pleadings filed with the Commission will not be withdrawn without approval of the Commission.

002.06 Service and Notice:

002.06A Manner of Service: Service of any pleading or subpoena may be accomplished through any means permitted by law related to civil cases.

002.06B Date of Service if by First Class Mail: If a document is served via first class mail, the date of service of a document is the date of the mailing plus three (3) days.

002.06C Notice of Application: Notice of the filing of all applications will be given to all interested persons by publishing a summary of the authority or relief sought.

002.06D Notice of Hearing: Notice of a hearing will be mailed to all parties via first class mail, except that notice of a hearing on a complaint will be mailed to the respondent via certified mail or made by personal service.

002.06E Official Publication: The legal newspaper is known as The Daily Record and is the official newspaper in which notices will be published by the Commission.

002.06F Address/Agent for Service: For the purpose of service, each person subject to the Commission's jurisdiction must at all times keep on file with the Executive Director his, her or its business address or, in lieu thereof, notify the Executive Director of an agent (name and address) designated to receive documents and notices. Until the Executive Director is notified to the contrary, the address on file with the Commission's various departments will be deemed to be the address to which documents and notices will



be mailed or personally delivered. Proof of service that any person subject to Commission jurisdiction was served, or was attempted to be served, at the address on file with the Commission will be adequate to satisfy any notice requirement imposed by these rules. Any person who does not hold a certificate, permit, or license from the Commission, and yet may be subject to the Commission's jurisdiction, may be served wherever such person is found within the state.

002.06G Service of Complaints: The Commission will serve a copy of any formal or departmental complaint on each respondent listed in the complaint personally or by first class or certified mail. Written proof of such service must be filed with the Commission. Each respondent who chooses to file a responsive pleading must do so within 20 days from the date of personal service or the date of Commission mailing of the petition or formal complaint.

002.06H All pleadings subsequent to the initial petition, application, or formal complaint must be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service must be made personally or by first class or certified mail. Written proof of such service must be filed with the Commission.

002.07 Commencing an Action before the Commission: An action before the Commission is commenced by the filing of a petition, application, or complaint. The Commission, on its own motion, may open investigations or other dockets.

002.08 Hearing Officer; Criteria: The Commission may delegate to a Hearing Officer the functions of conducting any prehearing conference, planning conference, and/or hearing and addressing discovery and evidentiary matters and other non-dispositive matters.

002.08A A Commissioner who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as Hearing Officer or assist or advise a Hearing Officer in the same proceeding without the consent of all parties.

002.08B A Commissioner who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as Hearing Officer or assist or advise a Hearing Officer in the same proceeding.

002.08C A Commissioner may serve as Hearing Officer at successive stages of the same contested case.

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## 002.09 Amendments:

002.09A A petition, application, or complaint may be amended at any time before an intervention, protest, or answer is filed or is due, if notice is given. Otherwise, a petitioner, applicant, or complainant must request permission to amend from the hearing officer by filing a motion.

002.09B A hearing officer may also allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. A Hearing Officer may also permit amendment of pleadings when a mistake appears or when amendment does not materially change a claim or defense.

## 002.10 Disposition Without Hearing:

002.10A Unless otherwise precluded by law, disposition of any case may be made by stipulation, agreed settlement, consent order, or default and be processed administratively without a hearing.

002.10B Any application, petition, or other initial pleading which is not opposed through a protest or formal intervention within thirty (30) days of the date notice is published may be processed by use of affidavits administratively without a hearing.

002.10C Any petitioner, applicant, or complainant failing to prosecute his or her petition, application, or complaint within ninety (90) days may be subject to an order to show cause as to why the petition, application, or complaint should not be dismissed.

## 002.11 Prohibitions Against Ex Parte Communications:

002.11A The prohibitions found in this section apply beginning at the time a petition is filed. If after thirty (30) days from the date notice of an application or petition is published no interventions or protests are filed, the provisions of section 002.11 prohibiting ex parte communications will no longer apply to the proceeding.

002.11B With respect to any matter of fact or law at issue in a proceeding and notwithstanding any other provision of law, a member, staff, or agent of the Commission will not during the pendency of any proceeding heard before the Commission have any ex parte communication with any party having an interest in the outcome of the proceeding. In any proceeding before the Commission in which the public advocate is a party or is appearing for a party, the public advocate

will be considered a party for purposes of the restrictions on ex parte communications.

002.11C Any Commissioner, member of commission staff, or agent of the Commission who is or may reasonably be expected to be involved in the decision-making process of the proceeding who receives or who makes or knowingly causes to be made an ex parte communication must file in the record of the proceeding all such written communications, memoranda stating the substance of all such oral communications, and all written responses and memoranda stating the substance of all oral responses to all the ex parte communications. The filing must be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, will be given to all parties of record.

002.12 Intervention and Protest:

002.12A Persons seeking to formally intervene in any matter before the Commission must comply with the following:

002.12A1 A petition for formal intervention must be filed with the Commission within thirty (30) days of the date of publication of notice of an application, petition, or other initial pleading. A copy of the petition must be served by the petitioner for formal intervention upon all parties to the proceeding;

002.12A2 The petition must state the petitioner's name and address; facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as a formal intervenor under any provision of law; and

002.12A3 The Hearing Officer or designee may grant a petition for formal intervention at any time upon determining that the formal intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

002.12A4 If a petitioner qualifies for formal intervention, the Hearing Officer or designee may impose conditions upon the formal intervenor's participation in the proceedings, either at the time that formal intervention is granted or at any subsequent time. Those conditions may include:

002.12A4a Limiting the formal intervenor's participation to designated issues in which the

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formal intervenor has a particular interest demonstrated by the petition;

002.12A4b Limiting the formal intervenor's use of discovery, cross examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

002.12A4c Requiring two or more formal intervenors to combine their presentation of evidence and argument, cross examination, discovery, and other participation in the proceedings.

002.12A5 The Hearing Officer or designee will issue, prior to the establishment of any procedural schedule, an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

002.12A5a The Hearing Officer or designee may modify the order at any time, stating the reasons for the modification.

002.12A5b The Hearing Officer or designee will promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

002.12B Persons seeking to informally intervene in any matter before the Commission must comply with the following:

002.12B1 A petition for informal intervention must state the petitioner's name and address and must give notice of whether the petitioner intends to offer a witness at the hearing. The statement the witness for the petitioner must be served upon all parties to the proceeding not less than five (5) days prior to the hearing.

002.12B2 A petition for informal intervention may be filed with the Commission within thirty (30) days of the date of publication of notice of the application, petition, or other initial pleading, but not less than five (5) days prior to the hearing. A copy of the petition must be served by the petitioner for informal intervention upon all parties to the proceeding.

002.12B3 Leave to intervene informally will be granted only if the petitioner addresses issues reasonably pertinent to the issues already presented and does not unduly broaden the scope of the proceeding.

002.12B4 Participation by an informal intervenor is limited to the presentation of a pre-filed statement of a single witness together with exhibits by such witness, and participation in oral argument and submission of briefs. Informal intervenors are not parties and as such are not entitled to cross examine or otherwise interrogate witnesses in the proceeding presented by any party.

002.12C Persons seeking to protest any matter before the Commission must comply with the following:

002.12C1 A protest against the granting of any application must be filed with the Commission within thirty (30) days from the date of publication of notice of the application. A copy of the protest must be served upon all parties to the proceeding.

002.12C2 A protest against the granting of an application for a certificate authorizing inter-LATA interexchange telecommunications service must be filed with the Commission within ten (10) days from the date of publication of said notice. A copy of the protest should be served upon all adverse parties, or upon their attorneys of record.

002.12C3 A protest to the granting of an application for temporary motor carrier authority, which the Commission is empowered to grant after not less than five (5) days-notice and without hearing, must be filed with the Commission within five (5) days after the date such notice is published.

002.12C4 In certain emergency situations, the Commission has the statutory authority to temporarily alter, amend, or suspend any existing rates in force, or to fix any such rates where none exist by issuing an order which prescribes an emergency rate. A protest to the granting of such emergency rate must be filed within fifteen (15) days after notice of the emergency rate.

002.12C5 A protest must set forth the name and address of the protestant, a statement concerning the interest of the protestant in the application, and a request for the relief sought by the protestant. Additionally, the protest must set forth specifically the grounds upon which it is made and the facts and circumstances relied upon.

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002.13 Subpoenas:

002.13A Witnesses and Documents: The Commission may compel the attendance of witnesses or production of documents through the issuance of a subpoena upon written request of any party, or on order of the Commission or Hearing Officer.

002.13A1 Requests for subpoenas must be filed with the Commission at least ten (10) days prior to the date the witness is expected to attend or the date the production of documents is expected to occur.

002.13A2 Witness fees must be paid as provided by law in attendance at any district court in this state. The sheriff or constable executing any process of the Commission will receive such compensation as is provided by law for performing similar services. Any such fee must be paid by the party requesting the subpoena.

002.13A3 Any Motion to Quash a subpoena must be filed in writing with the Commission and served on all parties to a proceeding by the movant in compliance with Rule 004.06C. The hearing officer may grant or deny the motion in whole or in part or may schedule oral argument on the motion.

002.13B Failure to Comply with Subpoena:

002.13B1 Any witness failing or refusing to obey any subpoena issued by the Commission, or to produce before the Commission such books, papers, documents or records as have been enumerated and required in any subpoena, or failing or refusing, when before the Commission, to give testimony lawfully required by it, or failing or refusing to answer such questions as may be propounded by it which such witness would be required to answer if in court, the witness is guilty of a misdemeanor, and upon conviction thereof, for each offense, may be fined in any sum not exceeding five thousand dollars (\$5,000.00).

002.13B2 The claim that any such testimony may tend to incriminate the witness will not excuse the witness from testifying, but such evidence or testimony may not be used against such person on the trial of any criminal proceeding.

002.14 Discovery:

002.14A The use of depositions and discovery in proceedings before the Commission is governed by the rules and regulations

of the Nebraska Supreme Court unless otherwise ordered by the Hearing Officer.

002.14B The Hearing Officer or a designee, at the request of any party or upon the Hearing Officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

002.14C Any motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion must:

002.14C1 Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

002.14C2 State the reasons supporting the motion;

002.14C3 Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

002.14C4 Be filed with the Commission. The moving party must serve copies of all such motions to all parties to the contested case.

002.14D Other than as provided in subsection 002.14C4 above, discovery materials need not be filed with the Commission.

002.15 Commission Decisions and Orders:

002.15A A Commission order entered disposing of a matter pending before the Commission must be written and must recite the following:

002.15A1 A discussion of the facts of a basic or underlying nature;

002.15A2 The ultimate facts; and

002.15A3 The Commission's reasoning or other authority relied upon by the Commission.

002.15B Every decision and order rendered by the Commission after a civil penalty hearing is held pursuant to section 75-156 will be in writing and accompanied by findings of facts and conclusions of law. The decision or order will be sent to the parties by certified or registered mail.

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002.15C Parties to the proceeding will be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions will be delivered or mailed upon request to each party or his or her attorney of record.

002.15D Every order of the Commission becomes effective ten (10) days after the date of the mailing of a copy of the order to the parties of record except:

002.15D1 When the Commission prescribes an alternate effective date;

002.15D2 As otherwise provided with respect to emergency rate orders entered pursuant to section 75-121 and rate orders entered pursuant to section 75-139;

002.15D3 For cease and desist orders issued pursuant to section 75-133 which will become effective on the date of entry; or

002.15D4 For orders granting temporary approval of a lease of a regulated motor carrier property and certificates or permits sought to be acquired entered pursuant to section 75-319 which will become effective on the date of entry.

002.15E When any application has been denied, in whole or in part, a subsequent application covering substantially the same subject matter will not be considered by the Commission within ninety (90) days from the date of the final denial, in whole or in part, of the previous application, except for good cause shown.

002.16 Motions for Reconsideration and Appeals:

002.16A Except with respect to rate orders under the State Natural Gas Regulation Act, any party may file a motion for reconsideration with the Commission within ten (10) days after the effective date of the order.

002.16A1 The filing of a motion for reconsideration will suspend the time for filing a notice of intention to appeal pending resolution of the motion.

002.16A2 If the Commission does not dispose of a motion for reconsideration within sixty (60) days after the filing of the motion, the motion is deemed denied.

002.16B Any party to a general rate proceeding under the State Natural Gas Regulation Act may file a motion for



reconsideration within thirty (30) days after the day an order setting natural gas rates is entered by the Commission.

002.16B1 The filing of a motion for reconsideration will stay the order until the earlier of the date the Commission enters an order resolving the motion or one hundred twenty (120) days from the date of the order setting rates.

002.16B2 Either party will have thirty (30) days after the date the Commission enters an order resolving the motion or the expiration of the one hundred twenty (120) day period for considering the motion, whichever is earlier, in which to file an appeal.

002.16C Appeal of a Commission order must be taken in the same manner and time as appeals from the district court, except that the appellate court must conduct a review of the matter de novo on the record. Appeal of a Commission order is perfected by filing a notice of intention to appeal with the Executive Director of the Commission within thirty (30) days after the effective date of the order.

003 RULES OF PRACTICE AND PROCEDURE FOR HEARINGS IN CONTESTED CASES:

003.01 Contested Case: A matter filed with the Commission is deemed to be a contested case if:

003.01A a person files a petition or application with the Commission and a person files a formal intervention or protest within thirty (30) days of the date notice is published;

003.01B a person files a formal complaint with the Commission;

003.01C a departmental complaint is filed with the Commission; or

003.01D a matter is declared to be a contested case upon the Commission's own motion.

003.02 Parties: The parties to a contested case must be the petitioner, applicant, complainant, or other person by whom a contested case is brought and the respondent or person against whom a contested case is brought and includes any formal intervenors or protestants.

003.03 Hearing: Unless state law provides that a hearing is not required, a hearing date must be set by the Commission in accordance with statutory requirements. A written notice of the

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time and place of hearing and the name of the Hearing Officer, if known, must be served by the Commission upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include a proof of such service and will be filed with the Commission.

003.04 Formal Intervention in a Contested Case: Subsequent to the initial thirty (30) day period following the publication of an application or petition, if a matter has not been disposed of pursuant to 002.10B, persons seeking to formally intervene in a matter must file with the Commission a petition for formal intervention in compliance with the requirements set forth in section 002.12A2 at least five (5) days before a hearing. The Hearing Officer must dispose of the petition for formal intervention consistent with 002.12A3 through 002.12A5 except the Hearing Officer shall dispose of the petition at least twenty-four (24) hours prior to the hearing. Any person who has an interest in any proceeding pending before the Commission but who does not desire to file a formal protest, may file a Petition of Formal Intervention. Such person will be designated as a "formal intervenor", and will become a party to the proceeding.

003.04A Content: A Petition of Formal Intervention must set forth the name and address of the intervenor, a statement of the interest of the intervenor in the proceeding, the grounds upon which the intervention is made and must specify the facts and circumstances relied upon for such intervention.

003.04B: When Filed; Service: A Petition of Formal Intervention must be filed with the Commission within the timeframe specified in 02.12C1 for the filing of a formal protest. A copy of the Petition of Formal Intervention must be served upon all parties of record to the proceedings or upon their attorneys of record.

003.04C: Participation in the Proceedings: A formal intervenor will be entitled to participate in the proceeding to the extent of his/her express interest in the matter. Such participation may include, presentation of evidence and argument, cross-examination of witnesses and submission of rebuttal evidence. As a party, a formal intervenor will have the right of appeal.

003.05 Informal Intervention in a Contested Case: Subsequent to the initial thirty (30) day period following the publication of an application or petition, if a matter has not been disposed of pursuant to 002.10B, persons seeking to informally intervene in a matter must file with the Commission a petition for informal intervention in compliance with the requirements set forth in section 002.12B at least five (5) days before a hearing. The Hearing Officer must dispose of the petition for informal intervention consistent with 002.12B. Any person may file a

Petition of Informal Intervention. Such a Petition of Informal Intervention. Such Petition of Informal Intervention must set forth the information required in 003.04A above. Any person who files a Petition of Informal Intervention will be designated as an "Informal Intervenor".

003.05A When Filed: A Petition of Informal Intervention must be filed not later than fifteen days prior to the date the hearing in the proceeding commences and must be accompanied by the statement referred to in 003.05C and any exhibits to be offered by the Informal Intervenor's witness at the hearing. A copy of the Petition of Informal Intervention and all accompanying pre-filed material must be served on all parties to the proceeding, or upon their attorneys of record.

003.05B Approval by the Commission: Leave to intervene informally will be granted only if the petitioner addresses issues reasonably pertinent to the issues already presented and does not unduly broaden the scope of the proceeding. If leave is granted by the Commission, the petition becomes an informal intervenor but does not become a party to the proceeding.

003.05C Participation in the Proceedings: Participation by an informal intervenor shall be limited to the presentation of a pre-filed statement of a single witness together with exhibits by such witness, and participation in oral argument submission or briefs. An informal intervenor will not be permitted to engage in discovery or cross-examine or otherwise interrogate the witnesses in the proceeding called by any party. An informal intervenor providing a statement at a hearing may be subject to cross-examination by the other parties to the proceeding.

003.06 Prehearing Procedures:

003.06A A Hearing Officer designated to conduct a hearing may determine, subject to the Commission's rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a Hearing Officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

003.06A1 If a prehearing conference is conducted the following will apply:

003.06A1a The Hearing Officer will promptly notify the Commission of the determination that a prehearing conference will be conducted. The Commission may assign another Hearing Officer for the prehearing conference; and

003.06A1b The Hearing Officer for the prehearing conference will set the time and place of the

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conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The Commission shall give notice to other persons entitled to notice.

003.06A1c The notice referred to in subsection 004.05A1b will include the following:

003.06A1c(i) The names and mailing addresses of all parties and other persons to whom notice is being given by the Hearing Officer;

003.06A1c(ii) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Commission;

003.06A1c(iii) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

003.06A1c(iv) A statement of the time, place, and nature of the prehearing conference;

003.06A1c(v) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

003.06A1c(vi) The name, official title, mailing address, and telephone number of the Hearing Officer for the prehearing conference;

003.06A1c(vii) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

003.06A1c(viii) Any other matters that the Hearing Officer considers desirable to expedite the proceedings.

003.06A2 The Hearing Officer will conduct a prehearing conference, as may be appropriate, to deal with such matter as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence,

rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The Hearing Officer will issue a prehearing order incorporating the matters determined at the prehearing conference.

003.06A3 The Hearing Officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

003.06B The Hearing Officer or staff designated by the Hearing Officer may conduct informal planning conferences during the pendency of an action to discuss scheduling, discovery, and other procedural issues.

003.07 Continuances: The Hearing Officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the Hearing Officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

003.07A Good cause for an extension of time or continuance may include, but is not limited to, the following:

003.07A1 Illness of the party, legal counsel or witness;

003.07A2 A change in legal representation; or

003.07A3 Settlement negotiations are underway.

003.08 Conducting a Contested Case Hearing:

003.08A At the discretion of the Hearing Officer, the hearing may be conducted in the following order:

003.08A1 The hearing is called to order by the Hearing Officer. Any preliminary motions, stipulations or agreed orders are entertained.

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003.08A2 Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

003.08B Evidence will be received in the following order. Presentation of evidence by Commission staff may be offered during the hearing at the discretion of the Hearing Officer:

003.08B1 Evidence is presented by the applicant, petitioner, or complainant;

003.08B2 Evidence is presented by the intervenor, protestant, or respondent;

003.08B3 Rebuttal evidence is presented by the applicant, petitioner, or complainant; and

003.08B4 Surrebuttal evidence is presented by the intervenor, protestant, or respondent, if permitted by the Hearing Officer. If surrebuttal evidence is permitted, the applicant, petitioner, or complainant will have an opportunity to respond.

003.08C With regard to each witness who testifies, the following examination may be conducted:

003.08C1 Direct examination conducted by the party who calls the witness;

003.08C2 Cross examination by the opposing party;

003.08C3 Redirect examination by the party who called the witness; and

003.08C4 Recross examination by the opposing party, if permitted by the Hearing Officer. If recross is permitted, the party sponsoring the witness will have an opportunity to respond.

003.08D After the evidence is presented, each party may request the opportunity to make a closing argument. Closing arguments will be made in the same order as the presentation of evidence. The Hearing Officer may limit the time allowed for each party's closing argument, however, each party will be allowed equal time. The Hearing Officer may request that the parties file briefs.

003.09 Evidence:

003.09A In contested cases the Commission or Hearing Officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably

prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

003.09B Any party to a formal hearing before the Commission, from which a decision may be appealed to the courts of this state, may request that the Commission be bound by the rules of evidence applicable in district court by delivering to the Commission, at least three (3) days prior to the holding of the hearing, a written request therefore. Such request will include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party will procure for the hearing.

003.09C Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

003.09D All evidence including records and documents in the possession of the Commission of which it desires to avail itself will be offered and made a part of the record in the case. No factual information or evidence other than the record will be considered in the determination of the case.

003.09E A Hearing Officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

003.09F The Commission will give effect to the rules of privilege recognized by law.

003.09G The Commission may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by the Commission.

003.09G1 Parties will be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

003.09G2 Parties will be afforded an opportunity to contest facts so noticed.

003.09G3 The record will contain a written record of everything officially noticed.

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003.09H The Commission may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

003.09I The Hearing Officer may conduct all or part of the hearing by television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, if technically feasible, to see the entire proceeding while it is taking place, and oaths can be properly administered to witnesses.

003.09J Testimony of a witness may be adduced by use of a prepared statement, if the witness is present for cross examination.

003.09K The Hearing Officer may authorize any party to furnish and serve designated late filed exhibits within a specified time after the close of the hearing.

## 003.10 Official Record:

003.10A The Commission will prepare an official record, which will include testimony and exhibits, in each contested case, but it will not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record will be furnished by the Commission upon request and tender of the cost of preparation.

003.10B The Commission will maintain an official record of each contested case under the Administrative Procedure Act for at least four (4) years following the date of the final order.

003.10C The Commission record will consist only of the following:

003.10C1 notices of all proceedings;

003.10C2 any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Commission pertaining to the contested case;

003.10C3 the record of the hearing before the Commission, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Commission during the proceeding, and all proffers of proof and objections and rulings thereon;



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003.10C4 any notices of any ex parte communications and responses thereto filed pursuant to section 004.01C; and

003.10C5 the final order.

003.10D The Commission record will constitute the exclusive basis for Commission action in contested cases under the act.

003.11 Costs: All costs of a formal hearing will be paid by the party or parties as may be ordered by the Commission.

004 FORMAL AND DEPARTMENTAL COMPLAINTS:

004.01 Applicability: The following apply to formal complaints and departmental complaints in addition to the requirements set forth in section 004. To the extent a conflict exists between section 003 and 004 with respect to a formal complaint or departmental complaint, section 004 controls.

004.02 Departmental Complaint:

004.02A A departmental complaint must contain the name of the complainant, the name of the respondent, a clear and concise allegation of each offense in terms of each applicable statute, rule or Commission order, the requested relief, and be signed by the complainant.

004.02B An answer to a departmental complaint must be filed and must admit or deny each material allegation of the departmental complaint. The answer must set forth any affirmative defense which respondent may assert.

004.02B1 The answer must be filed with the Commission within twenty (20) days after service of the complaint.

004.02B2 Except for good cause shown, failure to answer will be construed as an admission of the allegations in the complaint. The fact that a failure to answer will be construed as an admission to the allegations in the complaint must be included in the complaint served upon respondent.

004.03 Formal Complaints:

004.03A A formal complaint must contain the name of the complainant, the name of the respondent, a clear and concise allegation of each offense, the requested relief, and be signed by the complainant.

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004.03B An answer to a formal complaint must be filed and must admit or deny each material allegation of the complaint. The answer must set forth any affirmative defense which the defense may assert. The Commission will have the discretion, upon proper showing, to dismiss the formal complaint or require further action.

004.03B1 The answer must be filed with the Commission within twenty (20) days after service of the complaint.

004.03B2 Except for good cause shown and except where a Statement of Satisfaction has been filed and accepted, failure to answer will be construed as an admission of the allegations in the complaint.

004.03C A respondent to a formal complaint may file with the Commission a Statement of Satisfaction of the formal complaint.

004.03C1 Such Statement of Satisfaction must be filed with the Commission within ten (10) days after service of the complaint upon respondent.

004.03C2 Respondent must serve a copy of the Statement of Satisfaction upon the complainant.

004.03C3 Within five (5) days after receipt of the Statement of Satisfaction by complainant, complainant may file a Statement of Acceptance, a copy of which must be served upon respondent. The respondent may then move for dismissal at any time prior to the time set for hearing on the complaint.

004.03C4 If a Statement of Satisfaction is filed by the respondent but is not accepted by the complainant, the respondent must file an answer with the Commission within twenty (20) days from the date of service of the Statement of Satisfaction with a copy thereof being served on complainant.

005 ORDERS TO SHOW CAUSE:

005.01 General: The Commission may, by order, compel any person to whom it has granted authority to show good cause as to why the authority should not be suspended, changed, revoked in whole or in part, or why the holder of the certificate for such authority should not be subject to an administrative fine as provided for in Commission rules.

005.02 Content: An order to show cause must contain the name of the respondent, a clear and concise allegation of each cause for which the Commission requires a showing, and be signed by the

Executive Director. The show cause order will specifically advise the respondent of the alleged violation or violations and the time and place of the hearing on such order.

005.03 Cease and Desist Order: The Commission may, after proper notice and hearing, enter a cease and desist order or any order the Commission deems just and reasonable.

006 COMMISSION INVESTIGATIONS:

006.01 General: The Commission may, at any time on its own motion, conduct an investigation or order any hearing which the Commission is authorized by law or inherent power to conduct.

006.02 Order to Appear: The Commission may, by order, compel any person to appear in an investigative proceeding. The order will state the purpose or scope of the investigation and the time and place of the hearing.

006.03 Investigations/Penalty: If it appears, as the result of an investigative hearing by the Commission, that any person who has been personally served has violated the provisions of any statute over which the Commission has jurisdiction or the rules of the Commission, the Commission may order such person to cease and desist or enter any order justified in the premises.

007 CIVIL PENALTY PROCEDURES:

007.01 Purpose and Scope:

007.01A The purpose of this section is to establish procedures which the Commission will follow when civil penalties are sought against any person as defined in Neb. Rev. Stat. § 75-139.01 pursuant to § 75-156.

007.01B For purposes of these rules, civil penalty has the same meaning as administrative fine and these terms may be used interchangeably.

007.02 Assessing Civil Penalties:

007.02A In addition to other penalties and relief provided by law, the Commission may, upon a finding that a violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars (\$10,000) per day against any person for each violation.

007.02B The civil penalty assessed under these rules must not exceed two million dollars (\$2,000,000) per year for each violation. For purposes of this rule, year shall mean calendar year which is the period from January 1 to December 31 inclusive.

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007.02C The Commission will have discretion in determining the appropriate amount of the civil penalty assessed for each violation. In determining the amount of the penalty, the Commission shall consider:

007.02C1 The appropriateness of the penalty in light of the gravity of the violation; and,

007.02C2 The good faith of the violator in attempting to achieve compliance after notification of the violation.

007.03 Initiation of Civil Penalty Proceedings Before the Commission:

007.03A A civil penalty proceeding may be initiated by any person by the filing of a formal complaint or departmental complaint with the Executive Director or the issuance of an order to show cause. The complaint initiating a civil penalty proceeding must (1) consist of a written pleading signed by the complainant or his or her legal representative containing the names of the complainant and the alleged violator or violators; (2) set forth the date, facts, and nature of each act or omission upon which each charge of a violation is based; (3) specifically identify the particular statute, certificate, permit, rule, regulation, or order allegedly violated; (4) contain a prayer stating the type of relief, action, or order desired by the complainant; (5) inform the respondent that pursuant to Commission rules, failure to answer will be construed as an admission of the allegations in the complaint; and, (6) that upon failure to pay any civil penalty determined by the Commission, such civil penalty may be collected by civil action in the District Court of Lancaster County.

007.03A1 In the case of a formal complaint, a hearing fee may be assessed against the complainant in the amount established by the Commission and as provided by law for hearing fees. If the respondent is found to have committed the violation or violations named in the formal complaint, the hearing costs assessed, if any, will be refunded to the complainant. If the respondent is found to have committed the violation or violations named in the formal complaint, the respondent may be assessed the cost(s) of the hearing.

007.03B Before a formal complaint filed pursuant to an alleged violation of sections 75-301 to 75-390 by anyone other than the Commission can proceed to a hearing, a copy of said complaint will be delivered to the Executive Director of the Commission. The Director has thirty (30) days to intervene in support of said complaint, intervene in opposition to said

complaint, or issue a letter advising the complainant that the Commission has taken no position in the proceeding. In the event the Director takes no action after the thirty (30) day period has expired, the complainant may proceed to a hearing on the complaint no earlier than thirty (30) days after notice is served upon the respondent named in the complaint. Nothing contained herein will preclude the Commission from intervening as otherwise allowed under the rules of the Commission.

007.03C When a complaint is filed with the Commission, wherein the respondent may be subject to a civil penalty under state law and these rules, the Commission will notify such respondent in writing (1) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based; (2) specifically identifying the particular statute, certificate, permit, rule, regulation, or order allegedly violated; (3) that a hearing will be held and give notification of the time, date, and place of such hearing; (4) that, in addition to a civil penalty, the Commission may enforce additional penalties and relief as provided by law; (5) that pursuant to Commission rules, failure to answer will be construed as an admission of the allegations in the complaint. Failure to file an answer or to appear at the hearing allows the Commission to enter an order assessing a civil penalty as provided by law for the violation or violations alleged in the complaint, or the Commission may proceed with a hearing to receive evidence of the alleged violation or violations and may assess civil penalties as provided by law; and, (6) that upon failure to pay any civil penalty determined by the Commission, such civil penalty may be collected by civil action in the District Court of Lancaster County.

007.03D A copy of the complaint described in 007.03A and the notice information specified by 007.03C will be sent by the Commission to the respondent pursuant to the Service and Notice provisions as contained in Commission rules.

007.03E Supplemental pleadings filed by a party must be in writing and be filed with the Commission and distributed by him or her to all interested parties under a certificate of service at any time until five (5) days before the hearing date. Supplemental pleadings filed five (5) days or less prior to the hearing date may be allowed by the Hearing Officer upon a showing of good cause and undue surprise does not disadvantage other parties of record. A civil penalty proceeding will not be cumulative of all other remedies available under state law and the rules of the Commission. Nothing herein will be construed so as to preclude the Commission or any other party, person, or entity from seeking

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any remedy in law or equity not specifically provided for in this section.

007.03F A complaint may be withdrawn by the party who filed the complaint without prejudice to refileing upon the same facts if the Commission approves the withdrawal as provided by these rules.

007.04 Answer:

007.04A The respondent must file with the Commission a written answer in the manner required by these rules no later than twenty (20) days after the date on which notice is given.

007.04B If the respondent fails to timely file an answer as required by this subsection, or fails to appear at the hearing, the Commission may enter an order which assesses a civil penalty as provided by law for the violation or violations alleged in the complaint, or the Commission may proceed with a hearing to receive evidence on the alleged violation or violations and the Commission may assess civil penalties or an administrative fine as provided by law.

007.05 Settlement Orders:

007.05A A respondent may enter into a compromise settlement agreement and proposed final order prior to a hearing pursuant to section 75-157 which does not constitute an admission by the respondent of any alleged violation or violations contained in the civil penalty complaint. Such agreement and proposed final order must be signed by the respondent and all parties to the proceeding and must reflect that the respondent consents to the assessment of a specific civil penalty or administrative fine. Settlement of the matters raised by the complaint in a proposed final order containing a recommended penalty are subject to the approval of the Commission.

007.05B If the respondent and all parties to the proceeding enter into a compromise settlement agreement and proposed final order, the settlement of the complaint may include a recommended penalty to the Commission. If a recommended penalty is included as part of the compromise settlement agreement and proposed final order, simultaneous with the filing of a compromise settlement agreement and proposed final order, the respondent must remit to the Commission a cashier's check or money order in the amount of the recommended penalty payable to the Treasurer of the State of Nebraska. These funds will be held in a contingent liability account until appropriately allocated upon final order. The compromise settlement agreement and proposed final order must be filed with the Commission by the Commission's counsel. If the Commission approves the agreement and proposed order, the

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civil penalty proceeding will cease. If the Commission does not approve the proposed order, a hearing on the civil penalty complaint must be held.

## 007.06 Post Order Requirements:

007.06A On the issuance of a final order finding that the violation or violations have occurred, the Commission must inform the respondent or the respondent's legal representative no later than five (5) business days of the rendition of the order and of the amount of the penalty, if any.

007.06B Within the thirty (30) day period immediately following the day on which the Commission's final order is mailed, the respondent who has not previously paid all the civil penalty ordered to be paid must pay the penalty in full by remitting a cashier's check, electronic transfer or money order to the Commission payable to the Treasurer of the State of Nebraska. The Commission will then promptly forward the cashier's check or the money order to the State Treasurer as provided by law.

007.07 Collection of Penalty in Lieu of Payment: A civil penalty assessed pursuant to these rules and unpaid will constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of Lancaster County. Any civil penalty collected by the Commission pursuant to such judicial proceedings must be transmitted within thirty (30) days from receipt to the Treasurer of the State of Nebraska for deposit in the permanent school fund pursuant to section 75-158.

## 008 RULE MAKING PETITIONS:

008.01 Petition: Any person may petition the Commission requesting the promulgation, amendment, or repeal of a rule or regulation.

008.02 Form: The petition must:

008.02A Be clearly designated as a petition for a rule change;

008.02B In the case of a proposed new rule or amendment of an existing rule, must set forth the desired rule in its entirety;

008.02C In the case of a petition for the repeal of an existing rule, such must be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by the Commission rule number;

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008.02D Describe the reason for the rule change;

008.02E Include an address and telephone at which the petitioner can be reached during regular work hours; and

008.02F Be signed by:

008.02F1 The petitioner or his or her attorney in which case the attorney must also state his or her address and telephone number and bar number; or

008.02F2 A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

008.03 Within sixty (60) days after submission of a petition, the Commission must:

008.03A Deny the petition in writing, stating its reasons therefor;

008.03B Initiate rulemaking or regulation making proceedings in accordance with the Administrative Procedure Act; or

008.03C If otherwise lawful, adopt a rule or regulation.

009 PETITIONS FOR DECLARATORY ORDER:

009.01 Generally: A request for a declaratory order must be made by a petition that meets the requirements of section 009.

009.02 Who May File: Any person may petition the Commission for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order which is within the primary jurisdiction of the Commission.

009.03 When Order Is Appropriate: A declaratory order may be requested on the applicability of a statute, rule, regulation, or order enforced by the Commission. "Applicability" refers to the appropriateness of the relation of the law to the person, property, or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies, or which law applies. Considerations as to whether issuance of a declaratory order is appropriate include:

009.03A A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.

009.03B A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.



009.03C A declaratory order is not a mechanism for review or appeal of a decision made by the Commission in a contested case.

009.03D A declaratory order may not be requested to obtain a declaration by the Commission that a statute or regulation is unconstitutional or that a regulation of the Commission is invalid.

009.03E A declaratory order may not be issued by the Commission that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

009.04 Form of Petition: A petition for declaratory order must be in the form of either a pleading or letter which shall contain each of the following:

009.04A A caption, which must include:

009.04A1 The venue "BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION";

009.04A2 A heading specifying the subject matter and the name of the petitioner; and

009.04A3: The name of the pleading as "PETITION FOR DECLARATORY ORDER".

009.04B The statements required in subsection 009.05 of this chapter.

009.04C The signature of the petitioner, or when represented by an attorney, the signature of the attorney.

009.04D The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

009.04E The petition must be made on white, letter-sized (8-1/2" x 11") paper.

009.04F The petition must be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the petition must be written in ink. Only one side of a page must contain any writing.

009.04G Any documents attached to a petition must be securely fastened to the pleading, must meet the requirements of 009.04E and 009.04F and, when possible, be reproduced on 8-

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1/2" x 11" paper or placed in an 8-1/2" x 11" envelope and clearly marked as an attachment to the petition.

009.05 Contents of Petition: To be considered, the petition must include the following:

009.05A The name and address of the petitioner;

009.05B The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the applicability of the statute, rule, regulation, or order or who may be adversely affected by the issue sought to be resolved by the petitioner.

009.05C The statute, rule, regulation, or order upon which the petitioner seeks issuance of a declaratory order;

009.05D A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

009.05E All propositions of law or contentions asserted by the petitioner;

009.05F A demand for the relief to which the petitioner alleges entitlement. The petition must state the petitioner's position as to how the Commission should rule and why the Commission should rule in the manner requested; and

009.05G Any documents pertinent to the petition that the petitioner wishes to be considered by the Commission.

009.06 Verification: The Petition must be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other entity, then the petition must be subscribed and verified by a duly authorized agent of the petitioning entity.

009.07 Written Consents: The petitioner must also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

009.08 Submission and Service of Declaratory Order Petition:

009.08A The original petition for declaratory order must be filed with the Commission by mail or in person during the Commission's normal business hours.

009.08B The petition will be deemed as filed when it is actually received by the Commission. The Commission will date stamp all petitions upon receipt.

009.08C At the same time the petition is filed with the Commission, the petitioner will serve a copy of the petition, by certified mail, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations, or other entities who are known to have or claim any interest, legal right, duty, privilege, or immunity which would be directly affected by issuance of a declaratory order in this matter by the Commission.

009.09 Disposition of the Petition:

009.09A Upon the filing of a petition, the Commission may, in its discretion, do one or more of the following:

009.09A1 Require that additional information be filed before the petition will be further considered;

009.09A2 Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the Commission;

009.09A3 Schedule a date, time, and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition; or

009.09A4 Consider the petition and any attachments without oral presentation.

009.09B Within thirty (30) days after the petition is filed, the Commission will, in writing:

009.09B1 Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

009.09B2 Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

009.09B3 Set the matter for specified proceedings as set forth in subsection 009.09 of this Chapter; or

009.09B4 Decline to issue a declaratory ruling, stating the reasons for the Commission's decision.

009.09C Notwithstanding section 009.09B of this rule, the Commission may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would be contrary to any provisions of section 009.013 of this Chapter. The Commission will notify the

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petitioner and, if applicable, any intervenor or necessary party in writing when the Commission determines not to issue a declaratory order.

009.10 Intervention in Declaratory Order Proceeding:

Intervention by any person or entity in a declaratory order proceeding will be allowed when the following requirements are met:

009.10A A petition for intervention must be filed in writing with the Commission. Copies must be mailed to all parties to the proceeding.

009.10B The petition for intervention must be submitted to the Commission, in writing, on 8 1/2" x 11" white paper, and must include each of the following:

009.10B1 The statute, regulation, rule, or order that may apply to or effect the person, property, entity, or facts at issue in the matter;

009.10B2 A statement of facts sufficient to show the intervenor's interest;

009.10B3 A statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law;

009.10B4 All propositions of law or contentions asserted by the intervenor; and

009.10B5 A statement of the specific relief requested by the intervenor.

009.10C The Commission must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

009.10D The Commission may, at its discretion, invite any person or entity to file a petition for intervention.

009.10E The Commission will grant a petition for intervention if the requirements of § 009.010 are satisfied.

009.10F The Commission will deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

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009.10G The Commission's decision to grant or deny a petition for intervention will be in writing and served upon all parties.

009.11 Declaratory Order Proceedings:

009.11A Oral argument will be had only on specific order of the Commission. A petitioner, intervenor, necessary party, or the Commission may file a motion for oral argument with the Commission. If opportunity for oral argument is granted, then argument will be scheduled to be conducted not more than forty-five (45) days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, must be served by the Commission with a notice of the date, time, and location for oral argument. The Commission will provide each of the parties with notice of the proceeding not less than seven (7) days in advance of the scheduled date. Service will be made by certified mail, return receipt requested.

009.11B Oral argument will be made before the Commission. The Hearing Officer will be in control of the proceeding and will:

009.11B1 Identify the proceeding and introduce himself or herself and identify each party for the record;

009.11B2 Hear the oral argument of the petitioner, intervenor, or necessary parties; and

009.11B3 Close the proceedings.

009.11C At the declaratory order proceeding, Commission staff will have the right to present oral argument.

009.11D The Hearing Officer may impose reasonable time limits on the amount of time allocated to each party for oral argument.

009.11E The parties and Commission staff may file briefs in support of their respective positions. The Hearing Officer may fix the time and order of filing briefs and may direct that briefs be filed prior to the date of oral argument.

009.11F The oral argument may be conducted either in person or by telephone conference call.

009.12 Issuance of Declaratory Order:

009.12A The Commission will issue its declaratory order within sixty (60) days of the date on which the petition was filed.

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009.12B The declaratory order will be in writing and shall include the following:

009.12B1 The names of all parties to the proceeding upon which the order is based;

009.12B2 The facts upon which the order is based;

009.12B3 The statute, regulation, rule, or order at issue in the matter;

009.12B4 The Commission's conclusion as to the applicability of the statute, regulation, rule, or order to the facts;

009.12B5 The Commission's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and

009.12B6 The reasons relied upon by the Commission to support its conclusions.

009.12C A copy of the declaratory order must be served upon each party by certified mail, return receipt requested.

009.12D A declaratory order will have the same status and binding effect as any other order issued in a contested case.

009.12E If the Commission has not issued a declaratory order within sixty (60) days after the petition has been filed, then the petition will be deemed to have been denied by the Commission.

009.13 Circumstances Under Which Commission Will Not Issue Declaratory Orders:

009.13A Grounds upon which the Commission may refuse to issue a declaratory order include, but are not limited to, the following:

009.13A1 The petition requests a declaratory order on a matter that is outside the scope of authority of the Commission;

009.13A2 The petition requests review or appeal of a decision made by the Commission in a contested case;

009.13A3 The petition requests a declaratory order on the effect of past conduct;

009.13A4 An investigation for purposes of a formal adjudication, a contested case, or a petition to issue,

amend, or repeal regulations is pending before the Commission involving the petitioner on substantially the same or similar facts or issues raised in the petition;

009.13A5 The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

009.13A6 The issue raised in the petition has been settled by a change in circumstances or other means so as to render moot the need for a declaratory order;

009.13A7 An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding;

009.13A8 An order would not resolve the controversy or uncertainty; or

009.13A9 The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.

009.13B Grounds upon which the Commission may determine to refuse to issue a declaratory order include, but are not limited to, the following:

009.13B1 Refusal is necessary to assure adequate allocation of Commission resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

009.13B2 The question presented is of such complexity that the Commission has had insufficient opportunity or resources to develop a fully matured ruling; or

009.13B3 The petitioner fails to file any additional information requested by the Commission or files such information after the date established by the Commission.

009.14 Appeal: A declaratory order is subject to review in the manner provided for review of contested cases by § 75-136.

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## 010 SECURITY ISSUANCES:

010.01 Applications: Applications for approval of a security issuance must set forth the details surrounding the proposed indebtedness or issuance and must be accompanied by the following:

010.01A a certified copy of the Articles of Incorporation with amendments to date;

010.01B a certified copy of the minutes from the board of directors' or stockholders' meeting, or other proper corporate authority authorizing the action;

010.01C a certified copy of the by-laws with amendments to date;

010.01D current balance sheet and supporting profit and loss statement; and

010.01E sample of proposed stock certificate.

010.02 Notice: In cases of stock increase and consolidation of stock, a hearing will be held only after proof of publication in a legal newspaper published in the city wherein the common carrier has its principal place of business in the State of Nebraska, or, if no legal newspaper is published in such county, then in some legal newspaper published within the state and having general circulation within such county once each week for two consecutive weeks. The first publication must be at least sixty (60) days prior to the hearing upon the application for the increase or for the consolidation.