Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DEPARTMENT OF STATE

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 201(a) and 209(a) (26 **Del.C.** §§201(a) & 209(a))
26 **DE Admin. Code** 1001

FINAL

IN THE MATTER OF REVISION TO THE RULES OF PRACTICE AND PROCEDURE OF THE DELAWARE PUBLIC SERVICE COMMISSION (FILED JANUARY 6, 1999; RE-OPENED OCTOBER 9, 2012)	PSC REGULATION DOCKET NO. 99-9

ORDER NO. 8727

AND NOW, this 21st day of April, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, the Commission has jurisdiction over this matter pursuant to 26 **Del.C.** §§201(a) and 209(a)(1); and

WHEREAS, by Order No. 8232 (October 9, 2012), the Commission reopened Regulation Docket No. 99-9 to review and amend the *"Rules of Practice and Procedure of the Delaware Public Service Commission,"* 26 *Del. Admin. C.* §1001 et seq. (the "Rules"); and

WHEREAS, minor revisions to the Rules (the "Amendments") are necessary to update certain outdated references and to ensure consistency in the Rules; and

WHEREAS, because the Amendments are strictly procedural and statutorily exempt from formal notice requirements pursuant to 29 **Del.C.** §§10102(9) and 10113(b)(2), and because they are not substantive amendments which would otherwise require publication and a public comment period pursuant to 29 **Del.C.** §§10115 to 10118;

NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. Pursuant to 29 **Del.C.** §§10102(9) and 10113(b)(2), decretal paragraphs 2 and 3 of Order No. 8232 are hereby waived.
2. Pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10113(b)(2), the Commission hereby adopts the *Amended Rules of Practice and Procedure of the Delaware Public Service Commission* (the "Amended Rules") as its official regulations as defined by 29 **Del.C.** §1132(3). A true and correct copy of the version reflecting the changes as between the current Rules and the Amended Rules is attached as **Exhibit "A"**. A clean version of the Amended Rules reflecting the changes is attached as **Exhibit "B"**.
3. Pursuant to 26 **Del.C.** §§10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order (with the attached Amended Rules) to the Registrar of Regulations for publication in the *Delaware Register*. An exact copy of the Amended Rules shall be published as the current official regulations in the *Delaware Register*.
4. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chair
Joann T. Conaway, Vice Chair
Jaymes B. Lester, Commissioner
Harold B. Gray, Commissioner

ATTEST:
Donna Nickerson, Secretary

1001 Rules of Practice and Procedure of the Delaware Public Service Commission

1.0 General Provisions

1.1 Applicability and Construction of Rules, Specific Orders, and Waiver

1.1.1 These rules govern practice and procedure in all matters before the Commission and shall be liberally construed to secure a just, fair, convenient, economical and expeditious determination in accord with the Commission's statutory and public responsibilities.

1.1.2 Nothing in these rules shall preclude the Commission, in the exercise of its statutory duties and where circumstances reasonably require, from prescribing different procedures to apply to specific proceedings.

1.2 Definitions

"**Application**" - means a document in which a person seeks a certification, permit, license, or other approval, ruling or authorization from the Commission.

"**Complaint**" - means a formal or informal document or communication in which a person alleges that a person subject to the jurisdiction of the Commission has violated a statute, rule, regulation, or order within the Commission's authority to enforce.

"**Commission**" - means the Public Service Commission of Delaware.

"**E-Filing**" means, on and after November 4, 2013, all filings made by a person with the Commission utilizing the "DelaFile" document management system available through the Commission website at http://depsc.delaware.gov.

"**Filing**" - means any document submitted to the Commission as part of the Commission's official records in any proceeding.

"**Hearing Examiner**" - means a person assigned by the Commission to preside over a Commission proceeding and, thereafter, to prepare a report with recommendations for the Commission's consideration.

"**Intervenor**" - means a person who is admitted as a party pursuant to Rule ~~21~~2.9 of these rules.

"**Party**" - means a person who, as a matter of right or by Commission authorization, appears in and has a direct interest in a proceeding before the Commission.

"**Person**" - includes a natural person; a corporation, partnership, association, public trust, joint stock company, joint venture, or other group of persons, whether incorporated or not; a trustee or receiver of the foregoing; a municipality or other political subdivision of the State of Delaware; and any other governmental agency or any officer, agent or employee of such agency.

"**Petition**" - means a request for relief which is not an application or complaint.

"**Presiding Officer**" - means a Commissioner designated by the Commission to preside over a proceeding and to prepare a report, with recommendations, for the Commission's consideration.

"**Proceeding**" - means any matter assigned a docket number by the Secretary.

"**Proof of Public Notice**" - means a certificate or affidavit reciting the date and manner notice was given to the public as may be required by statute, rule, or order.

"**Proof of Service**" - means a certificate or affidavit reciting the date and manner of service upon the parties to a proceeding.

"**Respondent**" - means a public utility or other person named as the subject of an investigation or complaint proceeding.

"**Secretary**" - means the Secretary of the Commission, or any employee of the Commission designated by the Secretary and authorized by the Executive Director.

"**Staff**" - means full-time professional employees of, and outside counsel and consultants retained by, the Public Service Commission who render advice to the Commission. The Staff may participate in any Commission proceeding and may advocate particular positions concerning the issues raised in such proceeding and file supporting material and testimony for the Commission's consideration.

1.3 Address of Commission and Office Hours

1.3.1 The mailing address of the Commission is: "The Public Service Commission of Delaware, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904." All communications to the Commission shall be so addressed unless otherwise specifically directed.

1.3.2 Unless otherwise provided by statute or Executive Order, the office of the Commission shall be open from 8:00 A.M. until 4:30 P.M. of each week day, except Saturdays, Sundays, and legal holidays observed by the State in Kent County, Delaware.

1.4 Commission Meetings

1.4.1 The Commission shall meet for the transaction of its business at its office in Dover or at such other places within this State as the Commission may designate.

1.4.2 Notice of all meetings of the Commission shall be given at least seven (7) days in advance by a conspicuous posting of written notice at the Commission's office in Dover and such other methods as the

Commission may deem appropriate. An agenda shall be posted contemporaneously with the notice, subject to revisions made up until six (6) hours in advance of the meeting. The Secretary may make the notice and agenda available through the Commission's web page.

1.4.3 A majority of the members appointed to the Commission shall constitute a quorum and shall be sufficient for any final order of the Commission; provided, however, that a single Commissioner may sit as a Presiding Officer for the purpose of hearing testimony in any proceeding subject to Commission review. Any final decision concerning any matter before the Commission must be approved by the affirmative vote of the majority of all members appointed to the Commission.

1.5 Office of the Secretary

1.5.1 The Secretary shall have custody of the seal and official records of the Commission and shall be responsible for the maintenance and custody of its docket files, opinions, orders, rules, regulations, forms, and any schedules and tariffs filed with the Commission.

1.5.2 All orders and other actions of the Commission shall be attested to by the Secretary.

1.5.3 The Secretary shall mark the time and date of receipt or filing on each communication addressed to the Commission and on each pleading, report, exhibit, deposition, transcript, and order received or filed. When deemed appropriate, the Secretary shall also assign a docket number to a filing that has been received.

1.5.4 The Secretary shall maintain the schedule of fees and charges as approved by the Commission, for filings and the provision of copying and other similar services.

1.6 Filing of Documents

1.6.1 All papers submitted for filing with the Commission shall include on the first page the caption and docket number of the proceeding if available; the name, mail and e-mail addresses, telephone and fax numbers of the person filing the document; and the name, mail and e-mail addresses, telephone fax numbers of the person representing the person filing the document.

1.6.2 The Secretary may reject any filing that does not conform to these rules or is not accompanied by the appropriate filing fee or other approved payment by returning the filing with an explanation of the defect to be remedied, if allowed, within the time period specified by the Secretary.

1.6.3 If E-Filing is not an available option, an original and ten (10) copies of all documents submitted for paper filing shall be provided to the Secretary, unless otherwise directed by the Commission, designated Presiding Officer or Hearing Examiner. The Secretary may request additional copies when necessary.

1.6.4 All filings shall be made via E-Filing unless a person obtains prior written permission from the Commission, designated Presiding Officer, or Hearing Examiner to be excused from using such method. If E-Filing is unavailable for use, paper filings must be made in accordance with these Rules.

1.6.5 The Commission shall forward to the Public Advocate a copy of all applications submitted by public utilities and all formal complaints and petitions filed with the Commission, along with proof of a notice to be executed and returned with an acknowledged receipt pursuant to 29 **Del.C.** §8808 (e). One copy of all initial filings and comments shall be served on the Division of the Public Advocate at its official address and a certificate of service indicating such service must accompany the filing with the Secretary.

1.6.6 Each person filing a document with the Commission shall serve a copy of the document on each party named on the service list for the proceeding as maintained by the Secretary, if established, and any other person required to be served by rule, order, or law. Proof of such service shall be attached to the document to be filed or its cover letter.

1.6.7 Unless otherwise specified by the Presiding Officer or Hearing Examiner or served via DelaFile, service should be made by:

1.6.7.1 United States mail, first-class;

1.6.7.2 Commercial courier service; or

1.6.7.3 personal delivery.

1.7 Types of Filings and General Requirements

1.7.1 Filings shall include the following:

1.7.1.1 applications;

1.7.1.2 petitions;

1.7.1.3 complaints;

1.7.1.4 answers;

1.7.1.5 motions;

1.7.1.6 briefs;

1.7.1.7 memoranda;

1.7.1.8 exceptions; and

1.7.1.9 comments.

1.7.2 All petitions and other filings that allege facts not otherwise in the record must be accompanied by a signed, sworn verification. Where the filer is a corporation or an association, the verification shall be signed by a bona fide officer thereof.

1.7.3 All filings must be accompanied by a signed certificate of service pursuant to Rules ~~6(f)~~1.6.5 and ~~6(g)~~1.6.6.

1.7.4 Except as directed by the Commission, designated Presiding Officer or Hearing Examiner, all paper filings shall be on 8 1/2 inch by 11 inch sized paper with margins of at least one inch using type size no smaller than 12 pitch font.

1.8 Applications

1.8.1 Applications shall be in numbered paragraphs and include the following:

1.8.1.1 the name, mail and e-mail addresses, telephone and fax numbers of the applicant;

1.8.1.2 a description of the authorization, right, or approval sought;

1.8.1.3 a description of any previous authorization or approval which will be affected;

1.8.1.4 a concise recitation of the material facts to be relied upon;

1.8.1.5 a citation to the statute, rule, or order which authorizes the application;

1.8.1.6 copies of all pertinent contracts, agreements, certificates, permits, tariffs, proposed tariffs, charters, by-laws, ordinances, resolutions or other writings referred to in the application, which shall be attached as exhibits. Copies of written material or orders which are of record with the Commission need not be attached to the application if reference is made to the appropriate docket and order numbers; and

1.8.1.7 any information required by rule or order for a specific type of application.

1.8.2 Applications shall be initially reviewed by the Commission and upon such review, may be i) published for public comment, ii) approved with or without conditions, iii) denied, iv) set for evidentiary hearing, or v) granted in part and denied in part.

1.8.3 Applications may become the subject of an evidentiary hearing if the Commission determines that the comments or the application require a hearing.

1.9 Computing Time

1.9.1 In computing any time period under these rules, the first day of the designated period of time shall commence the next day after the event requiring the computation of the time period. The last day of the time period shall be included, unless it falls on a Saturday, Sunday, or a legal holiday by the laws of this State or the United States, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

1.9.2 Upon good cause shown, the Commission, or a designated Presiding Officer or Hearing Examiner, may extend the period of time prescribed by these rules.

1.10 Public Access to Commission Records

1.10.1 The Secretary shall make available for public inspection upon reasonable request during the regular business hours of the Commission all of the "public records" of the Commission, as defined in 29 **Del.C.** §10002 (d), subject to any privilege or proprietary treatment of the records.

1.10.2 The Secretary may charge a fee to recover reasonable costs of copying.

1.11 Submission of Confidential, Proprietary, and Privileged Material

1.11.1 A person may request that the Commission accord confidential treatment to some or all of the information contained in a document. In support of such a request, such person shall attest that the information is not subject to inspection by either the public or by other parties unless an appropriate proprietary agreement is executed. There shall be a rebuttable presumption that information claimed to be confidential is confidential until ruled otherwise by the Commission. (For a listing of materials that are exempt from public disclosure, *see* 29 **Del.C.** §10002(d)).

1.11.2 If the claim of confidentiality is challenged by any person, then the person claiming confidential treatment for information must demonstrate in a petition to the Commission that the designated information is confidential as recognized by state law.

1.11.3 The party seeking proprietary treatment shall submit for filing one copy of the document without the confidential information, with an indication that claimed confidential information has been deleted.

1.11.4 Upon any dispute over the confidential treatment of information, the matter shall be resolved by the Commission, designated Presiding Officer or Hearing Examiner.

1.11.5 The Commission, Commission Staff, and the Division of Public Advocate shall have access to all documents for which confidential treatment has been claimed. Access to non-public information shall be made available to all other parties, including consultants retained by the Commission, Commission Staff, and the Division of Public Advocate, upon the execution of an appropriate agreement by the parties or entry of a protective order by the Commission or designated Presiding Officer or Hearing Examiner.

1.11.6 Non-public information shall not be disclosed by the Commission, its Staff, the Division of the Public Advocate, and their consultants and any party to a proprietary agreement and its consultants except as authorized by law.

1.12 Ex Parte Communications

1.12.1 No Commissioner or Commission Staff assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any party or person except upon notice to, and opportunity for, all parties to participate. This rule shall not apply to communications required for the disposition of ex parte matters as authorized by law, or to communications, not prohibited by law, by and among Commission members and Commission Staff.

17 DE Reg. 554 (11/01/13)
18 DE Reg. 160 (08/01/14)

2.0 Hearings

2.1 Appearances

2.1.1 A person may appear before the Commission by filing: i) an entry of appearance; ii) a complaint; iii) an answer; iv) a petition to intervene; v) an application; or vi) comments. An attorney, officer, or other qualified authorized agent may appear on behalf of a corporation or association, whether incorporated or not, subject to the Rules of the Supreme Court of Delaware. The Commission, Executive Director, or designated Hearing Examiner may limit the number of representatives that a party may designate to be on the service list.

2.1.2 Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the Commission in accordance with Rule 72 of the Rules of the Supreme Court of Delaware. A motion for such admission shall be made by a member of Delaware Bar in a form complying with Official Form O of the Rules of the Delaware Supreme Court and shall be accompanied with the required fees. A separate motion for such admission must be made in each matter before the Commission. The member of the Delaware Bar moving such admission shall remain responsible for compliance with any rule or order of the Commission.

2.1.3 An attorney appearing before the Commission shall conform to the standards required of members of the Delaware Bar. The Commission may deny, temporarily or permanently, the privilege of appearing before it if it determines that an attorney or other qualified officer or agent has engaged in illegal, unethical, or improper behavior.

2.1.4 The Public Advocate may appear in any proceeding before the Commission as a party as a matter of right.

2.2 Informal Complaints and Mediation

2.2.1 An informal complaint may be made by letter, other writing, or via telephone to Commission Staff, which shall investigate the allegations and, having duly notified the person that is the subject of the informal complaint, request a response from such person. The Commission Staff shall attempt to resolve the informal complaint to the satisfaction of the parties. The Commission Staff shall prepare a report at the conclusion of the investigation and mediation process to summarize the dispute and the proposed resolution by the Commission Staff. The parties will have twenty (20) days to indicate in writing acceptance or rejection of the proposed resolution by Commission Staff.

2.2.2 If resolution of the informal complaint by Commission Staff is not deemed satisfactory by the complainant or respondent, then the complainant may institute a formal complaint at any time, within two (2) years of the alleged violation, unless good cause is shown.

2.3 Formal Complaints

2.3.1 A formal complaint shall be in numbered paragraphs and include the following:

2.3.1.1 name, mail and e-mail addresses, daytime telephone and fax numbers of the complainant;

2.3.1.2 name of the person that is subject of the complaint;

2.3.1.3 description of conduct, including all known facts, alleged to have violated a law, rule or order; and

2.3.1.4 description of the relief requested.

2.3.2 Formal complaints alleging violations of any matter within the Commission's jurisdiction shall be served by the Secretary either through DelaFile or by certified mail on the person that is the subject of the complaint

and direct such person to file a response within twenty (20) days of the service, unless emergency relief is requested and appropriate.

2.3.3 Except for investigations under Rule ~~14~~2.2.1, any Commission Staff investigation of an alleged violation shall be deemed a formal complaint, and the notice of investigation shall, unless otherwise ordered, be served in a like manner as a formal complaint. Notice of this investigation to the public may be given in order to elicit public input.

2.4 Answer to Formal Complaint

2.4.1 Within twenty (20) days after service of a formal complaint, or such other time as the Commission may order, the respondent shall file an answer with the Commission and a certificate of service indicating service on the complainant and any other party who may have intervened. The answer shall specifically admit or deny the factual allegations in the complaint or that the party is without knowledge or information sufficient to answer the allegation. The answer should state clearly and concisely the facts and law relied upon, and set forth fully the nature of any defense.

2.4.2 Except where the Commission shall have waived the service and filing of an answer, a respondent who fails to file a timely answer shall be deemed in default and the Commission may thereafter enter an order granting the relief requested or take such other action as it deems appropriate.

2.5 Resolution of Formal Complaints

2.5.1 If a respondent and complainant reach an agreement on a formal complaint, then the complainant and the respondent shall execute and file with the Secretary a statement that the complaint has been resolved and the proceeding can be closed.

2.5.2 If a formal complaint is not resolved by agreement, the complaint shall be assigned to a Hearing Examiner to conduct a hearing and prepare a Recommended Decision for the Commission's consideration.

2.6 Discovery Procedures

2.6.1 Discovery may be conducted through written interrogatories, written data requests, requests for admissions, and or depositions. Discovery may be available to any party in proceedings before the Commission or to the Staff and Public Advocate in the investigation of any filing. No discovery is to be filed with the Commission or Hearing Examiner unless it is requested or submitted as part of a discovery dispute.

2.6.2 Parties should begin any discovery as soon as possible after the commencement of the proceeding and discovery should be completed prior to the hearings. Leave to conduct discovery after the commencement of hearings may be granted for good cause shown.

2.6.3 All interrogatories or written data requests shall be numbered in sequence by the party requesting the information.

2.6.4 The Commission, designated Presiding Officer or Hearing Examiner may vary discovery provisions, in the interest of justice, and may direct the parties to employ electronic medium for the service of discovery.

2.6.5 The parties are encouraged to pursue discovery through informal written or oral data requests or conferences.

2.6.6 In rate or other expedited cases, responses to discovery must be served no later than fifteen (15) days, excluding holidays and weekends, after service of the discovery, unless otherwise directed by the Commission, the designated Presiding Officer or Hearing Examiner. In all other cases the information requested shall be provided within thirty (30) days of service, unless otherwise directed by the Commission, Presiding Officer, or designated Hearing Examiner.

2.6.7 If a party objects to any discovery, then that party must notify the party seeking the information within ten (10) days after service of the discovery of the objection and its grounds. Should the parties be unable to resolve any discovery dispute, then the party seeking the information shall file a motion to compel and attach the other party's objection. The Presiding Officer or Hearing Examiner may schedule oral argument on the motion.

2.7 Motions

2.7.1 A party in any proceeding may file and serve a motion at any time, unless otherwise prohibited. A written motion shall set forth in numbered paragraphs a concise statement of the facts and law which support the motion and a specific request for relief.

2.7.2 The Commission, Presiding Officer or Hearing Examiner may permit oral motions to be made on the record during a hearing or conference that is transcribed.

2.8 Notice

2.8.1 Except in emergencies, notice of a formal hearing shall include the date, time and place of the hearing or hearings, a brief description of the subject matter and the manner in which the public may present its views. The Commission shall establish the appropriate public notice consistent with 26 **Del.C.** §102A**.**

2.8.2 After commencement of the initial hearing, any adjournments and continuances of the hearing may be scheduled and conducted on such dates as designated by the Commission, Hearing Examiner or Presiding Officer, either on the record or in writing to the parties.

2.9 Petitions for Leave to Intervene

2.9.1 Any person, other than an original party to a proceeding or a party entitled to participate as a matter of right, must file a petition to intervene. Such petition shall set forth in numbered paragraphs the following:

2.9.1.1 the name, identity, mail and e-mail addresses, telephone and fax numbers of the person seeking to intervene;

2.9.1.2 a description of the petitioner's interest in the outcome of the proceeding;

2.9.1.3 a concise statement of why the petitioner's interest will not be adequately represented by the parties to the proceeding or why participation in the proceeding would be in the public interest; and

2.9.1.4 a description of the relief requested.

2.9.2 A petition to intervene shall be filed with the Commission no later than the date specified for the filing of such petitions in the public notice, or the initial hearing if no public notice is given. Late intervention may be sought and granted for good cause shown.

2.9.3 The Commission may delegate to the designated Presiding Officer or Hearing Examiner the authority to grant or deny a party's intervention, subject to an interlocutory appeal pursuant to Rule ~~28~~2.16.

2.9.4 Intervention shall be subject to such reasonable terms and conditions as the Commission or designated Presiding Officer or Hearing Examiner may prescribe.

2.10 Pre-hearing Conferences

2.10.1 The Commission, Hearing Examiner or Presiding Officer, with or without motion, and upon written notice to all parties of record, may convene a pre-hearing conference. Each of the parties may be required to prepare a pre-hearing memorandum that addresses the following matters:

2.10.1.1 Proposed resolution of the proceeding or issues;

2.10.1.2 Identification of issues the party expects to pursue;

2.10.1.3 Identification of witnesses the party expects to present;

2.10.1.4 Status of the party's discovery; and

2.10.1.5 Position on complete or partial settlement of the proceeding.

2.10.2 Pre-hearing conferences may be conducted formally or informally. Proceedings at formal conferences shall be recorded by a Reporter. Agreements or stipulations by the parties and other matters resolved at informal conferences shall be reduced to writing by the Presiding Officer or Hearing Examiner, who will issue a pre-hearing memorandum. The memorandum will bind all parties, including those who, after having been duly notified, could have attended the conference but did not.

2.10.3 The Hearing Examiner or Presiding Officer at such conference may, by either written or oral ruling, dispose of such procedural matters as may be necessary or appropriate to determine at that stage of the proceedings. All such rulings shall be binding upon all parties to the proceeding, subject to interlocutory appeal to the Commission and to subsequent modification for good cause shown.

2.11 Hearings

2.11.1 Formal hearings and informal proceedings will be held before the Commission, a Commissioner appointed as Presiding Officer, or a Hearing Examiner appointed by the Commission.

2.11.2 The Commission shall give notice of a hearing in a manner consistent with 26 **Del.C.** §102A.

2.11.3 Hearings shall be transcribed and the transcripts shall become part of the record.

2.11.4 All witnesses shall present testimony that is sworn or affirmed and shall be subject to reasonable cross-examination.

2.12 Order of Proceeding and Burden of Proof

2.12.1 The moving party shall open and close the presentation of evidence, except in those instances when the Commission, the designated Presiding Officer or Hearing Examiner determines a different presentation, such as when the evidence is peculiarly within the knowledge or control of another party.

2.12.2 If a party fails to appear at a scheduled hearing, then the designated Presiding Officer or Hearing Examiner may recommend to the Commission that it enter an order ruling against the party who failed to appear.

2.12.3 The burden of proof shall be on the moving party, except where placed on another party by law or Commission order.

2.12.4 All parties to hearings, their counsel and spectators shall conduct themselves in a proper manner. Disruptive demonstrations of any kind at hearings shall not be permitted. Any disregard by parties, attorneys or other persons of the rulings of the Commission, Presiding Officer or Hearing Examiner on matters of order or procedure may be noted on the record. The Presiding Officer or Hearing Examiner may, in his or her discretion, recess or continue any hearing when the deportment of witnesses, spectators, news media or other persons unduly disrupts or interferes with the proper conduct of such hearing.

2.13 Evidence

2.13.1 The Commission may consider the Delaware Uniform Rules of Evidence as a guide but, in accordance with 26 **Del.C.** § 503 and 29 **Del.C.** §10125, shall not be bound by the technical rules of evidence.

2.13.2 The parties are encouraged to agree upon any facts at issue, or upon the authenticity of any relevant documents. The agreement may be in writing or by oral statement made upon the hearing record. The Commission, Presiding Officer or Hearing Examiner upon reasonable notice to the parties, may require proof by record evidence of stipulated facts.

2.13.3 Unless otherwise ordered, parties shall file prepared statements of testimony and exhibits in rate proceedings or other proceedings where directed by the Commission or the designated Presiding Officer or Hearing Examiner. All prepared statements of testimony shall be double-spaced on pages with numbered lines and have a cover page identifying the witness, the nature of the testimony (direct, rebuttal, etc.), the sponsoring party, and the caption of the proceeding.

2.13.4 Exhibits shall be marked sequentially.

2.14 Subpoenas and Witnesses

2.14.1 Upon application of any party or upon the initiative of the Commission, the designated Presiding Officer or Hearing Examiner will issue subpoenas to be served as provided in 26 **Del.C.** §504.

2.14.2 The Commission, Presiding Officer or Hearing Examiner, upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, may quash, modify, or condition the subpoena if it is demonstrated to be unreasonable or oppressive.

2.14.3 The Commission, designated Presiding Officer or Hearing Examiner may limit the number of witnesses or restrict evidence or its examination in the interest of justice and economy.

2.15 Transcripts of Hearings

2.15.1 An official court reporter designated by the Commission shall make an official transcript (in both public and confidential versions when necessary) of the formal hearings and such other matters as directed by the Commission, Executive Director or designated Presiding Officer or Hearing Examiner.

2.15.2 Parties desiring copies of the official transcript shall arrange to secure and pay for such copies from the official court reporter.

2.15.3 A party's motion to correct the transcript of the record must be filed within ten (10) days after the transcript is filed in the proceeding. Any party objecting to such motion shall file an answer within five (5) days from the filing of the motion. The Commission, Presiding Officer or Hearing Examiner shall rule on the motion with or without hearing.

2.16 Interlocutory Appeals to the Commission

2.16.1 Interlocutory appeals from rulings of the Presiding Officer or Hearing Examiner during the course of a proceeding may be taken to the full Commission by any party only where extraordinary circumstances necessitate a prompt decision by the Commission to prevent substantial injustice or detriment to the public interest.

2.16.2 Within three (3) days of the entry of the ruling from which the appeal is sought, a party shall file with the Commission and serve via DelaFile or by hand delivery or overnight delivery upon all the other parties to the proceeding a Petition for interlocutory review. The Petition shall set forth in numbered paragraphs, not to exceed five (5) pages in length, the following:

2.16.2.1 a short statement of the case;

2.16.2.2 a summary of the party's position; and

2.16.2.3 the grounds supporting interlocutory appeal, including citations to the record.

2.16.3 Within three (3) days of service of the Petition for interlocutory review, any party may file an answer limited to five (5) pages in length.

2.16.4 The proceeding shall continue pending Commission review of the Petition for interlocutory review unless the Presiding Officer or Hearing Examiner stays the proceeding pending Commission review.

2.16.5 The Commission shall determine if the Petition and any answers thereto justify interlocutory review. If interlocutory review is granted, then it will be scheduled for oral argument before the Commission at its earliest convenience or a decision will be issued based on the written submissions. If no Commission action occurs within thirty days of the Petition filing, then it shall be deemed denied by operation of law.

2.17 Post-Hearing Briefs

2.17.1 The Commission, Presiding Officer or Hearing Examiner may direct the filing of post-hearing briefs or memoranda. A post-hearing brief shall contain a cover page with the caption of the proceeding, the name of the party, and the nature of the brief. The Commission or designated Presiding Officer or Hearing Examiner may, either in addition or as an alternative, direct the filing of proposed findings of fact and conclusions of law.

2.17.2 The Commission, or designated Presiding Officer or Hearing Examiner may specify the length of the briefs or other post-hearing submissions, and any other format guidelines, including electronic medium.

2.17.3 The Commission, Presiding Officer or Hearing Examiner may reject briefs or memoranda which do not conform to these rules or the rulings of the Presiding Officer or Hearing Examiner.

2.18 Post Hearing Procedures for Hearings Conducted by Presiding Officer or Hearing Examiner

2.18.1 In accordance with 29 **Del.C.** Chapter 101, upon the completion of a proceeding, the Hearing Examiner or Presiding Officer shall prepare and submit to the Commission a report and recommendations which shall include a summary of the evidence, recommended findings of fact, recommended conclusions and the reasons therefor.

2.18.2 The Executive Director or Secretary shall serve a copy of the report and recommendations on all parties and by cover letter indicate when exceptions should be filed and when the matter will be scheduled for the Commission's consideration.

2.19 Exceptions

2.19.1 Any party may file with the Commission written exceptions to the findings and recommendation of the designated Presiding Officer or Hearing Examiner in numbered paragraphs that:

2.19.1.1 identify each part of the Presiding Officer's or Hearing Examiner's findings and recommendations that is the subject of the exceptions.

2.19.1.2 refer to the portions of the record relied upon in support of each exception;

2.19.1.3 cite any authorities relied upon;

2.19.1.4 state all the grounds and reasons for exceptions, comments and arguments respecting the recommended decision or report and refer to the portions of any post-hearing brief or memorandum where the issue was more fully addressed; and

2.19.1.5 set forth any request for oral argument.

2.19.2 Any argument opposing a portion of the designated Presiding Officer's or Hearing Examiner's findings and recommendation that is not raised by an exception shall be considered waived.

2.19.3 Exceptions shall be filed within twenty (20) days of the date the findings and recommendations was served on the parties, unless the parties have agreed to a reduced time period or the Executive Director or Secretary has granted a longer time period to accommodate the Commission's meeting schedule.

2.20 Oral Argument before the Commission

2.20.1 The Commission may exercise its discretion to hear argument on exceptions. Oral arguments shall be limited to a discussion of the legal or regulatory issues and a restatement of the facts in the record. No new evidence shall be presented at oral argument except by direction of the Commission, upon a motion to re-open the record.

2.21 Entry of Orders

2.21.1 The Commission, acting through a majority of the members of Commission, shall execute an Order on matters properly before it for decision, unless the law allows otherwise. The Secretary shall serve the Order on all parties to the proceeding along with a cover letter that shall establish the entry date of issuance of the Order for the purpose of determining the time period for any challenge to the Order.

2.22 Post-Hearing Petitions for Relief

2.22.1 Petition to Re-open Record. At any time after the close of the record any party desiring further hearing upon supplemental evidence may file a petition setting forth the grounds to re-open the record, a description of additional evidence to be introduced, and a statement of the reasons why such was not introduced prior to the close of the record. The petition and any answer thereto shall be referred to the designated Presiding Officer or Hearing Examiner for disposition.

2.22.2 Petition for Rehearing and Reconsideration. Within thirty (30) days from the entry of an Order or decision of the Commission, any party may petition for rehearing and reconsideration, which shall set forth in

numbered paragraphs the grounds for rehearing and reconsideration that are different from the arguments previously made to the Commission. Other parties shall have seven (7) days to file an answer. The Commission, in its discretion, may grant or deny the petition without a hearing, or set a hearing thereon. The filing of a timely petition for rehearing shall suspend the finality of the order that is the subject of the petition.

2.22.3 If the Commission takes no action on a petition within sixty (60) days of the entry date of the Order, then the petition for rehearing and reconsideration shall be deemed denied by operation of law, and the Secretary shall notify in writing all parties of such denial by operation of law.

2.23 Compliance Filings

2.23.1 Any party directed by a final Commission Order to undertake a compliance filing shall make the filing with the Secretary and serve all parties within fifteen days (15) from the service of the final Order, or such other time as the Commission may permit.

2.23.2 The Commission shall retain jurisdiction to review all compliance filings to determine that they are in compliance with the Commission Order.

2 DE Reg. 2162 (05/01/99)
17 DE Reg. 554 (11/01/13)
18 DE Reg. 997 (06/01/15) (Final)