

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a)(1) and 29 Delaware Code, Section 10111(2)
(26 Del.C. §209(a)(1) & 29 Del.C. §10111(2))
26 DE Admin. Code 1001

PROPOSED

PUBLIC NOTICE

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

IN THE MATTER OF REVISIONS TO THE
RULES OF PRACTICE AND PROCEDURE
OF THE DELAWARE PUBLIC SERVICE
COMMISSION
(FILED JANUARY 6, 1999; RE-OPENED
OCTOBER 9, 2012; RE-OPENED
JANUARY 29, 2020; RE-OPENED AUGUST 31,
2022)

PSC REGULATION DOCKET
NO. 99-9

The Delaware Public Service Commission proposes to revisit the *Rules of Practice and Procedure of the Delaware Public Service Commission*, 26 Del. Admin. C. § 1001 et seq. ("Rules") for the purpose of clarification and procedural adjustment.

You can review the proposed revised Rules in the October 2022 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed revised Rules in the PSC's electronic filing system, Delafile, located at <http://delafile.delaware.gov/> (for docket #, input "Reg. 99-9"). If you wish to obtain written copies of the Order and proposed revised Rules, please contact the PSC at (302)736-7500. Copies in excess of the first twenty (20) pages are \$0.10 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

The Commission will conduct a public hearing on the revised Rules on Wednesday, November 2, 2022, beginning at 1:00 PM, in accordance with 26 Del. C. § 209(a). All persons who wish to be heard by the Commission may attend in person or by teleconference. Dial-in information will be provided on the agenda for November 2, 2022 meeting, which can be found on the PSC website at www.depsc.delaware.gov. Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the revised Rules.

Written comments can be filed electronically in Delafile at <http://delafile.delaware.gov/> by filling out the "Public Comment Form" located under "Public Links". Written comments can also be mailed to: Donna Nickerson, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904, or via email to donna.nickerson@delaware.gov, with the subject line "Regulation Docket No. 99-9." Written comments will be accepted until November 18, 2022, pursuant to 29 Del. C. § 10118(a). **To be considered at the November 2, 2022 hearing, however, written comments must be submitted on or before October 14, 2022.**

IN THE MATTER OF REVISIONS TO THE
RULES OF PRACTICE AND PROCEDURE
OF THE DELAWARE PUBLIC SERVICE
COMMISSION
(FILED JANUARY 6, 1999; RE-OPENED
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2022)

PSC REGULATION DOCKET
NO. 99-9

ORDER NO. 10094

AND NOW, this 31st day of August 2022, the Delaware Public Service Commission ("Commission") determines and orders as follows:

WHEREAS, the Commission operates under the *Rules of Practice and Procedure of the Delaware Public Service*

Commission, 26 Del. Admin. C. § 1001 et seq. ("Rules"), which were adopted on April 6, 1999, by PSC Order No. 5057, and revised on April 21, 2015, by PSC Order No. 8727, and again on February 19, 2020, by PSC Order No. 9547; and

WHEREAS, under the provisions of 26 Del. C. § 209(a)(1) and 29 Del. C. § 10114, the Commission is authorized to grant or deny proceedings for the adoption, amendment, or repeal of a regulation of the Rules upon the motion of an agency member; and

WHEREAS, pursuant to 26 Del. C. § 209(a)(1) and 29 Del. C. § 10114, Commission Staff ("Staff") now motions to the Commission to grant the proceedings for the adoption, amendment, or repeal of the Rules, as Staff finds that multiple revisions to the Rules are necessary for clarification and adjustment, and now recommends that the Commission issue the attached proposed amendments to the *Rules of Practice and Procedure of the Delaware Public Service Commission* for publication in the *Delaware Register of Regulations*;

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

1. That, for the reasons set forth above, and pursuant to 26 Del. C. § 209 and 29 Del. C. § 10114, the Commission proposes to re-open Regulation Docket 99-9 and to revise its Rules, which were last revised by PSC Order No. 9547 (February 20, 2020) and published at 26 Del. Admin. § 1001 et seq. A marked-up version of the proposed amendments is attached to this Order as Exhibit "A".

2. That, pursuant to 29 Del. C. § 10115(a), the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the October 1, 2022 edition of the *Delaware Register of Regulations*.

3. That, pursuant to 29 Del. C. § 10115(b), the Secretary shall cause the form of public notice attached as Exhibit "B" to be published in the *Delaware State News* and *The News Journal* newspapers on or before October 1, 2022, and published on the Delaware Public Service Commission website, located at <https://depssc.delaware.gov/>. In addition, the Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advance notice of this Commissions' rule-making proceedings¹. The Secretary shall file a certification of the completion of these tasks by October 14, 2022.

4. That pursuant to 26 Del. C. § 209(a), the Commission will hold a public hearing on the proposed amendments on Wednesday, November 2, 2022, beginning at 1:00 PM². The Commission will conduct the meeting as set forth in the attached form of public notice, which may be modified by Staff to reflect the hearing will be conducted remotely or in-person. Interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before November 18, 2022³. **To be considered at the November 2, 2022 hearing, however, written comments must be submitted on or before October 14, 2022.**

5. That 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, Chairman

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner

Manubhai "Mike" Karia, Commissioner

K. F. Drexler, 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. 26 Del. C. § 10115(b).

2. Pursuant to 29 Del. C. § 10118(a), the opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations.

3. 29 Del. C. § 10118(a) requires that the opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing on a proposed regulation.

- 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.

"DPA" means the Delaware Division of the Public Advocate, or its successors.

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

"Filing" means any document submitted to the Commission as part of the Commission's official records in any proceeding. See subsection 1.7 for a further definition of Filing.

"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 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 address, and telephone number of the person filing the document; and the name, mail and e-mail address 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 email of the filing shall be provided to the service list and 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, e-mail service 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 provide to the DPA electronic notification of all Filings (as defined in subsection 1.7).~~
- 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;
 - 1.6.7.3 Personal delivery; or
 - 1.6.7.4 E-mail.
- 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.~~ Comments; and

1.7.1.10 Reports.

- 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 1.6.5 and 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:

- 1.8.2.1 Published for public comment;
- 1.8.2.2 Approved with or without conditions;
- 1.8.2.3 Denied;
- 1.8.2.4 Set for evidentiary hearing; or
- 1.8.2.5 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(4)~~ §10002(o)).
- 1.11.2 If the claim of confidentiality is challenged by any person, ~~then the person claiming confidential treatment for information must demonstrate in that person may file~~ a petition to the Commission ~~that the designated information is confidential as recognized by state law to request a ruling regarding the confidential designation. To maintain the confidential designation, the party claiming confidentiality must demonstrate that the designated information is exempt from public disclosure pursuant to 29 **Del.C.** § 10002(o).~~

- 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~~ DPA 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~~ DPA, 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~~ DPA, 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)

18 DE Reg. 997 (06/01/15)

23 DE Reg. 778 (03/01/20)

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~~ the official forms 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 the ~~Division of the Public Advocate~~ DPA, which shall notify the utility of the complaint. The utility shall have ten (10) business days to respond to the informal complaint. While the complaint is open, the utility shall continue to provide service to the complainant. Upon the ~~Division of the Public Advocate's~~ DPA's request, Commission Staff may provide assistance to the ~~Division of the Public Advocate~~ DPA. Commission Staff may investigate informal complaints referred directly to Commission Staff; however, the ~~Division of the Public Advocate~~ DPA should be notified of the informal complaint and the resolution.
- 2.2.2 If the proposed resolution of the informal complaint by the Division of the Public Advocate or Commission Staff is not deemed satisfactory by the complainant or the utility, then the complainant may institute a formal complaint.

2.3 Formal Complaints

- 2.3.1 Formal complaints must be filed within two (2) years of the alleged violation, unless good cause is shown to extend this period.

- 2.3.2 A formal complaint shall be in numbered paragraphs and include the following:
- 2.3.2.1 Name, mail and e-mail addresses, and daytime telephone number of the complainant;
 - 2.3.2.2 Name of the person that is subject of the complaint;
 - 2.3.2.3 Description of conduct, including all known facts, alleged to have violated a law, rule or order; and
 - 2.3.2.4 Description of the relief requested.
- 2.3.3 Formal complaints alleging violations of any matter within the Commission's jurisdiction shall be served by the Secretary either through ~~DeLaFile~~ E-Filing 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) calendar days of the service, unless emergency relief is requested and appropriate.
- 2.3.4 Except for investigations under Rule 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) calendar 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. Discovery may be served on a rolling basis, and responses shall be due as set forth in subsection 2.6.6, unless otherwise ordered by the designated Presiding Officer or Hearing Examiner. 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. Interrogatories and written data requests shall be provided in Word format.
- 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 such as Section 215 applications, applications for issuance of a certificate of public convenience and necessity, applications to abandon a previously-granted certificate of public convenience and necessity, or distribution planning matters, responses to discovery must be served no later than fifteen (15) calendar 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 on any grounds, then that party must notify the party seeking the information within ten (10) calendar days after service of the discovery of the objection and its grounds. Should the parties be unable to resolve any discovery dispute within seven (7) calendar days, then the

party seeking the information shall file a motion to compel within five (5) business days thereafter and attach the other party's objection. The Presiding Officer or Hearing Examiner may schedule oral argument on the motion. All motions to compel must be resolved within fifteen (15) days of the filing of the motion to compel.

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. Responses to a motion shall be submitted seven (7) calendar days after a motion is filed. The movant may file a reply to the response no later than seven (7) calendar days after the response is filed.
- 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 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 department 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)~~ seven (7) calendar days of the entry of the ruling from which the appeal is sought, a party shall file with the Commission and serve via ~~DeLaFile~~ E-Filing 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)~~ seven (7) calendar 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 (30) 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) calendar days of the date the findings and recommendations ~~was~~ were 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)

23 DE Reg. 778 (03/01/20)

26 DE Reg. 307 (10/01/22) (Prop.)