

## **100 DOCKETS AND FILINGS**

100.1 The Office of the Commission Secretary shall maintain the official docketing system for the Commission.

The docketing system shall contain records and documents available for public inspection. Public inspection may be either on the Commission's website or in person at the Office of the Commission Secretary during normal office hours. Confidential or proprietary records and documents are not available for public inspection. The rules governing confidential or proprietary records and documents are contained in Section 150. Access to all filings in the Office of the Commission Secretary is subject to reasonable limitations, including extraordinary circumstances, or when inspection would interfere with the normal operation of the Office of the Commission Secretary. Persons requesting copies of any filing or other written matter within the possession and/or custody of the Commission from the Office of the Commission Secretary may be subject to a per page copying fee.

All documents filed with the Commission shall be addressed to the Commission Secretary and filed with the Office of the Commission Secretary.

The Commission shall be open each business day except Saturdays, Sundays, and legal holidays, from 9:00 a.m. to 5:30 p.m.

All documents shall be filed electronically, including documents containing confidential or proprietary information, with the exception of documents containing "critical infrastructure information" (CII) and documents filed on electronic storage devices such as flash drives or compact disks (CDs). Documents containing CII must be filed with the Commission as one hard copy and shall clearly state in bold, capitalized letters that the filing contains CII. Documents filed on electronic storage devices shall include a table of contents, list of the data, or other description of the data stored on the device. To file documents electronically with the Commission, filers must first complete an online registration form on the eDocket System.

All filings shall comply with the requirements set forth in the Commission's rules and shall be accompanied by a cover letter indicating the title of the document or type of filing; the case or docket number and caption, if already assigned; and the name, street address, e-mail address, and telephone number of the person making the filing.

100.7 The Commission may, at any time, reject all or any part of a filing that does not conform with the requirements of the Commission's rules under this chapter. If any filing, or part thereof, is rejected, the document or the part thereof will be deemed not to have been accepted for filing with the Commission.

100.8 When a confidential or proprietary document is filed, the corresponding public version shall be filed concurrently.

- 100.9 All documents filed electronically shall be considered filed when the Commission has received the electronic filing, consistent with Subsection 100.10, unless the electronic filing has been rejected under Subsection 100.12.
- 100.10 Documents may be filed electronically twenty-four (24) hours a day, seven (7) days a week. All documents filed electronically shall be considered as timely filed and will be docketed, consistent with Subsection 100.9, if filed by 5:30 p.m. If a filing is received after 5:30 p.m. on a business day or at any time on a non-business day, it shall be docketed on the next business day.
- 100.11 Persons that file documents electronically shall receive an electronic acknowledgment of their filing from the Office of the Commission Secretary once file transmission is complete.
- 100.12 After reviewing an electronic filing to ensure that it meets the Commission's electronic filing requirements, the Office of the Commission Secretary shall send a notice of acceptance or a notice of rejection. If the filing does not meet the Commission's requirements, then the Office of the Commission Secretary shall send a notice of rejection explaining the reason(s) for rejection.

**AUTHORITY:** Unless otherwise noted, the authority for this chapter is Paragraph 97(b) of § 8 of An Act Making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 977); as amended by § 2 of the Public Utilities Amendment Act of 1989, D.C. Law 8-47, D.C. Code 43-501 (1990 Rept. Vol.).

**SOURCE:** Final Rulemaking published at 28 DCR 2984, 2986 (July 3, 1981); as amended by Final Rulemaking published at 29 DCR 2719 (June 25, 1982); by Final Rulemaking published at 29 DCR 4906 (November 5, 1982); by Final Rulemaking published at 36 DCR 4781 (July 7, 1989); by Final Rulemaking published at 39 DCR 5117, 5118 (July 10, 1992); and by Final Rulemaking published at 42 DCR 2340 (May 12, 1995); as amended by Final Rulemaking published at 46 DCR 440 (January 15, 1999); as amended by Final Rulemaking published at 66 DCR 659 (January 18, 2019).

## **101            COMMENCEMENT OF PROCEEDINGS**

- 101.1            A formal or informal complaint, petition or application, may be filed by any person as defined in this chapter.
- 101.2            The Commission, on its own motion or on the petition of any person, at any time, may order a formal investigation or issue an order to show cause.
- 101.3            Orders initiating an investigation or to show cause shall indicate the nature of the matters to be investigated, and shall be served upon the person who is the subject of the order.
- 101.4            The Commission may investigate at any time any matter germane to its jurisdiction.
- 101.5            No fees shall be charged for the commencement of any proceeding or the filing of any pleading or other papers.
- 101.6            Within ten (10) days of the commencement of a proceeding, or the commencement of a proceeding by the Commission on its own motion, any interested party shall file a statement indicating whether the new proceeding should be considered a "rate case" or an "other investigation" for the purposes of D.C. Code §43-612 (1981 Ed.), and the factual and legal bases for the assertion. Any responsive comments shall be filed within twenty (20) days of the commencement of the proceeding.
- 101.7            For purposes of §101.6. a proceeding shall be deemed to be commenced upon the occurrence of any of the following events:
- (a)            An initial petition, application or formal complaint is filed;
  - (b)            A notice of proposed rulemaking is published in the District of Columbia Register;
  - (c)            A public notice is published in the District of Columbia Register;
  - (d)            A notice of prehearing conference is published in the District of Columbia Register; or
  - (e)            An order and report on the prehearing conference designating issues and establishing a procedural schedule is issued by the Commission.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2987 (July 3, 1981); as amended by Final Rulemaking published at 36 DCR 7291 (October 20, 1989).



## **103            INFORMAL COMPLAINTS AND HEARINGS**

- 103.1            Each informal complaint, including complaints under Chapter 3 of this title, shall initially be referred to the Commission's Office of the General Counsel for investigation, unless otherwise directed by the Commission.
- 103.2            Upon conclusion of an investigation, the Staff shall file its written findings and recommendations with the Commission.
- 103.3            Upon review of the Staff's findings and recommendations, the Commission may either attempt to resolve the matter informally or transfer it to the Formal Docket.
- 103.4            When an informal complaint is docketed as a formal complaint, the Commission shall issue an Order setting forth the issues and procedural schedule.
- 103.5            If a formal pleading in the nature of a complaint, including formal complaints pursuant to the Consumer Bill of Rights, is of a nature conducive to informal resolution, the Commission may refer the matter for informal resolution under this section unless the complaint specifically alleges that the matter has previously been brought to the attention of the General Counsel Staff.
- 103.6            The Commission may, from time-to-time, order informal hearings to obtain information necessary or helpful in the determination of its policies, the carrying out of its duties, the formulation or amendment of rules and regulations, or the disposition of informal complaints.
- 103.7            Informal hearings may be public or non-public as the Commission may direct, and the procedure may be informal to any extent which the Commission may deem appropriate and expedient.
- 103.8            The Commission may require the attendance of witnesses and the production of evidence as in a formal hearing.
- 103.9            Informal complaints shall be in writing and may conform to the other requirements for formal pleadings.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2988 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5118 (July 10, 1992).

## **104 INITIAL PLEADINGS**

104.1 Each initial petition, application, or formal complaint shall contain the following information:

- (a) The name, address, and e-mail address of petitioner, applicant, or complainant;
- (b) A clear and concise statement of facts upon which the petition, application, or complaint is based and the position and interest of the petitioner, applicant, or complainant in the matter;
- (c) A reference to the specific section or sections of the statute, rule, regulation, or order of the Commission upon which relief is sought;
- (d) A request for a particular order, authorization, permission, certificate, or relief;
- (e) Verification and signature of petitioner, applicant, or complainant;
- (f) The signatory's address and telephone number; and
- (g) A statement indicating whether the proceeding sought should be considered a "rate case" or an "other investigation" for the purposes of D.C. Code § 43-612 (1981 Ed.), and the factual and legal bases for the assertion; Provided, that comments on a petitioner's statement required by this paragraph shall be filed by any interested party within ten (10) days of the initial filing, and any responsive comments shall be submitted within twenty (20) days of the initial filing.

104.2 Joint complaints shall be allowed if they involve the same issues and the same or similar facts. Joint complaints shall be subject to all rules relating to complaints.

104.3 Each document initiating new proceedings shall leave a space for the docket number. Each subsequent document for filing shall show on the first page the caption for each proceeding, the docket number, the title of the document, and leave sufficient space in the upper right hand corner for a time and date stamp.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2989 (July 3, 1981); as amended by Final Rulemaking published at 36 DCR 7291, 7292 (October 20, 1989); as amended by Notice of Final Rulemaking published at 58 DCR 10631 (December 16, 2011).

## **105 ANSWERS, CROSS-COMPLAINTS AND MOTIONS**

- 105.1 Any party upon whom a copy of a petition, formal complaint, cross complaint, order or investigation, or order to show cause has been served shall answer and file the same with the Commission within ten (10) days after service of that complaint, petition, or order, or within such time as extended by the Commission, or within a lesser time fixed by the Commission for good reason stated.
- 105.2 Any party specified by § 105.1 who fails to answer a service within the period prescribed shall be deemed in default, except where the Commission shall waive the answer.
- 105.3 In the event the Commission shall waive the answer as to any party, the case shall be deemed at issue as to that party.
- 105.4 Joint answers to the same complaint shall be allowed.
- 105.5 The purpose. of the answer is to fully advise the complainant and the Commission of the nature of the defense.
- 105.6 The answer shall admit or deny each material allegation in the complaint and shall set forth any new matter constituting a defense. It shall also set forth any defects in the complaint which require amendment or clarification.
- 105.7 Cross complaints, if any, shall be filed by the respondent with the answer to the complaint. Cross complaints shall be subject to all rules relating to complaints.
- 105.8 Written motions may be filed at any time in accordance with this chapter. Responses to a written motion shall be filed no later than ten (10) calendar days after a motion has been served.
- 105.9 No rejoinders or replies to responses shall be accepted without leave of the Commission.
- 105.10 The Commission may act without awaiting responses, when considered necessary.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2989 (July 3, 1981).

## **106 INTERVENTION**

- 106.1 Any person as defined by this chapter, not named as a party in the pleadings initiating a proceeding but having a substantial interest therein, may petition the Commission for leave to intervene.
- 106.2 Petitions for leave to intervene shall set forth the grounds of the proposed intervention and the position and interest of the petitioners in the proceeding.
- 106.3 A petition for leave to intervene shall be in writing and shall be filed by the prospective intervenor in compliance with the direction set forth in the public notice of the filing or application, or as may be otherwise ordered by the Commission.
- 106.4 Any party may answer a petition for leave to intervene. That answer, if filed, shall be subject to all of the rules relating to answers.
- 106.5 The Commission may grant or deny a petition for leave to intervene, or may grant the petition upon such conditions and limitations as it may prescribe.
- 106.6 A person whose petition for leave to intervene has been granted by the Commission shall be permitted to appear and participate as a party in the proceeding; Provided, that the granting of such petition shall not constitute a determination by the Commission that the intervenor is or will be affected by the final order or decision.
- 106.7 The granting of a petition to intervene shall not have the effect of changing or broadening the issues in the proceeding, except where that change or broadening is expressly requested by the intervenor and is expressly granted by the Commission after opportunity for the filing of objection to that request has been afforded to all parties.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2990 (July 3, 1981).

**107 LIMITED APPEARANCE**

- 107.1 At the discretion of the Commission, any person may make a limited appearance in any proceeding by presenting a statement orally or in writing at any time prior to the close of the record.
- 107.2 A person entering a limited appearance shall not be a party to the proceeding and shall not have the right to present testimony or cross-examine witnesses.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2991 (July 3, 1981).

**108 EX PARTE COMMUNICATIONS**

- 108.1 No interested person may, with respect to any case, make (or knowingly cause to be made) to any Commissioner, Hearing Agent, or personal assistant to the Commissioners, any ex parte communication while the proceeding is pending before the Commission.
- 108.2 The provisions of § 108.1 do not apply to any of the following communications:
- (a) Those specifically authorized by law to be made on an ex parte basis;
  - (b) Those related to a matter of procedure; or
  - (c) Those made in the course of another proceeding of the Commission to which it primarily relates, and is on the public record.
- 108.3 Any employee of the Commission or person may apply to the Office of General Counsel for an advisory opinion as to whether any provision of this section is applicable to a communication.
- 108.4 A proceeding is considered pending before the Commission when it is noticed for hearing, or when a communicator who reasonably believes it will be noticed for hearing obtains such knowledge (but not before the proceeding is docketed).
- 108.5 A proceeding ends when the Commission's decision becomes final for purposes of judicial review.
- 108.6 If a proceeding is phased or segmented so that one or more parts of the proceeding constitute informal rulemaking and one or more parts constitute contested proceedings, the Commission may, by order, provide that each phase or segment shall constitute a separate proceeding for purposes of this rule.
- 108.7 Any Commissioner, personal assistant to a Commissioner, hearing agent or person appointed to advise the Commission, who receives an ex parte communication prohibited by this section shall, within forty-eight (48) hours after first having reason to believe that the communication is prohibited, prepare and deliver to the Secretary a written statement setting forth the substance of the communication if it is in oral form, or deliver to the Secretary the actual communication if it is in written form.
- 108.8 The Secretary shall place any statement or communication in public files associated with the proceeding, but separate from the record upon which the Commission will rely in reaching its decision. The Secretary shall mail to each person on the official service list of the proceeding a copy of any such statement or communication.
- 108.9 If the Commission determines that a communication was knowingly made (or caused to be made) by a party acting in violation of this section, the Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his or her claim or

interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2990 (July 3, 1981); as amended by Final Rulemaking published at 29 DCR 97 (January 1, 1982); and by Final Rulemaking published at 39 DCR 5117, 5118 (July 10, 1992).

## **109 COMMISSION STAFF'S ROLE IN PROCEEDINGS**

- 109.1 Unless otherwise provided by Chapter 1 or 2 of this title, any person or participant in any proceeding is encouraged to confer on an informal basis with the Staff of the Public Service Commission with respect to any matters within the Commission's authority to regulate.
- 109.2 No person, participant, or Staff personnel shall be bound by any statement made during the course of any informal consultations, and the Commission shall not be bound by statements or positions of Staff without its expressed consent.
- 109.3 Neither the Staff of the Commission nor any consultant hired by the Commission shall appear as a party to, advocate, or intervenor in any Commission proceeding.
- 109.4 Individual Staff members and consultants may comment or participate in any proceeding as expert witnesses only when directed to do so by the Commission. Individual Staff members and consultants may present testimony on selected issues after the Commission makes a finding of the issues to be decided in the proceeding and a determination that testimony in addition to that presented by the parties or intervenors is required by the Commission to develop a complete record. This provision shall apply to any tariff changes, investigations, financing or rulemakings, as well as base rate proceedings.
- 109.5 The appearance of individual Staff members and consultants shall be in accordance with Article VII of the Federal Rules of Evidence.
- 109.6 The Commission may appoint its General Counsel or the General Counsel's designee to assist the Staff members and consultants testifying pursuant to § 109.4.
- 109.7 The General Counsel or the General Counsel's designee may cross-examine all witnesses, including those testifying pursuant to § 109.4, in any proceeding before the Commission.
- 109.8 Testimony filed or presented pursuant to § 109.4 shall reflect the witnesses' views on the issues. The statement of a view on an issue may include the following:
- (a) An analysis of how that view differs from the views of other witnesses in the proceeding;
  - (b) An analysis of prior Commission decisions; and
  - (c) An analysis of how such decisions relate to the views of the testifying witnesses and the other witnesses in the proceeding.
- 109.9 Staff members and consultants presenting testimony pursuant to § 109.4 may file rebuttal testimony.
- 109.10 Neither prehearing nor post-hearing briefs shall be filed by Staff in any Commission proceeding, unless otherwise directed.

District of Columbia Municipal Regulations:  
CHAPTER 1: PUBLIC SERVICE COMMISSION RULES OF PRACTICE AND PROCEDURE

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SOURCE: Final Rulemaking published at 28 DCR 2984, 2993 (July 3, 1981); as amended by Final Rulemaking published at 33 DCR 891 (February 14, 1986); by Final Rulemaking published at 42 DCR 2340 (May 12, 1995); by Final Rulemaking published at 39 DCR 5117, 5118 (July 10, 1992); and by Final Rulemaking published at 43 DCR 29 (January 5, 1996), effective January 22, 1996.

## **110 APPEARANCES AND REPRESENTATION**

- 110.1 In any proceeding an individual, receiver, trustee, or official may appear in his or her own behalf, a member of a partnership may represent the partnership, an officer of a corporation may represent the corporation, a member or employee or an association or non-profit corporation may represent the association or non-profit corporation, and an official of a Federal, District or State Commission or other governmental agency may represent that Commission or governmental agency.
- 110.2 Any individual appearing before or transacting business with the Commission in a representative capacity may be required to establish authority to act in that capacity.
- 110.3 A person may be represented in any proceedings before the Commission by an attorney at law admitted to practice before the District of Columbia Court of Appeals; or by an attorney admitted to practice before the highest court of any state upon the granting by the Commission of a motion for special appearance; Provided, that the attorney does not maintain an office within the District of Columbia for the practice of law.
- 110.4 In any proceeding before the Commission, if a party is represented by more than one attorney or person, that party shall, at the time it first appears before or files with the Commission, designate which one of those attorneys or persons is authorized to receive service on behalf of that party. Service to that designated representative shall be considered to be service to all representatives of that party as well as to that party.
- 110.5 The Commission may disqualify, or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way, to any individual who is found by the Commission, after hearing, either to be lacking in the requisite qualifications to represent others or in character or integrity or to have engaged in unethical, improper or unprofessional conduct. In particular, no person shall willfully mislead the Commission or its Staff by a false statement of fact or law.
- 110.6 Persons who appear in a representative capacity in any formal proceeding shall file a written notice of appearance with the Commission Secretary on the first occasion of appearance. The notice of appearance shall state the person's name, local address, local telephone number, e-mail address, and for whom the appearance is made. The written notice shall be part of the record.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2994 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5119 (July 10, 1992); as amended by Notice of Final Rulemaking published at 58 DCR 10631, 10632 (December 16, 2011).

## **111 CONDUCT DURING PROCEEDINGS**

- 111.1 In addition to the requirements of § 108, any attorney who participates in any proceeding before the Commission shall comply with the rules and regulations of the Commission and shall adhere to the standards of the ethical conduct required of attorneys before the courts of the District of Columbia and the District of Columbia Code of Professional Conduct.
- 111.2 No restrictions in this section shall preclude an attorney from replying to charges of misconduct publicly made against him or her, or from participating in the proceedings of legislative, administrative, or other investigative bodies.
- 111.3 In all proceedings before the Commission, no attorney, other than the Commission's General Counsel or his or her designee, shall communicate, or cause another to communicate as to the merits of the cause, with any Commissioner or examiner before whom the proceeding is pending, except as follows:
- (a) In the course of official proceedings in the cause; and
  - (b) In writing directed to the Secretary of the Commission with copies served upon all other counsel of record.
- 111.4 It is improper for any party, or person representing a party, in a case before the Commission to attempt to sway the judgment of the Commission in that case by undertaking directly or indirectly, through a third party outside the hearing process, to bring pressure or influence to bear upon the Commission, its Staff, or the presiding officer assigned to the proceeding.
- 111.5 Requests for expeditious treatment of matters pending with the Commission are improper except when filed with the Secretary and copies served upon all other parties or unless made before the Commission or its hearing agent at a hearing.
- 111.6 No member of the Commission, presiding officer, or employee of the Commission shall invite or knowingly entertain any prohibited ex parte communication, or make any communication to any party or counsel or agent of a party, or any other person who he or she has reason to know may transmit that communication to a party or party's agent.
- 111.7 The Commission may disqualify and deny temporarily or permanently, the privilege of appearing or practicing before it in any way to any individual who, after a hearing, is found to have violated the requirements of this section. Violations of the requirements of this section by attorneys shall be referred to the appropriate District of Columbia Bar Committee for investigation.
- 111.8 Conduct amounting to contempt at any hearing before the Commission or a member of the Commission or before a presiding officer of the Commission shall be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing or of the proceeding, or any part thereof.

District of Columbia Municipal Regulations:  
CHAPTER 1: PUBLIC SERVICE COMMISSION RULES OF PRACTICE AND PROCEDURE

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SOURCE: Final Rulemaking published at 28 DCR 2984, 2995 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5119 (July 10, 1992).

**112 SUBSTITUTION OF PARTIES**

- 112.1 In the event of the death of an individual party, or the dissolution or reorganization of a party other than an individual, the Commission, upon motion of a party or upon its own motion, may substitute the person succeeding to the rights and liabilities of the party.
- 112.2 In the event of a mistake in the name of the title of a party, the Commission, upon motion of a party or upon its own motion, may substitute the correct name or title.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2996 (July 3, 1981).

## **113 FORM OF FORMAL PLEADINGS**

- 113.1 All electronic filings shall be word-processed or otherwise electronically entered on a page sized 8 ½ inches wide and 11 inches long in font size of not less than 11 points, unless a larger size page format is required.
- 113.2 The cover page of each confidential or proprietary document shall indicate that the filing contains confidential or proprietary information. Each confidential or proprietary document filed shall have clearly marked “[**BEGIN CONFIDENTIAL**]” in bold capital letters at the beginning of each portion or section of the document containing such confidential or proprietary information and “[**END CONFIDENTIAL**]” in bold capital letters at the end of each portion or section of the document containing such confidential or proprietary information. All other material in each and every portion or section of such document shall be treated as non-confidential and non-proprietary and available for public use and review. Redacted public versions of confidential or proprietary filings shall also be filed consistent with Subsections 100.6 and 100.8. The pagination, numbering and other formatting features of the redacted filings shall be identical to those features in the confidential or proprietary filings. The beginning and the ending of all confidential or proprietary matters redacted from the public versions shall be clearly identified on each and every page of that public version as set forth in this subsection.
- 113.3 Consistent with Subsection 100.7, the Commission may reject any filings that do not conform to the requirements of this section.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2996 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5120 (July 10, 1992); as amended by Final Rulemaking published at 64 DCR 4991 (May 26, 2017); as amended by Final Rulemaking published at 66 DCR 659 (January 18, 2019).

## **114 SIGNING AND VERIFICATION OF PLEADINGS**

- 114.1 The original of each application, petition, complaint, answer, or amendment shall be signed in ink by each party.
- 114.2 If a party is a corporation or association, the pleading shall be signed and verified by an officer or other designated employee.
- 114.3 Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, represents by such act that he or she is authorized to do so.
- 114.4 Any attorney for or representative of a party shall also sign the pleading, and show his or her address, telephone number, e-mail address, and Unified Bar Number, if applicable.
- 114.5 Motions, notices, briefs, and petitions for reconsideration need only be signed by an attorney or representative.
- 114.6 Petitions or amendments to petitions (except petitions for reconsideration) shall be verified by each petitioner.
- 114.7 Applications or amendments to applications shall be verified by each applicant.
- 114.8 Complaints or amendments to complaints shall be verified by at least one (1) complainant.
- 114.9 Answers or amendments to answers shall be verified by at least one (1) of the respondents filing the answer.
- 114.10 Other pleadings need not be verified.
- 114.11 Verification may be made before a notary public or by certification or declaration under the penalty of perjury.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2997 (July 3, 1981); as amended by Notice of Final Rulemaking published at 58 DCR 10631, 10632 (December 16, 2011).

**115                    SERVICE OF PLEADINGS AND OTHER DOCUMENTS**

- 115.1            Petitions and applications, when filed with the Commission, shall be served on the Office of the People’s Counsel of the District of Columbia.
  
- 115.2            Cross complaints, intervening petitions, answers, amendments, written motions, and all other documents shall be served by the parties within one (1) day after the pleading is filed with the Commission.
  
- 115.3            When filed, these pleadings and other documents shall be accompanied by proof of service upon all parties.
  
- 115.4            Proof of service of any pleading or any other document shall be by certificate of attorney, affidavit or affirmation, or receipt.
  
- 115.5            Service of pleadings or any other documents shall be made by sending one (1) copy of the pleading to each party by:
  - (a)        E-mail;
  - (b)        First class mail; or
  - (c)        Personal service.
  
- 115.6            [Deleted]
  
- 115.7            [Deleted]
  
- 115.8            [Deleted]
  
- 115.9            [Deleted]

SOURCE: Final Rulemaking published at 39 DCR 5117, 5120 (July 10, 1992); as amended by Notice of Final Rulemaking published at 58 DCR 10631, 10632 (December 16, 2011).

**116 NOTICE**

- 116.1 Whenever the provisions of Chapter 1 or 2 of this title or a statute require notice to be given, notice shall be served not less than ten (10) days before the hearing, order, or other proposed action of which the notice is required, except in those instances in which another period is allowable or specifically provided.
- 116.2 Notices shall be typewritten or otherwise duplicated and shall conform to the requirements of §§ 100 and 113 as to form and number.
- 116.3 Notice, whenever given, shall be served upon all parties, and copies filed with the Commission.
- 116.4 Service of notice shall be made in person, by e-mail, or by first class mail.
- 116.5 Proof of service shall be filed with the Commission.
- 116.6 In proceedings entered in the Formal Docket, copies of the notice of that proceeding shall be posted on the official bulletin board of the Commission and in the District of Columbia Register in the case of a rulemaking and may be published in a newspaper or newspapers of general circulation in the area or areas concerned.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2998 (July 3, 1981); as amended by Notice of Final Rulemaking published at 58 DCR 10631, 10632 (December 16, 2011).

## **117 COMPUTATION OF TIME**

- 117.1 When the time prescribed by Chapter 1 or 2 of this title for doing an act expires on a Saturday, Sunday, or legal holiday, that time shall extend to and include the next succeeding day which is not a Saturday, Sunday, or legal holiday. The computation of that time shall exclude the day of service or notice.
- 117.2 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other pleading upon that party and the notice or pleading is served upon that party by mail, three (3) days shall be added to the prescribed period.
- 117.3 Each party is bound by the type of service it receives, regardless of how other parties are served. This subsection shall not apply to filings required by the Commission.
- 117.4 Except in the case of jurisdictional time periods prescribed by statute, when an act is required or allowed to be done at or within a specific time, the Commission on its own motion for good cause shown may order the period enlarged.
- 117.5 The Commission may order an enlargement of time with or without motion or notice if request therefore is made before the expiration of the period prescribed, or upon motion made after the expiration of the prescribed period.
- 117.6 Unless otherwise specified, when a party has the right or is required to do some act within seven (7) days or less under this chapter or pursuant to a Commission order, Saturdays, Sundays and Commission holidays shall not be counted.
- 117.7 Unless otherwise specified, when a party has the right or is required to do some act in greater than seven (7) days under this chapter or pursuant to a Commission order, Saturdays, Sundays and holidays shall be counted.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2999 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5120 (July 10, 1992).

**118**                    **DELETED**

SOURCE: Final Rulemaking published at 49 DCR 8721 (September 20, 2002); as amended by Notice of Final Rulemaking published at 58 DCR 10631, 10632 (December 16, 2011); as amended by Final Rulemaking published at 66 DCR 659 (January 18, 2019).

**119 ELECTRONIC FILING FORMATS AND DOCUMENT VERIFICATION**

- 119.1 Filings shall conform to the formatting rules set forth in section 113.
- 119.2 Parties shall submit all filings in text-searchable format converted directly from a word processing program to portable document format (PDF) with the optical character recognition (OCR) feature enabled.
- 119.3 Parties shall not submit files that are corrupted or contain inserted programs (for example, embedded macros, viruses, and other general file corruptions).
- 119.4 Parties shall not use auto-date features, which add the current date to the document whenever the file is opened.
- 119.5 Parties shall not submit files containing hyperlinks to external documents.
- 119.6 For purposes of electronic filing, the signature on the filing shall be the same as the owner of the user ID and password used to submit the filing. The signature requirement for electronic filings shall cover certificate of service signature requirements, and the signature requirements stated in subsections 104.1(e), 114.1, 114.2, 114.3, 114.4, and 114.5 of this chapter.

SOURCE: Final Rulemaking published at 49 DCR 8721 (September 20, 2002); as amended by Notice of Final Rulemaking published at 58 DCR 10631, 10633 (December 16, 2011).

**120                    FORMAL HEARINGS: GENERAL PROVISIONS**

- 120.1                    The Commission may order a formal hearing in any proceeding in which it determines that a formal hearing is necessary.
- 120.2                    The notice of hearing shall designate the time and place of the hearing.
- 120.3                    Unless otherwise specifically ordered, formal hearings shall be in the hearing room at the office of the Commission.
- 120.4                    The Commission shall give notice of a formal hearing, or of any change in date or place of such hearing. Notice under this rule shall be exempt from the requirements of § 116.
- 120.5                    A formal hearing shall be held before the Commission, or any member or agent of the Commission as the presiding officer for that purpose.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3000 (July 3, 1981).

## **121            PRE-HEARING CONFERENCE**

- 121.1            The Commission, or any presiding officer to whom a case has been assigned for hearing, shall give notice directing all parties to attend a pre-hearing conference.
- 121.2            At least five (5) calendar days before the pre-hearing conference, each party shall serve and file a statement of proposed issues and order of procedure with the Commission.
- 121.3            The parties to the proceeding, or their representatives, and representatives of the Commission designated by it for the purpose, shall be conferees.
- 121.4            The purpose of the pre-hearing conference shall be to do the following:
- (a)            Formulate the issues;
  - (b)            Arrange for the exchange of proposed exhibits;
  - (c)            Make any necessary amendments to the pleadings;
  - (d)            Obtain admissions of fact and of documents which will avoid unnecessary proof;
  - (e)            Determine the number of witnesses;
  - (f)            Set forth any extraordinary rules of procedure for the conduct of the hearing(s);
  - (g)            Adopt a procedural schedule for the proceedings; and
  - (h)            Pursue any other matters as may aid in the disposition of the proceeding.
- 121.5            Any agreements reached at the conference by the parties shall be promptly reduced to writing by the Commission's designee and submitted to the Commission for approval.
- 121.6            Any participant who fails to attend a pre-hearing conference of which the participant had due notice shall, with respect to any matter reasonably encompassed in the notice of the prehearing conference, be deemed to have waived any objections to any agreement reached, or ruling made thereon at the conference.
- 121.7            At the conclusion of the pre-hearing conference, the Commission shall issue, as soon thereafter as possible, an Order and Report on Prehearing Conference, designating the parties, setting forth the issues to be decided in the hearing(s), any extraordinary rules or procedure, and the procedural schedule of the proceeding.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3000 (July 3, 1981).

## **122 INFORMATION REQUESTS**

- 122.1 A party's request for information from parties other than a utility shall be submitted in writing no later than ten (10) days after the filing of testimony by the party receiving the request.
- 122.2 A party to whom a request is made other than a utility company shall respond to that request within fifteen (15) days.
- 122.3 In proceedings where a utility company is a party, requests for information from the utility company shall be served on the company no later than thirty (30) days from the date of the Order and Report on the Prehearing Conference unless otherwise specified by the Commission. The utility company shall respond to each of the requests within twenty-one (21) days after service of the data request.
- 122.4 Data requests shall be considered continuing in nature. Substantially revised information shall be provided without specific additional requests.
- 122.5 Additional data requests may be served upon amendment of previous testimony or subsequent to the filing of supplemental or rebuttal testimony; Provided, that those requests are served within ten (10) days of the filing of the amended, supplemental or rebuttal testimony. Responses to these requests shall be served on the requesting party within ten (10) days after service of the request.
- 122.6 Any party to whom a response is provided who believes that the data needs clarification may within five (5) business days request the clarification or follow-up information; however, follow-up data requests shall be limited to one (1) per original request; Provided, that the information is within the scope of the original request. Responses to those requests shall be provided to the requesting party within five (5) business days after receipt of the request. If a party or Staff desires more than one follow-up request, that party may seek permission from the Commission to ask for additional follow-up data requests. The Commission will allow for additional follow-up data requests only upon a showing of a compelling need for the additional requests.
- 122.7 Data requests shall be in writing and shall be served upon all parties. One copy of each data request shall be submitted to the Commission's Secretary.
- 122.8 The staff may request information from the utility at any time, and those requests originally need not be in writing. The oral request, if submitted with respect to a contested case in which Staff is participating shall be reduced to a written memorandum and served on all parties within three (3) days of the initial request.
- 122.9 Responses to data requests shall be submitted to the following:
- (a) The party making the request;
  - (b) The Secretary of the Commission; and

- (c) If a party or Staff wishes to obtain data supplied in response to another party's request, that party or Staff shall obtain the information from the Commission Secretary's Office.
  
- 122.10 If a response to a particular information request is so voluminous that sending copies to all parties would be unduly burdensome, the responding party may serve the response on the following:
  - (a) The requesting party;
  - (b) The Secretary of the Commission; and
  - (c) The Commission's Office of Accounting and Finance.
  
- 122.11 If a response is served pursuant to § 122.10, the responding party shall give notice to other parties expecting a response, that a copy may be inspected by applying to the Secretary of the Commission.
  
- 122.12 Large volumes of materials to be examined in response to a request may be made available for examination at reasonable times at the responding party's offices.
  
- 122.13 Data responses, to the extent possible, shall be submitted in the requested format, including machine readable forms. All data responses shall identify the name and the title of the person sponsoring the response.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3001 (July 3, 1981); as amended by Final Rulemaking published at 29 DCR 2719 (June 25, 1982); by Final Rulemaking published at 33 DCR 2229 (April 11, 1986); by Final Rulemaking published at 39 DCR 5117, 5120 (July 10, 1992); and by Final Rulemaking published at 42 DCR 2340, 2341 (May 12, 1995).

**123            OBJECTIONS TO REQUESTS AND MOTIONS TO COMPEL**

123.1            Unless otherwise ordered by the Commission, the time for serving a notice of objection or notice of unavailability to all or any part of a request for production of documents, data requests, or interrogatories, shall be five (5) days after service of the request. The notice of objection shall state in substance the nature of the objection. One copy of the notice of objection or notice of unavailability shall be submitted to the Secretary of the Commission.

123.2            Motions to compel responses to requests for production of documents, data requests, interrogatories, and other discovery actions shall not be entertained unless filed within five (5) days after service of the response, or five (5) days after service of a notice of objection by opposing counsel. The motion shall state in substance the factual and legal grounds for the action.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3002 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5122 (July 10, 1992).

**124            SUBPOENAS**

- 124.1            Subpoenas for the attendance of witnesses may be issued by a member of the Commission or a member of the Staff designated by the Commission, upon application in writing.
- 124.2            Subpoenas for the production of books, records, papers, or other documents may be issued by the Commission upon application in writing.
- 124.3            Subpoenas issued pursuant to § 124.2 shall be under the seal of the Commission, upon a form approved and provided by the Commission, and shall so describe the document ordered to be produced as to permit ready identification.
- 124.4            A subpoena may be served in the same manner and by any person authorized by the Civil Rules of the Superior Court of the District of Columbia.
- 124.5            If service of a subpoena is by a United States Marshal or his or her deputy, that service shall be evidenced by his or her return thereon.
- 124.6            If service is made by any other person, that person shall note the manner, place, and time of service, and shall return the affidavit on or with the original copy of the subpoena.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3003 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5122 (July 10, 1992).

## **125 DEPOSITIONS: GENERAL PROVISIONS**

- 125.1 The Commission may, either on its own initiative, pursuant to a prehearing conference, or upon proper motion of a party to a proceeding, issue an order to take a deposition.
- 125.2 A motion to take a deposition shall be filed with the Commission no less than ten (10) days before the proposed date for taking the deposition, unless the Commission shall permit otherwise.
- 125.3 The motion shall set forth the reason for the deposition, the place and time of taking, the names and addresses of the deponents, and whether the deposition is to be based upon written interrogatories or upon oral examination.
- 125.4 If the deposition is to be based upon oral examination, the motion shall contain a statement of the subject-matter concerning which each deponent will testify.
- 125.5 If the deposition is to be based on written interrogatories, the motion shall be accompanied by the interrogatories to be propounded.
- 125.6 Copies of all motions to take depositions, and accompanying interrogatories, if any, shall be served on all parties.
- 125.7 A party served with a motion to take a deposition may object to the taking of the deposition by filing with the Commission and serving upon all parties within five (5) days after receipt of the motion to take a deposition, a notice of the objection stating the reasons therefor.
- 125.8 A party served with a motion to take a deposition on written interrogatories shall have five (5) days, or any other time as the Commission may permit, after receipt of service of that motion, within which to file and serve written cross-interrogatories.
- 125.9 An application to take a deposition in a foreign country shall be entertained when necessary or convenient, and authority to take such deposition shall be granted upon such notice and other terms and directions as are lawful and appropriate.
- 125.10 Depositions shall be filed with the Commission before they are offered as evidence. No deposition shall constitute a part of the record in any proceeding until received in evidence at a hearing, unless, prior to the final submission of the case, the Commission determines otherwise.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3003 (July 3, 1981).

## **126 CONDUCT OF DEPOSITIONS**

- 126.1 The court reporter before whom the deposition is to be taken shall put the deponent under oath or affirmation and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the deponent.
- 126.2 The testimony shall be transcribed unless the parties agree otherwise.
- 126.3 All objections made at the time of the examination to the manner of taking the deposition or the evidence presented, or to the conduct of any party, and any other objections to the proceedings, shall be noted by the court reporter upon the deposition. Evidence objected to shall be taken subject to the objections.
- 126.4 Any party served with a notice to take an oral deposition, may cross-examine a deponent whose testimony is taken under that deposition. In lieu of cross-examination, parties served with notice of taking a deposition may transmit written interrogatories or cross-interrogatories to the court reporter taking the deposition, who shall propound them to the deponent and record the answers verbatim together with any objection interposed thereto by adverse parties.
- 126.5 When the testimony is fully transcribed the deposition of each deponent shall be submitted to him or her for examination and shall be read to or by him or her.
- 126.6 Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the court reporter with a statement of the reasons given by the deponent for making them.
- 126.7 The deposition shall then be signed by the deponent, unless the parties by stipulation waive the signing or the deponent is ill or cannot be found or refuses to sign.
- 126.8 If the deposition is not signed by the deponent, the court reporter shall sign it and state on the record the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the Commission holds that the reasons given for the refusal to sign required rejection of the deposition in whole or in part.
- 126.9 The court reporter taking the deposition shall certify on the deposition that the deponent was duly sworn or put on affirmation by him or her and that the deposition is a true record of the testimony given by the deponent, and that the court reporter is not of counsel or attorney to either of the parties, or interested in the event or the proceeding or investigation.
- 126.10 The court reporter shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert name of deponent]" and shall promptly send the original and three (3) copies of all exhibits, where practicable, by registered mail to the Commission.

District of Columbia Municipal Regulations:  
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SOURCE: Final Rulemaking published at 28 DCR 2984, 3004 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5122 (July 10, 1992).

**127**                    **WRITTEN TESTIMONY**

127.1                    In addition to complying with the rules relating to pleadings, and unless otherwise ordered by the Commission, written testimony shall include the following.

- (a)            A statement identifying the witness;
- (b)            A statement of occupational history;
- (c)            A statement of educational history;
- (d)            A statement of qualification to give testimony before the Commission;
- (e)            A statement of the subject area and purpose of the testimony;
- (f)            A statement, setting forth an explanation of any exhibits accompanying such testimony, including identification of the source materials used in preparing any such exhibits; and
- (g)            A statement as to whether any such exhibits were prepared by the witness or under his direction.

127.2                    All written testimony shall contain line numbers on each page in the left hand margin and shall be subject to the rules regarding preparation and numbering of exhibits.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3006 (July 3, 1981).

**128**                    **PARTIES WITH COMMON INTERESTS**

- 128.1                    Parties with common interests or positions are encouraged to align themselves to make joint oral and written presentations, including briefing and presentation of evidence.
  
- 128.2                    Any alignment of parties shall be without derogation to the right of any party to present a separate point of view where the party position differs from that of the group to which he or she is aligned.
  
- 128.3                    In making any filing where more than one party is in agreement, the parties may jointly file, and in that case, the party filing shall clearly designate the parties who join therein.
  
- 128.4                    Subject to the approval of the Commission, any and all of the parties may, by stipulation in writing filed with the Commission or presented at a hearing, state their agreement upon any matter in a proceeding.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3006 (July 3, 1981).

**129 STATUS CONFERENCES**

- 129.1 Upon the motion of any party or upon its own motion, the Commission may convene a status conference.
- 129.2 Participants shall be prepared to discuss procedural and substantive matters involved in the proceeding, and shall be authorized to make commitments with respect to those matters.
- 129.3 Among specific items to be discussed are stipulations as to facts, authentication of documents, procedural dates, and limitation of issues and witnesses. Participants shall be prepared to resolve any other matters as may aid in the disposition of the proceeding.
- 129.4 A status conference order setting forth the proceeding may be prepared.
- 129.5 Any participant who fails to attend a status conference of which the participants have due notice shall, with respect to any matters reasonably encompassed in the notice of the conference, be considered to have waived any objections to any agreement reached or ruling made.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3007 (July 3, 1981).

## **130 SETTLEMENT AND STIPULATION CONFERENCES**

- 130.1 Unless otherwise ordered, counsel for the Staff shall not initiate arrangements for an initial settlement conference. Staff shall not schedule a conference prior to any deadlines which may exist for filing petitions to intervene in or to become a party to a proceeding.
- 130.2 Staff shall file a report on the outcome of the initial settlement conference within ten (10) days after the convening of the conference.
- 130.3 The initial settlement conference scheduled by the Staff under this section shall not preclude the parties from meeting at any other times as they deem necessary for the purpose of settlement and stipulation.
- 130.4 All parties shall be allowed to file proposed orders on matters of agreement.
- 130.5 All parties participating in settlement conferences shall do so either personally or through representatives empowered to act on behalf of the party and ultimately bind the party to any settlement.
- 130.6 Statements made and documents considered by parties during the course of settlement negotiations and conferences shall be confidential and non-discoverable, and shall not be admissible as evidence or raised in arguments by parties.
- 130.7 All filings contemplated under this section shall recite, in addition to the matters agreed upon at the conference, the date, time, and place of the conference, and the names of the parties in attendance.
- 130.8 A party may waive the confidentiality of its own disclosures. A party who has made public disclosures about matters that have also been considered in settlement negotiations and conferences may be deemed to have waived the confidentiality of its own disclosures, but not those of other parties.
- 130.9 In order to ensure the confidentiality of settlement proceedings, persons who are not parties may be excluded from settlement conferences and negotiations.
- 130.10 Settlements may be presented at any time prior to the issuance of a final decision. When a settlement is presented to the Commission, the settlement shall do the following:
- (a) Be reduced to writing;
  - (b) Contain all of the terms and conditions agreed upon by the signatories;
  - (c) Be clearly and accurately labeled unanimous or nonunanimous;
  - (d) Be clearly and accurately labeled partial or full;
  - (e) Indicate whether any party who has not executed the settlement will oppose its adoption;

- (f) Indicate whether the provisions of the agreement are severable; and
  - (g) Stipulate the admission into evidence of testimony and exhibits filed in the proceeding by the signing parties; Provided, that in the case of a partial settlement, only testimony and exhibits related to the settled matters shall be stipulated to for admission into evidence.
- 130.11 A full settlement presented in a base rate change application or other contested case, which would have an impact on a utility's customers, competitors, or the public, shall only be accepted after a hearing on whether the settlement is in the public interest.
- 130.12 At the hearing held pursuant to § 130.11, non-signatory parties shall be provided the opportunity to cross-examine the witness(es) tendered by the signatory parties on whether the settlement agreement is in the public interest.
- 130.13 A Commission decision to adopt a nonunanimous settlement as a resolution on the merits shall be based upon substantial evidence upon the record.
- 130.14 A party who does not sign settlement documents may not defeat or challenge a settlement simply by refusing to sign the document.
- 130.15 A settlement which fully or partially resolves a proceeding, before the Commission, shall have no precedential effect on future proceedings.
- 130.16 Given the negotiated nature of a settlement, the Commission shall either accept or reject a settlement in its entirety, unless the parties have specifically stated that the provisions of the settlement are severable.
- 130.17 If a settlement is rejected, the Commission may take various steps, including the following:
- (a) Allow the parties time to renegotiate a settlement;
  - (b) Propose alternative terms to the parties and allow the parties a reasonable time within which to elect to accept such terms or request other relief; or
  - (c) Proceed with litigation of the case.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3007 (July 3, 1981); as amended by Final Rulemaking published at 42 DCR 2340, 2341 (May 12, 1995); and by Final Rulemaking published at 39 DCR 5117, 5122 (July 10, 1992).

## **132 CONDUCT OF HEARINGS**

- 132.1 Evidence shall be presented by those participating in the sequence set forth in the Order and Report on Prehearing Conference.
- 132.2 Continuances, extensions of time, and adjournments may be ordered by the Commission, or its presiding officer, upon written motion of a party or upon its own motion.
- 132.3 If, in the judgment of the presiding officer, convenience or necessity so require, he or she may, after opening a hearing, postpone the hour or change the place thereof without the requirement of a motion.
- 132.4 Motions made during a hearing may be oral; Provided, that the following motions shall be in writing:
- (a) Motions to dismiss;
  - (b) Motions requesting a more sufficient pleading;
  - (c) Motions for a Bill of Particulars;
  - (d) Motions to strike objectionable written matter other than pre-filed testimony;
  - (e) Motions for the addition of parties or dismissal of improper parties; and
  - (f) Motions to quash a subpoena.
- 132.5 All written motions affecting the conduct of a hearing shall be filed not later than three (3) business days before the scheduled hearing date.
- 132.6 If a party desires to file a written motion less than three (3) business days before the hearing, that party shall request permission from the Commission.
- 132.7 Respondents shall file the answers to motions by 3:45 p.m. on the business day immediately preceding the scheduled hearing date.
- 132.8 There shall be submitted to the Commission or the presiding officer no later than 10:00 a.m. on the first day of hearings a list of the witnesses that are scheduled to appear before the Commission on that day and the following day, and an identification of the material and subject areas on which each witness is to be examined.
- 132.9 The list of witnesses shall be cumulative and shall be submitted no later than 10:00 a.m. on each succeeding day of hearings.
- 132.10 Unless otherwise ordered, the Commission Secretary shall be responsible for submitting the list of witnesses. Upon agreement of counsel for the parties and upon approval of the Commission, witnesses with particular scheduling constraints may be presented at a hearing at a prearranged date and time.

- 132.11 Counsel and all other participants other than witnesses testifying shall stand while addressing the Commission and witnesses. Not more than one counsel for each party shall be entitled to examine any one witness or address the Commission on any one matter without the permission of the Commission.
- 132.12 Whenever a party plans to utilize data or information alleged to be confidential or proprietary, the party shall advise the Commission in advance to avoid disclosure of the information to persons or parties who have not executed a confidentiality agreement under § 150.2 of this chapter.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3008 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5125 (July 10, 1992).

## **133 EXHIBITS**

- 133.1 All direct and rebuttal testimony shall be prepared in the form of written exhibits.
- 133.2 All revisions and corrections to case-in-chief and rebuttal exhibits shall be presented by way of replacement pages and submitted no later than five (5) business days prior to the beginning of hearings. Only the correction of minor typographical errors shall be allowed after this period. Each replacement page shall be identified in the heading as such and identify the date it was submitted.
- 133.3 The title of each exhibit shall state concisely what the exhibit contains.
- 133.4 Exhibits containing prepared written testimony shall contain line numbers on each page in the left-hand margin. All such testimony shall be authenticated by an appropriate affidavit of the witness. An exhibit containing rebuttal testimony shall also include the exhibit, page and line numbers of the evidence that it purports to rebut.
- 133.5 Case-in-Chief exhibits and rebuttal exhibits shall be served on each party, and thirteen (13) written copies shall be filed with the Secretary for use by the Commission and its staff. In addition, one (1) written copy shall be served on each Commission agent and consultant previously identified by the Commission's Secretary or General Counsel.
- 133.6 Narrative testimony and exhibits shall be marked with a tab in the filed written version and a bookmark in the electronic PDF version required under Sections 118 and 119 of this chapter and be identified prior to filing as follows:
- (a) The name of the party shall be set forth on each exhibit in the form of an acronym or initials (*e.g.*, OPC, PEPCO, WGL, VZ-DC, DCG, PSC, GSA, AOBA);
  - (b) When the document to be filed is the testimony of a witness, each set of the testimony shall, following the party's initials, bear a letter (in upper case); thus, the first witness of the Company shall have his or her testimony identified, for example, as PEPCO (A); the second witness, PEPCO (B), and so on. Each witness shall retain the same letter; however, the first witness' second set of testimony shall be lettered (2A) and so on;
  - (c) If there is an exhibit attached on the testimony of the witness, that exhibit shall bear an Arabic number. Thus, the first exhibit of the first witness would be marked, for example, PEPCO (A)-1. His or her second exhibit shall be marked, for example, PEPCO (A)-2, and so on. Any exhibit attached to the second set of testimony of a witness would be marked, for example, PEPCO (2A)-1; and
  - (d) If there is no testimony submitted with the exhibit, then the exhibit shall merely bear the capitalized initials of the party and be numbered sequentially with Arabic numbers (*e.g.*, PEPCO-1).

- 133.7 The Commission may, at the hearing, sequentially number all exhibits by the insertion of a prefix number before the letters of the party.
- 133.8 Not later than 9:30 a.m. of the morning of a hearing, there shall be provided to all parties, Commissioners and agents, a list of all cross-examination exhibits that the party proposes to introduce on the record. This list shall be accompanied by copies of those exhibits in electronic and written versions. Each exhibit shall be marked with a tab in the filed written version and a bookmark in the electronic PDF version and otherwise comply with Section 119 of this chapter.
- 133.9 As subsequent filings are made, the list of cross-examination exhibits shall be cumulatively updated. Any party proposing to use a document in examination of a witness shall have it marked for identification and shall distribute copies to the Commission, for the record, and to the parties by 10:00 a.m. the day of the hearing.
- 133.10 The list of cross-examination exhibits shall contain the following information:
- (a) The caption and docket number of the case;
  - (b) A title showing the party proponent of the list and the date of the list and the date of the list it supersedes, if any;
  - (c) The designation of the document in letters and numbers as the first column; and
  - (d) A description of the document in the second column.
- 133.11 Documents, including, cross-examination exhibits, containing allegedly confidential or proprietary information shall be identified with a title which is not confidential or proprietary, thus permitting reference to the document in a manner which does not raise confidentiality issues. Only the confidential pages should be filed confidentially and they should be identified in the heading as “confidential” versions of the “public” pages they reproduce in full.
- 133.12 Each party shall, for the formal record, submit within two business days of the close of the hearing in each case an original and two fully corrected sets of its case-in-chief, supplemental and/or rebuttal testimony and exhibits (“conformed testimony”) in a single document, as well as a final list of all cross-examination exhibits introduced on the record accompanied by copies of those exhibits in a single document.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3009 (July 3, 1981); as amended by Final Rulemaking published at 29 DCR 2719, 2729 (June 25, 1982); as amended by Final Rulemaking published at 33 DCR 3267 (July 1, 1983); as amended by Final Rulemaking published at 39 DCR 5117, 5125 (July 10, 1992); as amended by Final Rulemaking published at 42 DCR 2340, 2341 (May 12, 1995); as amended by Final Rulemaking published at 64 DCR 4991 (May 26, 2017).

## **134           ADMISSION OF EVIDENCE**

- 134.1           The Federal Rules of Evidence shall be applied in formal hearings; Provided, that the presiding officer, or the Commission may, after informing the parties of an intention to do so, relax those rules in any hearing when, in his, her, or its judgment, the ends of justice would be better served by so doing.
- 134.2           Formal exceptions to rulings of the presiding officer, or of the Commission, are unnecessary. It is sufficient that a party, at the time the ruling is made or sought, makes known the action which he or she desires to be taken, or his or her objection to an action taken, and his or her grounds for such action or objection.
- 134.3           The Commission may, in its discretion, limit the cross-examination of any witness.
- 134.4           Where written matter offered in evidence is embraced in a document containing another matter which is not intended to be offered in evidence, the offering party shall present the original document for inspection at the hearing, and shall offer an exact copy of the matter which is to be introduced, unless the presiding officer, or the Commission, determines that the matter is short enough to be read into the record. Other parties shall be afforded opportunity to introduce in evidence, in like manner, other portions of the original document.
- 134.5           When any portion of the record before a body other than the Commission is offered in evidence, true copies of that portion shall be presented for the record in the form of an exhibit, or that portion may, without objection, be incorporated in the record by reference.
- 134.6           For purposes of this section, true copies of the official record of the Commission may be certified in writing by the Commission Secretary or by any attorney authorized to practice before the Commission.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3011 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5125 (July 10, 1992).

**135            TRANSCRIPTS OF HEARINGS**

- 135.1            An official court reporter designated by the Commission shall make an official transcript of the testimony taken.
- 135.2            After the close of the hearing this transcript, together with any exhibits, briefs, or other documents filed in the proceeding, shall be filed with the Secretary of the Commission.
- 135.3            Parties desiring copies of the official transcript shall arrange to secure those copies from the Commission.
- 135.4            Motions to correct the official transcript shall be acted upon by the Commission or the presiding officer designated to conduct the hearing.
- 135.5            Motions to correct the record shall be filed with the Commission within ten (10) days after the receipt of the transcript of the final day of hearings in the proceeding.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3012 (July 3, 1981).

**136 WITNESS FEES**

- 136.1 Each witness who shall appear before the Commission or the presiding officer pursuant to an order for deposition or subpoena, shall receive the same fee for attendance and mileage as is currently paid to witnesses by the District of Columbia Superior Court.
- 136.2 No witness subpoenaed by the Commission at the request of any party shall be entitled to compensation for attendance or travel unless the Commission shall certify that the witnesses testimony was material to the matter investigated, and that attendance as a witness was reasonably necessary.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3012 (July 3, 1981).

## **137 POST-HEARING BRIEFS**

- 137.1 Post-hearing briefs shall be filed at such times as shall be fixed by the Commission or the presiding officer in each case.
- 137.2 The applicant shall brief all issues designated by the Commission in the Report and Order on Pre-hearing Conference and any other issues designated by the Commission during the proceeding.
- 137.3 All post-hearing briefs shall contain a title sheet clearly identifying the parties submitting the brief, including name and title, local address, and local telephone number.
- 137.4 A subject index with page references and a list of all authorities cited alphabetically arranged with page references shall be included.
- 137.5 Authorities most heavily relied upon shall be asterisked. Lengthy quotations from any records or from authorities shall not be included.
- 137.6 The Commission may reject briefs unnecessarily prolix or which do not conform to the rules of the Commission.
- 137.7 Each participant proposing adjustments to test year expenses, rate base, revenues or rate of return, shall include, as an appendix to the initial post-hearing brief or memorandum, a schedule listing each proposed adjustment beginning with the applicant's original unadjusted test year presentation, and including the accepted adjustments of all other participants.
- 137.8 The schedule shall specifically refer to evidence of record which reflects the details of all calculations that support the proposed adjustments. The schedule shall show the impact on the income deficiency or excess earnings, rate base and revenue requirement.
- 137.9 When an intervening participant submits testimony on a specific issue and does not adopt the evidence of other participants on the remaining issues, the intervening participant shall only prepare a schedule on the issues addressed in the participant's testimony and evidence.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3013 (July 3, 1981); as amended by Final Rulemaking published at 36 DCR 5651 (August 4, 1989).

**138 PROPOSED FINDINGS AND CONCLUSIONS**

- 138.1 Each party to the proceeding, after the close of the record within the time prescribed for post-hearing briefs, or as otherwise directed by the Commission shall serve on all parties and file with the Commission proposed findings of fact and conclusions of law for consideration by the Commission.
- 138.2 The proposed findings of fact and conclusions of law shall be referenced to the record of the proceedings.
- 138.3 The proposed findings of fact and conclusions of law may be included in the post hearing briefs required by this section.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3013 (July 3, 1981).

**139 ORAL ARGUMENT**

- 139.1 The Commission or presiding officer, in its discretion, may permit or require oral argument during or at the close of a hearing or on any brief, memorandum, motion, application, or petition filed.
- 139.2 Arguments on the admissibility of evidence or other oral argument during the course of the taking of testimony shall be made on the record.
- 139.3 The formal oral argument of a case shall be reported in the official transcript.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3014 (July 3, 1981).

## **140 RECONSIDERATION**

- 140.1 Any person affected by any final order or decision of the Commission may, within thirty (30) days after the publication of the order or decision, file with the Commission an application in writing requesting a reconsideration or modification of the matters involved. (See Paragraph 64 of the Act of March 4, 1913, as amended, D.C. Code § 43-904 (1981 Ed.))
- 140.2 Applications for reconsideration or modification shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous.
- 140.3 Responses to applications for reconsideration or modification shall be considered by the Commission only if filed with the Commission within five (5) business days after receipt of the application.
- 140.4 The Commission may, in its discretion, permit or require oral argument or briefs or both upon application for reconsideration or modification.
- 140.5 The Commission shall, within thirty (30) days after the filing of the application, either grant or deny the application for reconsideration or modification. Failure by the Commission to act within that period shall be considered a denial of the application.
- 140.6 If the application is granted, the Commission shall, after notice to all parties, either with or without a hearing, rescind, modify, or affirm its order or decision.
- 140.7 The filing of an application for reconsideration shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application.
- 140.8 Any application for reconsideration or modification filed on the thirtieth (30th) day after the publication of the order or decision which the application seeks to have reconsidered or modified, shall be filed on or before the close of business of that day.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3012 (July 3, 1981); as amended by Final Rulemaking published at 29 DCR 2719, 2720 (June 25, 1982).

**141 RECONSIDERATION OF ORDERS ISSUED PURSUANT TO TITLE III OF THE ELECTRIC COMPANY INFRASTRUCTURE IMPROVEMENT FINANCING ACT OF 2014**

- 141.1 Any party affected by any final order or decision issued pursuant to Title III of the “Electric Company Infrastructure Improvement Financing Act of 2014” (“ECIIFA”) may within thirty (30) days after publication of the order or decision, file with the Commission an application in writing requesting a reconsideration or modification of the matters involved (*See* D.C. Official Code § 34-604(b)).
- 141.2 The parties shall identify with specificity in the application for reconsideration or modification error(s) of law or fact in the Commission’s final order that they seek to have corrected. The application for reconsideration or modification is not a vehicle for losing parties to rehash arguments earlier considered and rejected by the Commission where there exists no error of law or fact.
- 141.3 Responses to applications for reconsideration or modification shall be filed with the Commission within five (5) business days after receipt of the application.
- 141.4 The Commission may, in its discretion, permit or require oral argument or briefs or both upon application for reconsideration or modification. The Commission shall proceed to hear and determine the reconsideration application as expeditiously as practicable.
- 141.5 The Commission shall, within thirty (30) days after the filing of the application, either grant or deny the application for reconsideration or modification. Failure by the Commission to act within that period shall be considered a denial of the application. An application for reconsideration filed pursuant to this section will be given priority and acted upon by the Commission as expeditiously as practicable.
- 141.6 If the Commission determines that more time is needed to address the issues in the application for reconsideration or modification and any responses thereto, the Commission may issue a tolling order extending the deadline for reconsideration or modification by no more than ten (10) days.
- 141.7 If the application for reconsideration or modification is granted, the Commission shall, after notice to all parties, either with or without a hearing, rescind, modify, clarify or affirm its order or decision.
- 141.8 The filing of an application for reconsideration or modification shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application for reconsideration or modification; provided, that upon written consent of the affected utility such order or decision shall not be stayed unless otherwise ordered by the Commission.
- 141.9 Any application for reconsideration or modification filed on the thirtieth (30th) day after the publication of the order or decision which the application seeks to

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have reconsidered or modified, shall be filed on or before the close of business of that day.

SOURCE: Final Rulemaking published at 61 DCR 8961 (August 29, 2014).

**142-143**

**[RESERVED]**

## **144 DECLARATORY ORDERS**

- 144.1 Upon written petition of any interested person, the Commission, within its discretion, may issue a declaratory order regarding the applicability of any rule, regulation, or statute enforceable by it, to terminate a controversy (other than a contested case) or to remove uncertainty.
- 144.2 A declaratory order, as provided in this section, shall be binding between the Commission and the petitioner as to a particular set of facts and circumstances unless such order is altered or set aside by a court.
- 144.3 A declaratory order is subject to review in the manner provided in D.C. Code, title 43, Chapter 9 for the review of orders and decisions, except that the refusal of the Commission to issue a declaratory order shall not be subject to review.
- 144.4 Each petition shall contain the following information:
- (a) The name and address of petitioner;
  - (b) A clear and concise statement of facts and issues upon which the petition is based, and the position and interest of the petitioner;
  - (c) A reference to the specific section or sections of the statute, rule, or regulation, for which a declaratory order is sought;
  - (d) Signature of petitioner; and
  - (e) The signatory's address and telephone number.
- 144.5 The Commission may decline to issue a declaratory order in its discretion and will not consider requests based upon hypothetical facts, past transactions, or nameless parties.

SOURCE: Final Rulemaking published at 34 DCR 2034 (March 27, 1987).

**145**                    **ADVISORY OPINIONS**

- 145.1                    Any employee of the Commission or person may apply to the Office of General Counsel for an advisory opinion as to the interpretation or applicability of any Commission rule or action. Advisory opinions requested in writing or rendered in writing by the Office of General Counsel in the course of a pending proceeding shall be forwarded to all parties of record.

SOURCE: Final Rulemaking published at 29 DCR 97 (January 1, 1982).

**146**            **WAIVER**

- 146.1            The Commission may, in its discretion, waive any of the provisions of Chapters 1 and 2 of this title in any proceeding after duly advising the parties of its intention to do so.

SOURCE: Final Rulemaking published at 28 DCR 2984, 3036 (July 3, 1981).

## **147 FILING REQUIREMENTS**

147.1 All entities filing one of the applications listed below must include with their application a draft Order approving the application. This draft Order must be filed electronically in the format approved by the Commission. The following applications are subject to this requirement:

- (a) Applications to become a competitive local exchange carrier pursuant to Chapter 25 of the Commission's rules;
- (b) Applications to transfer or assign competitive local exchange carrier certifications pursuant to section 2512 of the Commission's rules;
- (c) Applications for approval of a negotiated, mediated, or arbitrated interconnection agreement pursuant to Chapter 26 of the Commission's rules;
- (d) Applications for abandonment of service or certification pursuant to Chapter 27 of the Commission's rules;
- (e) Applications for electricity suppliers required by Order No. 11796; and
- (f) Applications for gas suppliers required by Order No. 12709.

SOURCE: Final Rulemaking published at 52 DCR 10185 (November 18, 2005).

**148-149 [RESERVED]**

## **150 CONFIDENTIAL OR PROPRIETARY INFORMATION**

- 150.1 Any materials submitted by a party which it claims are confidential or proprietary shall be filed under seal and shall not be used except in connection with the proceeding in which the material is filed.
- 150.2 All submissions filed under seal shall include a request for confidential or proprietary treatment, including justification for such request. Such requests shall state with specificity the grounds upon which the request is based.
- 150.3 All requests for confidential or proprietary treatment shall be presumed granted unless the Commission on its own, or in response to a Confidential/Proprietary Information Determination, determines that confidential or proprietary treatment is not justified. In making that determination, the Commission shall follow the procedures set forth in Section 150.7 or Section 150.8 of this chapter.
- 150.4 All submissions filed under seal shall be made available only to parties and persons who have signed an appropriate confidentiality or proprietary agreement with the party claiming that its information is confidential or proprietary. Information obtained pursuant to the execution of confidentiality or proprietary agreement shall be held solely for use in or in preparation of filings, including briefs, comments, documents, exhibits, data responses, cross-examination, other pleadings, petitions for reconsideration or appeals in the regulatory proceeding in which the information was originally obtained.
- 150.5 If any party uses confidential or proprietary information in filings, such as briefs, comments, testimony, exhibits, data responses, cross-examination or other documents, to be filed in a proceeding in which the information is obtained pursuant to a confidentiality or proprietary agreement, the following shall apply:
- (a) A confidential version of the filings containing the alleged confidential or proprietary information shall be filed, consistent with Sections 100 and 113 of these rules, with the Office of the Commission Secretary;
  - (b) Direct or cross-examination by any party involving information which another party alleges to be confidential or proprietary shall be conducted during proceedings which shall be closed to all those who have not signed an appropriate proprietary or confidentiality agreement; provided, that there has been no prior Commission determination that such information is not confidential or proprietary. Two transcripts of the proceeding shall be prepared and filed with the Commission Secretary; one that shall include the confidential or proprietary information and one that shall exclude the confidential or proprietary information. The Office of the Commission Secretary shall maintain the transcript of the proceeding containing the confidential or proprietary information as confidential; and
  - (c) If any party challenges the appropriateness of a claim that information is confidential or proprietary, the procedures set forth under Subsection 150.7 of this chapter shall apply.

150.6 If a party who has not signed a confidentiality or proprietary agreement with the party claiming its information is confidential or proprietary desires to obtain confidential or proprietary information from a party that has the information, either through data requests, during cross-examination, or through sealed briefs, comments, testimony, exhibits, or other such documents, the requesting party shall:

- (a) Contact the party claiming its information is confidential or proprietary for an appropriate confidentiality or proprietary agreement, which shall be signed and returned to the party; or
- (b) File with the Commission for a Confidential/Proprietary Information Determination under Section 150.7.

150.7 If at any time during a Commission proceeding a party wishes to challenge a claim of the party who asserts that its information is confidential or proprietary, the following procedures shall apply:

- (a) The party challenging the claim that information is confidential or proprietary shall file with the Commission for a Confidential/Proprietary Information Determination, which shall consist of a request for a ruling on whether the particular information is confidential or proprietary, hereafter referred to as “Confidential/Proprietary Information Determination Request” (“CPID Request”). The CPID Request shall be filed with the Commission Secretary and served on the party claiming that the information sought is confidential or proprietary and on the signatories to the confidentiality or proprietary agreement. Parties to the proceeding who have not signed the confidentiality or proprietary agreement shall only receive notice from the filing party that a CPID Request has been filed in lieu of a copy of the filing;
- (b) When any CPID Request has been filed, the party claiming that its information is confidential or proprietary shall deliver under seal all of the relevant documents to the Commission Secretary for an *in camera* inspection by the Commission and shall also deliver to the Commission Secretary the relevant confidential or proprietary agreements signed by each party permitted access to the alleged confidential or proprietary information;
- (c) The party claiming that its information is confidential or proprietary shall, within five (5) days after the filing of the CPID Request, file an initial brief stating in detail the basis of its claim. Within five (5) days thereafter, the party that filed a CPID Request shall file a brief in response to the initial brief of the party claiming that its information is confidential or proprietary. Within three (3) days after the filing of the brief in response, the party claiming that its information is confidential or proprietary may file a reply brief. If either the initial or reply brief of the party claiming that its information is confidential or proprietary, or the brief in response of the party challenging the claim, uses information that allegedly is confidential or proprietary, those briefs shall be filed under

seal. In that instance, the parties shall not be required to file a public version of their briefs;

- (d) The burden of ultimately persuading the Commission that the subject information is confidential or proprietary is upon the party claiming that its information is confidential or proprietary; and
- (e) A party shall not make public information regarding the disputed confidential or proprietary information until a ruling is received from the Commission. Following the ruling, the information shall be made available only in accordance with the Commission's ruling; provided that an application for reconsideration of the Commission's order filed by the party claiming that the information is confidential or proprietary will act as a stay of such order pending reconsideration.

150.8

The Commission, in any proceeding before it, may, at its option, elect to require that a party claiming that its information is proprietary or confidential substantiate its claim. If the Commission so elects, then the following procedures shall apply:

- (a) The Commission shall issue an order notifying the party claiming that its information is confidential or proprietary and any signatories to the confidentiality or proprietary agreement that the party must substantiate its claim before the Commission;
- (b) The party claiming that its information is proprietary or confidential shall file an initial brief stating in detail the basis of its proprietary or confidential claim within five (5) days of the notification;
- (c) Within five (5) days thereafter, any party may file a brief in response to the initial brief filed by the party claiming that its information is proprietary or confidential;
- (d) Within three (3) days of that filing, the party claiming that its information is confidential or proprietary may file a reply brief. If either the initial or reply brief of the party claiming that its information is confidential or proprietary, or the brief of any other party, uses information that is proprietary or confidential, those pleadings shall be filed under seal. In that instance, the parties shall not be required to file a public version of their briefs;
- (e) The burden of ultimately persuading the Commission that the subject information is confidential or proprietary is upon the party claiming that its information is confidential or proprietary; and
- (f) A party shall not make public information regarding the disputed confidential or proprietary information until a ruling is received from the Commission. Following the ruling, the information shall be made available only in accordance with the Commission's order; provided, that an application for reconsideration of the Commission's order filed by the

party claiming that its information is confidential or proprietary will act as a stay of such order pending reconsideration.

- 150.9 If an appeal is taken from a final Commission order in the proceeding, all information under seal at the time shall remain under seal until the appellate court issues a final order on the appeal.
- 150.10 The parties retain the right to object to the admissibility of any specific confidential or proprietary information on any proper grounds, including relevancy or materiality to the proceeding.
- 150.11 When the Commission's order in the proceeding is final and no longer subject to appeal, the sealed portion of the Commission's record shall be retained under seal by the Commission. All parties and persons having material furnished pursuant to a confidentiality or proprietary agreement (including, but not limited to, notes or records made from such material) or copies of confidential documents kept under seal by the Commission during the course of such proceeding (including, but not limited to, briefs, comments, testimony, exhibits, transcripts, and data responses) shall, upon request by the party claiming that its information is confidential or proprietary, deliver all such material to that party.
- 150.12 Access to the documents kept under seal by the Commission shall be limited to the Commission, its staff, its agents, and those parties to the proceeding in which the request is made who have executed a confidentiality or proprietary agreement.
- 150.13 All persons or parties executing a confidentiality or proprietary agreement shall be responsible for the protection of the confidential or proprietary information in their control.

SOURCE: Final Rulemaking published at 39 DCR 5117, 5125 (July 10, 1992); as amended by Final Rulemaking published at 61 DCR 1960 (March 7, 2014); as amended by Final Rulemaking published at 66 DCR 659 (January 18, 2019).

## **151 CRITICAL INFRASTRUCTURE INFORMATION**

151.1 If a party or an intervenor makes a request for information from a public utility company (“Company”) during the course of a Commission investigation or proceeding and the Company objects to the production of the requested information because it deems the requested information to be “critical infrastructure information” (“CIIF”), and the requesting party files a motion to compel the production of the requested information, the following procedures shall be applied:

- (a) Within five (5) days from the date that a motion to compel disclosure of the information is filed, the Company shall file with the Office of the Commission Secretary a confidential filing that identifies the materials that it deems to be “critical infrastructure information” (“CIIF”) for which it is seeking privileged material protection. The filing shall contain the following information:
  - (1) A sealed copy of the requested information for the Commission’s inspection *in camera* or, a description of the information requested and an explanation for why the information is not being filed at this time;
  - (2) An explanation of the internal measures that are currently in place to protect the requested information;
  - (3) A statement of whether the information is currently being provided to any non-company personnel and, if so, to whom and under what circumstances;
  - (4) A statement of whether any special level of security clearance is required to view all or a portion of the requested information;
  - (5) A copy of a Non-Disclosure Agreement setting out the terms and conditions under which the requested information would be provided, or an explanation of why a Non-Disclosure Agreement would not suffice to protect the requested information and no Non-Disclosure Agreement is being provided;
  - (6) An explanation of the alternative controls, if any, pursuant to which the Company would make available the requested information;
  - (7) Any other information that the Company believes is relevant to its request to protect the requested information; and
  - (8) A sworn affidavit signed by an Executive Officer of the Company attesting to the information being submitted.

- (b) The Company shall also file in the Office of the Commission Secretary a public version of its filing with a notation and shall serve a copy of its filing on the requesting party.
  - (c) Within five (5) days of receiving the Company's filing, the requesting party shall file a response with the Office of the Commission Secretary. The response shall contain the following information:
    - (1) The name of the requesting party and the names, titles and company affiliations of each person who would be granted access to the requested information;
    - (2) The reason(s) that the requested information is needed, including why it is relevant and material to the subject matter of the investigation or the proceeding at the Commission;
    - (3) The reason(s) why the requesting party should be granted access to the requested information, including whether the requesting party has any requisite security clearance, if applicable;
    - (4) Whether the requesting party is prepared to sign the Non-Disclosure Agreement provided by the Company and if not, why not;
    - (5) Whether the requesting party is prepared to accept the alternative controls identified by the Company for the receipt of the requested information;
    - (6) Any additional information that the requesting party believes is relevant to the request for the information; and
    - (7) An affidavit from the head of the organization of the requesting party attesting to the information in the response.
  - (d) If the response contains confidential information, the requesting party shall file a confidential and a public version of the response.
- 151.2 Within five (5) days after the requesting party has filed its response, either the Company or the requesting party may file a motion requesting an evidentiary hearing. The party making the request shall list in its motion each and every fact in dispute requiring resolution and the reasons therefore. Responses to the motion shall be filed within five (5) days after the motion has been filed.
- 151.3 The Commission will review the filings made pursuant to §§ 151.1 and 151.2 and conduct an *in camera* review of the information that has been submitted. The Commission may request additional information from the Company or the requesting party, such information to be provided at the Commission's option through additional affidavits, through proffers by counsel, or in an evidentiary hearing.

- 151.4            Within ten (10) days of the receipt of all filings, including supplemental filings where required, the Commission shall issue an order that contains the following determinations:
- (a)            Whether the Company has met its burden of proving that the requested information is CII and subject to the rules and procedures under Section 151;
  - (b)            If the requested information is deemed CII, whether the Company has justified the restrictions, if any, that it has requested for the disclosure of the information to the requesting party;
  - (c)            If the requested material is CII, whether the requesting party has justified its need for the requested information in light of the sensitivity of the information and has demonstrated that it is eligible to receive the requested information; and
  - (d)            If the Commission determines that a protective order is necessary for the disclosure of the CII, the conditions to be placed on the release of the information.
- 151.5            Any person may file an application in writing requesting a reconsideration or modification of the matters involved pursuant to the rules for reconsideration set forth in Section 140 of Chapter 1 of the Commission's rules, except that any application for reconsideration or modification shall be filed within ten (10) days after the issuance of the order or decision.
- 151.6            If a person that is not a party in an investigation or proceeding before the Commission makes a request of the Commission for information received from a Company that has been deemed CII, or that may be CII, the request shall be handled pursuant to the procedures for a Freedom of Information Act Request as set forth in Chapter 7 of the Commission's rules.

SOURCE: Final Rulemaking published at 61 DCR 854 (January 31, 2014).

## **160 CIVIL FORFEITURE PROCEDURES**

- 160.1 Upon information of any person, or on its own motion, the Commission may investigate and find subject to forfeiture penalties any person or public utility found to have:
- (a) Violated or failed to comply with any rule, order, or regulation issued, adopted, or approved by the Commission; or
  - (b) Violated or failed to comply with the terms and conditions of any license, permit, certificate, or other instrument of authorization issued by the Commission; or
  - (c) Violated or failed to comply with any provisions in title 34 of the District of Columbia Official Code.
- 160.2 A forfeiture penalty under this section may be in addition to any other penalty provided for under the laws of the District of Columbia.
- 160.3 If, after an initial investigation, the Commission believes that a person or public utility is subject to forfeiture under title 34 of the D.C. Official Code, then the Commission shall issue a show cause order directing the person or public utility to comply with any rule, order, regulation, license, permit, certificate, instrument, or any provision(s) within title 34 of the District of Columbia Official Code. If the order remains unabated or not complied with for thirty (30) days, the Commission shall notify the person or public utility that the Commission is instituting forfeiture proceedings against such person or public utility. The Commission shall provide a written Notice of Probable Violation (Notice) reciting the allegations in support of forfeiture. The Notice shall:
- (a) Identify each violation with which the respondent is charged;
  - (b) State the dates on which the violations occurred; and
  - (c) Specify the amount of the proposed forfeiture.
- 160.4 Within twenty (20) days of receipt of the Notice, the respondent shall either:
- (a) Submit a schedule or a plan for the abatement or correction of the violation, failure, or refusal;
  - (b) Pay the forfeiture;
  - (c) File a verified answer explaining why a forfeiture penalty should not be imposed; or
  - (d) File a verified answer explaining why the proposed forfeiture should be reduced.
- 160.5 Any verified answer shall include a detailed factual statement supported by such documentation and affidavits as may be relevant. If a verified answer is not filed

within twenty (20) days, the respondent shall be deemed in default, and the Commission may order forfeiture without further proceedings. The twenty (20)-day notice period will not be extended absent extraordinary circumstances.

160.6 If after the respondent files a verified answer to the Notice, the Commission determines that material facts are in dispute, the Commission shall schedule a formal hearing before a hearing officer as prescribed by § 120 of this chapter. Parties shall have the right to present evidence and call witnesses under oath. Proceedings shall be recorded or transcribed.

160.7 There shall be a rebuttable presumption of forfeiture. A respondent may rebut the presumption by showing with clear and convincing evidence that either:

- (a) No law, order, or regulation imposed upon the respondent the duty to perform as set forth in the notice; or
- (b) Forfeiture is unwarranted because the respondent fulfilled his or her obligation to perform.

160.8 The Commission shall issue a Forfeiture Order canceling or reducing the proposed forfeiture or requiring that it be paid in full if the forfeiture penalty has not been paid in full within thirty (30) days after receiving the respondent's Notice or after the record of the formal hearing closes. Payment of the forfeiture shall be due no more than forty-five (45) days after the forfeiture order becomes final and is no longer subject to reconsideration and appeal. If the forfeiture is not paid, the matter may be referred to the Superior Court of the District of Columbia for enforcement and collection.

160.9 No forfeiture penalty assessed under this section shall be in excess of five thousand dollars (\$5,000) for each violation. Each day of violation may be considered a separate and distinct violation as prescribed by D.C. Official Code § 34-708 (2010 Repl.).

160.10 The Commission may compromise any forfeiture penalty consistent with the provisions of D.C. Official Code § 34-706(a) and (c) (2011 Supp.), if applicable.

160.11 The forfeiture shall be paid into the Treasury of the United States to the credit of the General Fund of the District of Columbia.

SOURCE: Final Rulemaking published at 59 DCR 1160 (September 28, 2012).

## 199 DEFINITIONS

199.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

**Applicant** – a person who files an application for any action by the Commission.

**Commission** – the Public Service Commission of the District of Columbia.

**Complainant** – a person who files a complaint with the Commission.

**Critical Infrastructure** – existing and proposed infrastructure systems and assets, whether physical or virtual so vital to the District of Columbia or the United States that the incapacity or destruction of such infrastructure system or asset could jeopardize the physical security, economic security, health, safety, or welfare of the public.

**Critical Infrastructure Information** – information not customarily in the public domain that is related to the security of critical infrastructure of companies that are regulated by the Public Service Commission of the District of Columbia including:

- (a) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, or District of Columbia laws, harms interstate commerce of the United States or the economy of the District of Columbia, or threatens public health or safety;
- (b) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or
- (c) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

**Days** – calendar days, unless otherwise expressly defined.

**Docket** – the Commission’s formal record of a proceeding, including the filings.

**Ex Parte Communication** – an oral or written communication, not on the public record, which is relevant to the merits of a proceeding and with respect to which reasonable prior notice to all parties has not been given.

**File** – to submit a filing to the Office of the Commission Secretary, utilizing the “eDocket” system available through the Commission website at [www.dcpsc.org](http://www.dcpsc.org), for the purpose of having that filing entered upon the docket of a proceeding.

**Filing** – any pleading or other document requiring Commission action or attention which is presented to the Commission's Secretary, in accordance with this chapter, for placement in the Commission's General or Formal Docket. (39 DCR 5129).

**Full Settlement** – a settlement which addresses all of the issues in a contested case. (39 DCR 5129).

**Interested Person** – with respect to a proceeding means any person who is a party to a matter pending before the Commission or represents a party to any such matter.

**Intervenor** – a person whose petition to intervene in a proceeding has been granted.

**Nonunanimous Settlement** – a settlement that is opposed in whole or in part by any of the parties to the case in which such settlement is proposed for adoption by the Commission. (39 DCR 5129).

**Partial Settlement** – a settlement which addresses some, but not all, of the issues in a contested case. (39 DCR 5129).

**Party** – a person who appears in and has a direct interest in a proceeding before the Commission. Persons may become parties to proceedings by virtue of filing an application, complaint, or petition initiating the proceeding; by filing a response to an application, complaint, or petition; by statutory right; or by Commission authorization, such as the granting of a petition for intervention.

**Person** – an individual, partnership, association, firm, corporation, body politic, municipal organization, governmental body, joint stock company, receiver, trustee, official acting in his or her official capacity, or any other organization or institution.

**Petitioner** – a person who files a petition with the Commission.

**Pleading** – complaints, cross complaints, amended and supplemental complaints, petitions, applications, answers, written motions, and amendments to any thereof.

**Respondent** – a person against whom a complaint is made or an order of investigation or an order to show cause is directed.

**Secretary** – that person appointed by the Commission to receive all filings and to execute all documents on behalf of the Commission.

**Settlement** – except as to full settlements presented under § 130.11, proceedings in which parties have fully agreed to each other's positions and recommendations

are not required to be considered settlements and may be expeditiously processed. (39 DCR 5129).

**Staff** – for purposes of matters before the Commission, the employees of the Commission, excluding those appointed to the Office of General Counsel and those assigned as personal assistants to the Commissioners.

SOURCE: Final Rulemaking published at 28 DCR 2984, 2985 (July 3, 1981); as amended by Final Rulemaking published at 39 DCR 5117, 5129 (July 10, 1992); as amended by Final Rulemaking published at 61 DCR 854 (January 31, 2014); as amended by Final Rulemaking published at 66 DCR 659 (January 18, 2019).