

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF REVISIONS TO THE)
RULES OF PRACTICE AND PROCEDURE)
OF THE DELAWARE PUBLIC SERVICE) PSC REGULATION DOCKET
COMMISSION) NO. 99-9
(FILED JANUARY 6, 1999; RE-OPENED)
OCTOBER 9, 2012; RE-OPENED)
JANUARY 29, 2020; RE-OPENED AUGUST)
31, 2022)

ORDER NO. 10156

AND NOW, this 14th day of December 2022, the Delaware Public Service Commission (“Commission”) determines and orders the following:

WHEREAS, in PSC Docket No. 20-0149,¹ Order No. 9953, the Commission noted Staff’s recommendation that the Commission should consider adopting rules that incentivize utilities to answer data requests rather than objecting to them or equivocating in their responses.² The Commission directed Staff as follows:

“[T]o consider the issue revolving around discovery issues at the hearing examiner level and to come up with recommendations to the Commission to expedite those matters so that procedural schedules are not delayed and the information gets provided to the parties who require it. These proposals should be included in the revised MFRs that Staff is currently preparing. (Unanimous).”³

WHEREAS, on August 31, 2022, Commission Staff (“Staff”) petitioned the Commission to re-open Regulation Docket 99-9, as Staff found that multiple amendments, including the

¹ Docket No. 20-0149 was Delmarva Power & Light’s last electric rate base case.

² See Docket No. 20-0149, Order No. 9953, para. 238: “Staff raised an issue in its testimony about ongoing problems with getting timely responses from the utility to its discovery requests. As Staff pointed out: (1) the utility has all the books and records that the omission, and by extension its Staff, are entitled to examine—now mostly through data requests, which in Staff’s opinion are routinely objected to; and (2) a seven (7) month clock begins with the filing of a rate case and upon expiration allows the Company to put in the full amount of its rate request, subject to future refund. According to Staff, this forces Delmarva’s ratepayers, at least for a period of time, to pay the full cost of the Company’s application and delays the opportunity for them to utilize this capital for other expenses.”

³ PSC Docket 20-0149, Order No. 9953, para. 244 (emphasis added). See also *id.* at para. 239-244.

aforementioned discovery issues, to the “*Rules of Practice and Procedure of the Delaware Public Service Commission*,” 26 Del. Admin. C. § 1001 et seq. (“Rules”) were necessary for clarification and adjustment, which amendments (“Proposed Amendments”) are specifically detailed as follows:

(1) under Subsection 1.2, to define “DPA” as the Delaware Division of the Public Advocate, or its successors;

(2) under Subsection 1.2, to update the definition of “E-Filing” so as to remove the date, and remove “DelaFile” so as to remain current should the Commission rename its electronic document management system, and as a result, to use “E-Filing” in place of “DelaFile” in the Rules hereinafter;

(3) under Subsection 1.2, to update the definition of “Filing” for ease of reference;

(4) under Subsection 1.6.5, to update the procedure in which the Commission provides Filings to the DPA, so that the requirement that the Commission provide paper copies of all filings to the DPA is eliminated;

(5) under Subsection 1.7.1.3, to change “Complaints” to “Formal Complaints” so as to differentiate formal complaints, which should be filed with the Commission, from informal complaints, which should be filed with the Delaware Division of the Public Advocate (“DPA”)⁴;

(6) under Subsection 1.7.1.8, to remove the word “and;”

(7) under Subsection 1.7.1.10, to include the word “and;”

(8) under Subsection 1.7.1.10, to add “Reports” to the list of filings to clarify that reports should be filed with the Commission;

⁴ See 26 Del. Admin. C. § 1001-2.2.1.

(9) under Subsection 1.11.1, to update the statutory citation to the *Freedom of Information Act* (“FOIA”) to reflect the current statute;

(10) under Subsection 1.11.2, to amend certain procedures relating to challenging a claim of confidential designation for better alignment with *Freedom of Information Act* (“FOIA”);⁵

(11) under Subsections 1.11.5, to shorten the reference to the DPA to the defined term;

(12) under Subsections 1.11.6, to shorten the reference to the DPA to the defined term;

(13) under Subsection 2.1.2, to update *pro hac vice* admission information to maintain uniformity with the Delaware Supreme Court;

(14) under Subsection 2.2.1, to clarify the timeframe for utility response to informal complaints and to shorten the reference to the DPA;

(15) under Subsection 2.3.3, to replace “DelaFile” with “E-Filing” and to clarify the timeframe that the Commission Secretary is to direct a filed response to a complaint is twenty (20) calendar days;

(16) under Subsection 2.4.1, to clarify the timeframe that a respondent shall file an answer to a formal complaint is twenty (20) calendar days;

(17) under Subsection 2.6.2, to adjust certain procedures relating to serving discovery between parties so that rolling discovery is the default and that responses shall be due as set forth in Subsection 2.6.6. unless otherwise ordered by the designated Presiding Officer or Hearing Examiner;

⁵ As amended, this places an affirmative obligation on a party claiming that information of confidential or proprietary to file a petition with the Commission to request a ruling if any party challenges that designation of information. It clarifies that the party claiming confidentiality must demonstrate that the designated information is exempt from public disclosure pursuant to 29 *Del. C.* § 10002(o) of the FOIA.

(18) under Subsection 2.6.3, to provide instruction that interrogatories and written data requests shall be provided in Word format;

(19) under Subsection 2.6.6, to provide that discovery responses in rate or other expedited cases (including Section 215 applications, applications for issuance of a certificate of public convenience and necessity (“CPCN”), applications to abandon a previously-granted rate CPCN, or distribution planning matters) must be served no later than fifteen (15) calendar days after they are served on a party; and to remove the language “excluding holidays and weekends;”

(20) under Subsection 2.6.7, to reduce the time for objecting to discovery to ten (10) calendar days after service of discovery under subsection 2.6.7, and to include a seven (7) calendar day time frame to for the parties to resolve a discovery dispute; in the event the parties are unable to resolve the discovery dispute, to clarify that the party seeking the information shall file a motion to compel within five (5) business days thereafter; and to include language that all motions to compel must be resolved within fifteen (15) days of the filing of the motion to compel;

(21) under Subsection 2.7.1, to include that responses to a motion shall be submitted seven (7) calendar days after motion is filed, and to include that the movant may file a reply to the response no later than seven (7) calendar days after the response is filed;

(22) under Subsection 2.16.2, to increase the timeframe for filing a Petition for interlocutory review from three (3) days to seven (7) calendar days, and replacing “Delafile” with “E-Filing”; and

(23) under Subsection 2.16.3, to increase the timeframe for a party filing an answer to a Petition for interlocutory review from three (3) days to seven (7) calendar days;

(24) under Subsection 2.16.5, to clarify the timeframe for Commission action in response to a Petition for interlocutory review by including the numerical thirty (“30”) and parenthesis; and

(25) under Subsection 2.19.3, to clarify that the timeframe for a party to file written exceptions is twenty (20) calendar days, and to grammatically correct the language from “was” to “were;” and

WHEREAS, on August 31, 2022, by Order No. 10094, the Commission reopened this docket, approved publication of the Proposed Amendments, directed the Secretary of the Commission (“Secretary”) to transmit the amended Rules to the Registrar of Regulations (“Registrar”) for publication in the October 2022 edition of *Delaware Register*, as required by 29 *Del. C.* § 10113; and in accordance with 26 *Del. C.* § 209(a) and 29 *Del. C.* § 10118(a), stated that the Commission would hold a public hearing on the proposed amendments on November 2, 2022, with the public comment period remaining open until November 18, 2022; and

WHEREAS, on October 12, 2022, Artesian Water Company, Inc. (“Artesian”) submitted written comments regarding the Proposed Amendments to be considered at the November 2, 2022 Commission Meeting, which, in summary: (1) proposed to include a limit to the number of data requests in Subsection 2.6.3; (2) stated concern regarding the proposed reduction of time for a recipient to respond to a discovery request in Subsection 2.6.6; and (3) proposed additional language to Subsection 2.6.7 to read, “within seven (7) calendar days after notification of the objection;”⁶ and

WHEREAS, on October 13, 2022, Delmarva Power & Light Company (“Delmarva”) submitted written comments regarding the Proposed Amendments to be considered at the

⁶ See Docket 99-9, Artesian Water Company, Inc., October 12, 2022, “Artesian Comments on Docket 99-9.”

November 2, 2022 hearing, which: (1) proposed additional language to Subsection 2.6.3 to include, “The party responding to interrogatories or data requests is not obligated to provide its response in Word format;” (2) proposed increasing the time to respond to discovery in Subsection 2.6.6 from fifteen (15) calendar days to twenty-one (21) calendar days; and (3) proposed to increase the time to respond to a motion in Subsection 2.7.1 from seven (7) calendar days to ten (10) calendar days;⁷

WHEREAS, pursuant to 26 *Del. C.* § 209(a), on November 2, 2022, the Commission conducted a public hearing to consider written comments submitted by October 14, 2022;⁸ and

WHEREAS, on November 2, 2022, Delmarva provided oral comments, which mirrored its written comments. Delmarva first noted that its proposal regarding Subsection 2.6.3 is meant to clarify that “the party responding to Interrogatories or to data request is not also obligated to provide its response in Word format. In other words, it can provide them in Excel or as a PDF as it is.”⁹ Second, Delmarva commented on its proposal for Subsection 2.6.6, which stated concern for the Proposed Amendments’ fifteen (15) calendar day timeline, and again suggested the twenty (21) calendar day timeline so that its employees can respond to data requests.¹⁰ Delmarva noted as an example that in its last gas rate case, Delmarva received data requests from Staff and the Division of the Public Advocate (“DPA”) (but did not receive data requests from intervenors).¹¹ Third, Delmarva commented on its proposal for Subsection 2.6.7, which includes an additional three (3) calendar days to respond to a motion¹² and noted that this is in line with the rules of all the courts in Delaware;¹³ and

⁷ See Docket 99-9, Delmarva Power & Light, October 13, 2022, “DPL’s Comments.”

⁸ Pursuant to 29 *Del. C.* § 10118(a), the opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. The Proposed Amendments were published on October 1, 2022.

⁹ PSC Commission Meeting Tr., Nov. 2, 2022, pg. 21-22, lines 1-4.

¹⁰ *Id.* at pg. 35, lines 5-9.

¹¹ *Id.* at pg. 23, lines 6-11.

¹² *Id.* at pg. 24, lines 5-17.

¹³ *Id.* at pg. 35, lines 10-16.

WHEREAS, on November 2, 2022. Artesian provided oral comments which stated its concurrence with Delmarva's comments, and echoed its written comments submitted on October 12, 2022;¹⁴ and

WHEREAS, the Division of the Public Advocate (the "DPA") provided oral comments, which first stated the DPAs support for the Proposed Amendments as published in the October 2022 edition. Second, the DPA noted that Artesian and Delmarva's concerns regarding subsection 2.6.2 have not borne out in practice. The DPA noted that in Docket No. 20-0149, Delmarva's most recent electric rate case, Staff and the DPA issued discovery about once a week—not daily—and that Delmarva timely responded to all sets of discovery without a problem.¹⁵ Additionally, the DPA noted that Subsection 2.6.4 states that the Hearing Examiner (or designated presiding officer) may vary discovery provisions in the interest of justice, so that if there is a problem with complying with rolling discovery obligations, a party may request the Hearing Examiner to vary the discovery provisions and that in the past, the parties have worked with each other in the past with respect to needing additional time for discovery responses.¹⁶ Third, the DPA stated it did not oppose Delmarva's proposed change to Subsection 2.6.3. Fourth, in regard to Subsection 2.6.6, the DPA noted that why expedited discovery is necessary in the specific types of cases identified in the proposed amendment to Subsection 2.6.6, and also that decreasing the time for discovery responses could help speed up the rate case process.¹⁷ Fifth, the DPA did not oppose Artesian's proposed change in Subsection 2.6.7. Sixth, the DPA made comment on the proposed amendment to Subsection 2.6.7 regarding motions and response time, noting that if the longer response time was

¹⁴ *Id.* at pg. 25, lines 4-6, 10-17

¹⁵ *Id.* at pg. 27, lines 10-12. *See also id.* at pg. 27-28 for additional examples of how much discovery Staff and the DPA have issued during rate cases.

¹⁶ *Id.* at pg. 28-29.

¹⁷ *Id.* at pg. 31.

adopted, it could be weeks before a Commission hears a motion because of the Commission's meeting schedule.¹⁸ Additionally, the DPA noted it is within the Hearing Examiner or the Commission's discretion to waive application of the seven (7) day response and reply period should the circumstances warrant.¹⁹ The DPA also suggested that the seven (7) day response and reply timing is a bigger burden on Staff and the DPA than it is on utilities, as Staff (when fully staffed) has two (2) Deputy Attorney Generals ("DAG(s)") and the DPA has one (1) DAG, but nonetheless, there has never been an issue in the past in turning around responses and replies to motions.²⁰

WHEREAS, on November 2, 2022, Staff noted it worked with the DPA on the amended Rules and therefore it agreed with the DPA comments.²¹ Staff took no issue with Delmarva's suggested amendment to Subsection 2.6.3, or Artesian's suggested amendment to Subsection 2.6.7; and

WHEREAS, in accordance with the Administrative Procedures Act ("APA"), public comment remained open until November 18, 2022;²² and

WHEREAS, on November 14, 2022, Tidewater Utilities, Inc., ("Tidewater") submitted public comment. First, Tidewater stated that the proposed amendment to Subsection 2.6.2 would allow for discovery to be served on a rolling basis, which could create an additional burden for the recipient of the discovery requests to manage.²³ Tidewater suggested that Subsection 2.6.2 include a defined limit on the frequency and/or number of discovery batches to once every three (3) weeks

¹⁸ *Id.* at pg. 33-34.

¹⁹ *Id.* at pg. 34, lines 1-3.

²⁰ *Id.* at pg. 34, lines 7-13.

²¹ *Id.* at pg. 36, lines 11-13.

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

²³ *See* Docket 99-9, Nov. 14, 2022, "Comments of Tidewater Utilities, Inc."

with a maximum of four (4) discovery batches for each intervenor during the course of rate proceedings.²⁴ Second, Tidewater objected to Subsection 2.6.6, as the change from business days to calendar days reduces the length of time a recipient has to respond to discovery by nearly a full business week and will place a burden on the utilities.²⁵ Tidewater noted that this change could require utilities to hire outside counsel, and states its support to leave the rule unchanged at fifteen (15) days excluding holidays and weekends, or to increase the number of days to respond from fifteen (15) days to twenty (20) days;²⁶ and

WHEREAS, on November 14, 2022, Chesapeake Utilities Corporation submitted public written comment agreeing with the comments of Tidewater, Delmarva, and Artesian, and supporting the recommendation made in those comments for the reasons set forth therein;²⁷ and

WHEREAS, on November 17, 2022, the DPA submitted written public comment on the proposed amendments. First, the DPA noted that the Section 10113(b) of the APA does not require the Commission to follow the normal procedure for amending regulations when the regulations are rules of practice and procedure used by the agency;²⁸ rather, the Commission may simply adopt the regulation and file both the regulation and a copy of the order adopting the regulations with the Registrar.²⁹ The DPA stated that the Proposed Amendments are reasonable and should be adopted by the Commission, with the minor modifications that Delmarva and Artesian proposed. The DPA proceeded to identify each of the amendments to the Subsections and reiterated its post-hearing comments.³⁰

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Docket 99-9, Nov. 14, 2022, "Comments of Chesapeake Utilities Corporation."

²⁸ See 29 *Del. C.* § 10113(b).

²⁹ See Docket 99-9, Nov. 17, 2022, "Comments of the Delaware Division of the Public Advocate on the Proposed Amendments to the Delaware Public Service Commission's Rules of Practice and Procedure," pg. 1-2.

³⁰ *Id.* at pg. 3-10.

WHEREAS, on November 18, 2022, Delmarva submitted supplemental comments to its first set of Comments dated October 13, 2022. Delmarva stated that public utilities face voluminous written discovery in rate cases for which a twenty-one (21) calendar day response period is reasonable.³¹ Delmarva noted that PSC Docket No. 22-0150 included a fifteen (15) calendar day response period, which Delmarva had to supplement or amend 62 responses for, and that in Docket No. 22-0002, the DPA and Staff agreed to a twenty-one (21) day response period.³² Delmarva stated that with the larger response period, the number of supplemental responses dropped by almost 50 percent.³³

WHEREAS, on November 18, 2022, the opportunity for public comment closed; and

WHEREAS, the Commission has considered all comments received by November 18, 2022; and

WHEREAS, pursuant to 29 *Del. C.* § 10118(c), if changes to the amended rules are not substantive,³⁴ the agency shall *not* be required to republish the regulation change (emphasis added); and

WHEREAS, pursuant to 29 *Del. C.* § 10113(b)(4), any changes in existing regulations to alter style or form or to correct technical errors are exempted from the procedural requirements of Title 29 Chapter 101 and may be adopted informally; and

³¹ See Docket 99-9, Nov. 18, 2022, "DPL's Supplement Comments," pg. 2.

³² *Id.*

³³ *Id.*

³⁴ See 29 *Del. C.* § 10102(9) (which defines substantive as "when used in connection with regulations, those regulations allowing, requiring or forbidding conduct in which private persons are otherwise free or prohibited to engage, or regulations which state requirements, other than procedural, for obtaining, retaining or renewing a license or any kind of benefit or recompense,").

WHEREAS, pursuant to 29 *Del. C.* § 10113(b), an agency's rules of practice and procedure are exempted from the procedural requirements of Title 29 Chapter 101 and may be adopted informally; and

WHEREAS, the Commission has considered all comments received by the utilities, Staff and the DPA, and is not persuaded by the majority of the utility's comments regarding the Proposed Amendments. The Commission notes that Subsections 2.6.2, 2.6.3, 2.6.6, and 2.6.7 were the only Subsections to receive comment by the utilities. The Commission finds that the remaining Proposed Amendments were uncontested. The Commission therefore finds that the uncontested subsections of the Proposed Amendments should be adopted; and

WHEREAS, the Commission finds that the Proposed Amendment to Subsection 2.6.2 would be beneficial for the parties involved in discovery and therefore accepts the Proposed Amendment to Subsection 2.6.2. The Commission is persuaded by the DPA's argument that discovery served has not, historically speaking, been overwhelming to the utilities, but that it is served about every week, which the Commission believes is manageable for utilities. Further, in the event that discovery does become an overwhelming issue for a utility, the Commission notes that the designated Presiding Officer or Hearing Examiner on the matter can consider the utility's position and order such different discovery procedures as may be necessary; and

WHEREAS, the Commission finds that the Proposed Amendment to Subsection 2.6.3, as augmented by the additional language Delmarva proposed in its comments, serves to clarify Subsection 2.6.3 and that it would be a helpful inclusion to the Subsection for all parties involved. Accordingly, the Commission accepts the Proposed Amendment to Subsection 2.6.3, and accepts Delmarva's proposed additional language; and

WHEREAS, the Commission finds that the Proposed Amendment to Subsection 2.6.6, would be beneficial for the parties involved in discovery, and therefore to the Commission as well. The Commission is persuaded by the DPA's comments as to why expedited discovery is necessary in the specific types of cases identified in the proposed amendment to Subsection 2.6.6, and the comments by the DPA that decreasing the time for discovery responses could help speed up the rate case process. Moreover, as we noted with respect to rolling discovery, if a utility has a problem complying with the 15-day response period, it can request the Hearing Examiner to order a different period. The Commission therefore accepts the Proposed Amendments to Subsection 2.6.6; and

WHEREAS, the Commission finds that the Proposed Amendment to Subsection 2.6.7, as augmented by the additional language Artesian proposed in its comments, serves to alter and clarify the form of Subsection 2.6.7 as it states when the seven (7) calendar day period begins, instead of implying when the seven (7) calendar day period begins. Accordingly, the Commission accepts the Proposed Amendment to Subsection 2.6.7, and accepts Artesian's proposed additional language; and

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

1. That, for the reasons set forth above, the Commission hereby approves as final the proposed *Rules of Practice and Procedure of the Delaware Public Service Commission 26 Del. Admin. C. § 1001 et seq.*, as proposed herein. A marked-up version of the *Rules* reflecting only the amended sections is attached as Exhibit "A." A clean version of the Amended Rules reflecting the changes is attached as Exhibit "B."
2. Pursuant to 26 Del. C. §§ 10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order (with the attached Amended Rules) to the Registrar of Regulations

for publication in the January 1, 2023 edition of the *Delaware Register of Regulations*. An exact copy of the Amended Rules shall be published as the current official regulations in the *Delaware Register*.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman

Joann Conaway, Commissioner

Harold Gray, Commissioner

Manubhai "Mike" Karia, Commissioner

Kim F. Drexler, Commissioner

ATTEST:

Donna Nickerson, Secretary

EXHIBIT "A"

**STATE OF DELAWARE
Delaware Public Service Commission**

**Rules of Practice and Procedure of the
Delaware Public Service Commission
(Marked Up Version of Amended Sections)**

26 Del. Admin. C. § 100

**TITLE 26 PUBLIC UTILITIES
DELAWARE ADMINISTRATIVE CODE**

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**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION
1000 General Regulations**

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

1.0 General Provisions

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

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

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

1.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.3 Address of Commission and Office Hours

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

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

1.4 Commission Meetings

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

1.4.2 Notice of all meetings of the Commission shall be given at least seven (7) days in advance by a conspicuous posting of written notice at the Commission's office in Dover and such other methods as the Commission may deem appropriate. An agenda shall be posted contemporaneously with the notice, subject to revisions made up until six (6) hours in advance of the meeting. The Secretary may make the notice and agenda available through the Commission's web page.

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

1.5 Office of the Secretary

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

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

1.5.3 The Secretary shall mark the time and date of receipt or filing on each communication addressed to the Commission and on each pleading, report, exhibit,

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deposition, transcript, and order received or filed. When deemed appropriate, the Secretary shall also assign a docket number to a filing that has been received.

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

1.6 Filing of Documents

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

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

- 1.6.3 If E-Filing is not an available option, an email of the filing shall be provided to the service list and Secretary, unless otherwise directed by the Commission, designated Presiding Officer or Hearing Examiner. The Secretary may request additional copies when necessary.

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

- 1.6.5 The Commission shall ~~forward~~ provide to the ~~Public Advocate a copy of all applications submitted by public utilities and all formal complaints and petitions filed with the Commission, along with proof of a notice to be executed and returned with an acknowledged receipt pursuant to 29 Del.C. §8808 (e).~~ One copy of all initial filings and comments shall be served on the Division of the Public Advocate at its official address and a certificate of service indicating such service must accompany the filing with the Secretary. DPA electronic notification of all Filings (as defined in subsection 1.7).

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

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

- 1.6.7.1 United States mail, first-class;
- 1.6.7.2 Commercial courier service;
- 1.6.7.3 Personal delivery; or
- 1.6.7.4 E-mail.

1.7 Types of Filings and General Requirements

- 1.7.1 Filings shall include the following:

- 1.7.1.1 Applications;
- 1.7.1.2 Petitions;
- 1.7.1.3 Formal Complaints;
- 1.7.1.4 Answers;
- 1.7.1.5 Motions;
- 1.7.1.6 Briefs;

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- 1.7.1.7 Memoranda;
- 1.7.1.8 Exceptions; ~~and~~
- 1.7.1.9 ~~Comments.~~ Comments; and
- 1.7.1.10 Reports.
- 1.7.2 All petitions and other filings that allege facts not otherwise in the record must be accompanied by a signed, sworn verification. Where the filer is a corporation or an association, the verification shall be signed by a bona fide officer thereof.
- 1.7.3 All filings must be accompanied by a signed certificate of service pursuant to Rules 1.6.5 and 1.6.6.
- 1.7.4 Except as directed by the Commission, designated Presiding Officer or Hearing Examiner, all paper filings shall be on 8 1/2 inch by 11 inch sized paper with margins of at least one inch using type size no smaller than 12 pitch font.
- 1.8 Applications
 - 1.8.1 Applications shall be in numbered paragraphs and include the following:
 - 1.8.1.1 The name, mail and e-mail addresses, telephone and fax numbers of the applicant;
 - 1.8.1.2 A description of the authorization, right, or approval sought;
 - 1.8.1.3 A description of any previous authorization or approval which will be affected;
 - 1.8.1.4 A concise recitation of the material facts to be relied upon;
 - 1.8.1.5 A citation to the statute, rule, or order which authorizes the application;
 - 1.8.1.6 Copies of all pertinent contracts, agreements, certificates, permits, tariffs, proposed tariffs, charters, by-laws, ordinances, resolutions or other writings referred to in the application, which shall be attached as exhibits. Copies of written material or orders which are of record with the Commission need not be attached to the application if reference is made to the appropriate docket and order numbers; and
 - 1.8.1.7 Any information required by rule or order for a specific type of application.
 - 1.8.2 Applications shall be initially reviewed by the Commission and upon such review, may be:
 - 1.8.2.1 Published for public comment;
 - 1.8.2.2 Approved with or without conditions;
 - 1.8.2.3 Denied;
 - 1.8.2.4 Set for evidentiary hearing; or
 - 1.8.2.5 Granted in part and denied in part.
 - 1.8.3 Applications may become the subject of an evidentiary hearing if the Commission determines that the comments or the application require a hearing.
- 1.9 Computing Time
 - 1.9.1 In computing any time period under these rules, the first day of the designated period of time shall commence the next day after the event requiring the computation of the time period. The last day of the time period shall be included, unless it falls on a Saturday, Sunday, or a legal holiday by the laws of this State or the United States, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

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- 1.9.2 Upon good cause shown, the Commission, or a designated Presiding Officer or Hearing Examiner, may extend the period of time prescribed by these rules.
- 1.10 Public Access to Commission Records
- 1.10.1 The Secretary shall make available for public inspection upon reasonable request during the regular business hours of the Commission all of the “public records” of the Commission, as defined in **29 Del.C. §10002 (d)**, subject to any privilege or proprietary treatment of the records.
- 1.10.2 The Secretary may charge a fee to recover reasonable costs of copying.
- 1.11 Submission of Confidential, Proprietary, and Privileged Material
- 1.11.1 A person may request that the Commission accord confidential treatment to some or all of the information contained in a document. In support of such a request, such person shall attest that the information is not subject to inspection by either the public or by other parties unless an appropriate proprietary agreement is executed. There shall be a rebuttable presumption that information claimed to be confidential is confidential until ruled otherwise by the Commission. (For a listing of materials that are exempt from public disclosure, see ~~29 Del.C. §10002(f)~~ **29 Del.C. §10002(o)**).
- 1.11.2 If the claim of confidentiality is challenged by any person, ~~then the person claiming confidential treatment for information must demonstrate in a~~ that person may file a petition to the Commission that the designated information is confidential as recognized by state law. to request a ruling regarding the confidential designation. To maintain the confidential designation, the party claiming confidentiality must demonstrate that the designated information is exempt from public disclosure pursuant to 29 Del. C. § 10002(o).
- 1.11.3 The party seeking proprietary treatment shall submit for filing one copy of the document without the confidential information, with an indication that claimed confidential information has been deleted.
- 1.11.4 Upon any dispute over the confidential treatment of information, the matter shall be resolved by the Commission, designated Presiding Officer or Hearing Examiner.
- 1.11.5 The Commission, Commission Staff, and the ~~Division of Public Advocate~~ DPA shall have access to all documents for which confidential treatment has been claimed. Access to non-public information shall be made available to all other parties, including consultants retained by the Commission, Commission Staff, and the ~~Division of Public Advocate~~ DPA, upon the execution of an appropriate agreement by the parties or entry of a protective order by the Commission or designated Presiding Officer or Hearing Examiner.
- 1.11.6 Non-public information shall not be disclosed by the Commission, its Staff, the ~~Division of the Public Advocate~~ DPA, and their consultants and any party to a proprietary agreement and its consultants except as authorized by law.
- 1.12 Ex Parte Communications
- 1.12.1 No Commissioner or Commission Staff assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any party or person except upon notice to, and opportunity for, all parties to participate. This rule shall not apply to communications required for the disposition of ex parte matters as authorized by law, or to communications, not prohibited by law, by and among Commission members and Commission Staff.

17 DE Reg. 554 (11/01/13)

18 DE Reg. 160 (08/01/14)

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

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

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2.0 Hearings

2.1 Appearances

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

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

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

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

2.2 Informal Complaints and Mediation

2.2.1 An informal complaint may be made by letter, other writing, or via telephone to the ~~Division of the Public Advocate DPA~~, which shall notify the utility of the complaint. The utility shall have ten (10) business days to respond to the informal complaint. While the complaint is open, the utility shall continue to provide service to the complainant. Upon the ~~Division of the Public Advocate's DPA's~~ request, Commission Staff may provide assistance to the ~~Division of the Public Advocate DPA~~. Commission Staff may investigate informal complaints referred directly to Commission Staff; however, the ~~Division of the Public Advocate DPA~~ should be notified of the informal complaint and the resolution.

2.2.2 If the proposed resolution of the informal complaint by the Division of the Public Advocate or Commission Staff is not deemed satisfactory by the complainant or the utility, then the complainant may institute a formal complaint.

2.3 Formal Complaints

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

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

2.3.2.1 Name, mail and e-mail addresses, and daytime telephone number of the complainant;

2.3.2.2 Name of the person that is subject of the complaint;

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

2.3.2.4 Description of the relief requested.

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- 2.3.3 Formal complaints alleging violations of any matter within the Commission's jurisdiction shall be served by the Secretary either through DelaFile E-Filing or by certified mail on the person that is the subject of the complaint and direct such person to file a response within twenty (20) calendar days of the service, unless emergency relief is requested and appropriate.
- 2.3.4 Except for investigations under Rule 2.2.1, any Commission Staff investigation of an alleged violation shall be deemed a formal complaint, and the notice of investigation shall, unless otherwise ordered, be served in a like manner as a formal complaint. Notice of this investigation to the public may be given in order to elicit public input.
- 2.4 Answer to Formal Complaint
- 2.4.1 Within twenty (20) calendar days after service of a formal complaint, or such other time as the Commission may order, the respondent shall file an answer with the Commission and a certificate of service indicating service on the complainant and any other party who may have intervened. The answer shall specifically admit or deny the factual allegations in the complaint or that the party is without knowledge or information sufficient to answer the allegation. The answer should state clearly and concisely the facts and law relied upon, and set forth fully the nature of any defense.
- 2.4.2 Except where the Commission shall have waived the service and filing of an answer, a respondent who fails to file a timely answer shall be deemed in default and the Commission may thereafter enter an order granting the relief requested or take such other action as it deems appropriate.
- 2.5 Resolution of Formal Complaints
- 2.5.1 If a respondent and complainant reach an agreement on a formal complaint, then the complainant and the respondent shall execute and file with the Secretary a statement that the complaint has been resolved and the proceeding can be closed.
- 2.5.2 If a formal complaint is not resolved by agreement, the complaint shall be assigned to a Hearing Examiner to conduct a hearing and prepare a Recommended Decision for the Commission's consideration.
- 2.6 Discovery Procedures
- 2.6.1 Discovery may be conducted through written interrogatories, written data requests, requests for admissions, and or depositions. Discovery may be available to any party in proceedings before the Commission or to the Staff and Public Advocate in the investigation of any filing. No discovery is to be filed with the Commission or Hearing Examiner unless it is requested or submitted as part of a discovery dispute.
- 2.6.2 Parties should begin any discovery as soon as possible after the commencement of the proceeding and discovery should be completed prior to the hearings. Discovery may be served on a rolling basis, and responses shall be due as set forth in subsection 2.6.6, unless otherwise ordered by the designated Presiding Officer or Hearing Examiner. Leave to conduct discovery after the commencement of hearings may be granted for good cause shown.
- 2.6.3 All interrogatories or written data requests shall be numbered in sequence by the party requesting the information. Interrogatories and written data requests shall be provided in Word format. **[The party responding to interrogatories or data requests is not obligated to provide its response in Word format.]**
- 2.6.4 The Commission, designated Presiding Officer or Hearing Examiner may vary discovery provisions, in the interest of justice, and may direct the parties to employ electronic medium for the service of discovery.

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- 2.6.5 The parties are encouraged to pursue discovery through informal written or oral data requests or conferences.
- 2.6.6 In rate or other expedited cases such as Section 215 applications, applications for issuance of a certificate of public convenience and necessity, applications to abandon a previously-granted certificate of public convenience and necessity, or distribution planning matters, responses to discovery must be served no later than fifteen (15) calendar days, excluding holidays and weekends, after service of the discovery, unless otherwise directed by the Commission, the designated Presiding Officer or Hearing Examiner. In all other cases the information requested shall be provided within thirty (30) days of service, unless otherwise directed by the Commission, Presiding Officer, or designated Hearing Examiner.
- 2.6.7 If a party objects to any discovery on any grounds, then that party must notify the party seeking the information within ten (10) calendar days after service of the discovery of the objection and its grounds. Should the parties be unable to resolve any discovery dispute within seven (7) calendar days [after notification of the objection], then the party seeking the information shall file a motion to compel within five (5) business days thereafter and attach the other party's objection. The Presiding Officer or Hearing Examiner may schedule oral argument on the motion. All motions to compel must be resolved within fifteen (15) days of the filing of the motion to compel.
- 2.7 Motions
- 2.7.1 A party in any proceeding may file and serve a motion at any time, unless otherwise prohibited. A written motion shall set forth in numbered paragraphs a concise statement of the facts and law which support the motion and a specific request for relief. Responses to a motion shall be submitted seven (7) calendar days after a motion is filed. The movant may file a reply to the response no later than seven (7) calendar days after the response is filed.
- 2.7.2 The Commission, Presiding Officer or Hearing Examiner may permit oral motions to be made on the record during a hearing or conference that is transcribed.
- 2.8 Notice
- 2.8.1 Except in emergencies, notice of a formal hearing shall include the date, time and place of the hearing or hearings, a brief description of the subject matter and the manner in which the public may present its views. The Commission shall establish the appropriate public notice consistent with **26 Del.C. §102A**.
- 2.8.2 After commencement of the initial hearing, any adjournments and continuances of the hearing may be scheduled and conducted on such dates as designated by the Commission, Hearing Examiner or Presiding Officer, either on the record or in writing to the parties.
- 2.9 Petitions for Leave to Intervene
- 2.9.1 Any person, other than an original party to a proceeding or a party entitled to participate as a matter of right, must file a petition to intervene. Such petition shall set forth in numbered paragraphs the following:
- 2.9.1.1 The name, identity, mail and e-mail addresses, telephone and fax numbers of the person seeking to intervene;
- 2.9.1.2 A description of the petitioner's interest in the outcome of the proceeding;
- 2.9.1.3 A concise statement of why the petitioner's interest will not be adequately represented by the parties to the proceeding or why participation in the proceeding would be in the public interest; and

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- 2.9.1.4 A description of the relief requested.
- 2.9.2 A petition to intervene shall be filed with the Commission no later than the date specified for the filing of such petitions in the public notice, or the initial hearing if no public notice is given. Late intervention may be sought and granted for good cause shown.
- 2.9.3 The Commission may delegate to the designated Presiding Officer or Hearing Examiner the authority to grant or deny a party's intervention, subject to an interlocutory appeal pursuant to Rule 2.16.
- 2.9.4 Intervention shall be subject to such reasonable terms and conditions as the Commission or designated Presiding Officer or Hearing Examiner may prescribe.
- 2.10 Pre-hearing Conferences
 - 2.10.1 The Commission, Hearing Examiner or Presiding Officer, with or without motion, and upon written notice to all parties of record, may convene a pre-hearing conference. Each of the parties may be required to prepare a pre-hearing memorandum that addresses the following matters:
 - 2.10.1.1 Proposed resolution of the proceeding or issues;
 - 2.10.1.2 Identification of issues the party expects to pursue;
 - 2.10.1.3 Identification of witnesses the party expects to present;
 - 2.10.1.4 Status of the party's discovery; and
 - 2.10.1.5 Position on complete or partial settlement of the proceeding.
 - 2.10.2 Pre-hearing conferences may be conducted formally or informally. Proceedings at formal conferences shall be recorded by a Reporter. Agreements or stipulations by the parties and other matters resolved at informal conferences shall be reduced to writing by the Presiding Officer or Hearing Examiner, who will issue a pre-hearing memorandum. The memorandum will bind all parties, including those who, after having been duly notified, could have attended the conference but did not.
 - 2.10.3 The Hearing Examiner or Presiding Officer at such conference may, by either written or oral ruling, dispose of such procedural matters as may be necessary or appropriate to determine at that stage of the proceedings. All such rulings shall be binding upon all parties to the proceeding, subject to interlocutory appeal to the Commission and to subsequent modification for good cause shown.
- 2.11 Hearings
 - 2.11.1 Formal hearings and informal proceedings will be held before the Commission, a Commissioner appointed as Presiding Officer, or a Hearing Examiner appointed by the Commission.
 - 2.11.2 The Commission shall give notice of a hearing in a manner consistent with **26 Del.C. §102A**.
 - 2.11.3 Hearings shall be transcribed and the transcripts shall become part of the record.
 - 2.11.4 All witnesses shall present testimony that is sworn or affirmed and shall be subject to reasonable cross-examination.
- 2.12 Order of Proceeding and Burden of Proof
 - 2.12.1 The moving party shall open and close the presentation of evidence, except in those instances when the Commission, the designated Presiding Officer or Hearing Examiner determines a different presentation, such as when the evidence is peculiarly within the knowledge or control of another party.

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- 2.12.2 If a party fails to appear at a scheduled hearing, then the designated Presiding Officer or Hearing Examiner may recommend to the Commission that it enter an order ruling against the party who failed to appear.
- 2.12.3 The burden of proof shall be on the moving party, except where placed on another party by law or Commission order.
- 2.12.4 All parties to hearings, their counsel and spectators shall conduct themselves in a proper manner. Disruptive demonstrations of any kind at hearings shall not be permitted. Any disregard by parties, attorneys or other persons of the rulings of the Commission, Presiding Officer or Hearing Examiner on matters of order or procedure may be noted on the record. The Presiding Officer or Hearing Examiner may, in his or her discretion, recess or continue any hearing when the department of witnesses, spectators, news media or other persons unduly disrupts or interferes with the proper conduct of such hearing.
- 2.13 Evidence
- 2.13.1 The Commission may consider the Delaware Uniform Rules of Evidence as a guide but, in accordance with **26 Del.C. § 503** and **29 Del.C. §10125**, shall not be bound by the technical rules of evidence.
- 2.13.2 The parties are encouraged to agree upon any facts at issue, or upon the authenticity of any relevant documents. The agreement may be in writing or by oral statement made upon the hearing record. The Commission, Presiding Officer or Hearing Examiner upon reasonable notice to the parties, may require proof by record evidence of stipulated facts.
- 2.13.3 Unless otherwise ordered, parties shall file prepared statements of testimony and exhibits in rate proceedings or other proceedings where directed by the Commission or the designated Presiding Officer or Hearing Examiner. All prepared statements of testimony shall be double-spaced on pages with numbered lines and have a cover page identifying the witness, the nature of the testimony (direct, rebuttal, etc.), the sponsoring party, and the caption of the proceeding.
- 2.13.4 Exhibits shall be marked sequentially.
- 2.14 Subpoenas and Witnesses
- 2.14.1 Upon application of any party or upon the initiative of the Commission, the designated Presiding Officer or Hearing Examiner will issue subpoenas to be served as provided in **26 Del.C. §504**.
- 2.14.2 The Commission, Presiding Officer or Hearing Examiner, upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, may quash, modify, or condition the subpoena if it is demonstrated to be unreasonable or oppressive.
- 2.14.3 The Commission, designated Presiding Officer or Hearing Examiner may limit the number of witnesses or restrict evidence or its examination in the interest of justice and economy.
- 2.15 Transcripts of Hearings
- 2.15.1 An official court reporter designated by the Commission shall make an official transcript (in both public and confidential versions when necessary) of the formal hearings and such other matters as directed by the Commission, Executive Director or designated Presiding Officer or Hearing Examiner.
- 2.15.2 Parties desiring copies of the official transcript shall arrange to secure and pay for such copies from the official court reporter.

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- 2.15.3 A party's motion to correct the transcript of the record must be filed within ten (10) days after the transcript is filed in the proceeding. Any party objecting to such motion shall file an answer within five (5) days from the filing of the motion. The Commission, Presiding Officer or Hearing Examiner shall rule on the motion with or without hearing.
- 2.16 Interlocutory Appeals to the Commission
- 2.16.1 Interlocutory appeals from rulings of the Presiding Officer or Hearing Examiner during the course of a proceeding may be taken to the full Commission by any party only where extraordinary circumstances necessitate a prompt decision by the Commission to prevent substantial injustice or detriment to the public interest.
- 2.16.2 Within ~~three (3)~~ seven (7) calendar days of the entry of the ruling from which the appeal is sought, a party shall file with the Commission and serve via ~~DelaFile~~ E-Filing or by hand delivery or overnight delivery upon all the other parties to the proceeding a Petition for interlocutory review. The Petition shall set forth in numbered paragraphs, not to exceed five (5) pages in length, the following:
- 2.16.2.1 A short statement of the case;
- 2.16.2.2 A summary of the party's position; and
- 2.16.2.3 The grounds supporting interlocutory appeal, including citations to the record.
- 2.16.3 Within ~~three (3)~~ seven (7) calendar days of service of the Petition for interlocutory review, any party may file an answer limited to five (5) pages in length.
- 2.16.4 The proceeding shall continue pending Commission review of the Petition for interlocutory review unless the Presiding Officer or Hearing Examiner stays the proceeding pending Commission review.
- 2.16.5 The Commission shall determine if the Petition and any answers thereto justify interlocutory review. If interlocutory review is granted, then it will be scheduled for oral argument before the Commission at its earliest convenience or a decision will be issued based on the written submissions. If no Commission action occurs within thirty (30) days of the Petition filing, then it shall be deemed denied by operation of law.
- 2.17 Post-Hearing Briefs
- 2.17.1 The Commission, Presiding Officer or Hearing Examiner may direct the filing of post-hearing briefs or memoranda. A post-hearing brief shall contain a cover page with the caption of the proceeding, the name of the party, and the nature of the brief. The Commission or designated Presiding Officer or Hearing Examiner may, either in addition or as an alternative, direct the filing of proposed findings of fact and conclusions of law.
- 2.17.2 The Commission, or designated Presiding Officer or Hearing Examiner may specify the length of the briefs or other post-hearing submissions, and any other format guidelines, including electronic medium.
- 2.17.3 The Commission, Presiding Officer or Hearing Examiner may reject briefs or memoranda which do not conform to these rules or the rulings of the Presiding Officer or Hearing Examiner.
- 2.18 Post Hearing Procedures for Hearings Conducted by Presiding Officer or Hearing Examiner
- 2.18.1 In accordance with 29 **Del.C.** Chapter 101, upon the completion of a proceeding, the Hearing Examiner or Presiding Officer shall prepare and submit to the Commission a report and recommendations which shall include a summary of the evidence, recommended findings of fact, recommended conclusions and the reasons therefor.

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- 2.18.2 The Executive Director or Secretary shall serve a copy of the report and recommendations on all parties and by cover letter indicate when exceptions should be filed and when the matter will be scheduled for the Commission's consideration.
- 2.19 Exceptions
- 2.19.1 Any party may file with the Commission written exceptions to the findings and recommendation of the designated Presiding Officer or Hearing Examiner in numbered paragraphs that:
- 2.19.1.1 Identify each part of the Presiding Officer's or Hearing Examiner's findings and recommendations that is the subject of the exceptions.
- 2.19.1.2 Refer to the portions of the record relied upon in support of each exception;
- 2.19.1.3 Cite any authorities relied upon;
- 2.19.1.4 State all the grounds and reasons for exceptions, comments and arguments respecting the recommended decision or report and refer to the portions of any post-hearing brief or memorandum where the issue was more fully addressed; and
- 2.19.1.5 Set forth any request for oral argument.
- 2.19.2 Any argument opposing a portion of the designated Presiding Officer's or Hearing Examiner's findings and recommendation that is not raised by an exception shall be considered waived.
- 2.19.3 Exceptions shall be filed within twenty (20) calendar days of the date the findings and recommendations ~~was~~ were served on the parties, unless the parties have agreed to a reduced time period or the Executive Director or Secretary has granted a longer time period to accommodate the Commission's meeting schedule.
- 2.20 Oral Argument before the Commission
- 2.20.1 The Commission may exercise its discretion to hear argument on exceptions. Oral arguments shall be limited to a discussion of the legal or regulatory issues and a restatement of the facts in the record. No new evidence shall be presented at oral argument except by direction of the Commission, upon a motion to re-open the record.
- 2.21 Entry of Orders
- 2.21.1 The Commission, acting through a majority of the members of Commission, shall execute an Order on matters properly before it for decision, unless the law allows otherwise. The Secretary shall serve the Order on all parties to the proceeding along with a cover letter that shall establish the entry date of issuance of the Order for the purpose of determining the time period for any challenge to the Order.
- 2.22 Post-Hearing Petitions for Relief
- 2.22.1 Petition to Re-open Record. At any time after the close of the record any party desiring further hearing upon supplemental evidence may file a petition setting forth the grounds to re-open the record, a description of additional evidence to be introduced, and a statement of the reasons why such was not introduced prior to the close of the record. The petition and any answer thereto shall be referred to the designated Presiding Officer or Hearing Examiner for disposition.
- 2.22.2 Petition for Rehearing and Reconsideration. Within thirty (30) days from the entry of an Order or decision of the Commission, any party may petition for rehearing and reconsideration, which shall set forth in numbered paragraphs the grounds for rehearing and reconsideration that are different from the arguments previously made to the Commission. Other parties shall have seven (7) days to file an answer. The Commission,

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in its discretion, may grant or deny the petition without a hearing, or set a hearing thereon. The filing of a timely petition for rehearing shall suspend the finality of the order that is the subject of the petition.

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

2.23 Compliance Filings

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

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

2 DE Reg. 2162 (05/01/99)

17 DE Reg. 554 (11/01/13)

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

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

EXHIBIT “B”

**STATE OF DELAWARE
Delaware Public Service Commission**

**Rules of Practice and Procedure of the
Delaware Public Service Commission
(Non-Marked Up Version of Entire Text of the Regulation)**

26 Del. Admin. C. § 1001

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**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION
1000 General Regulations**

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

1.0 General Provisions

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

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

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

1.2 Definitions

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

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

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

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

"**E-Filing**" means all filings made by a person with the Commission utilizing the Commission's document management system available through the Commission website at <http://depsc.delaware.gov>.

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

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

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

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

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

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

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

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

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

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

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

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

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

1.3 Address of Commission and Office Hours

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

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

1.4 Commission Meetings

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

1.4.2 Notice of all meetings of the Commission shall be given at least seven (7) days in advance by a conspicuous posting of written notice at the Commission's office in Dover and such other methods as the Commission may deem appropriate. An agenda shall be posted contemporaneously with the notice, subject to revisions made up until six (6) hours in advance of the meeting. The Secretary may make the notice and agenda available through the Commission's web page.

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

1.5 Office of the Secretary

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

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

1.5.3 The Secretary shall mark the time and date of receipt or filing on each communication addressed to the Commission and on each pleading, report, exhibit,

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deposition, transcript, and order received or filed. When deemed appropriate, the Secretary shall also assign a docket number to a filing that has been received.

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

1.6 Filing of Documents

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

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

1.6.3 If E-Filing is not an available option, an email of the filing shall be provided to the service list and Secretary, unless otherwise directed by the Commission, designated Presiding Officer or Hearing Examiner. The Secretary may request additional copies when necessary.

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

1.6.5 The Commission shall provide to the DPA electronic notification of all Filings (as defined in subsection 1.7).

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

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

- 1.6.7.1 United States mail, first-class;
- 1.6.7.2 Commercial courier service;
- 1.6.7.3 Personal delivery; or
- 1.6.7.4 E-mail.

1.7 Types of Filings and General Requirements

1.7.1 Filings shall include the following:

- 1.7.1.1 Applications;
- 1.7.1.2 Petitions;
- 1.7.1.3 Formal Complaints;
- 1.7.1.4 Answers;
- 1.7.1.5 Motions;
- 1.7.1.6 Briefs;
- 1.7.1.7 Memoranda;
- 1.7.1.8 Exceptions;
- 1.7.1.9 Comments; and
- 1.7.1.10 Reports.

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- 1.7.2 All petitions and other filings that allege facts not otherwise in the record must be accompanied by a signed, sworn verification. Where the filer is a corporation or an association, the verification shall be signed by a bona fide officer thereof.
- 1.7.3 All filings must be accompanied by a signed certificate of service pursuant to Rules 1.6.5 and 1.6.6.
- 1.7.4 Except as directed by the Commission, designated Presiding Officer or Hearing Examiner, all paper filings shall be on 8 1/2 inch by 11 inch sized paper with margins of at least one inch using type size no smaller than 12 pitch font.
- 1.8 Applications
 - 1.8.1 Applications shall be in numbered paragraphs and include the following:
 - 1.8.1.1 The name, mail and e-mail addresses, telephone and fax numbers of the applicant;
 - 1.8.1.2 A description of the authorization, right, or approval sought;
 - 1.8.1.3 A description of any previous authorization or approval which will be affected;
 - 1.8.1.4 A concise recitation of the material facts to be relied upon;
 - 1.8.1.5 A citation to the statute, rule, or order which authorizes the application;
 - 1.8.1.6 Copies of all pertinent contracts, agreements, certificates, permits, tariffs, proposed tariffs, charters, by-laws, ordinances, resolutions or other writings referred to in the application, which shall be attached as exhibits. Copies of written material or orders which are of record with the Commission need not be attached to the application if reference is made to the appropriate docket and order numbers; and
 - 1.8.1.7 Any information required by rule or order for a specific type of application.
 - 1.8.2 Applications shall be initially reviewed by the Commission and upon such review, may be:
 - 1.8.2.1 Published for public comment;
 - 1.8.2.2 Approved with or without conditions;
 - 1.8.2.3 Denied;
 - 1.8.2.4 Set for evidentiary hearing; or
 - 1.8.2.5 Granted in part and denied in part.
 - 1.8.3 Applications may become the subject of an evidentiary hearing if the Commission determines that the comments or the application require a hearing.
- 1.9 Computing Time
 - 1.9.1 In computing any time period under these rules, the first day of the designated period of time shall commence the next day after the event requiring the computation of the time period. The last day of the time period shall be included, unless it falls on a Saturday, Sunday, or a legal holiday by the laws of this State or the United States, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.
 - 1.9.2 Upon good cause shown, the Commission, or a designated Presiding Officer or Hearing Examiner, may extend the period of time prescribed by these rules.
- 1.10 Public Access to Commission Records

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- 1.10.1 The Secretary shall make available for public inspection upon reasonable request during the regular business hours of the Commission all of the “public records” of the Commission, as defined in **29 Del. C. § 10002 (d)**, subject to any privilege or proprietary treatment of the records.
- 1.10.2 The Secretary may charge a fee to recover reasonable costs of copying.
- 1.11 Submission of Confidential, Proprietary, and Privileged Material
- 1.11.1 A person may request that the Commission accord confidential treatment to some or all of the information contained in a document. In support of such a request, such person shall attest that the information is not subject to inspection by either the public or by other parties unless an appropriate proprietary agreement is executed. There shall be a rebuttable presumption that information claimed to be confidential is confidential until ruled otherwise by the Commission. (For a listing of materials that are exempt from public disclosure, see **29 Del. C. § 10002(o)**).
- 1.11.2 If the claim of confidentiality is challenged by any person, that person may file a petition to the Commission to request a ruling regarding the confidential designation. To maintain the confidential designation, the party claiming confidentiality must demonstrate that the designated information is exempt from public disclosure pursuant to **29 Del. C. § 10002(o)**.
- 1.11.3 The party seeking proprietary treatment shall submit for filing one copy of the document without the confidential information, with an indication that claimed confidential information has been deleted.
- 1.11.4 Upon any dispute over the confidential treatment of information, the matter shall be resolved by the Commission, designated Presiding Officer or Hearing Examiner.
- 1.11.5 The Commission, Commission Staff, and the DPA shall have access to all documents for which confidential treatment has been claimed. Access to non-public information shall be made available to all other parties, including consultants retained by the Commission, Commission Staff, and the DPA, upon the execution of an appropriate agreement by the parties or entry of a protective order by the Commission or designated Presiding Officer or Hearing Examiner.
- 1.11.6 Non-public information shall not be disclosed by the Commission, its Staff, the DPA, and their consultants and any party to a proprietary agreement and its consultants except as authorized by law.
- 1.12 Ex Parte Communications
- 1.12.1 No Commissioner or Commission Staff assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any party or person except upon notice to, and opportunity for, all parties to participate. This rule shall not apply to communications required for the disposition of ex parte matters as authorized by law, or to communications, not prohibited by law, by and among Commission members and Commission Staff.

17 DE Reg. 554 (11/01/13)

18 DE Reg. 160 (08/01/14)

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

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

2.0 Hearings

- 2.1 Appearances

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- 2.1.1 A person may appear before the Commission by filing: i) an entry of appearance; ii) a complaint; iii) an answer; iv) a petition to intervene; v) an application; or vi) comments. An attorney, officer, or other qualified authorized agent may appear on behalf of a corporation or association, whether incorporated or not, subject to the Rules of the Supreme Court of Delaware. The Commission, Executive Director, or designated Hearing Examiner may limit the number of representatives that a party may designate to be on the service list.
- 2.1.2 Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the Commission in accordance with Rule 72 of the Rules of the Supreme Court of Delaware. A motion for such admission shall be made by a member of Delaware Bar in a form complying with the official forms of the Rules of the Delaware Supreme Court and shall be accompanied with the required fees. A separate motion for such admission must be made in each matter before the Commission. The member of the Delaware Bar moving such admission shall remain responsible for compliance with any rule or order of the Commission.
- 2.1.3 An attorney appearing before the Commission shall conform to the standards required of members of the Delaware Bar. The Commission may deny, temporarily or permanently, the privilege of appearing before it if it determines that an attorney or other qualified officer or agent has engaged in illegal, unethical, or improper behavior.
- 2.1.4 The Public Advocate may appear in any proceeding before the Commission as a party as a matter of right.
- 2.2 Informal Complaints and Mediation
- 2.2.1 An informal complaint may be made by letter, other writing, or via telephone to the DPA, which shall notify the utility of the complaint. The utility shall have ten (10) business days to respond to the informal complaint. While the complaint is open, the utility shall continue to provide service to the complainant. Upon the DPA's request, Commission Staff may provide assistance to the DPA. Commission Staff may investigate informal complaints referred directly to Commission Staff; however, the DPA should be notified of the informal complaint and the resolution.
- 2.2.2 If the proposed resolution of the informal complaint by the Division of the Public Advocate or Commission Staff is not deemed satisfactory by the complainant or the utility, then the complainant may institute a formal complaint.
- 2.3 Formal Complaints
- 2.3.1 Formal complaints must be filed within two (2) years of the alleged violation, unless good cause is shown to extend this period.
- 2.3.2 A formal complaint shall be in numbered paragraphs and include the following:
- 2.3.2.1 Name, mail and e-mail addresses, and daytime telephone number of the complainant;
 - 2.3.2.2 Name of the person that is subject of the complaint;
 - 2.3.2.3 Description of conduct, including all known facts, alleged to have violated a law, rule or order; and
 - 2.3.2.4 Description of the relief requested.
- 2.3.3 Formal complaints alleging violations of any matter within the Commission's jurisdiction shall be served by the Secretary either through E-Filing or by certified mail on the person that is the subject of the complaint and direct such person to file a response within twenty (20) calendar days of the service, unless emergency relief is requested and appropriate.

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- 2.3.4 Except for investigations under Rule 2.2.1, any Commission Staff investigation of an alleged violation shall be deemed a formal complaint, and the notice of investigation shall, unless otherwise ordered, be served in a like manner as a formal complaint. Notice of this investigation to the public may be given in order to elicit public input.
- 2.4 Answer to Formal Complaint
 - 2.4.1 Within twenty (20) calendar days after service of a formal complaint, or such other time as the Commission may order, the respondent shall file an answer with the Commission and a certificate of service indicating service on the complainant and any other party who may have intervened. The answer shall specifically admit or deny the factual allegations in the complaint or that the party is without knowledge or information sufficient to answer the allegation. The answer should state clearly and concisely the facts and law relied upon, and set forth fully the nature of any defense.
 - 2.4.2 Except where the Commission shall have waived the service and filing of an answer, a respondent who fails to file a timely answer shall be deemed in default and the Commission may thereafter enter an order granting the relief requested or take such other action as it deems appropriate.
- 2.5 Resolution of Formal Complaints
 - 2.5.1 If a respondent and complainant reach an agreement on a formal complaint, then the complainant and the respondent shall execute and file with the Secretary a statement that the complaint has been resolved and the proceeding can be closed.
 - 2.5.2 If a formal complaint is not resolved by agreement, the complaint shall be assigned to a Hearing Examiner to conduct a hearing and prepare a Recommended Decision for the Commission's consideration.
- 2.6 Discovery Procedures
 - 2.6.1 Discovery may be conducted through written interrogatories, written data requests, requests for admissions, and or depositions. Discovery may be available to any party in proceedings before the Commission or to the Staff and Public Advocate in the investigation of any filing. No discovery is to be filed with the Commission or Hearing Examiner unless it is requested or submitted as part of a discovery dispute.
 - 2.6.2 Parties should begin any discovery as soon as possible after the commencement of the proceeding and discovery should be completed prior to the hearings. Discovery may be served on a rolling basis, and responses shall be due as set forth in subsection 2.6.6, unless otherwise ordered by the designated Presiding Officer or Hearing Examiner. Leave to conduct discovery after the commencement of hearings may be granted for good cause shown.
 - 2.6.3 All interrogatories or written data requests shall be numbered in sequence by the party requesting the information. Interrogatories and written data requests shall be provided in Word format. The party responding to interrogatories or data requests is not obligated to provide its response in Word format.
 - 2.6.4 The Commission, designated Presiding Officer or Hearing Examiner may vary discovery provisions, in the interest of justice, and may direct the parties to employ electronic medium for the service of discovery.
 - 2.6.5 The parties are encouraged to pursue discovery through informal written or oral data requests or conferences.
 - 2.6.6 In rate or other expedited cases such as Section 215 applications, applications for issuance of a certificate of public convenience and necessity, applications to abandon a previously-granted certificate of public convenience and necessity, or distribution

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

2.6.7 If a party objects to any discovery on any grounds, then that party must notify the party seeking the information within ten (10) calendar days after service of the discovery of the objection and its grounds. Should the parties be unable to resolve any discovery dispute within seven (7) calendar days after notification of the objection, then the party seeking the information shall file a motion to compel within five (5) business days thereafter and attach the other party's objection. The Presiding Officer or Hearing Examiner may schedule oral argument on the motion. All motions to compel must be resolved within fifteen (15) days of the filing of the motion to compel.

2.7 Motions

2.7.1 A party in any proceeding may file and serve a motion at any time, unless otherwise prohibited. A written motion shall set forth in numbered paragraphs a concise statement of the facts and law which support the motion and a specific request for relief. Responses to a motion shall be submitted seven (7) calendar days after a motion is filed. The movant may file a reply to the response no later than seven (7) calendar days after the response is filed.

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

2.8 Notice

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

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

2.9 Petitions for Leave to Intervene

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

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

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

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

2.9.1.4 A description of the relief requested.

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

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- 2.9.3 The Commission may delegate to the designated Presiding Officer or Hearing Examiner the authority to grant or deny a party's intervention, subject to an interlocutory appeal pursuant to Rule 2.16.
- 2.9.4 Intervention shall be subject to such reasonable terms and conditions as the Commission or designated Presiding Officer or Hearing Examiner may prescribe.
- 2.10 Pre-hearing Conferences
- 2.10.1 The Commission, Hearing Examiner or Presiding Officer, with or without motion, and upon written notice to all parties of record, may convene a pre-hearing conference. Each of the parties may be required to prepare a pre-hearing memorandum that addresses the following matters:
- 2.10.1.1 Proposed resolution of the proceeding or issues;
 - 2.10.1.2 Identification of issues the party expects to pursue;
 - 2.10.1.3 Identification of witnesses the party expects to present;
 - 2.10.1.4 Status of the party's discovery; and
 - 2.10.1.5 Position on complete or partial settlement of the proceeding.
- 2.10.2 Pre-hearing conferences may be conducted formally or informally. Proceedings at formal conferences shall be recorded by a Reporter. Agreements or stipulations by the parties and other matters resolved at informal conferences shall be reduced to writing by the Presiding Officer or Hearing Examiner, who will issue a pre-hearing memorandum. The memorandum will bind all parties, including those who, after having been duly notified, could have attended the conference but did not.
- 2.10.3 The Hearing Examiner or Presiding Officer at such conference may, by either written or oral ruling, dispose of such procedural matters as may be necessary or appropriate to determine at that stage of the proceedings. All such rulings shall be binding upon all parties to the proceeding, subject to interlocutory appeal to the Commission and to subsequent modification for good cause shown.
- 2.11 Hearings
- 2.11.1 Formal hearings and informal proceedings will be held before the Commission, a Commissioner appointed as Presiding Officer, or a Hearing Examiner appointed by the Commission.
- 2.11.2 The Commission shall give notice of a hearing in a manner consistent with **26 Del. C. § 102A**.
- 2.11.3 Hearings shall be transcribed and the transcripts shall become part of the record.
- 2.11.4 All witnesses shall present testimony that is sworn or affirmed and shall be subject to reasonable cross-examination.
- 2.12 Order of Proceeding and Burden of Proof
- 2.12.1 The moving party shall open and close the presentation of evidence, except in those instances when the Commission, the designated Presiding Officer or Hearing Examiner determines a different presentation, such as when the evidence is peculiarly within the knowledge or control of another party.
- 2.12.2 If a party fails to appear at a scheduled hearing, then the designated Presiding Officer or Hearing Examiner may recommend to the Commission that it enter an order ruling against the party who failed to appear.

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- 2.12.3 The burden of proof shall be on the moving party, except where placed on another party by law or Commission order.
- 2.12.4 All parties to hearings, their counsel and spectators shall conduct themselves in a proper manner. Disruptive demonstrations of any kind at hearings shall not be permitted. Any disregard by parties, attorneys or other persons of the rulings of the Commission, Presiding Officer or Hearing Examiner on matters of order or procedure may be noted on the record. The Presiding Officer or Hearing Examiner may, in his or her discretion, recess or continue any hearing when the department of witnesses, spectators, news media or other persons unduly disrupts or interferes with the proper conduct of such hearing.
- 2.13 Evidence
 - 2.13.1 The Commission may consider the Delaware Uniform Rules of Evidence as a guide but, in accordance with **26 Del.C. § 503** and **29 Del.C. §10125**, shall not be bound by the technical rules of evidence.
 - 2.13.2 The parties are encouraged to agree upon any facts at issue, or upon the authenticity of any relevant documents. The agreement may be in writing or by oral statement made upon the hearing record. The Commission, Presiding Officer or Hearing Examiner upon reasonable notice to the parties, may require proof by record evidence of stipulated facts.
 - 2.13.3 Unless otherwise ordered, parties shall file prepared statements of testimony and exhibits in rate proceedings or other proceedings where directed by the Commission or the designated Presiding Officer or Hearing Examiner. All prepared statements of testimony shall be double-spaced on pages with numbered lines and have a cover page identifying the witness, the nature of the testimony (direct, rebuttal, etc.), the sponsoring party, and the caption of the proceeding.
 - 2.13.4 Exhibits shall be marked sequentially.
- 2.14 Subpoenas and Witnesses
 - 2.14.1 Upon application of any party or upon the initiative of the Commission, the designated Presiding Officer or Hearing Examiner will issue subpoenas to be served as provided in **26 Del.C. §504**.
 - 2.14.2 The Commission, Presiding Officer or Hearing Examiner, upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, may quash, modify, or condition the subpoena if it is demonstrated to be unreasonable or oppressive.
 - 2.14.3 The Commission, designated Presiding Officer or Hearing Examiner may limit the number of witnesses or restrict evidence or its examination in the interest of justice and economy.
- 2.15 Transcripts of Hearings
 - 2.15.1 An official court reporter designated by the Commission shall make an official transcript (in both public and confidential versions when necessary) of the formal hearings and such other matters as directed by the Commission, Executive Director or designated Presiding Officer or Hearing Examiner.
 - 2.15.2 Parties desiring copies of the official transcript shall arrange to secure and pay for such copies from the official court reporter.
 - 2.15.3 A party's motion to correct the transcript of the record must be filed within ten (10) days after the transcript is filed in the proceeding. Any party objecting to such motion

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shall file an answer within five (5) days from the filing of the motion. The Commission, Presiding Officer or Hearing Examiner shall rule on the motion with or without hearing.

2.16 Interlocutory Appeals to the Commission

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

2.16.2 Within seven (7) calendar days of the entry of the ruling from which the appeal is sought, a party shall file with the Commission and serve via E-Filing or by hand delivery or overnight delivery upon all the other parties to the proceeding a Petition for interlocutory review. The Petition shall set forth in numbered paragraphs, not to exceed five (5) pages in length, the following:

2.16.2.1 A short statement of the case;

2.16.2.2 A summary of the party's position; and

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

2.16.3 Within seven (7) calendar days of service of the Petition for interlocutory review, any party may file an answer limited to five (5) pages in length.

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

2.16.5 The Commission shall determine if the Petition and any answers thereto justify interlocutory review. If interlocutory review is granted, then it will be scheduled for oral argument before the Commission at its earliest convenience or a decision will be issued based on the written submissions. If no Commission action occurs within thirty (30) days of the Petition filing, then it shall be deemed denied by operation of law.

2.17 Post-Hearing Briefs

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

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

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

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

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

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- 2.18.2 The Executive Director or Secretary shall serve a copy of the report and recommendations on all parties and by cover letter indicate when exceptions should be filed and when the matter will be scheduled for the Commission's consideration.
- 2.19 Exceptions
 - 2.19.1 Any party may file with the Commission written exceptions to the findings and recommendation of the designated Presiding Officer or Hearing Examiner in numbered paragraphs that:
 - 2.19.1.1 Identify each part of the Presiding Officer's or Hearing Examiner's findings and recommendations that is the subject of the exceptions.
 - 2.19.1.2 Refer to the portions of the record relied upon in support of each exception;
 - 2.19.1.3 Cite any authorities relied upon;
 - 2.19.1.4 State all the grounds and reasons for exceptions, comments and arguments respecting the recommended decision or report and refer to the portions of any post-hearing brief or memorandum where the issue was more fully addressed; and
 - 2.19.1.5 Set forth any request for oral argument.
 - 2.19.2 Any argument opposing a portion of the designated Presiding Officer's or Hearing Examiner's findings and recommendation that is not raised by an exception shall be considered waived.
 - 2.19.3 Exceptions shall be filed within twenty (20) calendar days of the date the findings and recommendations were served on the parties, unless the parties have agreed to a reduced time period or the Executive Director or Secretary has granted a longer time period to accommodate the Commission's meeting schedule.
- 2.20 Oral Argument before the Commission
 - 2.20.1 The Commission may exercise its discretion to hear argument on exceptions. Oral arguments shall be limited to a discussion of the legal or regulatory issues and a restatement of the facts in the record. No new evidence shall be presented at oral argument except by direction of the Commission, upon a motion to re-open the record.
- 2.21 Entry of Orders
 - 2.21.1 The Commission, acting through a majority of the members of Commission, shall execute an Order on matters properly before it for decision, unless the law allows otherwise. The Secretary shall serve the Order on all parties to the proceeding along with a cover letter that shall establish the entry date of issuance of the Order for the purpose of determining the time period for any challenge to the Order.
- 2.22 Post-Hearing Petitions for Relief
 - 2.22.1 Petition to Re-open Record. At any time after the close of the record any party desiring further hearing upon supplemental evidence may file a petition setting forth the grounds to re-open the record, a description of additional evidence to be introduced, and a statement of the reasons why such was not introduced prior to the close of the record. The petition and any answer thereto shall be referred to the designated Presiding Officer or Hearing Examiner for disposition.
 - 2.22.2 Petition for Rehearing and Reconsideration. Within thirty (30) days from the entry of an Order or decision of the Commission, any party may petition for rehearing and reconsideration, which shall set forth in numbered paragraphs the grounds for rehearing and reconsideration that are different from the arguments previously made to the Commission. Other parties shall have seven (7) days to file an answer. The Commission,

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in its discretion, may grant or deny the petition without a hearing, or set a hearing thereon. The filing of a timely petition for rehearing shall suspend the finality of the order that is the subject of the petition.

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

2.23 Compliance Filings

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

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

2 DE Reg. 2162 (05/01/99)

17 DE Reg. 554 (11/01/13)

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

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