

BEFORE THE COMMONWEALTHY PUBLIC UTILITIES COMMISSION

RULES OF PRACTICE AND PROCEDURE

PART 1. DEFINITIONS AND GENERAL PROVISIONS

Rule 1. Definitions.

- a. "Applicant" or "Petitioner" means a party seeking approval, authority, permit or exemption or other relief.
- b. "Complainant" means a party who files a complaint.
- c. "Party" to a proceeding before the Commission means a person by or against whom a proceeding is commenced, or a person admitted by the Commission to intervene in a proceeding pursuant to these rules.
- d. "Person" means an individual, partnership, corporation, association, body politic, or commonwealth agency.
- e. "Respondent" means a party who is complained against, a party investigated or ordered to show cause.
- f. "Commission" means the Commonwealth Public Utilities Commission.
- g. "Hearing examiner" means the Commission's hearing examiner.
- h. "Application for rate change" means an application by a regulated entity to establish, abandon, modify, depart from, or change any rate, charge, tariff, or assessment which is assessed upon a utility customer.
- i. "Regulated entity" means any person regulated by the Commission, including public utilities, telecommunications companies and cable television companies, as further defined in 4 CMC § 8402.

Rule 2. Applicability and Construction of Rules.

These rules govern practice and procedure in all matters before the Commission and shall be liberally construed to secure just, economical, and expeditious determination of the issues presented.

Rule 3. Information, Documents, and Communications.

a. Information as to established practice or procedure under these rules will be furnished to any person upon application to the Commission.

b. Applications and other documents shall be in writing and shall conform to all requirements of these rules. The Commission upon reasonable request, will advise as to the form of petition, answer or other papers necessary to be filed in any docket and furnish such information from the files of the Commission as will aid in a full presentation of material facts.

c. Documents filed with the Commission shall be printed, typewritten or otherwise mechanically reproduced, shall be upon paper 8½ inches by 11 inches in size, or folded to such size, or on such forms as may be hereafter supplied by the Commission. Documents shall contain a heading with the name of the Commission, the docket number and a descriptive title of the information being filed.

d. Communications and documents shall be addressed and either mailed or hand delivered to the Commission, c/o Governor's Office, Caller Box 1007 Saipan MP or at such other address as the Commission may direct by public notice. In addition, communications and documents may be emailed to the Commission at _____.

e. No party shall have any *ex-parte* communication with either the Hearing Examiner or a commissioner regarding any substantive matter before the Commission.

f. Communications in proceedings under these rules may in the Hearing Examiner's discretion be made via email with copies transmitted to all parties and to the Commission and by telephone conference call.

Rule 4. Service of Papers.

Notices, petitions, answers and other papers or copies thereof required to be served in a proceeding may be served either personally, by mail or by email; and when a person has appeared by attorney, service upon such attorney is deemed proper service. When a paper is served, the person serving the paper shall file with the Commission proof of service, or admission of service, by the person served or his attorney, annexed to a copy of the paper served, so that the Commission may know that the paper in question has been properly served and the date of the service. Any document which is filed with the Commission in a docketed proceeding shall be served upon all parties of record and upon Commission staff.

Rule 5. Proceedings; Participation by Commission Staff.

The Commission staff, including Commission employees and consultants may in the Hearing Examiner's discretion, appear in any proceeding before the Commission and through its witnesses present testimony as to the results of its accounting, engineering and economic investigations, field studies, inspections, other technical investigations and studies. The Commission staff in any proceeding may, with Hearing Examiner's authorization, file briefs, make statements of positions, cross-examine witnesses, or otherwise upon the record make recommendations, as it believes proper and lawful, based upon the evidence presented.

Rule 6. Decisions and Transcripts.

A certified copy of the decision in a proceeding will be furnished free of charge to each party of record. Copies of transcripts and additional copies of decisions shall be furnished at such rates established from time to time by Commission order.

Rule 7. Computation of Time.

In computing a period of time prescribed or allowed by either the Hearing Examiner or the rules of the Commission in which an act is to be performed after a specific date, act or event, the day of the specific date, act or event is not included and the last day of the period is included except when it is a Saturday, Sunday or legal holiday, the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday.

PART 2. INTERVENTION

Rule 8. Petitions.

a. A person not defined herein as a complainant, respondent, protestant, applicant or petitioner, and who claims an interest in a pending proceeding, may petition in the proceeding for leave to intervene at least 5 days prior to the date set for the hearing, and the petition when filed shall show service of copies thereof upon all parties to the proceeding. A petition to intervene which is not timely filed with the Commission shall not be granted by the Commission unless the denial of the petition is shown to be detrimental to the public interest or to be likely to result in a miscarriage of justice, and unless all parties, excluding intervenors, have an adequate opportunity to file answers as hereinafter set forth and to be heard with respect thereto.

b. A petition to intervene shall set out clearly and concisely the facts supporting the petitioner's alleged right or interest, the grounds of the proposed intervention, and the position of the petitioner in the proceedings, so as fully and completely to advise the

parties and the Commission of the specific issues of fact or law to be raised or controverted.

Rule 9. Answers.

A party and Commission staff may file an answer to a timely petition to intervene on or before the date if any, set for hearing upon the petition or on and before the date set for hearing upon the merits, whichever is earlier. An adequate opportunity to file an answer to a petition to intervene, which is not timely filed, shall be afforded to any such party and the Commission staff.

Rule 10. Action by Commission.

As soon as practicable after expiration of the time for filing answer to a petition for intervention, the Hearing Examiner will grant or deny the petition in whole or in part, or if found to be appropriate may authorize limited participation. A person granted leave to intervene in whole or in part is an intervenor and shall be a party to the proceeding. The granting of a petition to intervene in whole or in part is not recognition that the intervenor may have rights to appeal from any order of the Commission entered in that proceeding, except as otherwise provided by law.

Rule 11. Participation Without Petition for Intervention.

a. A person may appear in a proceeding before the Commission in lieu of a formal petition to intervene, if there is full disclosure of the identity of the person whose appearance is to be entered; the interest of such person in the proceeding and the position intended to be taken are fully and fairly stated; and the contentions of such person will be reasonably pertinent to the issues already presented and any right to broaden the issues unduly is disclaimed.

b. An appearance under this rule entitles the person to make a statement of his position at a time during the hearing designated by the Hearing Examiner, with notice to all parties, and subject to such conditions as may be made by the Hearing Examiner; provided, however, that such person shall not be regarded as a party.

c. In addition to the right to participate under subparagraphs a] and b] above, a person may petition the Commission, not later than five days prior to a noticed hearing under 4 CMC § 8409(j) for leave to present evidence and witnesses at the hearing. Any such petition shall be reviewed, ruled upon and administered by Hearing Examiner under the standards established in said section.

d. In addition to the above participatory rights, the general public will be invited at any public hearing, under such conditions as may be established by the Hearing

Examiner, to present comments regarding the hearing subject matter. Presenters shall have no right to question any witnesses, party or the Commission.

PART 3. COMPLAINTS

Rule 12. Contents and Kinds.

a. A complaint shall be limited to matters involving alleged unlawful, unreasonable acts, practices or acts or omissions by a regulated entity in violation of law or a Commission rule or order. A complaint may be either formal or informal and may be made by a person having good or sufficient reason therefor or by the Commission on its own motion.

b. An informal complaint shall be in writing and signed by complainant, and contain a concise statement of the facts involved and the name and address of the complainant and the party complained against. The Commission will attempt to settle problems arising under an informal complaint without formal action when possible.

Rule 13. Formal Complaints; Copies and Contents.

A formal complaint shall be in writing and shall be filed with the Commission and with as many additional copies as there are parties complained against, and shall contain:

- a. The full name and post office address of the complainant.
- b. The full name and post office address of each respondent.
- c. A full, clear and reasonably certain statement of the alleged unlawful or unreasonable acts, practices or omissions concerning which complaint is made, with reference where practicable to the sections of law, order or rules of which a violation is claimed.
- d. The signature of the complainant and the name and post office address of the complainant and his attorney, if any.

Rule 13.1. Formal Complaints; Examination; Dismissal.

a. Upon the filing of a formal complaint, the Hearing Examiner shall immediately examine it to ascertain whether it states a *prima facie* case of an unlawful or unreasonable act, practice or omission of a regulated entity and conforms to these rules. If the Hearing Examiner believes that the complaint does not state a *prima facie* case or does not conform to these rules, he shall so notify the complainant or his attorney, and opportunity may be given to amend the complaint within such time, or such extension

thereof as the Hearing Examiner for good cause shown may grant, or if the complaint as amended does not state a *prima facie* case or conform to these rules, it shall be dismissed.

b. Where a complaint is found to have been groundless and filed in bad faith, in whole or in part, the Commission shall assess costs in whole or in part for investigation, defense and other associated costs, including but not limited to reasonable attorney fees borne by the regulated entity and the Commission in the review of the complaint.

Rule 13.2. Formal Complaint; Service of Copies and Notices to Answer.

If the Hearing Examiner believes that the complaint, either as originally filed or as amended, does state a *prima facie* case and conforms to these rules, he shall serve upon each respondent a notice accompanied by a copy of the complaint requiring that the matter complained of be satisfied, or that the complaint be answered, within 20 days from the date of service thereof or within such further time as the Hearing Examiner may fix upon good cause shown. However, if a motion to dismiss a complaint is served as hereinafter permitted, no answer need be made unless the Hearing Examiner denies the motion or postpones its disposition until a hearing on the merits, and in either event the answer shall be made within 20 days after notice to the respondent of the Hearing Examiner's action.

Rule 14. Formal Complaint; Respondent's Offers of Relief.

If a respondent desires to satisfy the complaint, it may submit to the Commission within the time allowed for the satisfaction or answer, a statement of the relief which it is willing to offer. On the acceptance of this offer by the complainant and approval of the Hearing Examiner, no further proceeding need be taken. If the offer of satisfaction is refused by the complainant, an answer shall be filed by the respondent within 20 days from the receipt by respondent from the Commission of notice of the refusal.

Rule 15. Formal Complaints; Motions to Dismiss and Answers.

The defense that the complainant does not have a good or sufficient reason for making a formal complaint, that the complainant is without standing to make the complaint, or that a formal complaint fails to state a *prima facie* case or otherwise fails to conform to these rules, may be raised by motion to dismiss or answer at the option of the respondent. All other defenses to the complaint shall be raised by answer. The motion to dismiss or answer, accompanied by proof of service of a copy thereof on the complainant shall be filed with the Commission. The answer shall contain a specific denial of the material allegations of the complaint controverted by respondent and also

a statement of new matters constituting an affirmative defense. If the answering party has no information or belief on the subject sufficient to enable it to answer an allegation of the complaint, it may so state in its answer and place its denial upon that ground.

Rule 16. Burden of Evidence and Proof.

In a complaint proceeding, the complainant has the burden of going forward with presentation of evidence unless otherwise ordered by the Hearing Examiner. The complainant has the burden of proof as to factual allegations relied upon as constituting the basis for the complaint and the respondent has the burden of proof with respect to affirmative defense.

Rule 17. Hearing.

The hearing process set forth in Part 7 of these Rules shall apply to complaint proceedings.

Rule 18. Remedies.

If the Commission determines as a result of any hearing under Rule 17 that a regulated entity has violated any provision of the Commonwealth Public Utilities Commission Act of 2006 or any Commission order or rule, it may impose penalties as set forth in 4 CMC § 8435[d], [e] and [f].

PART 4. APPLICATIONS FOR RATE RELIEF

Rule 19. Application.

Part 4 applies to applications by the Commonwealth Utilities Commission [CUC], and to such other regulated entities as the Commission may subsequently identify by order, to establish, abandon, modify, depart from, or change any rate, charge, tariff, or assessment, which is assessed upon a customer (*hereinafter referred to as a "change in rates"*).

Rule 20. Standard Filing Requirements ("Requirements")

a. Purpose - The Requirements are designed to assist the Commission in performing a thorough and expeditious review of an application for a change in rates.

b. Applicability - The schedules contained in these Requirements are applicable to CUC and such other regulated entities as the Commission may designate by order. Certain unique aspects of a regulated entity's business may require some schedules to be tailored to a specific type of utility. The Hearing Examiner is authorized, from time

to time, to establish and tailor schedule formats consistent with this purpose.

c. Minimum Requirements - The Requirements contain the minimum information which a regulated entity shall submit with their application for a change in rates. The schedules contained in the Requirements provide the basic information normally required to support a regulated entity's rate request. If the regulated entity believes that additional information is necessary to support its case or is proposing a position which requires a departure from the basic schedules, it should supplement the requirements as required to support its position. In addition, the Hearing Examiner may require a regulated entity to supply information to supplement these requirements during the course of the staff investigation of a specific case.

d. Waiver of Information Requirements - All information required by these requirements must be included with the application at the time of filing. The Hearing Examiner may reject any filing not complying with these requirements and require the regulated entity to refile its application. If any information required by these requirements cannot be provided or is not applicable to a regulated entity, or is considered unnecessary, within the context of the application, a written request for waiver of the specific information requirements must be submitted to the Hearing Examiner. The request for waivers should set forth the specific reasons why relief from the requirements should be granted. Waiver shall be available for a specific service change in rates, under conditions established by Hearing Examiner. The waiver must be obtained prior to filing an application for a change in rates.

e. Written Testimony - A regulated entity shall file with the application, the prepared testimony of its personnel or other expert witnesses in support of its proposal with the application. Prepared testimony should be in question and answer format, should include the qualifications of the person providing the testimony and shall contain an averment of truth and accuracy.

f. Working papers - Working papers and supporting exhibits to support the Requirements shall be available to the Commission staff at the start of the staff investigation. Working papers must be keyed to the appropriate standard filing exhibits, must be indexed, and must contain the name of the person preparing the working paper and date prepared. Working papers should be cross-indexed wherever possible to minimize duplication of data. When assumptions are made of working paper schedule amounts, narrative or other support should be included so that the reasonableness of the work paper can be reviewed. If a schedule contains a "working paper reference number" the work papers must be submitted with the application.

Rule 21. Filing Schedules Instruction.

a. Schedule A - Revenue Requirement.

A rate filing implies that a regulated entity is anticipating either that its current rate structure is insufficient to provide the cash for its operations or that the cash generated from operations will not provide sufficient cash to comply with its indenture requirements. Accordingly, the regulated entity shall summarize on Schedule A, in form as attached as Exhibits 1 (Electric) and 2 (Water and Wastewater) hereto. Schedule A will show the revenue deficiency which it anticipates will occur unless additional revenues are provided by the Commission through an increase (or change) to its rate structure.

Schedule A, and the supporting schedules hereinafter described, shall cover a three-year span, which is important as it will show the financial results under the current rate structure [historic year]; the financial results under the existing rate structure [current and forecast years]; and the financial results of operations under the proposed increase in (or redesign of) existing rates. The historic year shall be fully audited with a copy of the independent audit accompanying the filings. Schedule A shall contain a *proforma* income statement for each year, including the revenues, operating expenses, operating income, interest, depreciation, other revenues and expenses, and net income. These items shall be presented using the Uniform System of Accounts (water and wastewater) or by FERC to the extent possible (electric). In addition to the *proforma* income statements on Schedule A, a derivation of the debt service requirements, if applicable, should be clearly shown and the minimum requirement for these ratios identified.

A cash flow statement shall be provided on Schedule A to show the sources and uses of cash for each schedule year, including the forecasted periods both with and without the additional revenues sought. The cash flow statement shall begin with the cash derived from operations (net income plus depreciation and amortization) and clearly indicate any other sources or uses of cash. *Note: If one of the uses of cash is directly related to a desired level of coverage, the total amount of this cash requirement should be shown on this schedule.* Testimony should be filed in support of the requested level of coverage.

The fourth schedule column shall show the forecasted results of operations and the resultant cash flow items, should the Commission award the regulated entity with its request in full. If the additional revenue shown in this column is not the deficit indicated in the forecast year (third column), a detailed explanation must be provided. Each of the revenue, expense, coverage and cash flow items on Schedule A shall, as discussed in subparagraphs (b) through (m) below, reference a separate schedule which provides further details on these items for the schedule years. Reference to each line shall clearly identify the schedule from which the amount is tied, or reference to work papers or testimony accompanying the filing for those amounts not contained in the filing requirements.

b. Schedule B - Revenues.

The regulated entity shall provide the details deriving each revenue item shown on Schedule A for the three schedule years with the forecast year shown both with and without the requested changes. For base revenues, The regulated entity shall provide the relevant customer and sales data which was used to derive the base revenues shown on Schedule A. The derivation of any forecasted revenues should clearly show the method being used to forecast such revenues. Contained in the derivation of base revenues shall be a sub-schedule showing the sales (in CUC's case \$ and Kwh or \$ and kGal) by customer classification. The format for this information is flexible, since the regulated entity may elect to forecast revenues by specifically identifying customer, demand and energy charges (electric) or customer and volume charges (water and wastewater) rather than an average yield per customer. If the sales forecast used in the projection of base revenues has changed from the previous forecasts provided to the Commission, a copy of any new study should accompany the filing. The regulated entity shall provide the details underlying the assumptions contained in the fuel revenues shown on Schedule A, including in the case of CUC the sales and per barrel cost of oil (electric department) assumed within the filing. The regulated entity shall also provide a three-year summary of miscellaneous revenues clearly showing the components of such revenues in order to determine any underlying assumptions for the forecasted year. At the regulated entity's discretion, other revenues may be identified separately or as miscellaneous revenues.

c. Schedule C - Operating Expenses.

The regulated entity shall provide a schedule summary of operating expenses in their particular budget format, i.e., by cost center, object code or internal financial reporting formats, with sufficient detailed information in CUC's case to determine how they were translated into FERC format if required (electric). A complete operating expense budget for the forecast year should accompany the filing. If the current schedule year is being forecasted based on an existing operating budget, a variance report by cost center and object code, shall also be provided.

A separate sub-schedule, showing internal labor costs for the three schedule years shall be filed, showing the components of labor costs: regular pay, overtime, pension (both funded and unfunded), etc. and the number of employees in each schedule year. For the historic year, a utility shall provide the average and year-end number of employees. For the current and forecast schedule year, it shall provide the number of employees assumed in the budgets for those years. A description of any new budgeted (current and forecasted) positions and the total costs associated with those positions should also be provided. A schedule of non-labor O&M costs shall also be provided for each schedule year with a computation of the capitalized portion of operating expenses. For the water operations, budgets for both departments (water and

wastewater) should be provided, if expense can be separately identified. If water purchases are a component of operating costs for the water department, germane information (kGal, rate cost) should be provided on a subsidiary schedule for each contract.

d. Schedule D - Labor Expense and Position.

The regulated entity shall file a separate Schedule D addressing employees, service contracts and overtime covering each schedule year. To the degree there are positions for both the electric and water/wastewater departments, such positions should be identified and highlighted.

e. Schedule E - Debt Service.

The regulated entity shall provide for each schedule year a schedule of the complete details underlying the interest expense assumptions contained in Schedule A, including debt amounts (actual and forecasted) and interest rates. The payment schedules for each schedule year for embedded bonds in the capital structure should also be provided.

f. Schedule F - Internally Funded Construction.

The regulated entity shall provide for each schedule year a prioritized schedule of the capital improvement projects, which were or will be internally funded. For the current year, an updated report showing amounts expended and revision in costs or completion dates should also be provided. For the water and wastewater departments, purchases should be segregated between water, wastewater or common.

g. Schedule G - Working Capital.

The regulated entity shall provide for each schedule year a schedule containing a detailed calculation of working capital. For the forecast year, the computation should include a "with" and "without" rate relief scenario.

h. Schedule H - Other Cash Flow Items.

The regulated entity shall provide for each schedule year a schedule of actual or forecasted additional sources or uses of cash which may affect cash flow, such as insurance, dispute settlements, etc.

i. Schedule I - Proof of Revenues.

The regulated entity shall file a proof of revenues, which demonstrates that the

request rate change will result in the total revenue requirement of the utility, using its assumptions.

j. Schedule J - Externally Funded Construction.

The regulated entity shall provide for each schedule year, a schedule of externally funded projects, including cash flow [current and forecasted] completion dates, and expended and unexpended bond funds or other sources, such as grants.

k. Tariff Revisions.

The regulated entity shall file proposed tariff revisions, which show the requested tariff changes including any new tariffs requested for proposed new services and any textual changes for which the utility seeks Commission approval.

PART 5. CONTRACT REVIEW PROCEDURE

Rule 22. General Provisions.

The Commission shall establish and amend a procedure to review the contracts, obligations and capital divestitures of regulated entities, pursuant to its duty under 4 CMC § 8409[d] by independent order.

PART 6. INVESTIGATION AND INQUIRY

Rule 23. General Provisions.

The Commission on its own motion and in furtherance of its oversight, regulatory and investigative authority under its enabling legislation, may initiate an inquiry or investigation concerning the rates, business or operations of any regulated entity. The provisions of these rules applicable to hearings shall apply to any such investigation or inquiry.

PART 7. HEARINGS.

Rule 24. General Provisions.

a. A public hearing will be granted when required by statute, or when the Hearing Examiner may determine in a specific case.

b. Except as otherwise provided by statute, or waived by the regulated entity,

written notice of a hearing, at least two (2) weeks before the date set therefor shall be served upon all parties and such other persons as the Hearing Examiner directs, unless the Hearing Examiner determines a shorter or longer period of notice for good cause. The notice shall state the time, place and nature of the hearing and a short and simple statement of the matters to be considered. Public hearings on any change in proposed rates or charges of a regulated entity shall comply with the requirements of 4 CMC § 8418.

c. The Hearing Examiner shall conduct the hearings and shall oversee all prehearing activities.

d. A hearing before the Commission shall be made a matter of record. It is not necessary that the record be transcribed in a proceeding unless a request for a transcript be made by a party or by the Commission. A transcript shall be indexed to show the location of the testimony of each witness and the introduction of all exhibits.

Rule 25. Prehearing Conference.

a. On motion of a party or by order of the Hearing Examiner, the Hearing Examiner may conduct one or more prehearing conferences. The Hearing Examiner shall set the time and place for prehearing conferences and give reasonable written notice to all parties.

b. Prehearing conferences may deal with one or more of the following matters:

- Exploration of settlement possibilities.
- Preparation of stipulations.
- Clarification of issues.
- Rulings on identity and limitation of the number of witnesses.
- Objections to proffers of evidence.
- Order of presentation of evidence and cross-examination.
- Rulings regarding issuance of subpoenas and protective orders.
- Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.
- Any other matters as shall promote the orderly and prompt conduct of the hearing.

c. The Hearing Examiner shall issue a prehearing order incorporating the matters determined at any prehearing conference.

Rule 26. Conduct of Hearing; Disqualification of Hearing Examiner.

a. Every hearing in a contested case shall be presided over by the Hearing Examiner who shall conduct the hearing, rule on the admission and exclusion of

evidence and advise the Commission on matters of law.

b. The Hearing Examiner or any Commissioner shall voluntarily disqualify himself or herself and withdraw from any proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of the Hearing Examiner or a Commissioner by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue of whether a disqualification should be ordered shall be determined by the Commission. No Commissioner shall withdraw voluntarily or be subject to disqualification if his or her disqualification would prevent the existence of a quorum qualified to act in the particular docket.

Rule 27. Exhibits

a. Direct testimony of a witness under oath may be offered in exhibit form if 4 copies of the exhibit are filed with the Commission and a copy served upon all parties to the proceeding or their attorney of record at least 5 days in advance of the hearing, unless otherwise scheduled by the Hearing Examiner.

b. When in the circumstances of a particular proceeding it is deemed necessary or desirable, the Hearing Examiner may direct that testimony to be given upon direct examination shall be reduced to exhibit form and be served and offered in the manner hereinbefore described. A reasonable period of time shall be allowed for the preparation of such an exhibit.

c. In any case and upon request therefor, a party shall have the right, notwithstanding any provision of this rule, to have any witness on his behalf present his direct testimony orally before the Commission. In any case, a witness whose testimony is submitted in exhibit form shall be made personally available for cross-examination upon request by a party or the Commission staff. If the witness is not so made available, his testimony shall not be received in evidence.

d. To the extent that it is received in evidence, testimony in exhibit form shall be fully copied into the record and shall be accorded the same weight and sufficiency as testimony adduced through oral examination.

Rule 28. Depositions, Interrogatories, and Discoveries.

The Hearing Examiner at his discretion, either upon his own motion or for good cause shown by Commission staff or by a party to a proceeding, may issue an order to take a deposition, interrogatory or discovery. The taking and use of such deposition, interrogatory or discovery shall be in the same manner as provided by the rules of the

Commonwealth Superior Court, unless otherwise prescribed by the Hearing Examiner.

Rule 29. Initial Procedures.

a. A hearing will be opened with a concise statement of its nature and purpose. Appearances then will be entered on the record. Parties and the Commission staff may make opening statements or appropriate motions.

b. Changes in the time and place of the first session of the hearing in any proceeding will be granted only for good cause shown. Notices of change in time and place, if granted, will be made only to parties to the proceeding and to persons who have appeared or who have petitions to intervene pending before the Commission in accordance with these rules. After a hearing has been convened, an adjournment shall be in the discretion of the Hearing Examiner. The Hearing Examiner upon his own motion may change the time and place of any session.

Rule 30. Evidence; General Provisions.

a. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule, which might make improper the admission of such evidence over objection in civil actions.

b. Evidence, including records and documents in the possession of the Commission of which it desires to avail itself, shall be offered and made a part of the record in the proceeding and no other factual information or evidence shall be considered in the determination of the case, except as otherwise provided by law. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

c. Each party shall have the right to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify, and to rebut the evidence against it. If respondent does not testify in its own behalf it may be called and examined as if under cross-examination.

d. Oral evidence shall be taken only on oath or affirmation.

Rule 31. Evidence; Judicial Notice.

The Commission may take notice of judicially cognizable facts and also of general, technical scientific facts within its specialized knowledge. Parties shall be notified, either before or during the hearing or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Commission may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

Rule 32. Evidence; Documents and Exhibits

a. When evidence to be presented consists of technical matter or figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form, supplemented and explained, but not duplicated by oral testimony.

b. Exhibits of documentary character shall be typed on 1 side only on sheets not exceeding 8½ inches by 11 inches or multiples thereof with a sufficient margin for binding, preferable 1/2 inches to be left blank on the left side of each sheet. If an exhibit is in excess of 8½ wide, it shall be folded to be not more than 8 inches by 11 inches, if practicable. It is desirable that an exhibit of two or more sheets be stapled together and notation made at the top of the first sheet as to the number of sheets contained in the exhibit. An exhibit shall show at the top the docket number and provide space for the name of the witness and the number and date of the exhibit. All exhibits offered at a hearing shall be identified in a manner prescribed by the Hearing Examiner.

c. A party introducing documentary exhibits shall be prepared to furnish copies to all parties.

d. Documentary evidence may be submitted subsequent to the closing of the hearing upon stipulation of the parties.

e. Written or printed documents and maps received in evidence will not be returned to the parties except with approval of the Hearing Examiner.

Rule 33 Arguments and Briefs.

a. Oral argument may be given before the Commission at the Hearing Examiner's discretion, but shall be requested before or at the close of the hearing.

b. Briefs may be filed at the discretion of the Hearing Examiner. Briefs which

contain a statement of evidence or facts claimed to be established by evidence shall include a reference to the specific portion of the record in which such evidence may be found.

Rule 33. Subpoenas.

a. At any time in any proceeding, the Commission may order a party or witness to attend and testify orally in open hearing. At the request of the Commission staff or a party, subpoenas for attendance at a hearing shall be issued by any Commissioner. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein which shall be specified in sufficient detail.

b. The Commission, upon motion made at or before the time specified in the subpoena for compliance therewith, may:

- Quash or modify a subpoena or subpoena duces tecum if it is unreasonable or oppressive or related to irrelevant or immaterial evidence, or
- Condition denial of the motion, in the case a subpoena duces tecum, upon the advancement by the person in whose behalf the subpoena is issued, of the reasonable cost of producing the books, papers, documents or tangible things, unless otherwise provided by law.

c. A subpoena shall be issued under the seal of the Commission, shall state the title of the proceeding and shall command each person to whom it is directed to attend and comply with the subpoena at a time and place therein specified.

d. The fees and traveling expenses of witnesses shall be the same as allowed witnesses in the Commonwealth Superior Court.

Rule 34. Subpoenas; Service; Default in Compliance.

A subpoena shall be served in the manner prescribed by law for like subpoenas in civil actions in the Commonwealth Superior Court. It may be served at any place within the commonwealth. A subpoena *duces tecum* shall be served at least 4 days before the date specified for compliance. If a person fails to comply with a subpoena served upon him, or fails to attend or refuses to be sworn and testify, the Hearing Examiner may stay further proceedings until the subpoena is obeyed. If a person who so fails to obey the subpoena is a party to the proceeding, or an officer, member or employee of a party, the Hearing Examiner may strike all or any part off any pleading

of such party, or refuse to allow such party to support or oppose designated claims and defenses, or delay the proceeding or any part thereof, or take such further action as the Hearing Examiner deems appropriate under the circumstances. The Commission shall also have the enforcement remedies provided by 4 CMC § 8413.

PART 8. REOPENING AND REHEARING

Rule 36. Reopening of Hearings.

An application for reopening a hearing after final submission and prior to decision or order made by the Commission shall be by verified petition only; and an original and 4 copies shall be filed with the Commission. If the application for reopening is for the purpose of presenting further evidence, the nature and purpose of such evidence shall be briefly stated, the same shall not be merely cumulative, and good cause shall be shown for failure to produce such evidence at the original hearing. The application shall show service thereof on all other parties to the proceeding.

Rule 37. Rehearings

An application for rehearing after a decision or order of the Commission shall be by verified petition only. An original and 4 copies of the application shall be filed with the Commission within 10 days from the issuance of the Commission decision or order and notice thereof. An application for rehearing based upon claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the ground of error. An application for rehearing based upon newly discovered evidence, upon facts and circumstances arising subsequent to the hearing, or upon consequences resulting from compliance with the decision or order, shall set forth fully the matters relied upon. The application shall show service thereof on all the other parties to the proceeding.

Rule 38. Answers to Reopening and Rehearing Applications.

Within 20 days following service of an application for rehearing or for reopening a hearing, any party or Commission staff may file with the Commission an answer thereto, and in default thereof is deemed to have waived his objection to the granting of such application.

Rule 39. Proceedings Regarding Reopening and Rehearing Applications.

After due consideration of the application and answer, the Commission in its discretion, shall determine whether good and sufficient cause has been shown by applicant for rehearing or reopening. Any hearing on such applications shall be conducted in accordance with Part 7 of these Rules.

PART 10. OTHER PROVISIONS

Rule 40. Commission Expenses:

a. A regulated entity shall pay within 30 days of invoice:

- An annual charge, in amount determined by the Commission pursuant to 4 CMC § 8421(c).
- All expenses incurred by the Commission, including, without limitation consultant, counsel hearing examiner and recorder fees and expenses in any Commission docket or proceeding pertaining to the entity, which were not contemplated or considered in determining the annual charge.

b. The Commission shall by order establish a schedule of fees and expenses for proceeding transcripts, document copies and other like charges.

c. The Commission may, by order, establish such uniform penalties, as it may deem appropriate, for a regulated entity's failure to comply with this Rule 40.

