

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

In re: Amendments to Rules of Practices and Procedures of the Louisiana Public Service Commission .

(Decided at the November 28, 1995 Business and Executive Session)

At the November 28, 1995 meeting of the Louisiana Public Service Commission, proposed revisions to the Rules of Practices and Procedures of the Louisiana Public Service Commission were considered. The proposed revisions confirm the distinction between adjudicatory and rule making functions previously recognized by the Commission and the inapplicability of the adjudicatory rules to rule making proceedings; deletes a specific listing of Hearing Division Support Staff, providing organizational flexibility to the Secretary without the need for formal Commission action; recognizes the Executive Secretary's right and authority to appoint ad hoc ALJ's; confirms the Commission's right to solicit information from the parties to a proceeding regardless of whether that party requested an opportunity to present oral arguments; confirms the Commission's right and authority to consider any ruling of an ALJ, regardless of whether an interlocutory appeal has been filed; and also recognizes the Commission's right to consider any issue before an ALJ itself. Following debate, the Commission approved the proposed revisions to the Rules of Practices and Procedures of the Louisiana Public Service Commission.

Accordingly, it is ORDERED that the rules which are attached hereto as Attachment A shall be incorporated into the Rules of Practices and Procedures of the Louisiana Public Service Commission.

IT IS FURTHER ORDERED that the rules provided in Attachment A to this Order shall become effective immediately upon the date of issuance of this order.

**BY ORDER OF THE COMMISSION**  
**BATON ROUGE, LOUISIANA**  
December 22, 1995

/S/ JOHN F. SCHWEGMANN  
DISTRICT I  
CHAIRMAN JOHN F. SCHWEGMANN

/S/ IRMA MUSE DIXON  
DISTRICT III  
VICE-CHAIRMAN, IRMA MUSE DIXON

/S/ C. DALE SITTIG  
DISTRICT IV  
COMMISSIONER C. DALE SITTIG

/S/ DON OWEN  
DISTRICT V  
COMMISSIONER, DON OWEN

/S/ LAWRENCE C. ST. BLANC  
SECRETARY

/S/ KATHLEEN B. BLANCO  
DISTRICT II  
COMMISSIONER, KATHLEEN B. BLANCO

ATTACHMENT AA@  
TO GENERAL ORDER DATED DECEMBER 22, 1995  
OF THE LOUISIANA PUBLIC SERVICE COMMISSION

**PART XI. ADMINISTRATIVE HEARINGS DIVISION**

**PREAMBLE:**

To assist the Commission in fulfilling its adjudicatory functions, and in order to provide for a fair and orderly procedure for the docketing and hearing of cases before the Commission, there is established by this Part an Administrative Hearings Division within the Commission, with functions and responsibilities as described herein. To the extent any Rule within this section conflicts with provisions elsewhere in the Rules of Practice and Procedure or in previously issued Orders of the Commission addressing procedural matters, the Rule within this Part shall govern.

**Rule 54: Roles and Authority of the Administrative Hearings Division.**

The Administrative Hearings Division shall conduct hearings and make necessary recommendations and rulings in all matter invoking the adjudicatory jurisdiction of the Commission for which a hearing is required. The Administrative Hearings Division may also be called upon to assist the Commission in conducting hearings in matters invoking the legislative or executive jurisdiction of the Commission. In ratemaking proceedings the Executive Secretary shall certify all disputed Adjudicative facts@ or other issues rendering it appropriate for the Commission to hold an evidentiary hearing to the Administrative Hearings Division for hearing.

The Administrative Hearings Division shall consist of administrative law judges, including any person designated as an administrative law judge, ad hoc, by the Executive Secretary and such support staff as are assigned to that division.

**Rule 55: Authority Delegated by the Commission to the Administrative Law Judges.**

In conducting adjudications the administrative law judge shall have the authority to:

- (a) Administer oaths.
- (b) Issue subpoenas for the attendance of witnesses at depositions and hearings.
- (c) Issue subpoenas for the production of documents and other evidence at depositions and hearings.
- (d) Enforce subpoenas whenever any person summoned neglects or refuses to obey such summons, or to produce documents or other evidence, or to give testimony, as required.
- (e) Schedule status conferences and prehearing conferences for the purpose of defining issues, setting hearing dates and prehearing deadlines, and for addressing such matters as the administrative law judge deems appropriate.
- (f) Schedule and regulate the course of hearings, maintain decorum, and exclude from hearings any person engaging in contemptuous conduct or otherwise disrupting the proceedings.
- (g) Grant filing extensions and hearing continuances.
- (h) Compel discovery and impose sanctions for failure to comply with discovery rules and orders.
- (I) Examine witnesses.
- (j) Make evidentiary rulings, including the qualification of expert witnesses.
- (k) Accept testimony and exhibits into evidence.
- (l) Take official notice of (1) proceedings, determinations, orders, or other actions before or by the Commission; (2) judicially cognizable facts not subject to reasonable dispute in that they are generally known within the jurisdiction of the Commission or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned; and (3) generally recognized technical or scientific facts within the Commission=s specialized knowledge. Parties shall be provided reasonable notice either before or during the hearing of the material noticed, including any staff memoranda or data, and they shall afforded an opportunity to contest the material so noticed.
- (m) Direct the presentation or submission into the record of evidence or testimony not otherwise presented or submitted by any party to the proceeding, subject to objection by any party.
- (n) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law or application of law to facts upon which a ruling is required.
- (o) Require the filing of proposed findings of fact and conclusions of law.
- (p) Receive offers of proof.
- (q) Submit written recommendations to the Commissioners concerning all final determinations in proceedings, including determinations on the merits and determinations on exceptions and motions which result in the involuntary dismissal of a proceeding before the Commission.
- (r) Render interlocutory rulings upon all motions, exceptions, and other preliminary matters filed by the parties.
- (s) Prepare orders.

**Rule 56: Procedure for Review of Recommendations Regarding Final Determinations.**

- (a) Except as is provided in subparts (b),(c), and (d) of this Rule, the preparation and review procedure for a recommendation regarding a final determination in a proceeding is as follows:
- (1) At the conclusion of the taking of any evidence and testimony on the matter to be decided and after consideration of the evidence and testimony and any pertinent authority, the administrative law judge shall prepare a written *proposed* recommendation of final determination. Unless the nature of the proceeding necessitates a different format and substance, the *proposed* recommendation shall contain a summary of the allegations or application, pertinent legal authority and factual background, a review of the procedural history of the matter, findings of fact, conclusions of law and the recommended determination. The *proposed* recommendation shall be filed into the record, with copies contemporaneously mailed by the Administrative Hearings Division to all parties of record.
  - (2) Within fifteen (15) days of the filing of the *proposed* recommendation, any party may file into the record an exception to the *proposed* recommendation. The exception shall be in the form of a legal memorandum, and shall contain a statement of errors, pertinent legal authority, and references to the record in the proceeding, as appropriate. The exception shall not make reference to evidence of any kind which is not already a part of the record, except that a party may argue as to evidence tendered but excluded (offers of proof).
  - (3) If no party timely files an exception to the *proposed* recommendation, the recommendation shall become a *final* recommendation and shall be immediately forwarded to the Commissioners for consideration and for vote.
  - (4) If an exception to the *proposed* recommendation is timely filed, any party wishing to oppose the exception shall have fifteen (15) days from the filing of the exception in which to file an opposition memoranda into the record. The opposition memoranda shall address the statement of errors contained in the exception and shall include pertinent legal authority and references to the record in the proceeding, as appropriate. The opposition memoranda shall not include references to evidence of any kind which is not already a part of the record, except that a party may argue as to evidence tendered but excluded (offers of proof).
  - (5) At the conclusion of the time period for filing opposition memoranda to timely filed exceptions, no further briefing shall be allowed, except with the consent of the administrative law judge or by vote of the Commissioners.
  - (6) After reviewing any timely filed exception and opposition memoranda, the administrative law judge shall prepare a *final* recommendation. The *final* recommendation shall contain the elements described in subpart (a)(1) of this Rule.
  - (7) At the time the *final* recommendation is filed into the record, copies of the *final* recommendation shall be forwarded to the Commissioners and mailed to all parties of record.
  - (8) Upon submission of the *final* recommendation is filed into the record, copies of the *final* recommendation shall be forwarded to the Secretary for placement on the Commission meeting agenda for vote by the Commissioners.
  - (9) Within five (5) working days of the *final* recommendation, any party may request the opportunity to present oral argument at the Commission meeting. The request shall be in writing and shall be filed directly with the Secretary. The requesting party shall also mail a copy of the request to each Commissioner and to each party of record and shall file a copy of the request in the record of the proceeding. The request shall state the reasons why oral argument should be permitted and shall be considered a request on behalf of all parties to the proceeding. The Secretary shall place the request for oral argument on the Commission meeting agenda along with the *final* recommendation and shall notify the parties of its placement on the agenda. The request for oral argument shall be granted only upon a majority vote of the Commissioners at the Commission meeting, in response to a timely filed, written request. In granting a request for oral argument, the Commissioners may direct either that argument be presented during the course of that Commission meeting or at a subsequent Commission meeting. A party may waive its opportunity to present oral argument, either expressly or through its failure to appear and participate in the oral argument. Nothing in this subpart shall be construed as precluding any

Commissioner from soliciting information, positions or recommendations or asking questions of any party appearing at a Commission meeting, regardless of whether a request for oral argument has been filed.

- (10) In the event the Commissioners affirm the *final* recommendation of the administrative law judge, the recommendation shall be incorporated into the Order issued by the Commission. The Order shall be prepared by the administrative law judge who submitted the final recommendation affirmed by the Commission.
- (11) In the event the Commissioners overrule the *final* recommendation of the administrative law judge, the resulting Order shall be prepared by the Legal Division of the Commission.
- (b) Upon motion to the administrative law judge and upon a showing of good cause, or upon stipulation of all parties to the proceeding, the administrative law judge may extend or shorten the deadlines for the procedures described in subpart(a) of this Rule or, otherwise, may, extend, abbreviate or omit portions of those procedures.
- (c) To the extent the Commission has delegated to the Commission staff the handling of certain uncontested matters, the procedures within subpart (a) of this Rule shall not apply.
- (d) Except at the discretion of the administrative law judge, the procedures contained within subpart (a) of this Rule shall not apply to a motion to dismiss jointly filed by all parties of record, a motion to dismiss with prejudice filed by the party who instituted the proceeding, or a motion to dismiss without prejudice filed by a party who instituted the proceeding but prior to the filing of any other party=s filing of a responsive pleading. Upon the filing of such a motion to dismiss, the administrative law judge may forego all recommendation procedures and prepare an appropriate order of dismissal for issuance by the Commission.

**Rule 57: Review of Interlocutory Rulings.**

Every ruling of an administrative law judge shall be subject to review by the Commission upon its own motion. The Commission may also, upon its own motion, assert its original and primary jurisdiction and consider any question or issue pending before an Administrative Law Judge.

Any party may apply for immediate review of an interlocutory ruling, which may be obtained only upon a showing of irreparable injury, as defined in Louisiana jurisprudence. The procedure for such a request is as follows:

- (1) Within ten (10) days of the issuance of the interlocutory ruling, a party may file with the Administrative Hearings Division a motion for immediate review of the ruling. The motion must be accompanied by a legal memorandum which specifies the alleged errors in the ruling, with supporting legal authority, and sets out the grounds and authority for the moving party=s claim that the interlocutory ruling will result in irreparable injury.
- (2) Any party opposing the motion for immediate review shall have ten (10) days from the date on which the motion was filed to file an opposition memorandum.
- (3) At the conclusion of the deadline for filing opposition memoranda, the Administrative Hearings Division shall forward to the Commissioners the motion for immediate review, any memoranda filed in support of or in opposition to the motion, a copy or transcript of the interlocutory ruling being questioned, and any written comment offered by the administrative law judge, and shall forward the motion for immediate review to the Secretary for placement on the Commission meeting agenda.
- (4) Pending a ruling by the Commissioners on the motion for immediate review, the administrative law judge, may, upon motion, grant a stay of the interlocutory ruling upon a finding of good cause. The mere filing of a motion for immediate review shall not stay the interlocutory ruling and shall not interrupt, delay, or in any manner interfere with the proceedings in the docketed matter.
- (5) The administrative law judge may treat the filing of the motion for immediate review as a motion for reconsideration of the interlocutory ruling and may withdraw or modify the interlocutory ruling in response to the motion.

**Rule 58: Commission a Party to Every Docketed Proceeding.**

The Commission shall be considered a party to every proceeding docketed in the Administrative Hearings Division, without the necessity of filing intervention pleadings.

**Rule 59: Docketing of Matters in the Administrative Hearings Division.**

Following initial receipt and review by the Secretary (in accordance with Rule 3 and Rule 14) of a pleading which seeks to institute an adjudicatory proceeding before the Commission for which a hearing is required, the Secretary shall forward the pleadings to the Administrative Hearings Division for docketing. Notice of docketing shall be provided to all parties of record.

**Rule 60: Filing of Pleadings with the Administrative Hearings Division.**

After a matter has been docketed with the Administrative Hearings Division, all subsequently filed pleadings are to be filed directly with the Administrative Hearings Division. Pleadings mailed to the Administrative Hearings Division should be addressed as follows:

Louisiana Public Service Commission  
Administrative Hearings Division  
Post Office Box 91154  
Baton Rouge, Louisiana 70821-9154

In conjunction with its filing of an initial pleading in a proceeding, each party shall designate one Acontact@ person who shall serve as the party=s agent for receiving mailings and other communications from the Administrative Hearings Division and other parties of record in the proceeding and shall provide the Acontact@ person=s mailing address, telephone number and fax number. Any party filing a pleading with the Administrative Hearings Division shall serve a copy of the pleading upon all parties of record, including the Louisiana Public Service Commission Legal Division, in accordance with Rule 7(c).

**Rule 61: Form of Pleading and Number of Copies to Be Filed.**

Parties are to submit the original plus one copy of each pleading to be filed with the Administrative Hearings Division. Parties may not submit pleadings for filing by fax or other electronic means, except at the direction of the administrative law judge. Parties requesting the return of file-stamped copies of a pleading must provide the additional copies, as well as stamped, self-addressed envelope for that purpose.

**Rule 62: Pleadings Requesting Service by the Commission.**

Any party filing a pleading for which service by the Commission is requested, and any party requesting the issuance of subpoenas, must identify, in writing, each individual to be served or the agent for service of process for each entity to be served, as well as an accurate address for service.

**PART XII. DISCOVERY**

**Rule 63: Forms of Discovery Permitted/Limitations.**

Formal discovery shall be conducted in adjudicatory proceedings in accordance with the Louisiana Code of Civil Procedure but may be limited at the discretion of the administrative law judge. Requests for admission are specifically disallowed, unless propounded with the prior express consent of the administrative law judge.

**Rule 64: Filing of Discovery Requests and Responses.**

- (a) Discovery requests and responses shall not be filed with the Administrative Hearings Division, and the originals of the requests and responses shall be maintained by the parties, who shall serve as the official custodians of those documents, unless:
- (1) Filing is ordered by the administrative law judge or the Commissioners;
  - (2) A party files a motion to compel discovery or a motion to strike discovery requests, in which case the moving party shall file the pertinent discovery pleadings with the motion;
  - (3) The requests and responses are to be used or placed into evidence at any hearing in the proceeding or with regard to any motion or exception filed in the proceeding.

(b) Notices of depositions shall be filed into the record.

**Rule 65: Service of Discovery On All Parties.**

Any party propounding or responding to discovery requests shall mail copies of the requests or written responses to all parties of record.

**PART XIII. ABANDONMENT OF PROCEEDINGS.**

**Rule 66: Abandonment After One Year.**

Unless otherwise ordered by the Commission, an adjudicatory proceeding instituted before the Commission is deemed abandoned when the parties fail to take any step in its prosecution or defense for a period of one year.