

R746. Public Service Commission, Administration.

R746-1. Public Service Commission Administrative Procedures Act Rule.

R746-1-101. Title and Organization.

This rule R746-1 is:

(1) known as the "Public Service Commission Administrative Procedures Act Rule"; and

(2) organized into the following Parts:

(a) Part 100: General provisions;

(b) Part 200: Complaints and pleadings;

(c) Part 300: Motions;

(d) Part 400: Pre-hearing briefs, comments, and testimony;

(e) Part 500: Discovery;

(f) Part 600: Confidential and highly confidential information;

(g) Part 700: Hearings; and

(h) Part 800: Post-hearing proceedings.

R746-1-102. Authority.

This rule is adopted under Utah Code § 54-1-1.

R746-1-103. Definitions.

(1) "Applicant" means any person:

(a) applying for a license, right, or authority; or

(b) requesting agency action from the Commission.

(2) "Commission" is defined at Utah Code § 54-2-1(4).

(3) "Complainant" means a person that files a complaint with the Commission, pursuant to R746-1-201.

(4) "Division" means the Division of Public Utilities, State of Utah Department of Commerce.

(5) "Intervenor" means a person that:

(a) files with the Commission a petition for intervention in a pending matter; and

(b) receives Commission approval to participate as a party.

(6) "Office" means the Office of Consumer Services, State of Utah Department of Commerce.

(7) "Party" means a person that is entitled to participate in a proceeding, pursuant to Utah Code § 63G-4-103(1)(f).

(8) "Person" is defined at Utah Code § 63G-4-103(1)(g).

(9) "Presiding officer" is defined at Utah Code § 63G-4-103(1)(h).

(10)(a) "Proceeding" or "adjudicative proceeding" means an action before the Commission, initiated by:

(i) a notice of agency action, pursuant to Utah Code § 63G-4-201(1)(a);

(ii) a request for agency action, pursuant to Utah Code § 63G-4-201(1)(b); or

(iii) a filing made pursuant to Utah Code § 54-7-12(5).

(b) "Proceeding" does not include:

(i) an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; or

(ii) rulemaking pursuant to Utah Code Title 63G Chapter 3, the Utah Administrative Rulemaking Act.

(11) "Respondent" means a person:

(a) against whom a notice of agency action or request for agency action is directed; or

(b) required, or permitted by statute, to respond to an application, petition, or other request for agency action.

(12) "Responsive pleading" means any rejoinder to an initial pleading, including:

(a) an answer;

(b) a protest or opposition; or

(c) other similar filing.

R746-1-104. Designation of Adjudicative Proceedings.

(1) The following requests for agency action shall be adjudicated as informal proceedings:

(a) an unopposed application for a certificate of public convenience and necessity;

(b) a request for acknowledgment or approval of a telecommunications utility's name change; and

(c) an unopposed request for acknowledgment or approval of a merger, acquisition, or similar organizational restructuring that does not alter or affect the services provided by a telecommunications utility.

(2) A request for agency action not listed in Subsection R746-1-104(1) shall be adjudicated as a formal proceeding.

R746-1-105. Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and case law interpreting these rules are persuasive authority in Commission adjudications unless otherwise provided by:

(1) Title 63G, Chapter 4, Administrative Procedures Act;

(2) Utah Administrative Code R746; or

(3) an order of the Commission.

R746-1-106. Computation of Time.

(1) Unless Subsection R746-1-106(2) applies, periods of time in Commission proceedings shall be computed pursuant to Utah Code §§ 68-3-7 and 68-3-8.

(2) Subsection R746-1-106(1) is superseded by any

conflicting:

- (a) order of the Commission;
- (b) statute; or
- (c) rule.

R746-1-107. Representation of Parties.

A party may:

- (1) be represented by:
 - (a) an attorney licensed to practice in Utah; or
 - (b) an attorney licensed in a foreign state, pursuant to § 14-801 of the Utah Supreme Court Rules of Professional Practice, which is incorporated by reference;
- (2) represent oneself individually; or
- (3) if not an individual, represent itself through an officer or employee.

R746-1-108. Intervention.

A person that wishes to intervene in a proceeding shall comply with Utah Code § 63G-4-207.

R746-1-109. Deviation from Rules.

- (1) A party may move the Commission to deviate from a specified rule.
- (2) The party making the motion to deviate has the burden to demonstrate that the rule imposes a hardship that outweighs the benefit(s) of the rule.

R746-1-201. Complaints.

A person that files a complaint with the Commission shall demonstrate:

- (1) that the person has attempted to work with the utility to resolve the complaint;
- (2) that the Division has reviewed the complaint and determined that Commission action is warranted; and
- (3) that the complaint has been served on the public utility, pursuant to R746-1-203(1)(f).

R746-1-202. Title of Pleadings.

- (1) This Subsection R746-1-202 does not apply to complaints.
- (2) A person that files a pleading shall include the following information in the title:
 - (a)(i) name and bar number of attorney preparing the pleading; or
 - (ii) if no attorney is involved, name of the person signing the pleading;
 - (b) address, telephone number, and e-mail address of the person identified in Subsection R746-1-202(2)(a);

- (c) nature of the request;
- (d) description of the action or relief requested;
- (e) type of pleading; and
- (f) docket number, if known.

R746-1-203. Form and Content of Complete Filing.

(1) In order to be considered complete, a filing other than a complaint shall:

(a) be presented as a functional and searchable spreadsheet document, portable document file (PDF), or other electronic word processing document, as applicable;

(b) unless Subsection R746-1-203(5) applies, be filed electronically:

(i) by e-mail to psc@utah.gov, if the filing is strictly non-confidential; or

(ii) through the Commission's secure file transfer protocol (SFTP) server;

(c) be identified by an electronic file name that includes the following information, as applicable, in the following order:

(i) docket number;

(ii) identification of the type of filing, such as:

(A) testimony, specified as:

(I) confidential or redacted; and

(II) direct, rebuttal, surrebuttal, etc.;

(B) exhibit or workpaper:

(I) including exhibit or workpaper number; and

(II) specified as confidential or redacted;

(C) motion, including description; or

(D) response or reply to specified motion;

(iii) last name of the person providing the content of the filing; and

(iv) name of the party on whose behalf the filing is made;

(d) be type-written in 12-point font, double spaced, and in a format that, if printed, would require 8-1/2 x 11-inch paper;

(e) per Utah Rule of Civil Procedure 11, be signed by an individual who has read the filing and believes that it is supported in fact and in law, which individual may include:

(i) the party;

(ii) the party's counsel; or

(iii) other authorized representative of the party; and

(f) include a certificate of service:

(i) stating that a true and correct copy of the filing was served upon each of the parties;

(ii) identifying the manner of service; and

(iii) identifying the date of service.

(2)(a) An electronic filing that does not comply with R746-1-203(1)(c) shall be rejected and, if re-filed, may be deemed

untimely.

(b) In creating an electronic filing name pursuant to R746-1-203(1)(c), a person may use abbreviations that are reasonably calculated to convey the required information.

(3) An initial pleading shall:

(a) comply with Utah Code § 63G-4-201(3)(a); and

(b) if a statute, rule, regulation, or other authority requires the Commission to act within a specific time period, include a specific section setting forth:

(i) a reference or citation to the statute, rule, regulation, or other authority;

(ii) the applicable time period; and

(iii) the expiration date of the applicable time period, identified by day, month, and year.

(4) A person that is requested by the Commission or by another party to provide a paper copy of a filing shall do so within a reasonable time.

(5)(a) A person that is unable to use e-mail or the Commission's SFTP server for electronic filing may file by paper or by disc if:

(i) the filing is accompanied by a motion for permission to deviate from the electronic filing rule; and

(ii) if submitted on paper, the filing is typed in a font of at least 12 points and double-spaced on 8-1/2 by 11-inch paper.

(b) If the SFTP server is unable to receive a document on the day it is due, the filing shall be deemed timely if uploaded to the SFTP server during business hours of the first business day on which the SFTP server again becomes available.

R746-1-204. Effective date of filing.

(1) If filed with the Commission during regular business hours, a complete filing is effective on the date filed.

(2) If filed with the Commission after regular business hours, a complete filing is effective on the next business day.

R746-1-205. Amendment of Complaint or Initial Pleading.

(1) A party that has filed a complete and effective complaint or initial pleading may amend the filing without leave of the Commission at any time before:

(a) a responsive pleading has been filed; or

(b) the time for filing a responsive pleading has expired.

(2) If a defect in a complaint or initial pleading does not affect the substantial rights of the parties, it does not require amendment.

(3) After a responsive pleading has been filed or the deadline for filing a responsive pleading has passed, a party may amend an initial pleading only with leave from the Commission.

R746-1-206. Responsive Pleadings.

A response to a complaint or an initial pleading shall be filed in accordance with Utah Code § 63G-4-204, unless the Commission establishes a different response deadline.

R746-1-301. Motions.

Unless otherwise ordered by the Commission, briefing on a motion shall be as follows:

(1) Any response shall be filed within 15 days of the service date of the motion.

(2) Any reply shall be filed within 10 days of the service date of the response.

R746-1-401. Pre-hearing Briefs, Comments, and Testimony - General Requirements.

(1) Parties to a docket shall file briefs, comments or testimony, as applicable, as required in the Commission's scheduling order.

(2) Pre-hearing filings and accompanying exhibits shall:

(a) utilize a sequential line numbering system; and

(b) comply with Subsection R746-1-203(1).

(3) If a filing includes any calculation, the calculation shall be provided in the original format with formulas intact.

R746-1-402. Pre-hearing Testimony - Inclusion in Record.

(1)(a) A party may move the Commission to accept pre-hearing testimony into evidence without having it read under oath.

(b) Any such motion shall be subject to objection and argument.

(2) Pre-hearing testimony that is entered into evidence shall be subject to cross-examination.

R746-1-501. Discovery.

(1) Parties shall attempt to complete informal discovery through written requests for information and records (data requests).

(2) If a party considers informal discovery pursuant to Subsection R746-1-501(1) to be insufficient, the party may move the Commission for formal discovery according to Rules 26 through 37 of the Utah Rules of Civil Procedure, with the following exceptions and modifications:

(a)(i) If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initial pleading.

(ii) If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the

responsive pleading.

(b) Rule 26(a)(4) of the Utah Rules of Civil Procedure, which restricts discovery, shall not apply. The opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable unless a protective order is issued by the Commission.

(c) Discovery requests, regardless of how denominated, discovery responses, and transcripts of depositions shall not be filed with the Commission.

(d) Any reference in an applicable Rule of Civil Procedure to "the court" shall be considered a reference to the Commission.

(3) On request from a party or on the presiding officer's own initiative, the presiding officer may include in a scheduling order deadlines for:

(a) filing a petition for intervention;

(b) objecting to a discovery request;

(c) responding to a discovery request;

(d) serving disclosures of evidence to be presented at hearing;

(e) completing discovery;

(f) filing dispositive and evidentiary motions; and

(g) filing pre-hearing testimony.

(4) An intervenor shall serve any request for discovery on the other parties to the docket.

(5) A party that requires a subpoena for discovery purposes shall:

(a) present the subpoena to the Commission for signature; and

(b) serve the subpoena pursuant to Utah Rule of Civil Procedure 45(b)(1).

R746-1-601. Identification of Information Claimed to Be Confidential or Highly Confidential in Commission Proceedings.

(1) A party to a docket may request that information provided to another party or included in the record be treated as confidential by:

(a) placing the information on a document with yellow background;

(b) highlighting the information with shading, text boxes, borders, asterisks, or other conspicuous formatting; and

(c) including the following designation, as applicable, on each page containing confidential information:

(i) "CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULES 746-1-602 and 603"; or

(ii) "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".

(2)(a) A person that files or is requested to provide information that the person considers to be highly confidential

shall promptly:

(i) negotiate with the other parties mutually agreeable protections; or

(ii) petition the Commission for an order granting additional protective measures.

(b) The petitioning party shall set forth:

(i) the particular basis for the claim;

(ii) the specific, additional protective measures requested, which may include restricting or prohibiting specific individuals from accessing information; and

(iii) the reasonableness of the requested, additional protection.

(c) Any other party may oppose the petition or propose alternative protective measures.

(d) If the Commission grants a petition for additional protective measures, the party providing the highly confidential information shall:

(i) place the information on a document with a pink background;

(ii) highlight the information with shading, text boxes, borders, asterisks, or other conspicuous formatting; and

(iii) include the following designation, as applicable, on each page containing highly confidential information:

(A) "HIGHLY CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULES 746-1-602 and 603"; or

(B) "HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".

(3) A person that files with the Commission a document containing confidential or highly confidential information shall:

(a) file a redacted version for public access; and

(b) ensure that the line numbering and formatting in the redacted version match, as closely as practicable, that appearing in the unredacted version.

746-1-602. Persons Entitled to Review Confidential and Highly Confidential Information.

(1)(a) The following persons are entitled to receive and review confidential and highly confidential information:

(i) Commission, including counsel and staff;

(ii) Division, including counsel and staff; and

(iii) Office, including counsel and staff.

(b)(i) Except as provided in Subsection 746-1-602(2), the following persons are entitled to receive and review confidential and highly confidential information after signing a non-disclosure agreement:

(A) counsel or other designated representative of each party, including, to the extent reasonably necessary, the counsel's or representative's:

(I) paralegals;
(II) administrative assistants; and
(III) clerical staff;
(B) persons designated by a party as an expert witness,
including, to the extent reasonably necessary, the experts':
(I) administrative assistants; and
(II) clerical staff;
(C) persons employed by the parties, to the extent
reasonably necessary; and
(D) any other person that signs a non-disclosure agreement.
(ii) Subsection R746-1-602(1)(b)(i) is superseded by any
conflicting:
(A) agreement of the parties; or
(B) order of the Commission.
(c) The non-disclosure agreement required under Subsection
746-1-602(1)(b) shall read substantially as follows: "I have
reviewed Public Service Commission of Utah Rule 746-1-603 and/or
the Protective Order entered by the Public Service Commission of
Utah in Docket No. XX-XXX-XX with respect to the review and use of
confidential information and agree to comply with the terms and
conditions of the rule and/or Protective Order."
(2)(a) A person, including an expert who is employed or
retained by a party, may not receive confidential or highly
confidential information if, in performing the person's normal job
functions, the person could use the information to the competitive
disadvantage of the person providing the information.
(b) The party that wishes to restrict or deny access to
confidential or highly confidential information under Subsection
R746-1-602(2)(a) has the burden to demonstrate the competitive
disadvantage claimed.

R746-1-603. Treatment of Confidential and Highly Confidential Information.

(1) A person that receives confidential or highly
confidential information may not use or disclose the information
except:
(a) for the purpose of the Commission proceeding in which it
was obtained, provided that the use within the Commission
proceeding maintains confidentiality; or
(b) outside of a Commission proceeding, as required by law,
provided that the person complies with Subsection R746-1-603(2).
(2) A person that is required by law to disclose
confidential or highly confidential information outside of a
Commission proceeding shall, prior to providing the information:
(a) give notice of the disclosure requirement, by telephone
and in writing, to the person that first provided the information;
and

(b) cooperate with the person that first provided the information to obtain a protective order or similar assurance of confidentiality.

(3) Notes made pertaining to, or as the result of, a review of confidential or highly confidential information shall be treated according to this Subsection R746-1-603.

R746-1-604. Challenge to Claim of Confidentiality.

(1) A party may challenge another party's claim of confidentiality by filing a motion for an in camera proceeding.

(2) If granted, the record of an in camera proceeding shall be marked, as applicable, substantially as follows:

(a) "CONFIDENTIAL--SUBJECT TO RULE 746-1-604"; or

(b) "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER".

(3)(a) An in camera hearing may be transcribed only upon:

(i) agreement of the parties; or

(ii) order of the Commission.

(b) Any transcription of an in camera hearing shall be separately bound, segregated, and withheld from any person not a party to the in camera hearing.

(4) Following an in camera hearing, if the Commission issues an order overturning a party's claim of confidentiality, the order:

(a) shall be subject to Utah Code § 63G-4-301; and

(b) shall go into effect no sooner than 10 days after issuance.

R746-1-605 Receipt of Confidential and Highly Confidential Information into Evidence.

(1)(a) A party that considers it necessary to discuss confidential information in a filing shall, to the extent possible, refer to the information by title, exhibit number, or other non-confidential description.

(b) A party that is not able to comply with Subsection R746-1-605(1)(a) shall:

(i) place the confidential information in a separate section of the filing;

(ii) mark the separate section "CONFIDENTIAL"; and

(iii) ensure that the confidential section of the filing is served only on:

(A) counsel of record or other designated representative of the party (one copy each) who has signed a nondisclosure agreement;

(B) counsel for the Division; and

(C) counsel for the Office.

(2)(a) A party that proposes to use another person's confidential or highly confidential information as evidence in a

Commission proceeding shall arrange with the owner of the information circumstances that will allow the information to be used while keeping trade secrets and proprietary material confidential.

(b) If efforts taken pursuant to Subsection R746-1-605(2)(a) fail, the owner of the information shall move the Commission to segregate and withhold any portion of the record that would reveal trade secrets or proprietary information.

(c) If the Commission grants a motion to segregate and withhold a record, the moving party shall mark the record, as applicable, substantially as follows:

(i) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF UTAH RULE 746-1-605"; or

(ii) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER".

(3) A party that considers it necessary to discuss a segregated confidential record during a Commission proceeding shall move the Commission for an in camera hearing.

(4)(a) Other than the Division, the Office, and counsel for a party, a person that obtains another person's confidential or highly confidential information during a proceeding shall, within 30 days after the docket is concluded:

(i) return to the owner of the information all records in the party's possession that reference the confidential information; or

(ii) certify that the information has been:

(A) turned over, in its entirety, to the person's counsel; or

(B) destroyed.

(b) The Division, the Office, and counsel for a party may retain confidential information as part of notes, workpapers, and other documents:

(i) constituting work product; and

(ii) subject to privilege or other applicable disclosure restriction.

R746-1-606. Commission Compliance with the Utah Government Records Access and Management Act.

(1) A party's marking information as confidential or highly confidential does not ensure a classification of "private," "protected," or "classified" under the Utah Government Records Access and Management Act, Utah Code Title 63G, Chapter 2.

(2) A party whose confidential or highly confidential information is requested pursuant to Utah Code Title 63, Chapter 2. shall collaborate with the Commission to determine how the information should be classified under the statute.

R746-1-701. Witness Subpoenas.

(1) A party that wishes to subpoena a witness for hearing shall:

(a) file the subpoena with the presiding officer at least 20 days prior to hearing;

(b) serve the subpoena on the witness pursuant to Utah Rule of Civil Procedure 45(b)(1); and

(c) pay the witness the statutory mileage and witness fees, unless the witness waives payment.

(2) Failure to obey the Commission's subpoena shall be considered contempt pursuant to Utah Code § 54-7-23(2).

R746-1-702. Continuance of Scheduled Hearing.

(1) A person requesting to continue a scheduled hearing shall demonstrate that:

(a) the request is supported by good cause; or

(b) all parties stipulate to the continuance.

(2) Unless otherwise ordered by the presiding officer, any objection to a request for continuance shall be filed no later than five days following the date on which the request is filed and served.

R746-1-703. Closing a Hearing.

A party that wishes to close a hearing shall comply with Utah Code § 54-3-21(4).

R746-1-704. Public Witness Evidence.

A person not a party to a docket may:

(1) file comments prior to hearing; or

(2) appear during any public witness portion of a hearing to provide unsworn testimony.

R746-1-705. Exhibits Offered at Hearing.

(1) Parties shall:

(a) mark their exhibits before hearing;

(b) provide the original of each exhibit to the court reporter, if applicable; and

(c) provide a copy of each exhibit to:

(i) the presiding officer; and

(ii) each party.

(2) If an exhibit offered at hearing contains information claimed to be confidential or highly confidential, the party offering the exhibit shall comply with Subsection R746-1-605.

R746-1-801. Post-hearing Proceedings.

(1) Proceedings on review shall be in accordance with Utah Code § 54-7-15.

(2) A person that challenges a finding of fact in a proceeding brought under Subsection R746-1-801(1) shall marshal the record evidence that supports the challenged finding, as set forth in *State v. Nielsen*, 2014 UT 10, ¶¶ 33-44, 326 P.3d 645.

(3) Following the filing of a petition pursuant to Subsection R746-1-801(1), opposing parties may file responsive memoranda or pleadings within 15 days.

(4) A petition for rehearing pursuant to Utah Code § 54-7-15 is required in order for a party to exhaust its administrative remedies prior to appeal.

KEY: public utilities, administrative proceedings, electronic filing, confidential information

Date of Enactment or Last Substantive Amendment:

Notice of Continuation:

Authorizing, and Implemented or Interpreted Law: 54-1-1; 54-1-3; 54-1-6; 54-3-21; 54-4-1; 54-4-1.5; 54-4-2; 54-7-17; 63G-4