

1 R746. Public Service Commission, Administration.

2
3 ~~R746-100. Practice and Procedures Governing Formal Hearings~~Public
4 Service Commission Administrative Procedures Act Rule.

5
6 ~~R746-1-1001. General Provisions and Authorization~~Title and
7 Organization.

8 This rule R746-1 is:

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

11 (2) organized into the following Parts:

12 (a) Part 100: General provisions;

13 (b) Part 200: Complaints and pleadings;

14 (c) Part 300: Motions;

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

16 (e) Part 500: Discovery;

17 (f) Part 600: Confidential information;

18 (g) Part 700: Hearings;

19 (h) Part 900: Post-hearing proceedings.

20
21 **R746-1-102. Authority.**

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

23 ~~E. Authorization This rule is authorized pursuant to Section~~
24 ~~54-1-1 which requires the Commission to exercise its rulemaking~~
25 ~~powers and Subsection 54-1-2.5 which establishes the requirements~~
26 ~~for Commission procedure, including Hearings, Practice and~~
27 ~~Procedure, Chapter 7 of Title 54.~~

28
29 **R746-1-10300-2. Definitions.**

30 (1) "Applicant" is a party means any person:

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

32 (b) requesting agency action from the Commission.

33 (2) "Commission" is the Public Service Commission of Utah.

34 ~~In appropriate context, it may include administrative law judge or~~
35 ~~presiding officer designated by the Commission~~defined at Utah Code
36 § 54-2-1(3).

37 (3) "Complainant" is means a person who complains to the
38 Commission of an act or omission of a person in violation of law,
39 the rules, or an order of the Commissionfiles a complaint with the
40 Commission, pursuant to R746-1-201.

41 ~~D. "Consumer complaint" is a complaint of a retail customer~~
42 ~~against a public utility.~~

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

45 **R746-100-3. Pleadings.**

46 ~~A. Pleadings Enumerated Applications, petitions,~~
47 ~~complaints, orders to show cause; and other traditional initiatory~~

48 ~~pleadings may be filed with the Commission. Traditional pleadings~~
49 ~~will be considered requests for agency action, pursuant to Section~~
50 ~~63C-4-201, concerning adjudicative proceedings.~~

51 ~~1. The following filings are not requests for agency action~~
52 ~~or responses, pursuant to Sections 63C-4-201 and 63C-4-204:~~

53 ~~a. motions, oppositions, and similar filings in existing~~
54 ~~Commission proceedings;~~

55 ~~b. informational filings which do not request or require~~
56 ~~affirmative action, such as Commission approval.~~

57 (5)(a) "Initial pleading" means a request for agency action,
58 which includes:

59 (i) an application;

60 (ii) a petition;

61 (iii) an order to show cause; and

62 (iv) any other filing reasonably calculated to initiate an
63 adjudicative proceeding.

64 (b) "Initial pleading" does not include:

65 (i) a complaint;

66 (ii) a motion or similar filing in a docket; or

67 (iii) an informational filing that does not request or
68 require Commission action.

69 ~~F. "Ex parte communication" means an oral or written~~
70 ~~communication with a member of the Commission, administrative law~~
71 ~~judge, or Commission employee who is, or may be reasonably~~
72 ~~expected to be, involved in the decision making process relative~~
73 ~~to the merits of a matter under adjudication unless notice and an~~
74 ~~opportunity to be heard are given to each party. It shall not,~~
75 ~~however, include a request for a status report on a proceeding~~
76 ~~covered by these rules.~~

77 ~~G. "Formal proceeding" is a proceeding before the~~
78 ~~Commission not designated informal by rule, pursuant to Section~~
79 ~~63C-4-202.~~

80 ~~H. "Informal proceeding" is a proceeding so designated by~~
81 ~~the Commission.~~

82 (6)J. "Interested person" is a person who may be affected by
83 a proceeding before the Commission, but who does not seek
84 intervention. An interested person may not participate in the
85 proceedings except as a public witness, but shall receive copies
86 of notices and orders in the proceeding means a person who requests
87 to be placed on the service list for a docket.

88 ~~Q. "Public witness" is a person expressing interest in an issue~~
89 ~~before the Commission but not entitled or not wishing to~~
90 ~~participate as a party.~~

91 (7) "Intervener" is means a person who:

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

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

95 ~~is permitted to intervene in a proceeding before the Commission.~~

96 (8) "Office" ismeans the Office of Consumer Services, State
97 of Utah Department of Commerce.

98 (9) "Party" is a participant in a proceeding defined by
99 Subsection means a person who is entitled to participate in a
100 proceeding, pursuant to Utah Code § 63G-4-103(1)(f).

101 (10) "Person" means an individual, corporation, partnership,
102 association, governmental subdivision, or governmental agencyis
103 defined at Utah Code § 54-2-2.

104 (11) "Petitioner" ismeans a person seeking relief from the
105 Commission other than the issuance of a license, right, or
106 authority.

107 (12) "Presiding officer" is a person conducting an
108 adjudicative hearing, pursuant to Subsection 63G 4 103(1)(h)(i),
109 and may be the entire Commission, one or more commissioners acting
110 on the Commission's behalf, or an administrative law judge,
111 presiding officer, or hearing officer appointed by the Commission.
112 It may also include the Secretary of the Commission when
113 performing duties identified in Section 54-1-7defined at Utah Code
114 § 63G-4-103(1)(h).

115 (13)(a) "Proceeding" or "adjudicative proceeding" ismeans an
116 action before the Commission, initiated either by a notice of
117 agency action or request for agency action, pursuant to Section
118 Utah Code § 63G-4-201.

119 (b) "Proceeding" does not include:—It is not

120 (i) an informal or preliminary inquiry or investigation
121 undertaken by the Commission to determine whether a proceeding is
122 warranted; nor

123 (ii) is it a rulemaking action pursuant to Title 63G, Chapter
124 3, the Utah Administrative Rulemaking ActUtah Code § 63G-3-1 et
125 seq.

126 (14) "Respondent" ismeans a person:

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

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

131 (15) "Responsive pleading" means any rejoinder to an initial
132 pleading, including:

133 (a) an answer;

134 (b) a protest or opposition; or

135 (c) other similar filingtraditional responsive pleadings may
136 be filed with the Commission and will be considered responses,
137 subject to the requirements of Section 63G-4-204.

138

139 **R746-1-104. Designation of Adjudicative Proceedings.**

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

- 142 (a) a complaint;
143 (b) an unopposed application for a certificate of public
144 convenience and necessity;
145 (c) a request for acknowledgment or approval of a
146 telecommunications utility's name change; and
147 (d) a request for acknowledgment or approval of a merger,
148 acquisition, or similar organizational restructuring that does not
149 alter or affect the services provided by a telecommunications
150 utility.

151 (2) A request for agency action not listed in this
152 Subsection 104(1) shall be adjudicated as a formal proceeding.
153 ~~A. Procedure Governed -- Sections 1 through 14 of this rule~~
154 ~~shall govern the formal hearing procedures before the Public~~
155 ~~Service Commission of Utah, Sections 15 and 16 shall govern~~
156 ~~rulemaking proceedings before the Commission.~~
157 ~~B. Consumer Complaints -- Consumer complaints may be converted to~~
158 ~~informal proceedings, pursuant to Section 63G-4-202.~~

159

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

161 The Utah Rules of Civil Procedure and related case law are
162 persuasive authority in Commission adjudications unless otherwise
163 provided by:

- 164 (1) Title 63G, Chapter 4, Administrative Procedures Act; or
165 (2) Utah Administrative code R746 et seq.

166 ~~C. No Provision in Rules -- In situations for which there is no~~
167 ~~provision in these rules, the Utah Rules of Civil Procedure shall~~
168 ~~govern, unless the Commission considers them to be unworkable or~~
169 ~~inappropriate.~~

170 ~~D. Words Denoting Number and Gender -- In interpreting these~~
171 ~~rules, unless the context indicates otherwise, the singular~~
172 ~~includes the plural, the plural includes the singular, the present~~
173 ~~or perfect tenses include future tenses, and the words of one~~
174 ~~gender include the other gender. Headings are for convenience~~
175 ~~only, and they shall not be used in construing any meaning.~~

176

177 **R746-1-106. Computation of Time.**

178 Periods of time in Commission proceedings shall:

179 (1) ~~The time within which an act shall be done shall be~~
180 ~~computed by~~ Unless this Subsection 106(2) applies, period of time
181 in Commission proceedings shall:

182 (a) ~~excluding~~ the first day of the act, event or default
183 from which the time begins to run; and

184 (b) ~~including~~ the last day unless it is Saturday, Sunday,
185 or legal holiday, in which case the period runs until the end of
186 the next day that is not a Saturday, Sunday, or legal holiday.

187 (2) This Subsection 106(1) is superseded by any conflicting:

188 (a) order of the Commission;

189 (b) statute; or
190 (c) rule.

191

192 **R746-1-107. Representation of Parties.**

193 ~~A. Taking Appearances — Parties shall enter their appearances~~
194 ~~at the beginning of a hearing or when designated by the presiding~~
195 ~~officer by giving their names and addresses and stating their~~
196 ~~positions or interests in the proceeding. Parties shall, in~~
197 ~~addition, fill out and submit to the Commission an appearance~~
198 ~~slip, furnished by the Commission.~~

199 ~~A party~~B. Representation of Parties — Parties may:

200 (1) be represented by:

201 (a) an attorney licensed to practice in Utah; or

202 (b) an attorney licensed in a foreign state, pursuant to §

203 14-801 of the Utah Supreme Court rules of Professional Practice,

204 which is incorporated by reference when joined of record by an

205 attorney licensed in Utah; may also represent parties before the

206 Commission. Upon motion, reasonable notice to each party, and

207 opportunity to be heard, the Commission may allow an attorney

208 licensed in a foreign state to represent a party in an individual

209 matter based upon a showing that local representation would impose

210 an unreasonable financial or other hardship upon the party. The

211 Commission may, if it finds an irresolvable conflict of interest,

212 preclude an attorney or firm of attorneys, from representing more

213 than one party in a proceeding.

214 (2) represent oneself individually; or who is a party to a

215 proceeding, or

216 (3) if not an individual, represent itself through an

217 officer or employee of a party, may represent the principal's

218 interests in the proceeding.

219

220 **R746-1-108. Intervention.**

221 ~~Intervention — Persons wishing~~ A person who wishes to

222 ~~intervene in a proceeding for any purpose, including opposition to~~

223 ~~proposed agency action or a request for agency action filed by a~~

224 ~~party to a proceeding, shall do so in conformance~~ comply with

225 Section Utah Code § 63G-4-207.

226

227 **R746-109. Deviation from Procedural Rules.**

228 (1) A party may move t~~The Commission [may order deviation]~~to
229 deviate from a specified procedural rule.

230 (2) The party making the motion to deviate has the burden to

231 demonstrate upon notice, opportunity to be heard and a showing

232 that the rule imposes an undue hardship which~~that~~ outweighs the

233 benefit(s) of the rule.

234

235 **R746-1-201. H. Consumer Complaints.**

236 (1) A person may file with the Commission a complaint
237 against a public utility if the consumer has first:

238 (a) attempted to resolve the complaint with the utility's
239 customer relations department; and

240 (b) reported the complaint to the Division for
241 investigation.

242 (2) To file a complaint, a person shall:

243 (a) provide a concise and legible account of the facts and
244 circumstances on the form provided by the Division; and

245 (b) evidence having served the complaint on the public
246 utility, pursuant to R746-1-203(2)(b).

247 ~~1. Alternative dispute resolution, mediation procedures --~~
248 ~~Before a proceeding on a consumer complaint is initiated before~~
249 ~~the Commission, the Commission shall try to resolve the matter~~
250 ~~through referral first to the customer relations department, if~~
251 ~~any, of the public utility complained of and then to the Division~~
252 ~~for investigation and mediation. Only after these resolution~~
253 ~~efforts have failed will the Commission entertain a proceeding on~~
254 ~~the matter.~~

255 ~~2. Request for agency action -- Persons requesting Commission~~
256 ~~action shall be required to file a complaint in writing,~~
257 ~~requesting agency action. The Commission shall not act on~~
258 ~~illegible or incomplete complaints and shall return those~~
259 ~~complaints to the complainant with instructions for correction or~~
260 ~~completion.~~

261 ~~3. The Division of Public Utilities may participate in a~~
262 ~~consumer complaint proceeding as determined by the Division or as~~
263 ~~requested by the Commission.~~

264

265 **R746-1-202[00-3]. Title of Pleadings.**

266 ~~B. Docket Number and Title --~~

267 ~~1. Docket number -- Upon the filing of an initiatory~~
268 ~~pleading, or upon initiation of a generic proceeding, the~~
269 ~~Commission shall assign a docket number to the proceeding which~~
270 ~~shall consist of the year in which the pleading was filed, a code~~
271 ~~identifying the public utility appearing as applicant, petitioner,~~
272 ~~or respondent, or generic code designation and another number~~
273 ~~showing its numerical position among the filings involving the~~
274 ~~utility or generic proceeding filed during the year.~~

275 ~~2. Headings and titles -- Pleadings shall bear a heading~~
276 ~~substantially as follows:]~~

277 A person who files a pleading shall include the following
278 information in the title:

279 (1)(a) name of the attorney preparing the pleading; or

280 (b) if no attorney is involved, name of the person signing
281 the pleading;

282 (2) address and telephone number of the person identified in

- 283 this Subsection 202(1);
 284 (3) nature of the request;
 285 (4) description of the action or relief requested;
 286 (5) type of pleading; and
 287 (6) docket number, if known.

288
 289

TABLE

290
 291 ~~Name of Attorney preparing or Signer of Pleading~~
 292 ~~Address~~
 293 ~~Telephone Number~~

294
 295 ~~BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH~~
 296

297
 298 ~~In the Matter of the (nature) Type of pleading~~
 299 ~~of request) for (description)~~
 300 ~~of action or relief requested))~~
 301 ~~_____) Docket number (if known)~~
 302 ~~_____)~~
 303 ~~_____)~~
 304

305
 306
 307 **R746-1-203. Form of Complete Pleading Filing.**

308 In order to be considered complete, a filing other than a
 309 complaint shall conform to the following requirements.

310 (1) The filing ~~pleading~~ shall be filed in both paper and
 311 electronic formats.

312 (a) The paper format shall be:

313 (i) double-spaced on 8-1/2 by 11-inch paper;

314 (ii) typed ~~and~~ in a font of at least 12 points; and

315 (iii) if longer than five pages, printed on double-sided and
 316 three-hole-punched paper.

317 (b) The electronic format shall be:

318 (i) presented as an functional and searchable electronic
 319 word processing or spreadsheet document, as applicable, that is
 320 substantially the same as the paper version filed;

321 (ii) filed by:

322 (A) e-mail or;

323 (B) compact disc; and

324 (iii) identified by an electronic file name that includes:

325 (A) the name of the person making the filing; and

326 (B) the type of filing.

327 (2) The filing shall:

328 (a) be signed, as applicable, by:

329 (i) the party;

- 330 (ii) the party's counsel; or
331 (iii) other authorized representative of the party; and
332 (b) include a certificate of service:
333 (i) stating that a true and correct copy of the filing was
334 served upon each of the parties;
335 (ii) identifying the manner of service; and
336 (iii) identifying the date of service.

337 ~~D. Certificate of Service -- a Certificate of Service must be~~
338 ~~attached to all pleadings filed with the Commission, certifying~~
339 ~~that a true and correct copy of the pleading was served upon each~~
340 ~~of the parties in the manner and on the date specified. A filing~~
341 ~~is not complete without this certificate of service.~~

342 ~~G. Signing of Pleadings -- Pleadings shall be signed by the~~
343 ~~party, or by the party's attorney or other authorized~~
344 ~~representative if the party is represented by an attorney or other~~
345 ~~authorized representative, and shall show the signer's address.~~
346 ~~The signature shall be considered a certification by the signer~~
347 ~~that he has read the pleading and that, to the best of his~~
348 ~~knowledge and belief, there is good ground to support it.~~

349 ~~E. Pleadings Containing Confidential and Highly Confidential~~
350 ~~Information --~~

351 ~~2. Pleadings shall be presented for filing on paper 8 1/2 x 11~~
352 ~~inches, shall include the docket number, if known, and shall be~~
353 ~~dated and time stamped upon receipt by the Commission.~~

354 ~~3. Pleadings also shall be presented as an electronic word~~
355 ~~processing document that is substantially the same as the paper~~
356 ~~version filed, and may be transmitted electronically to the e-mail~~
357 ~~address the Commission designates for such purposes or presented~~
358 ~~in electronic media (i.e., compact disc (CD)), using a Commission-~~
359 ~~approved format.~~

360 ~~5. Pleadings over five pages shall be double-sided and three-~~
361 ~~hole punched.~~

362

363 **R746-1-204. Effective date of filing.**

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

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

368 ~~6. A filing is not complete until the original and all required~~
369 ~~copies -- both paper and electronic -- are provided to the~~
370 ~~Commission in the form described. If an electronic document is~~
371 ~~filed in Portable Document Format (PDF) and PDF is not the format~~
372 ~~of the filing party's source document:~~

373 ~~a. the electronic document shall also be provided in its~~
374 ~~original format; and~~

375 ~~b. the PDF document shall include footnote references~~
376 ~~describing the name and location of the source document in the~~

377 ~~filed electronic media.~~

378 1. ~~Pleadings, including all accompanying documents,~~
379 ~~containing information claimed to be confidential or highly~~
380 ~~confidential, as described in R746-100-16, shall be filed in~~
381 ~~accordance with R746-100-3(C) and shall conform to the following~~
382 ~~additional requirements:~~

383 a. ~~The paper version of a pleading containing~~
384 ~~confidential information shall be filed on yellow paper with the~~
385 ~~confidential portion of the pleading denoted by shading,~~
386 ~~highlighting, or other readily identifiable means. Both the paper~~
387 ~~and the electronic versions presented for filing shall be~~
388 ~~designated confidential in accordance with R746-100-16(A)(1)(b).~~

389 b. ~~The paper version of a pleading containing highly~~
390 ~~confidential information shall be filed on pink paper with the~~
391 ~~highly confidential portions of the pleadings denoted by shading,~~
392 ~~highlighting, or other readily identifiable means. Both the paper~~
393 ~~and electronic versions presented for filing shall be designated~~
394 ~~highly confidential in accordance with R746-100-16(A)(1)(g).~~

395 e. ~~A non confidential version shall also be filed, in~~
396 ~~both paper and electronic form, from which all confidential and~~
397 ~~highly confidential information must be redacted. All copies of~~
398 ~~this version shall be clearly labeled as "Non Confidential~~
399 ~~Redacted Version."~~

400

401 **R746-1-205. Content of Initial Pleading.** ~~Pleadings filed with the~~
402 ~~Commission An initial pleading shall include the following~~
403 ~~information, to the extent it is known and applicable:~~

404 (1) the reference numbers, docket numbers, or other
405 identifying symbols of relevant tariffs, rates, schedules,
406 contracts, applications, rules, or similar matter or material;

407 (2)(a) the name of each participant for whom the filing is
408 made; or

409 (b) if the filing is made for a group of participants, the
410 name of the group, ~~if the name of each member of the group is set~~
411 ~~forth in a previously filed document which is identified in the~~
412 ~~filing being made;~~

413 (3) if a statute, rule, regulation, or other authority
414 requires the Commission to act within a specific time period ~~for a~~
415 ~~matter at issue,~~ a specific section of the pleading:

416 (a) located after the heading or caption;

417 (b) entitled "Proceeding Time Period"; and

418 (c) setting forth:

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

421 (ii) the applicable time period; and

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

424 (4) the specific authorization or relief sought;
425 (5) copies of, or references to, tariff or rate sheets
426 relevant to the pleading;
427 (6) the relevant facts, if not set forth in a previously
428 filed document that is identified within the filing being made;
429 ~~the name and address of each person against whom the complaint is~~
430 ~~directed;~~
431 (7) the position taken by the person filing the pleading,
432 including the basis in fact and law for the position; and
433 (8) the name, address, and telephone number of an individual
434 who, with respect to a matter contained in the filing, represents
435 the person for whom the filing is made; ~~and~~
436 ~~— (9) additional information required to be included by~~
437 ~~Section 63G-4-201, concerning commencement of adjudicative~~
438 ~~proceedings, or other statute, rule, or order.~~
439

440 **R746-1-206. Amendment of Complaint or Initial Pleading.**

441 (1) A party that has filed a complete and effective
442 complaint or initial pleading may amend the filing. ~~Amendments~~
443 ~~to Pleadings — The Commission may allow pleadings to be amended~~
444 ~~or corrected at any time. Initiatory pleadings may be amended~~
445 ~~without leave of the Commission at any time before:~~

446 (a) a responsive pleading has been filed; or
447 (b) the time for filing the pleading has expired.

448 (2) If a defect in a pleading does not affect the
449 substantial rights of the parties, it does not require amendment.
450

451 **Required Public Notice.** ~~— When applying for original authority or~~
452 ~~rate increase, the party seeking authority or requesting~~
453 ~~Commission action shall publish notice of the filing or action~~
454 ~~requested in the form and within the times as the Commission may~~
455 ~~order and in a newspaper of general circulation in the area of the~~
456 ~~state in which the parties most likely to be interested are~~
457 ~~located.~~
458

459 **R746-1-207. K. Responsive Pleadings.** ~~—~~

460 1. A response to a pleading or consumer complaint Responsive
461 pleadings to applications, petitions, or requests for agency
462 action shall be filed in accordance with Section Utah Code § 63G-
463 4-204 unless the Commission establishes a different response
464 deadline.

465 ~~2. Response and reply pleadings may be filed to pleadings other~~
466 ~~than applications, petitions or requests for agency action.~~
467

468 **R746-1-301. Motions.** ~~— Motions may be submitted for the~~
469 ~~Commission's decision on either written or oral argument, and the~~
470 ~~filing of affidavits in support or contravention of the motion is~~

471 ~~permitted. If oral argument is sought, the party seeking oral~~
472 ~~argument shall arrange a hearing date with the secretary of the~~
473 ~~Commission and provide at least five days written notice to~~
474 ~~affected parties, unless the Commission determines a shorter time~~
475 ~~period is needed. Motions directed toward initiatory pleadings~~
476 ~~shall be filed before a responsive pleading is due~~

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

479 (1) Any response shall be filed within 30 days of the
480 service date of the motion.

481 (2) Any reply shall be filed within 15 days of the service
482 date of the response.

483 ~~; otherwise objections shall be raised in responsive pleadings.~~
484 ~~Motions directed toward responsive pleadings shall be filed within~~
485 ~~ten days of the service of the responsive pleading.~~

486 ~~Response or reply pleadings to other than applications, petitions~~
487 ~~or requests for agency action shall be filed within 15 calendar~~
488 ~~days and 10 calendar days, respectively, of the service date of~~
489 ~~the pleading or document to which the response or reply is~~
490 ~~addressed. Absent a response or reply, the Commission may presume~~
491 ~~that there is no opposition.~~

492

493 **~~R746-100-4. Filing and Service.~~**

494 ~~A. Filing of Pleadings -- Pleadings shall be filed with the~~
495 ~~Commission in the format described in R746-100-3(C), and the~~
496 ~~number of original and paper copies shall be as specified at~~
497 ~~<http://www.psc.utah.gov/filingrequirements.html>.~~

498 ~~B. Notice -- Notice shall be given in conformance with Section~~
499 ~~63G-4-201.~~

500 ~~D. Times for Filing -- Responsive pleadings to requests for~~
501 ~~agency action shall be filed with the Commission and served upon~~
502 ~~opposing parties within 30 days after service of the request for~~
503 ~~agency action or notice of request for agency action, which ever~~
504 ~~was first received.~~

505

506 **~~R746-100-5. Participation.~~**

507 ~~Parties to a proceeding before the Commission, as defined in~~
508 ~~Section 63G-4-103, may participate in a proceeding including the~~
509 ~~right to present evidence, cross-examine witnesses, make argument,~~
510 ~~written and oral, submit motions, and otherwise participate as~~
511 ~~determined by the Commission. The Division and Office shall be~~
512 ~~given full participation rights in any case.~~

513

514 **~~R746-100-9.~~**

515 ~~A. Prehearing Conferences -- Upon the Commission's motion or that~~
516 ~~of a party, the presiding officer may, upon written notice to~~
517 ~~parties of record, hold prehearing conferences for the following~~

518 ~~purposes:~~
519 1. ~~formulating or simplifying the issues, including each~~
520 ~~party's position on each issue;~~
521 2. ~~obtaining stipulations, admissions of fact, and documents~~
522 ~~which will avoid unnecessary proof;~~
523 3. ~~arranging for the exchange of proposed exhibits or~~
524 ~~prepared expert or other testimony, including a brief description~~
525 ~~of the evidence to be presented and issues addressed by each~~
526 ~~witness;~~
527 4. ~~determining procedures to be followed at the hearing;~~
528 5. ~~encouraging joint pleadings, exhibits, testimony and~~
529 ~~cross-examination where parties have common interests, including~~
530 ~~designation of lead counsel where appropriate;~~
531 6. ~~agreeing to other matters that may expedite the orderly~~
532 ~~conduct of the proceedings or of a settlement. Agreements reached~~
533 ~~during the prehearing conference shall be recorded in an~~
534 ~~appropriate order unless the participants stipulate or agree to a~~
535 ~~statement of settlement made on the record.~~
536 B. ~~Prehearing Briefs~~ — The Commission may require the filing of
537 ~~prehearing briefs which shall conform to the format described in~~
538 ~~R746 100 3(C) and may include:~~
539 1. ~~the issues, and positions on those issues, being raised~~
540 ~~and asserted by the parties;~~
541 2. ~~brief summaries of evidence to be offered, including the~~
542 ~~names of witnesses, exhibit references and issues addressed by the~~
543 ~~testimony;~~
544 3. ~~brief descriptions of lines of cross-examination to be~~
545 ~~pursued.~~
546 C. ~~Final prehearing conferences~~ — After all testimony has been
547 ~~filed, the Commission may at any time before the hearing hold a~~
548 ~~final prehearing conference for the following purposes:~~
549 1. ~~determine the order of witnesses and set a schedule for~~
550 ~~witnesses' appearances, including times certain for appearances of~~
551 ~~out-of-town witnesses;~~
552 2. ~~delineate scope of cross-examination and set limits~~
553 ~~thereon if necessary;~~
554 3. ~~identify and prenumber exhibits.~~

555
556 **R746-1-401. Pre-hearing Briefs, Comments, and Testimony - General**
557 **Requirements.**

558 (1) ~~Except in the case of a consumer complaint, parties to~~
559 ~~a docket shall file briefs, comments, direct, rebuttal, and~~
560 ~~surrebuttal testimony, as applicable, as required in the~~
561 ~~Commission's scheduling order prior to hearing.~~

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

564 — (a) ~~be filed by deadlines set in the presiding officer's~~

565 ~~scheduling order;~~
566 ~~_____ (b) be filed in electronic PDF format;~~
567 ~~_____ (c)(a) utilize a sequential line numbering system; and~~
568 ~~_____ (b) be filed in both paper and electronic formats.~~
569 ~~_____ (3) The paper format shall conform to the requirements set~~
570 ~~forth in R746-1-203(1)(a).~~

571 ~~_____ (4) The electronic format shall:~~
572 ~~_____ (a) conform to the requirements set forth in R746-1-~~
573 ~~203(1)(b); and~~
574 ~~_____ (b) as to testimony, be identified by an electronic file~~
575 ~~name including the following:~~
576 ~~4. In electronic pleadings, each file shall be identified by an~~
577 ~~electronic file name that includes at least the following, if~~
578 ~~applicable to the specific file:~~
579 ~~_____ (i) the word "direct," "rebuttal" or "surrebuttal," as~~
580 ~~applicable;~~
581 ~~_____ (ii) the last name of the witness;~~
582 ~~_____ (iii) the name of the party on whose behalf the witness~~
583 ~~offers testimony; and~~

584 ~~_____ (iv) as applicable, the word "exhibit" or "workpapers,"~~
585 ~~followed by any applicable identification number or letter.~~
586 ~~_____ (5) If an exhibits accompanying pre-hearing testimony~~
587 ~~utilizes any embedded formula or algorithm, it shall be filed in~~
588 ~~an electronic format that allows the embedded data to be accessed.~~
589 ~~If an exhibit contains a formula or algorithm for calculation, the~~
590 ~~party offering the exhibit shall file an electronic version in~~
591 ~~which the formula or algorithm can be accessed.~~

592
593 **R746-1-402. Pre-hearing Testimony - Inclusion in Record.**

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

597 ~~_____ (b) Any such motion shall be subject to objection and~~
598 ~~argument.~~
599 ~~If a witness's testimony has been reduced to writing and filed~~
600 ~~with the Commission before the hearing, in conformance with R746-~~
601 ~~100-3(C), at the discretion of the Commission, the testimony may~~
602 ~~be placed on the record without being read into the record; if~~
603 ~~adverse parties shall have been served with, or otherwise have had~~
604 ~~access to, the prefiled, written testimony for a reasonable time~~
605 ~~before it is presented. Except upon a finding of good cause, a~~
606 ~~reasonable amount of time shall be at least ten days. The~~
607 ~~testimony shall have line numbers inserted at the left margin and~~
608 ~~shall be authenticated by affidavit of the witness. To aid in the~~
609 ~~identification of text and the examination of witnesses, written~~
610 ~~testimony shall have each line of written text numbered~~
611 ~~consecutively throughout the entire written testimony. Internal~~

612 ~~charts, exhibits or other similar displays included within or~~
613 ~~attached to written testimony need not be included within the~~
614 ~~document's internal line numbering. If admitted, the testimony~~
615 ~~shall be marked and incorporated into the record as an exhibit.~~

616 (2) ~~Pre-filed~~hearing testimony that is entered into evidence
617 shall be subject Parties shall have full opportunity to cross-
618 examinatione the witness on the testimony. Unless the Commission
619 orders otherwise, parties shall have witnesses present summaries
620 of prefiled testimony orally at the hearing. Witnesses may be
621 required to reduce their summaries to writing and either file them
622 with their prefiled testimony or deliver them to parties of record
623 before or at the hearing. At the hearing, witnesses shall read
624 their summaries into the record. Opposing parties may cross-
625 examine both on the original prefiled testimony and the summaries.
626 H. ~~Joint Exhibits~~ -- Both narrative and numerical joint exhibits,
627 detailing each party's position on each issue, shall be filed with
628 the Commission before the hearing. These joint exhibits shall:
629 a. ~~be updated throughout the hearing;~~
630 b. ~~depict the final positions of each party on each issue~~
631 ~~at the end of the hearing; and~~
632 c. ~~be in conformance with R746 100 3(C).~~
633 e. ~~Exhibits shall conform to the format described in~~
634 ~~R746 100 3(C) and be double sided and three hole punched. They~~
635 ~~shall also be adequately footnoted and if appropriate, accompanied~~
636 ~~by either narrative or testimony which adequately explains the~~
637 ~~following: Explicit and detailed sources of the information~~
638 ~~contained in the exhibit; methods used in statistical~~
639 ~~compilations, including explanations and justifications;~~
640 ~~assumptions, estimates and judgments, together with the bases,~~
641 ~~justifications and results; formulas or algorithms used for~~
642 ~~calculations, together with explanations of inputs or variables~~
643 ~~used in the calculations. An exhibit offered by a witness shall~~
644 ~~also be presented as an electronic document, an exact copy of the~~
645 ~~paper version, using a format previously approved by the~~
646 ~~Commission.~~

647
648 **R746-1-501[100-8]. Discovery.**

649 (1) Parties shall attempt to complete informal discovery
650 through:A. ~~Informal discovery~~ -- The Commission encourages
651 parties to exchange information informally. Informational queries
652 termed "

653 (a) data requests;" which have been typically used by
654 parties practicing before the Commission may include

655 (b) written interrogatories;

656 (c) requests for admission; and

657 (d) requests for production of documents and other records
658 as those terms are used in the Utah Rules of Civil Procedure.

659 () A party that objects to a discovery request shall file a
660 motion to quash or modify the request.

661 () An intervener shall file any request for discovery on the
662 other parties to the docket. ~~Informal discovery is appropriate~~
663 ~~particularly with respect to the clarification of pre-filed~~
664 ~~testimony and exhibits before hearing so as to avoid unnecessary~~
665 ~~on-the-record cross-examination. The Commission may require an~~
666 ~~informal exchange of information as it judges appropriate. The~~
667 ~~Commission, on its own motion or the motion of a party, may~~
668 ~~require the parties to participate in an informal meeting to~~
669 ~~exchange information informally and otherwise simplify issues and~~
670 ~~expedite the proceeding.~~

671 (2) If a party considers informal discovery pursuant to this
672 Subsection 501(1) to be insufficient, the party may move the
673 Commission for formal discover according to B. ~~Formal Discovery~~
674 ~~Discovery shall be made in accordance with Rules 26 through 37, of~~
675 the Utah Rules of Civil Procedure, with the following exceptions
676 and modifications:-:

677 ~~C. Exceptions and Modifications~~

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

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

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

689 ~~3. At any stage of a proceeding, the Commission may, on its own~~
690 ~~motion or that of a party, convene a conference of the parties to~~
691 ~~establish times for completion of discovery, the scope of,~~
692 ~~necessity for, and terms of, protective orders, and other matters~~
693 ~~related to discovery.~~

694 ~~4. Formal discovery shall be initiated by an appropriate~~
695 ~~discovery request served on the party or person from whom~~
696 ~~discovery is sought.~~

697 (c) Discovery requests, regardless of how denominated,
698 discovery responses, and transcripts of depositions shall not be
699 filed with the Commission unless the Commission orders otherwise.

700 ~~5. (d) In the~~ Any reference in an applicable Rules of Civil
701 Procedure, ~~reference~~ to "the court" shall be considered a
702 reference to the Commission.

703 (3) A party that objects to a discovery request shall file a
704 motion to quash or modify the request in accordance with R746-1-
705 301.

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

708

709 **R746-1-601[100-16]. ~~[Use of]~~ Identification of Information**
710 **Claimed to Be Confidential or Highly Confidential in Commission**
711 **Proceedings.**

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

715 (a)(i) in the paper filing, placing the information on
716 yellow paper; and

717 (ii) in the electronic filing, highlighting the information
718 in yellow; and

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

721 (i) "CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE
722 COMMISSION RULE 746-1-601"; or

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

724 (2)(a) A person who files or is requested to provide
725 information that the person considers to be highly confidential
726 may

727 ~~f. Additional protective measures. To the extent a Providing~~
728 ~~Party reasonably claims that additional protective measures,~~
729 ~~beyond those required under this rule for Confidential~~
730 ~~Information, are warranted for certain highly proprietary, highly~~
731 ~~sensitive or highly confidential material (Highly Confidential~~
732 ~~Information), the Providing Party shall promptly inform the~~
733 ~~requester (Requesting Party) of the claimed highly sensitive~~
734 ~~nature of identified material and the additional protective~~
735 ~~measures requested by the Requesting Party. If the Providing Party~~
736 ~~and Requesting Party are unable to promptly reach agreement on the~~
737 ~~treatment of Highly Confidential Information, the Providing Party~~
738 ~~shall petition the Commission for an order granting additional~~
739 ~~protective measures.~~

740 (b) The petitioning party ~~The Providing Party shall set~~
741 forth:

742 (i) the particular basis for the claim;

743 (ii) the specific, additional protective measures requested;
744 and

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

747 ~~(c) A Requesting Party and any other party may respond to~~
748 ~~the petition and oppose the petition or propose alternative~~
749 ~~protective measures to those requested by the Providing Party.~~
750 ~~Disputes between the parties shall be resolved by the Commission.~~

751 (d) If the Commission grants a petition for additional
752 protective measures, the party providing the highly confidential

753 information shall:
754 (i)(A) in the paper filing, place the information on pink
755 paper; and
756 (B) in the electronic filing, highlight the information in
757 pink; and
758 (ii) include the following designation, as applicable, on
759 each page containing highly confidential information:
760 (A) "HIGHLY CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE
761 COMMISSION RULE 746-1-601"; or
762 (B) "HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".
763 (3) A person who files with the Commission a document
764 containing confidential or highly confidential information shall:
765 (a) file a redacted version for public access; and
766 (b) ensure that the line numbering and formatting in the
767 redacted version match, as closely as practicable, that appearing
768 in the unredacted version.

769
770 **R746-1-602. Persons Entitled to Review Confidential and Highly**
771 **Confidential Information.**

772 (1)(a) Except as provided in this Subsection 602(2), the
773 following persons are entitled to receive and review confidential
774 and highly confidential information:
775 (i) Commission, including counsel and staff;
776 (ii) Division of Public Utilities, including counsel and
777 staff;
778 (iii) Office of Consumer Services, including counsel and
779 staff;
780 (iv) counsel for all parties, including, to the extent
781 reasonably necessary:
782 (A) paralegals;
783 (B) administrative assistants; and
784 (C) clerical staff;
785 (v) persons designated by a party as an expert witness,
786 including, to the extent reasonably necessary, the experts':
787 (A) administrative assistants; and
788 (B) clerical staff;
789 (C) persons employed by the parties, to the extent
790 reasonably necessary; and
791 (vi) any person who signs a non-disclosure agreement
792 substantially as follows: "I have reviewed Public Service
793 Commission of Utah Rule 746-100-16 and/or the Protective Order
794 entered by the Public Service Commission of Utah in Docket No. XX-
795 XXX-XX with respect to the review and use of confidential
796 information and agree to comply with the terms and conditions of
797 the rule and/or Protective Order."
798 (2) A person, including an expert who is employed or
799 retained by a party, may not receive confidential or highly

800 confidential information if, in performing the person's normal job
801 functions, the person could use the information to the competitive
802 disadvantage of the person providing the information.
803

804 **R746-1-603. Treatment of Confidential and Highly Confidential**

805 **Information.**, ~~documents and material submitted or requested in or~~
806 ~~relating to any Commission proceeding which is claimed to be~~
807 ~~confidential will be treated as follows:~~

808 1. a. ~~Nature of Confidential Information. A person (Providing~~
809 ~~Party) required or requested to provide documents, data,~~
810 ~~information, studies, and other materials of a sensitive,~~
811 ~~proprietary or confidential nature (Confidential Information) to~~
812 ~~the Commission or to any party in connection with a Commission~~
813 ~~proceeding may request protection of such information in~~
814 ~~accordance with the terms of this rule. Confidential treatment~~
815 ~~shall be requested only to the extent a good faith reasonable~~
816 ~~basis exists for claiming that specific information constitutes a~~
817 ~~trade secret or is otherwise of such a highly sensitive or~~
818 ~~proprietary nature that public disclosure would be inappropriate.~~
819 ~~Confidential treatment shall be requested narrowly as to only that~~
820 ~~specific information for which protection is reasonably required.~~
821 b. ~~Identification of Confidential Information. All documents,~~
822 ~~data, information, studies and other materials filed in~~
823 ~~conjunction with a Commission proceeding, made available to~~
824 ~~proceeding participants, whether made available pursuant to~~
825 ~~interrogatories, requests for information, subpoenas, depositions,~~
826 ~~or other modes of discovery or otherwise, that are claimed to be~~
827 ~~Confidential Information, shall be furnished pursuant to the terms~~
828 ~~of this rule or any superseding Protective Order, and shall be~~
829 ~~treated by all persons accorded access thereto pursuant to this~~
830 ~~rule or Protective Order, and shall neither be used nor disclosed~~
831 ~~by any recipient thereof~~

832 (1) A person who receives confidential or highly
833 confidential information may not use or disclose the information
834 except:

835 (a) for the purpose of the proceeding in which it was
836 obtained; or

837 (b) pursuant to this Subsection 603(2), as required in
838 response to:

839 (i) interrogatories and other forms of discovery;

840 (ii) administrative requests for information or documents;

841 (iii) subpoenas;

842 (iv) civil investigative demands; or

843 (v) records requests under the Government Records Access and
844 Management Act, Utah Code Title 63G, Chapter 2.

845 (2) A person who is required by law to disclose confidential
846 or highly confidential information shall, prior to providing the

847 information:

848 (a) give notice of the disclosure requirement, by telephone
849 and in writing, to the person who first provided the information;
850 and

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

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

857
858 ~~and solely in accordance with this rule or superseding Protective~~
859 ~~Order. All material claimed to be Confidential Information shall~~
860 ~~be so marked by the person producing it by stamping or noting the~~
861 ~~same with a designation substantially as follows: "CONFIDENTIAL—~~
862 ~~—SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULE 746-100-16" or~~
863 ~~"CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL—~~
864 ~~SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX XXX XX (reflecting~~
865 ~~the appropriate docket number)." All copies of documents so~~
866 ~~marked shall be made on yellow paper.~~

867 e. ~~Line Numbering in Redacted Documents. Parties shall ensure~~
868 ~~that line numbering in any redacted version of a document shall~~
869 ~~conform to and retain the general formatting and line numbering~~
870 ~~used in the unredacted version of the document. Individuals~~
871 ~~providing electronic documents to the Commission should file both~~
872 ~~a confidential and non confidential version each clearly marked as~~
873 ~~such. For purposes hereof, notes made pertaining to or as the~~
874 ~~result of a review of Confidential Information shall be considered~~
875 ~~Confidential Information and subject to the terms of this rule.~~

876 d. ~~Use of Confidential Information and Persons Entitled to~~
877 ~~Review. The Commission, Division of Public Utilities, and Office~~
878 ~~of Consumer Services shall be provided with Confidential~~
879 ~~Information and may use the Confidential Information as these~~
880 ~~agencies deem necessary to perform their statutory functions,~~
881 ~~provided they shall protect the confidentiality of the information~~
882 ~~as required by Utah law. Other than these state agencies, all~~
883 ~~Confidential Information made available pursuant to this rule~~
884 ~~shall be given solely to counsel for the participants (which may~~
885 ~~include counsels' paralegals, administrative assistants and~~
886 ~~clerical staff to the extent reasonably necessary for performance~~
887 ~~of work on the matter), and shall not be used nor disclosed except~~
888 ~~for the purpose of the proceeding in which they are provided and~~
889 ~~in accordance with this rule; provided, however, that access to~~
890 ~~any specific Confidential Information may be authorized by~~
891 ~~counsel, solely for the purpose of the proceeding, to those~~
892 ~~persons indicated by the participants as being their experts in~~
893 ~~the matter (including such experts' administrative assistants and~~

894 clerical staff, and persons employed by the participants, to the
895 extent reasonably necessary for performance of work on the
896 matter). Persons designated as experts shall not include persons
897 employed by the participants who could use the information in
898 their normal job functions to the competitive disadvantage of the
899 person providing the Confidential Information. The Commission,
900 the Division of Public Utilities, and the Office of Consumer
901 Services, and their respective counsel and staff, pursuant to the
902 applicable provisions of Title 54, Utah Code Ann., the Rules of
903 Civil Procedure and the Rules of the Commission, may have access
904 to any Confidential Information made available pursuant to this
905 rule or Protective Order and shall be bound by the terms of this
906 rule, except as otherwise stated herein and except for the
907 requirement of signing a nondisclosure agreement. Further,
908 nothing herein shall prevent disclosure as required by law
909 pursuant to interrogatories, administrative requests for
910 information or documents, subpoena, civil investigative demand or
911 similar process, provided, however, that the person being required
912 to disclose Confidential Information shall promptly give prior
913 notice by telephone and written notice of such requirement of
914 disclosure by electronic mail facsimile and overnight mail to the
915 person that provided such Confidential Information, addressed to
916 the providing person and attorneys of record for such person, so
917 that the person that provided the Confidential Information may
918 seek appropriate restrictions on disclosure or an appropriate
919 protective order. The disclosing person will not oppose action
920 by, and will cooperate with the person that provided the
921 Confidential Information to obtain an appropriate protective order
922 or other reliable assurance that confidential treatment will be
923 accorded the Confidential Information.

924 e. Nondisclosure Agreement. Prior to giving or obtaining access
925 to Confidential Information, as contemplated in (1)(b) above,
926 counsel or any experts shall agree in writing to comply with and
927 be bound by this rule and any Protective Order. Confidential
928 Information shall not be disclosed to any person who has not
929 signed a Nondisclosure Agreement in the form which is provided
930 below or referenced in the Protective Order. The Nondisclosure
931 Agreement shall require the person to whom disclosure is to be
932 made to read a copy of this rule and any applicable Protective
933 Order and to certify in writing that he or she has reviewed the
934 same and has consented to be bound by the terms. The agreement
935 shall contain the signatory's full name, permanent address and
936 employer, and the name of the person with whom the signatory is
937 associated. Such agreement shall be delivered to the providing
938 person and counsel for the providing person prior to the expert
939 gaining access to the Confidential Information.

940 — The Nondisclosure Agreement may be in the following form:

941 ~~—— "Nondisclosure Agreement. I have reviewed Public Service~~
942 ~~Commission of Utah Rule 746 100 16 and/or the Protective Order~~
943 ~~entered by the Public Service Commission of Utah in Docket No. XX-~~
944 ~~XXX-XX with respect to the review and use of confidential~~
945 ~~information and agree to comply with the terms and conditions of~~
946 ~~the rule and/or Protective Order." Thereafter there shall be lines~~
947 ~~upon which shall be placed the individual's signature, the typed~~
948 ~~or printed name of the individual, identification or name of the~~
949 ~~individual's employer or firm employing the individual (if any),~~
950 ~~the business address for the individual, identification or name of~~
951 ~~the party in the proceeding with which the individual is~~
952 ~~associated, and the date the nondisclosure agreement is executed~~
953 ~~by the individual.~~

954 ~~g. Identification of Highly Confidential Information. All~~
955 ~~documents, data, information, studies and other materials filed in~~
956 ~~conjunction with a Commission proceeding, made available to~~
957 ~~proceeding participants, whether made available pursuant to~~
958 ~~interrogatories, requests for information, subpoenas, depositions,~~
959 ~~or other modes of discovery or otherwise, that are claimed to be~~
960 ~~Highly Confidential, shall be furnished pursuant to the terms of~~
961 ~~this rule or any superceding Protective Order, and shall be~~
962 ~~treated by all persons accorded access thereto pursuant to this~~
963 ~~rule or Protective Order, and shall neither be used nor disclosed~~
964 ~~by any recipient thereof except for the purpose of the proceeding~~
965 ~~in which it was obtained and solely in accordance with this rule~~
966 ~~or superceding Protective Order. All material claimed to be~~
967 ~~Highly Confidential shall be so marked by the person producing it~~
968 ~~by stamping or noting the same with a designation substantially as~~
969 ~~follows: "HIGHLY CONFIDENTIAL SUBJECT OF UTAH PUBLIC SERVICE~~
970 ~~COMMISSION RULE 746 100 16," "HIGHLY CONFIDENTIAL SUBJECT TO~~
971 ~~PROTECTIVE ORDER," or "HIGHLY CONFIDENTIAL SUBJECT TO PROTECTIVE~~
972 ~~ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket~~
973 ~~number)." All copies of documents so marked shall be made on pink~~
974 ~~paper.~~

975

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

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

979 2. a. Challenge to Confidentiality or Proposed Additional
980 Protective Measures. This rule establishes a procedure for the
981 expeditious handling of Confidential Information; it shall not be
982 construed as an agreement, or ruling on the confidentiality of any
983 document.

984 b. In the event that persons are unable to agree that certain
985 documents, data, information, studies, or other matters constitute
986 Confidential Information or Highly Confidential Information
987 referred to in (A)(1)(e) above, or in the event that persons are

988 ~~unable to agree on the appropriate treatment of Highly~~
989 ~~Confidential Information, the person objecting to the~~
990 ~~classification as Confidential Information or the person claiming~~
991 ~~Highly Confidential Information and the need for additional~~
992 ~~protective measures shall forthwith submit the disputes to the~~
993 ~~Commission for resolution.~~
994 ~~e. Any person at any time upon at least ten (10) days prior~~
995 ~~notice, when practicable, may seek by appropriate pleading, to~~
996 ~~have documents that have been designated as Confidential~~
997 ~~Information or Highly Confidential Information, or which were~~
998 ~~accepted into the sealed record in accordance with this rule or a~~
999 ~~Protective Order, removed from the protective requirements of this~~
1000 ~~rule or the Protective Order, or from the sealed record and placed~~
1001 ~~in the public record. If the confidential, or proprietary nature~~
1002 ~~of this information is challenged, resolution of the issue shall~~
1003 ~~be made by the Commission after proceedings which shall be~~
1004 ~~conducted under circumstances such that only those persons duly~~
1005 ~~authorized to have access to such confidential matter shall be~~
1006 ~~present.~~
1007 (2) If granted, the record of such an in camera proceeding
1008 shall be marked, as applicable, substantially as follows:
1009 (a) "CONFIDENTIAL--SUBJECT TO RULE 746-1-604"; or
1010 (b) "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER".~~or~~
1011 ~~"CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-~~
1012 ~~XX (reflecting the appropriate docket number)" unless the~~
1013 ~~Commission determines, and so provides by order, that such marking~~
1014 ~~need not occur.~~
1015 (3)(a) An in camera hearing may be transcribed ~~It shall be~~
1016 ~~transcribed only upon:~~
1017 (i) agreement of the parties; or
1018 (ii) order of the Commission.
1019 (b) Any transcription, and in that event of an in camera
1020 hearing shall be separately bound, segregated, sealed, and
1021 withheld from inspection by any person not a party to the in
1022 camera hearing.
1023 (4) Following an in camera hearing, if the Commission issues
1024 an order overturning a party's claim of confidentiality, the
1025 order:
1026 (a) shall be subject to reconsideration; and
1027 (b) shall go into effect no sooner than 10 days after
1028 issuance.~~bound by the terms of this rule or Protective Order,~~
1029 ~~unless and until released from the restrictions of this rule or~~
1030 ~~Protective Order, either through agreement of the parties, or~~
1031 ~~after notice to the parties and hearing, pursuant to an order of~~
1032 ~~the Commission. In the event the Commission should rule in~~
1033 ~~response to such a pleading that any information should be removed~~
1034 ~~from the protective requirements of this rule or Protective Order,~~

1035 ~~or from the protection of the sealed record, such order of the~~
1036 ~~Commission shall not be effective for a period of ten (10) days~~
1037 ~~after entry of the order.~~

1038
1039 **R746-1-605 Receipt of Confidential and Highly Confidential**
1040 **Information into Evidence.**

1041 (1)(a) A party that considers it necessary to discuss
1042 confidential information in a filing shall, to the extent
1043 possible, ~~4. Use in Proceedings. Where reference to~~
1044 ~~Confidential Information is required in pleadings, cross-~~
1045 ~~examinations, briefs, arguments, or motions, it shall be by~~
1046 ~~citation of refer to the information by title, exhibit number, or~~
1047 ~~other nonconfidential description.~~

1048 (b) A party that is not able to comply with this Subsection
1049 605(1)(a) ~~Any further use of, or substantive references to~~
1050 ~~Confidential Information shall:~~

1051 (i) place the confidential information in a separate section
1052 of the filing;

1053 (ii) mark the separate section ~~pleading, brief, or document~~
1054 ~~and submitted "UNDER SEAL" "CONFIDENTIAL"; and~~

1055 (iii) ensure that the ~~sealed~~ confidential section of the
1056 filing ~~. This sealed section shall be is served only on:~~

1057 (A) counsel of record or other designated representative of
1058 the party (one copy each) who ~~have~~ has signed a nondisclosure
1059 agreement;

1060 (B) counsel for the Division; and

1061 (C) ~~counsel for the Office. of Public Utilities and Office~~
1062 ~~of Consumer Services. All the protections afforded in this rule~~
1063 ~~apply to materials prepared and distributed under this paragraph.~~

1064 (2)(a) A party that proposes to use another person's
1065 confidential or highly confidential information as evidence shall,
1066 at least ten (10) days prior to use:

1067 ~~of or substantive reference to any Confidential Information as~~
1068 ~~evidence, if practicable, the person intending to use such~~
1069 ~~Confidential Information shall~~

1070 (i) inform the owner of the information; and
1071 ~~that intention known to the providing person. The requesting~~
1072 ~~person and the providing person shall~~

1073 (ii) make a good faith effort to arrange circumstances that
1074 will allow the information to be used while keeping trade secrets
1075 and proprietary material confidential. ~~reach an agreement so that~~
1076 ~~the Confidential Information can be used in a manner which will~~
1077 ~~not reveal its trade secret, confidential or proprietary nature.~~

1078 (b) If efforts taken pursuant to this Subsection 605(2)(a)
1079 fail, the providing person owner of the information shall
1080 separately identify, within five (5) business days, which
1081 portions, if any, of the documents to be offered or referenced on

1082 ~~the record containing Confidential Information shall be placed in~~
1083 ~~the sealed record~~ move the Commission to segregate and withhold any
1084 portion of the record that would reveal trade secrets or
1085 proprietary information. Only one (1) copy of documents
1086 designated by the providing person to be placed in a sealed record
1087 shall be made and only for that purpose. Otherwise, persons shall
1088 make only general references to Confidential Information in any
1089 proceedings.

1090 (c) If the Commission grants a motion to ~~seal~~ segregate and
1091 withhold a record, the moving party shall mark the record, as
1092 applicable, substantially as follows:

1093 (i) ~~b. Seal. While in the custody of the Commission,~~
1094 ~~Confidential Information provided pursuant to this rule or a~~
1095 ~~Protective Order shall be marked substantially as follows:~~
1096 "CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF UTAH RULE
1097 746-1-605"; or

1098 (ii) "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER". ~~or~~
1099 "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX XXX XX
1100 (reflecting the appropriate docket number)."

1101 (3) A party that considers it necessary to discuss a
1102 segregated confidential record during an adjudication shall move
1103 the Commission for an in camera hearing.e. In Camera Hearing.
1104 ~~Any Confidential Information that must be orally disclosed to be~~
1105 ~~placed in a sealed record of a proceeding shall be offered in an~~
1106 ~~in camera hearing, attended only by persons authorized to have~~
1107 ~~access to the Confidential Information under this rule or~~
1108 ~~Protective Order. Similarly, cross examination on or substantive~~
1109 ~~reference to Confidential Information, as well as that portion of~~
1110 ~~the record containing references thereto, shall be similarly~~
1111 ~~marked and treated.~~

1112 ~~d. Appeal. Sealed portions of the record in any proceeding may~~
1113 ~~be forwarded to any court of competent jurisdiction on appeal in~~
1114 ~~accordance with applicable rules and regulations, but under seal~~
1115 ~~as designated herein, for the information and use of the court.~~

1116 (4)(a) ~~e. Return. Unless otherwise ordered, Confidential~~
1117 ~~Information, including transcripts of any depositions to which a~~
1118 ~~claim of confidentiality is made, shall remain under seal, shall~~
1119 ~~continue to be subject to the protective requirements of this rule~~
1120 ~~or Protective Order, and shall be returned to the A person, other~~
1121 ~~than counsel, that obtains another person's confidential or highly~~
1122 ~~confidential information during a proceeding shall, providing~~
1123 ~~person or counsel for the providing person within 30 days after~~
1124 ~~the docket is concluded: final order, settlement, or other~~
1125 ~~conclusion of the matters in which they were used, including~~
1126 ~~administrative or judicial review thereof~~

1127 (i) return to the owner of the information all records in
1128 the party's possession that reference the confidential

1129 information; or
1130 (ii) certify, within 30 days after final order, settlement,
1131 or other conclusion of the matter including administrative or
1132 judicial review thereof, that the Confidential Information
1133 information has been:

1134 (A) turned over, in its entirety, to the person's counsel;
1135 or

1136 (B) destroyed.

1137 (b) ~~Counsel who are provided access to Confidential~~
1138 ~~Information pursuant to the terms of this rule or Protective Order~~
1139 ~~may retain confidential information as part of their notes,~~
1140 ~~workpapers, and other documents constituting as their attorney work~~
1141 ~~product and subject to privilege. created with respect to their~~
1142 ~~use and access to Confidential Information in the matter. An~~
1143 ~~expert witness, accorded access to Confidential Information~~
1144 ~~pursuant to this rule or Protective Order, shall provide to~~
1145 ~~counsel for the person on whose behalf the expert was retained or~~
1146 ~~employed, the expert's notes, work papers or other documents~~
1147 ~~pertaining or relating to any Confidential Information. Counsel~~
1148 ~~shall retain these experts' documents with counsel's documents.~~
1149 ~~In order to facilitate their ongoing responsibility, this~~
1150 ~~provision shall not apply to the Commission, the Division of~~
1151 ~~Public Utilities or the Office of Consumer Services, which may~~
1152 ~~retain Confidential Information obtained under this rule or~~
1153 ~~Protective Order subject to the other terms of this rule or~~
1154 ~~Protective Order. Any party that intends to use or disclose~~
1155 ~~Confidential Information obtained pursuant to this rule or a~~
1156 ~~Protective Order in any subsequent Commission dockets or~~
1157 ~~proceedings, shall do so in accordance with the terms of this rule~~
1158 ~~or any applicable protective orders issued in such other~~
1159 ~~subsequent Commission dockets or proceedings and only after~~
1160 ~~providing notice of such intent to the providing person along with~~
1161 ~~an identification of the original source of the Confidential~~
1162 ~~Information.~~

1163 ~~5. Use in Decisions and Orders. The Commission will attempt~~
1164 ~~to refer to Confidential Information in only a general, or~~
1165 ~~conclusionary form and will avoid reproduction in any decision of~~
1166 ~~Confidential Information to the greatest possible extent. If it~~
1167 ~~is necessary for a determination in a proceeding to discuss~~
1168 ~~Confidential Information other than in a general, or conclusionary~~
1169 ~~form, it shall be placed in a separate section of an Order, or~~
1170 ~~Decision, under seal. This sealed section shall be served only on~~
1171 ~~counsel of record (one copy each) who have signed a Nondisclosure~~
1172 ~~Agreement and counsel for the Division of Public Utilities and~~
1173 ~~Office of Consumer Services. Counsel for other parties shall~~
1174 ~~receive the cover sheet to the sealed portion and may review the~~
1175 ~~sealed portion on file with the Commission once they have signed a~~

1176 ~~Nondisclosure Agreement.~~
1177 ~~6. Segregation of Files. Those parts of any writing,~~
1178 ~~depositions reduced to writing, written examination,~~
1179 ~~interrogatories and answers thereto, or other written references~~
1180 ~~to Confidential Information in the course of discovery, if filed~~
1181 ~~with the Commission, will be sealed by the Commission, segregated~~
1182 ~~in the files of the Commission, and withheld from inspection by~~
1183 ~~any person not bound by the terms of this rule or Protective~~
1184 ~~Order, unless such Confidential Information is released from the~~
1185 ~~restrictions of this rule or Protective Order, either through~~
1186 ~~agreement of the parties, or after notice to the parties and~~
1187 ~~hearing, pursuant to an order of the Commission and/or final order~~
1188 ~~of a court having jurisdiction.~~
1189 ~~7. Preservation of Confidentiality. All persons who may be~~
1190 ~~entitled to receive, or who are afforded access to any~~
1191 ~~Confidential Information by reason of this rule or Protective~~
1192 ~~Order shall neither use, nor disclose the Confidential Information~~
1193 ~~for purposes of business or competition, or any other purpose~~
1194 ~~other than the purposes of preparation for and conduct of~~
1195 ~~Commission proceedings, and then solely as contemplated herein,~~
1196 ~~and shall take reasonable precautions to keep the Confidential~~
1197 ~~Information secure in accordance with the purposes and intent of~~
1198 ~~this rule or a Protective Order.~~
1199 ~~8. Reservation of Rights. Persons affected by the terms of~~
1200 ~~this rule or a Protective Order retain the right to question,~~
1201 ~~challenge, and object to the admissibility of any and all data,~~
1202 ~~information, studies and other matters furnished under the terms~~
1203 ~~of this rule or a Protective Order in response to interrogatories,~~
1204 ~~requests for information, other modes of discovery, or cross-~~
1205 ~~examination on the grounds of relevancy or materiality. This rule~~
1206 ~~or a Protective Order shall in no way constitute any waiver of the~~
1207 ~~rights of any person to contest any assertion by another person or~~
1208 ~~finding by the Commission that any information is a trade secret,~~
1209 ~~confidential, or privileged, and to appeal any assertion or~~
1210 ~~finding.~~

1211
1212 **R746-1-606. Commission Compliance with the Utah Government**
1213 **Records Access and Management Act.**

1214 (1) A party's marking information as confidential or highly
1215 confidential does not ensure a classification of "private,"
1216 "protected," or "classified" under the Utah Government Records
1217 Access and Management Act, Utah Code § 63G-2-101 et seq.

1218 (2) a party whose confidential or highly confidential
1219 information is requested pursuant to Utah Code § 63G-2-101 et seq.
1220 shall collaborate with the Commission to determine how the
1221 information should be classified under the statute.

1222

1223 **R746-1-701[100-10]. Witness Subpoenas.**

1224 (1) A party that wishes to subpoena a witness for hearing
1225 shall:

1226 (a) file the subpoena with the presiding officer at least 20
1227 days prior to hearing;

1228 (b) serve the subpoena on the witness pursuant to Utah Rule
1229 of Civil Procedure 45(b)(1); and

1230 ~~(c) and Attendance of Witnesses -- Commissioners, the~~
1231 ~~secretary to the Commission, and administrative law judges or~~
1232 ~~presiding officers employed by the Commission are delegated the~~
1233 ~~authority to sign and issue subpoenas. Parties desiring the~~
1234 ~~issuance of subpoenas shall submit them to the Commission. The~~
1235 ~~parties at whose behest the subpoena is issued shall be~~
1236 ~~responsible for service and paying the person summoned pay the~~
1237 ~~witness the statutory mileage and witness fees, unless the witness~~
1238 ~~waives payment.~~

1239 (2) Failure to obey the Commission's subpoena shall be
1240 considered contempt pursuant to Utah Code § 54-7-23(2).

1241
1242 ~~A. Time and Place -- When a matter is at issue, the Commission~~
1243 ~~shall set a time and place for hearing. Notice of the hearing~~
1244 ~~shall be served in conformance with Sections 63G-4-201(2)(b) and~~
1245 ~~63G-4-201(3)(c) at least five days before the date of the hearing~~
1246 ~~or shorter period as determined by the Commission.~~

1247
1248 **R746-1-702. Continuance of Scheduled Hearing.**

1249 (1) A person requesting to continue a scheduled hearing
1250 shall demonstrate that:

1251 (i) the request is supported by good cause; or

1252 (ii) all parties stipulate to the continuance.

1253 (2) Unless otherwise ordered by the presiding officer, any
1254 objection to a request for continuance shall be filed no later
1255 than five days following the date on which the request is filed
1256 and served.

1257 ~~B. Continuance -- Continuances may be granted upon good cause~~
1258 ~~shown. The Commission may impose the costs in connection with the~~
1259 ~~continuance as it judges appropriate.~~

1260 ~~C. Failure to Appear -- A party's default shall be entered and~~
1261 ~~disposed of in accordance with Section 63G-4-209.~~

1262 ~~E. Conduct of the Hearing --~~

1263
1264 **R746-1-703. Closing a Hearing.**

1265 A party that wishes to close a hearing shall comply with Utah
1266 Code § 54-3-21(4) or a portion of a hearing has the burden to
1267 demonstrate that, unless the hearing is closed, the person will be
1268 damaged by the dissemination of:

1269 — (1) proprietary information;

1270 ~~—— (2) trade secrets; or~~
1271 ~~—— (3) confidential material.~~

1272 1. ~~Generally — Hearings may be held before the full~~
1273 ~~Commission, one or more commissioners, administrative law judges~~
1274 ~~or presiding officers employed by the Commission as provided by~~
1275 ~~law and as the Commission shall direct. Hearings shall be open to~~
1276 ~~the public, except where the Commission closes a hearing for the~~
1277 ~~presentation of proprietary, trade secret or confidential~~
1278 ~~material. Failure to obey the rulings and orders of the presiding~~
1279 ~~officer may be considered contempt.~~

1280 2. ~~Before commissioner or administrative law judge — When a~~
1281 ~~hearing is conducted before less than the full Commission, before~~
1282 ~~an administrative law judge or presiding officer, the presiding~~
1283 ~~officer shall ensure that the taking of evidence and subsequent~~
1284 ~~matters proceed as expeditiously as practicable. The presiding~~
1285 ~~officer shall prepare and certify a recommended decision to the~~
1286 ~~Commission. Except as otherwise ordered by the Commission or~~
1287 ~~provided by law, the presiding officer may schedule and otherwise~~
1288 ~~regulate the course of the hearing; recess, reconvene, postpone,~~
1289 ~~or adjourn the hearing; administer oaths; rule on and receive~~
1290 ~~evidence; cause discovery to be conducted; issue subpoenas; hold~~
1291 ~~conferences of the participants; rule on, and dispose of,~~
1292 ~~procedural matters, including oral or written motions; summarily~~
1293 ~~dispose of a proceeding or part of a proceeding; certify a~~
1294 ~~question to the Commission; permit or deny appeal of an~~
1295 ~~interlocutory ruling; and separate an issue or group of issues~~
1296 ~~from other issues in a proceeding and treat the issue or group of~~
1297 ~~issues as a separate phase of the proceeding. The presiding~~
1298 ~~officer may maintain order as follows:~~

1299 a. ~~ensure that disregard by a person of rulings on~~
1300 ~~matters of order and procedure is noted on the record or, if~~
1301 ~~appropriate, is made the subject of a special written report to~~
1302 ~~the Commission;~~

1303 b. ~~if a person engages in disrespectful, disorderly, or~~
1304 ~~eontumacious language or conduct in connection with the hearing,~~
1305 ~~recess the hearing for the time necessary to regain order;~~

1306 e. ~~take appropriate action, including removal from the~~
1307 ~~proceeding, against a participant or counsel, if necessary to~~
1308 ~~maintain order.~~

1309 3. ~~Before full Commission — In hearings before the full~~
1310 ~~Commission, the Commission shall exercise the above powers and any~~
1311 ~~others available to it and convenient or necessary to an orderly,~~
1312 ~~just, and expeditious hearing.~~

1313

1314 **R746-1-704. Public Witness Evidence.**

1315 1. ~~Generally — The Commission is not bound by the technical~~
1316 ~~rules of evidence and may receive any oral or documentary~~

1317 ~~evidence; except that no finding may be predicated solely on~~
1318 ~~hearsay or otherwise incompetent evidence. Further, the~~
1319 ~~Commission may exclude non-probative, irrelevant, or unduly~~
1320 ~~repetitious evidence. Testimony shall be under oath and subject~~
1321 ~~to cross-examination.~~

1322 (1) A person not a party to a docket who does not petition
1323 for intervention may:

1324 (a) file comments prior to hearing; or

1325 (b) appear during the public witness portion of a hearing to
1326 provide unsworn testimony. ~~A public witness may elect to provide~~
1327 ~~unsworn statements. If providing a sworn statement, a public~~
1328 ~~witness shall be subject to cross examination.~~

1329 (2) A public witness may not conduct cross examination.

1330

1331 **R746-1-705. Exhibits Offered at Hearing.**

1332 ~~a. Except as to oral testimony and items administratively~~
1333 ~~noticed, material offered into evidence shall be in the form of an~~
1334 ~~exhibit. Exhibits shall be premarked.~~

1335 (1) ~~Parties offering exhibits shall:~~

1336 (a) mark their exhibits before hearing; ~~before the hearing~~
1337 ~~begins,~~

1338 (b) provide the original of each exhibit to the court
1339 reporter, if applicable; and

1340 (c) provide a copy of each exhibit to:

1341 (i) the presiding officer; and

1342 (ii) each party.

1343 (2) If an exhibit offered at hearing contains information
1344 claimed to be confidential or highly confidential, the party
1345 offering the exhibit shall comply with R746-1-601. ~~At a party's~~
1346 ~~election, the party may:~~

1347 ~~(a) provide an unredacted version of an exhibit to the~~
1348 ~~presiding officer and court reporter;~~

1349 ~~(b) provide a redacted version of the exhibit to the other~~
1350 ~~parties and other participants or their representatives, and the~~
1351 ~~original to the reporter, if there is one, otherwise to the~~
1352 ~~presiding officer. If documents contain information the offering~~
1353 ~~participant does not wish to include, the offering party shall~~
1354 ~~mark out, excise, or otherwise exclude the extraneous portion on~~
1355 ~~the original. Additions to exhibits shall be dealt with in the~~
1356 ~~same manner.~~

1357 ~~b. Exhibits shall be premarked, by the offering party, in~~
1358 ~~the upper right corner of each page by identifying the party, the~~
1359 ~~witness, docket number, and a number reflecting the order in which~~
1360 ~~the offering party will introduce the exhibit.~~

1361

1362 ~~3. Administrative notice—The presiding officer may take~~
1363 ~~administrative or official notice of a matter in conformance with~~

1364 ~~Section 63G-4-206(1)(b)(iv).~~

1365

1366 **~~R746-1-706. Order of Presentation of Evidence at Hearing.~~**

1367 ~~—— (1) Unless otherwise ordered or agreed, the presiding~~
1368 ~~officer orders otherwise, applicant or petitioner, including~~
1369 ~~petitioners for an order to show cause, shall first present their~~
1370 ~~case in chief, followed by other parties, in the order designated~~
1371 ~~by the presiding officer, followed by the proposing party's~~
1372 ~~rebuttal.~~

1373

1374 ~~4.—— Stipulations —— Participants in a proceeding may stipulate~~
1375 ~~to relevant matters of fact or the authenticity of relevant~~
1376 ~~documents. Stipulations may be received in evidence, and if~~
1377 ~~received, are binding on the participants with respect to any~~
1378 ~~matter stipulated. Stipulations may be written or made orally at~~
1379 ~~the hearing.~~

1380 ~~5.—— Settlements ——~~

1381 ~~a.—— Cases may be resolved by a settlement of the parties~~
1382 ~~if approved by the Commission. Issues so resolved are not binding~~
1383 ~~precedent in future cases involving similar issues.~~

1384 ~~b.—— Before accepting an offer of settlement, the~~
1385 ~~Commission may require the parties offering the settlement to show~~
1386 ~~that each party has been notified of, and allowed to participate~~
1387 ~~in, settlement negotiations. Parties not adhering to settlement~~
1388 ~~agreements shall be entitled to oppose the agreements in a manner~~
1389 ~~directed by the Commission.~~

1390

1391 ~~I. Recording of Hearing and Transcript —— Hearings may be~~
1392 ~~recorded by a shorthand reporter licensed in Utah; except that in~~
1393 ~~non-contested matters, or by agreement of the parties, hearings~~
1394 ~~may be recorded electronically.~~

1395 ~~1.—— Unless otherwise ordered by the Commission, scheduling~~
1396 ~~conferences and technical conferences will not be recorded.~~

1397 ~~2.—— If a party requests that a scheduling conference or~~
1398 ~~technical conference be recorded, the Commission may require that~~
1399 ~~party to pay some or all of the costs associated with recording.~~

1400

1401 ~~K. Cross Examination —— The Commission may require written cross-~~
1402 ~~examination and may limit the time given parties to present~~
1403 ~~evidence and cross-examine witnesses. The presiding officer may~~
1404 ~~exclude friendly cross-examination. The Commission discourages~~
1405 ~~and may prohibit parties from making their cases through cross-~~
1406 ~~examination.~~

1407

1408 ~~L. Procedure at Conclusion of Hearing —— At the conclusion of~~
1409 ~~proceedings, the presiding officer may direct a party to submit a~~
1410 ~~written proposed order. The presiding officer may also order~~

1411 ~~parties to present further matter in the form of oral argument or~~
1412 ~~written memoranda.~~

1413

1414 **~~R746-100-11. Commission deliberation.~~**

1415 ~~A. Generally — Decisions and orders may be drafted by the~~
1416 ~~Commission or by parties as the Commission may direct. Draft or~~
1417 ~~proposed orders shall contain a heading similar to that of~~
1418 ~~pleadings and bear at the top the name, address, and telephone~~
1419 ~~number of the persons preparing them. Final orders shall have a~~
1420 ~~concise summary of the case containing the salient facts, the~~
1421 ~~issues considered by the Commission, and the Commission's~~
1422 ~~disposition of them. A short synopsis of the order, placed at the~~
1423 ~~beginning of the order, shall describe the final resolutions made~~
1424 ~~in the order.~~

1425 ~~B. Recommended Orders — If a case has been heard by less than~~
1426 ~~the full Commission, or by an administrative law judge, the~~
1427 ~~official hearing the case shall submit to the Commission a~~
1428 ~~recommended report containing proposed findings of fact,~~
1429 ~~conclusions of law, and an order based thereon.~~

1430 ~~C. Final Orders of Commission — If a case has been heard by the~~
1431 ~~full Commission, it shall confer following the hearing. Upon~~
1432 ~~reaching its decision, the Commission shall draft or direct the~~
1433 ~~drafting of a report and order, which upon signature of at least~~
1434 ~~two Commissioners shall become the order of the Commission.~~
1435 ~~Dissenting and concurring opinions of individual commissioners may~~
1436 ~~be filed with the order of the Commission~~

1437 ~~D. Deliberations — Deliberations of the Commission shall be in~~
1438 ~~closed chambers.~~

1439 ~~E. Effective Date — Copies of the Commission's final report and~~
1440 ~~order shall be served upon the parties of record. Orders shall be~~
1441 ~~effective the date of issuance unless otherwise stated in the~~
1442 ~~order. Upon petition of a party, and for good cause shown, the~~
1443 ~~Commission may extend the time for compliance fixed in an order.~~

1444 ~~F. Review or Rehearing — Petitions for review or rehearing shall~~
1445 ~~be filed within 30 days of the issuance date of the order in~~
1446 ~~accordance with Section 63C-4-301 and served on other parties of~~
1447 ~~record.~~

1448

1449 **R746-1-801. Reconsideration and Agency Review.**

1450 (1) A person who challenges a finding of fact in a request
1451 for reconsideration or review shall 1. ~~A party asking the~~
1452 ~~Commission to modify a fact finding must~~ marshal the record
1453 evidence that supports the challenged finding, as set forth in
1454 State v. Nielsen, 2014 UT 10, ~~paragraphs ¶¶~~ 33-44, 326 P.3d 645.

1455 (2) Following the filing of a petition for reconsideration
1456 or review, opposing parties may file responsive memoranda or
1457 pleadings within 15 days.

1458 (3) Proceedings on review shall be in accordance with
1459 ~~Section~~Utah Code § 54-7-15.

1460 (4) A petition for reconsideration pursuant to ~~Section~~Utah
1461 Code § 63G-4-302 is not required in order for a party to exhaust
1462 its administrative remedies prior to appeal.

1463
1464 ~~R746-100-12. Appeals.~~

1465 ~~Appeals from final orders of the Commission shall be to a court of~~
1466 ~~appropriate jurisdiction.~~

1467
1468 ~~R746-100-13. Ex Parte Communications.~~

1469 ~~A. Ex Parte Communications Prohibited -- To avoid prejudice, real~~
1470 ~~or perceived, to the public interest and persons involved in~~
1471 ~~proceedings pending before the Commission:~~

1472 ~~B. Persons Affected -- Except as permitted in R746-100-13(C), no~~
1473 ~~person who is a party, or the party's counsel, agent, or other~~
1474 ~~person acting on the party's behalf, shall engage in ex parte~~
1475 ~~communications with a commissioner, administrative law judge,~~
1476 ~~presiding officer, or any other employee of the Commission who is,~~
1477 ~~or may reasonably be expected to be, involved in the decision-~~
1478 ~~making process regarding a matter pending before the Commission.~~
1479 ~~No commissioner, administrative law judge, presiding officer, or~~
1480 ~~other employee of the Commission who is, or may reasonably be~~
1481 ~~expected to be, involved in the decision-making process shall~~
1482 ~~request or entertain ex parte communications.~~

1483 ~~C. Exceptions -- The prohibitions contained in R746-100-13(B) do~~
1484 ~~not apply to a communication:~~

- 1485 ~~1. -- from an interceder who is a local, state, or federal~~
1486 ~~agency which has no official interest in the outcome and whose~~
1487 ~~official duties are not affected by the outcome of the on the-~~
1488 ~~record proceedings before the Commission to which the~~
1489 ~~communication relates;~~
- 1490 ~~2. -- from a party, or the party's counsel, agent, or other~~
1491 ~~person acting on the party's behalf if the communication relates~~
1492 ~~to matters of procedure only;~~
- 1493 ~~3. -- from a person when otherwise authorized by law;~~
- 1494 ~~4. -- related to routine safety, construction, and operational~~
1495 ~~inspections of project works by Commission employees undertaken to~~
1496 ~~investigate or study a matter pending before the Commission;~~
- 1497 ~~5. -- related to routine field audits of the accounts or the~~
1498 ~~books or records of a company subject to the Commission's~~
1499 ~~accounting requirements not undertaken to investigate or study a~~
1500 ~~matter pending in issue before the Commission in a proceeding;~~
- 1501 ~~6. -- related solely to a request for supplemental information~~
1502 ~~or data necessary for an understanding of factual materials~~
1503 ~~contained in documents or other evidence filed with the Commission~~
1504 ~~in a proceeding covered by these rules and which is made in the~~

1505 ~~presence of or after coordination with counsel.~~

1506 H. ~~Time When Prohibitions Apply~~ — The prohibitions contained in
1507 this rule shall apply from the at which the point a proceeding is
1508 noticed for hearing or the point the person responsible for the
1509 communication has knowledge that it will be noticed for hearing or
1510 when a protest or a request to intervene in opposition to
1511 requested Commission action has been filed, whichever occurs
1512 first.

1513 D. ~~Records of Ex Parte Communications~~ — Written communications
1514 prohibited by R746 100 13(B), sworn statements reciting the
1515 substance of oral communications, and written responses and sworn
1516 statements reciting the substance of oral responses to prohibited
1517 communications shall be delivered to the secretary of the
1518 Commission, who shall place the communication in the case file,
1519 but separate from the material upon which the Commission can rely
1520 in reaching its decision. The secretary shall serve copies of the
1521 communications upon parties to the proceeding and serve copies of
1522 the sworn statement to the communicator and allow him a reasonable
1523 time to file a response.

1524 E. ~~Treatment of Ex Parte Communications~~ — A commissioner,
1525 administrative law judge, presiding officer, or an employee of the
1526 Commission who receives an oral offer of a communication
1527 prohibited by R746 100 13(B) shall decline to hear the
1528 communication and explain that the matter is pending for
1529 determination. If unsuccessful in preventing the communication,
1530 the recipient shall advise the communicator that the communication
1531 will not be considered. The recipient shall, within two days,
1532 prepare a statement setting forth the substance of the
1533 communication and the circumstances of its receipt and deliver it
1534 to the secretary of the Commission for filing. The secretary
1535 shall forward copies of the statement to the parties.

1536 F. ~~Rebuttal~~ — Requests for an opportunity to rebut on the record
1537 matters contained in an ex parte communication which the secretary
1538 has associated with the record may be filed in writing with the
1539 Commission. The Commission may grant the requests only if it
1540 determines that fairness so requires. If the communication
1541 contains assertions of fact not a part of the record and of which
1542 the Commission cannot take administrative notice, the Commission,
1543 in lieu of receiving rebuttal material, normally will direct that
1544 the alleged factual assertion on proposed rebuttal be disregarded
1545 in arriving at a decision. The Commission will not normally
1546 permit a rebuttal of ex parte endorsements or oppositions by civic
1547 or other organizations by the submission of counter endorsements
1548 or oppositions.

1549 G. ~~Sanctions~~ — Upon receipt of a communication knowingly made in
1550 violation of R746 100 13(B), the presiding officer may require the
1551 communicator, to the extent consistent with the public interest,

1552 ~~to show cause why the communicator's interest in the proceeding~~
1553 ~~should not be dismissed, denied, disregarded, or otherwise~~
1554 ~~adversely affected because of the violation.~~

1555
1556 **~~R746-100-14. Rulemaking.~~**

1557 **~~A. How initiated~~**

1558 ~~1. By the Commission -- When the Commission perceives the~~
1559 ~~desirability or necessity of adopting a rule, it shall~~
1560 ~~draft or direct the drafting of the rule. During the~~
1561 ~~drafting process, the Commission may request the opinion~~
1562 ~~and assistance of any appropriate person. It may also, in~~
1563 ~~its discretion, conduct public hearings in connection with~~
1564 ~~the drafting. When the Commission is satisfied with the~~
1565 ~~draft of the proposed rule, it may formally propose it in~~
1566 ~~accordance with the Utah Rulemaking Act, 63G-3-301.~~

1567 ~~2. By others -- Persons may petition the Commission for the~~
1568 ~~adoption of a rule. The petitions shall be accompanied by~~
1569 ~~a draft of the rule proposed. Upon receipt the Commission~~
1570 ~~shall review the petition and draft and if it finds the~~
1571 ~~proposed rule desirable or necessary, it shall proceed as~~
1572 ~~with proposed rules initiated by the Commission, including~~
1573 ~~amending or redrafting. If the Commission finds the~~
1574 ~~proposal unnecessary or undesirable, it shall so notify~~
1575 ~~the petitioner in writing, giving reasons for its~~
1576 ~~findings. No public hearing shall be required in~~
1577 ~~connection with the Commission's review of a petition for~~
1578 ~~rulemaking.~~

1579 **~~B. Hearing Procedure~~** -- ~~Hearings conducted in connection with~~
1580 ~~rulemaking shall be informal, subject to requirements of~~
1581 ~~decorum and order. Absent a finding of good cause to proceed~~
1582 ~~otherwise, testimony and statements shall be unsworn, and~~
1583 ~~there shall be no opportunity for participants to cross-~~
1584 ~~examine. The Commission shall have the right, however, to~~
1585 ~~freely question witnesses. Public hearings shall be recorded~~
1586 ~~by shorthand reporter or electronically, at the discretion of~~
1587 ~~the Commission, and the Commission may allow or request the~~
1588 ~~submission of written materials.~~