

1 **R746. Public Service Commission, Administration.**

2
3 **R746-100. Practice and Procedures Governing Formal HearingsPublic**
4 **Service Commission Administrative Procedures Act Rule.**

5
6 **R746-1-1001. General Provisions and AuthorizationTitle 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 partymeans 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 Commissiondefined at Utah Code
36 § 54-2-1(3).

37 (3) "Complainant" ismeans 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 ~~63G-4-201, concerning adjudicative proceedings.~~

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

83 ~~by 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" is means the Office of Consumer Services, State
97 of Utah Department of Commerce.

98 (9) "Party" is a participant in a proceeding defined by
99 Subsectionmeans 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,
102 partnership, association, governmental subdivision, or
103 governmental agency is defined at Utah Code § 54-2-2.

104 (11) "Petitioner" is means 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 54-1-7 defined at Utah Code
114 § 63G-4-103(1)(h).

115 (13)(a) "Proceeding" or "adjudicative proceeding" is means
116 an 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,

124 ~~Chapter 3, the Utah Administrative Rulemaking Act~~ Utah Code § 63G-
125 3-1 et seq.

126 (14) "Respondent" is means 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
132 initial pleading, including:

133 (a) an answer;

134 (b) a protest or opposition; or

135 (c) other similar filing~~traditional responsive pleadings~~
136 ~~may 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) excludeing the first day of the act, event or default
183 from which the time begins to run; and

184 (b) includeing 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
188 conflicting:

189 (a) order of the Commission;

190 (b) statute; or

191 (c) rule.

192

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

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

200 ~~B. Representation of Parties -- Parties may:~~

201 (1) be represented by:

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

203 (b) an attorney licensed in a foreign state, pursuant to §
204 14-801 of the Utah Supreme Court rules of Professional Practice,
205 which is incorporated by reference when joined of record by an

206 ~~attorney licensed in Utah; , may also represent parties before the~~
207 ~~Commission. Upon motion, reasonable notice to each party, and~~
208 ~~opportunity to be heard, the Commission may allow an attorney~~
209 ~~licensed in a foreign state to represent a party in an individual~~
210 ~~matter based upon a showing that local representation would impose~~
211 ~~an unreasonable financial or other hardship upon the party. The~~
212 ~~Commission may, if it finds an irresolvable conflict of interest,~~
213 ~~preclude an attorney or firm of attorneys, from representing more~~
214 ~~than one party in a proceeding.~~

215 ~~_____ (2) represent oneself individually; or who is a party to a~~
216 ~~proceeding, or~~

217 ~~_____ (3) if not an individual, represent itself through an~~
218 ~~officer or employee of a party, may represent the principal's~~
219 ~~interests in the proceeding.~~

220

221 **R746-1-108. Intervention.**

222 ~~Intervention -- Persons wishing A person who wishes to~~
223 ~~intervene in a proceeding for any purpose, including opposition to~~
224 ~~proposed agency action or a request for agency action filed by a~~
225 ~~party to a proceeding, shall do so in conformance comply with~~
226 ~~Section Utah Code § 63G-4-207.~~

227

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

229 ~~_____ (1) A party may move tThe Commission [may order~~
230 ~~deviation]to deviate from a specified procedural rule.~~

231 ~~_____ (2) The party making the motion to deviate has the burden~~
232 ~~to demonstrate upon notice, opportunity to be heard and a showing~~
233 ~~that the rule imposes an undue hardship whichthat outweighs the~~
234 ~~benefit(s) of the rule.~~

235

236 **~~R746-1-201. H. Consumer Complaints. ---~~**

237 ~~_____ (1) Before a person may file a complaint against a public~~
238 ~~utility it must follow the alternative dispute resolution process~~
239 ~~set forth in R746-100-3(H)(1).[TRS1]~~

240 ~~_____ (12) Only after the resolution efforts set forth in R746-~~
241 ~~100-3(H)(1) [TRS2]have failed will the Commission entertain a~~

242 ~~A person may file with the Commission a complaint against a~~
243 ~~public utility if the consumer has first:~~

244 ~~_____ (a) attempted to resolve the complaint with the utility's~~
245 ~~customer relations department; and~~

246 ~~_____ (b) reported the complaint to the Division for~~

247 investigation.

248 (23) To file a complaint, a person shall:

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

251 (b) provide evidence that it has having served the
252 complaint on the public utility, pursuant to R746-1-203(2)(b).

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

261 ~~2. Request for agency action -- Persons requesting Commission~~
262 ~~action shall be required to file a complaint in writing,~~
263 ~~requesting agency action. The Commission shall not act on~~
264 ~~illegible or incomplete complaints and shall return those~~
265 ~~complaints to the complainant with instructions for correction or~~
266 ~~completion.~~

267 ~~3. The Division of Public Utilities may participate in a~~
268 ~~consumer complaint proceeding as determined by the Division or as~~
269 ~~requested by the Commission.~~

270

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

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

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

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

283 A person who files a pleading shall include the following
284 information in the title:

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

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

|

- 288 (2) address and telephone number of the person identified
- 289 in this Subsection 202(1);
- 290 (3) nature of the request;
- 291 (4) description of the action or relief requested;
- 292 (5) type of pleading; and
- 293 (6) docket number, if known.

294

295 TABLE

296

297 Name of Attorney preparing or Signer of Pleading

298 Address

299 Telephone Number

300

301 BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

302 -----

303

304 In the Matter of the (nature) Type of pleading

305 of request) for (description)

306 of action or relief requested))

307) Docket number (if known)

308)

309)

310 -----

311 -----

312

313 **R746-1-203. Form of Complete Pleading Filing.**

314 In order to be considered complete, a filing other than a
315 complaint shall conform to the following requirements set forth in
316 R746-100-3(c).^[TRS3]

317 (1) The filing pleading shall be filed made in an electronic
318 format that is acceptable to the Commission, on paper 8-1/2 x 11
319 inches, and shall include the docket number, if known, and shall
320 be dated and time stamped upon receipt by the Commission. If an
321 electronic filing is not possible or practical, a paper filing may
322 be made.

323

324 (a) If filed in paper format, the filing shall be: in both
325 paper and electronic formats.

- 326 (a) The paper format shall be:
- 327 (i) double-spaced on 8-1/2 by 11-inch paper;
- 328 (iii) typed and in a font of at least 12 points; and

329 ~~_____ (iii) if longer than five pages, printed on double-sided~~
330 ~~and three-hole-punched paper.~~

331 ~~_____ (b) An The electronic filing shall be formatted as~~
332 ~~followformat shall be:~~

333 ~~_____ (i) presented as an functional and searchable electronic~~
334 ~~word processing or spreadsheet document, as applicable, that is~~
335 ~~substantially the same as the paper version filed;~~

336 ~~_____ (ii) filed by:~~

337 ~~_____ (A) e-mail or;~~

338 ~~_____ (B) compact disc;~~

339 ~~_____ (C) thumb drive or other acceptable electronic media and~~

340 ~~_____ (iii) identified by an electronic file name that includes:~~

341 ~~_____ (A) the name of the person making the filing; and~~

342 ~~_____ (B) the type of filing.~~

343 ~~_____ (2) The filing shall:~~

344 ~~_____ (a) be signed, as applicable, by:~~

345 ~~_____ (i) the party;~~

346 ~~_____ (ii) the party's counsel; or~~

347 ~~_____ (iii) other authorized representative of the party; and~~

348 ~~_____ (b) include a certificate of service:~~

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

351 ~~_____ (ii) identifying the manner of service; and~~

352 ~~_____ (iii) identifying the date of service.~~

353
354
355 ~~_____ (2)Certificate of Service -- a Certificate of Service must be~~
356 ~~attached to all pleadings filed with the Commission, certifying~~
357 ~~that a true and correct copy of the pleading was served upon each~~
358 ~~of the parties in the manner and on the date specified. A filing~~
359 ~~is not complete without this certificate of service.~~

360
361 ~~_____ (3)Signing of Pleadings -- Pleadings shall be signed by the~~
362 ~~party, or by the party's attorney or other authorized~~
363 ~~representative if the party is represented by an attorney or other~~
364 ~~authorized representative, and shall show the signer's address.~~
365 ~~The signature shall be considered a certification by the signer~~
366 ~~that he has read the pleading and that, to the best of his~~
367 ~~knowledge and belief, there is good ground to support it.~~

368
369 ~~D. Certificate of Service -- a Certificate of Service must be~~

370 ~~attached to all pleadings filed with the Commission, certifying~~
371 ~~that a true and correct copy of the pleading was served upon each~~
372 ~~of the parties in the manner and on the date specified. A filing~~
373 ~~is not complete without this certificate of service.~~

374 ~~G. Signing of Pleadings -- Pleadings shall be signed by the~~
375 ~~party, or by the party's attorney or other authorized~~
376 ~~representative if the party is represented by an attorney or other~~
377 ~~authorized representative, and shall show the signer's address.~~
378 ~~The signature shall be considered a certification by the signer~~
379 ~~that he has read the pleading and that, to the best of his~~
380 ~~knowledge and belief, there is good ground to support it.~~

381 ~~E. Pleadings Containing Confidential and Highly Confidential~~
382 ~~Information --~~

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

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

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

394

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

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

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

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

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

407 ~~b. the PDF document shall include footnote references~~
408 ~~describing the name and location of the source document in the~~
409 ~~filed electronic media.~~

410 ~~1. Pleadings, including all accompanying documents,~~

|

411 ~~containing information claimed to be confidential or highly~~
412 ~~confidential, as described in R746-100-16, shall be filed in~~
413 ~~accordance with R746-100-3(C) and shall conform to the following~~
414 ~~additional requirements:~~

415 a. ~~_____ The paper version of a pleading containing~~
416 ~~confidential information shall be filed on yellow paper with the~~
417 ~~confidential portion of the pleading denoted by shading,~~
418 ~~highlighting, or other readily identifiable means. Both the paper~~
419 ~~and the electronic versions presented for filing shall be~~
420 ~~designated confidential in accordance with R746-100-16(A)(1)(b).~~

421 b. ~~_____ The paper version of a pleading containing highly~~
422 ~~confidential information shall be filed on pink paper with the~~
423 ~~highly confidential portions of the pleadings denoted by shading,~~
424 ~~highlighting, or other readily identifiable means. Both the paper~~
425 ~~and electronic versions presented for filing shall be designated~~
426 ~~highly confidential in accordance with R746-100-16(A)(1)(g).~~

427 c. ~~_____ A non-confidential version shall also be filed, in~~
428 ~~both paper and electronic form, from which all confidential and~~
429 ~~highly confidential information must be redacted. All copies of~~
430 ~~this version shall be clearly labeled as "Non-Confidential--~~
431 ~~Redacted Version."~~

432
433 **R746-1-205. Content of Initial Pleading.** ~~Pleadings filed with the~~
434 ~~Commission An initial pleading shall include the following~~
435 ~~information, to the extent it is known and applicable:~~

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

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

441 (b) if the filing is made for a group of participants, the
442 name of the group, ~~if the name of each member of the group is set~~
443 ~~forth in a previously filed document which is identified in the~~
444 ~~filing being made;~~

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

448 (a) located after the heading or caption;

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

450 (c) setting forth:

451 (i) a reference or citation to the statute, rule,

452 regulation, or other authority;
453 (ii) the applicable time period; and
454 (iii) the expiration date of the applicable time period,
455 identified by day, month, and year;
456 (4) the specific authorization or relief sought;
457 (5) copies of, or references to, tariff or rate sheets
458 relevant to the pleading;
459 (6) the relevant facts, if not set forth in a previously
460 filed document that is identified within the filing being made;
461 ~~the name and address of each person against whom the complaint is~~
462 ~~directed;~~
463 (7) the position taken by the person filing the pleading,
464 including the basis in fact and law for the position; and
465 (8) the name, address, and telephone number of an
466 individual who, with respect to a matter contained in the filing,
467 represents the person for whom the filing is made; ~~and~~
468 ~~_____ (9) additional information required to be included by~~
469 ~~Section 63G-4-201, concerning commencement of adjudicative~~
470 ~~proceedings, or other statute, rule, or order.~~

471
472 **R746-1-206. Amendment of Complaint or Initial Pleading.**
473 (1) A party that has filed a complete and effective
474 complaint or initial pleading may amend the filing. ~~Amendments~~
475 ~~to Pleadings -- The Commission may allow pleadings to be amended~~
476 ~~or corrected at any time. Initiatory pleadings may be amended~~
477 ~~without leave of the Commission at any time before:~~
478 (a) a responsive pleading has been filed; or
479 (b) the time for filing the pleading has expired.
480 (2) If a defect in a pleading does not affect the
481 substantial rights of the parties, it does not require amendment.

482
483 ~~**Required Public Notice.** -- When applying for original authority or~~
484 ~~rate increase, the party seeking authority or requesting~~
485 ~~Commission action shall publish notice of the filing or action~~
486 ~~requested in the form and within the times as the Commission may~~
487 ~~order and in a newspaper of general circulation in the area of the~~
488 ~~state in which the parties most likely to be interested are~~
489 ~~located.~~

490
491 **R746-1-207. K. Responsive Pleadings.---**
492 1. A response to a pleading or consumer complaint ~~Responsive~~

493 ~~pleadings to applications, petitions, or requests for agency~~
494 ~~action shall be filed in accordance with Section Utah Code § 63G-~~
495 ~~4-204 unless the Commission establishes a different response~~
496 ~~deadline.~~

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

500 **R746-1-301. Motions.** ~~-- Motions may be submitted for the~~
501 ~~Commission's decision on either written or oral argument, and the~~
502 ~~filing of affidavits in support or contravention of the motion is~~
503 ~~permitted. If oral argument is sought, the party seeking oral~~
504 ~~argument shall arrange a hearing date with the secretary of the~~
505 ~~Commission and provide at least five days written notice to~~
506 ~~affected parties, unless the Commission determines a shorter time~~
507 ~~period is needed. Motions directed toward initiatory pleadings~~
508 ~~shall be filed before a responsive pleading is due~~

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

511 ~~(1) Any response shall be filed within 30 days of the~~
512 ~~service date of the motion.~~

513 ~~(2) Any reply shall be filed within 15 days of the service~~
514 ~~date of the response.~~

515 ~~; otherwise objections shall be raised in responsive pleadings.~~

516 ~~Motions directed toward responsive pleadings shall be filed within~~
517 ~~ten days of the service of the responsive pleading.~~

518 ~~Response or reply pleadings to other than applications, petitions~~
519 ~~or requests for agency action shall be filed within 15 calendar~~
520 ~~days and 10 calendar days, respectively, of the service date of~~
521 ~~the pleading or document to which the response or reply is~~
522 ~~addressed. Absent a response or reply, the Commission may presume~~
523 ~~that there is no opposition.~~

524
525 **R746-100-4. Filing and Service.**

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

530 ~~B. Notice -- Notice shall be given in conformance with Section~~
531 ~~63G-4-201.~~

532 ~~D. Times for Filing -- Responsive pleadings to requests for~~
533 ~~agency action shall be filed with the Commission and served upon~~

534 ~~opposing parties within 30 days after service of the request for~~
535 ~~agency action or notice of request for agency action, which ever~~
536 ~~was first received.~~

537

538 ~~R746-100-5. Participation.~~

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

545

546 ~~**R746-100-9.**~~

547 ~~A. Prehearing Conferences -- Upon the Commission's motion or that~~
548 ~~of a party, the presiding officer may, upon written notice to~~
549 ~~parties of record, hold prehearing conferences for the following~~
550 ~~purposes:~~

551 ~~1. formulating or simplifying the issues, including each~~
552 ~~party's position on each issue;~~

553 ~~2. obtaining stipulations, admissions of fact, and documents~~
554 ~~which will avoid unnecessary proof;~~

555 ~~3. arranging for the exchange of proposed exhibits or~~
556 ~~prepared expert or other testimony, including a brief description~~
557 ~~of the evidence to be presented and issues addressed by each~~
558 ~~witness;~~

559 ~~4. determining procedures to be followed at the hearing;~~

560 ~~5. encouraging joint pleadings, exhibits, testimony and~~
561 ~~cross-examination where parties have common interests, including~~
562 ~~designation of lead counsel where appropriate;~~

563 ~~6. agreeing to other matters that may expedite the orderly~~
564 ~~conduct of the proceedings or of a settlement. Agreements reached~~
565 ~~during the prehearing conference shall be recorded in an~~
566 ~~appropriate order unless the participants stipulate or agree to a~~
567 ~~statement of settlement made on the record.~~

568 ~~B. Prehearing Briefs -- The Commission may require the filing of~~
569 ~~prehearing briefs which shall conform to the format described in~~
570 ~~R746-100-3(C) and may include:~~

571 ~~1. the issues, and positions on those issues, being raised~~
572 ~~and asserted by the parties;~~

573 ~~2. brief summaries of evidence to be offered, including the~~
574 ~~names of witnesses, exhibit references and issues addressed by the~~

575 testimony;

576 ~~3. brief descriptions of lines of cross-examination to be~~
577 ~~pursued.~~

578 ~~C. Final prehearing conferences -- After all testimony has been~~
579 ~~filed, the Commission may at any time before the hearing hold a~~
580 ~~final prehearing conference for the following purposes:~~

581 ~~1. determine the order of witnesses and set a schedule for~~
582 ~~witnesses' appearances, including times certain for appearances of~~
583 ~~out-of-town witnesses;~~

584 ~~2. delineate scope of cross-examination and set limits~~
585 ~~thereon if necessary;~~

586 ~~3. identify and prenumber exhibits.~~

587

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

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

594 ~~(2) Testimony Pre-hearing filings and accompanying exhibits~~
595 ~~shall:~~

596 ~~— (a) be filed by deadlines set in the presiding officer's~~
597 ~~scheduling order;~~

598 ~~— (b) be filed in electronic PDF format;~~

599 ~~— (c)(a) utilize a sequential line numbering system; and~~

600 ~~(b) be filed in both paper and electronic formats, or paper~~
601 ~~format if an electronic filing is not possible or practical.~~

602 ~~(3) The paper format shall conform to the requirements set~~
603 ~~forth in R746-1-203(1)(a).~~

604 ~~(4) The electronic format shall:~~

605 ~~(a) conform to the requirements set forth in R746-1-~~
606 ~~203(1)(b); and~~

607 ~~(b) as to testimony, be identified by an electronic file~~
608 ~~name including the following:~~

609 ~~4. In electronic pleadings, each file shall be identified by an~~
610 ~~electronic file name that includes at least the following, if~~
611 ~~applicable to the specific file:~~

612 ~~(i) the word "direct," "rebuttal" or "surrebuttal," as~~
613 ~~applicable;~~

614 ~~(ii) the last name of the witness;~~

615 ~~(iii) the name of the party on whose behalf the witness~~

616 offers testimony; and

617 (iv) as applicable, the word "exhibit" or "workpapers,"
618 followed by any applicable identification number or letter.

619 (5) If an exhibits accompanying pre-hearing testimony
620 utilizes any embedded formula or algorithm, it shall be filed in
621 an electronic format, and provide access to the formula or
622 algorithm. ~~that allows the embedded data to be accessed.~~ If an
623 exhibit contains a formula or algorithm for calculation, the party
624 offering the exhibit shall file an electronic version in which the
625 formula or algorithm can be accessed.

626

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

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

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

633 ~~If a witness's testimony has been reduced to writing and filed~~
634 ~~with the Commission before the hearing, in conformance with R746-~~
635 ~~100-3(C), at the discretion of the Commission, the testimony may~~
636 ~~be placed on the record without being read into the record; if~~
637 ~~adverse parties shall have been served with, or otherwise have had~~
638 ~~access to, the prefiled, written testimony for a reasonable time~~
639 ~~before it is presented. Except upon a finding of good cause, a~~
640 ~~reasonable amount of time shall be at least ten days. The~~
641 ~~testimony shall have line numbers inserted at the left margin and~~
642 ~~shall be authenticated by affidavit of the witness. To aid in the~~
643 ~~identification of text and the examination of witnesses, written~~
644 ~~testimony shall have each line of written text numbered~~
645 ~~consecutively throughout the entire written testimony. Internal~~
646 ~~charts, exhibits or other similar displays included within or~~
647 ~~attached to written testimony need not be included within the~~
648 ~~document's internal line numbering. If admitted, the testimony~~
649 ~~shall be marked and incorporated into the record as an exhibit.~~

650 (2) ~~Pre-~~filedhearing testimony that is entered into
651 evidence shall be subject Parties shall have full opportunity to
652 cross-examinatione the witness on the testimony. Unless the
653 Commission orders otherwise, parties shall have witnesses present
654 summaries of prefiled testimony orally at the hearing. Witnesses
655 may be required to reduce their summaries to writing and either
656 file them with their prefiled testimony or deliver them to parties

657 ~~of record before or at the hearing. At the hearing, witnesses~~
658 ~~shall read their summaries into the record. Opposing parties may~~
659 ~~cross-examine both on the original prefiled testimony and the~~
660 ~~summaries.~~

661 ~~H. Joint Exhibits -- Both narrative and numerical joint exhibits,~~
662 ~~detailing each party's position on each issue, shall be filed with~~
663 ~~the Commission before the hearing. These joint exhibits shall:~~

664 ~~a. _____ be updated throughout the hearing;~~

665 ~~b. _____ depict the final positions of each party on each issue~~
666 ~~at the end of the hearing; and~~

667 ~~c. _____ be in conformance with R746-100-3(C).~~

668 ~~c. _____ Exhibits shall conform to the format described in~~
669 ~~R746-100-3(C) and be double sided and three-hole punched. They~~
670 ~~shall also be adequately footnoted and if appropriate, accompanied~~
671 ~~by either narrative or testimony which adequately explains the~~
672 ~~following: Explicit and detailed sources of the information~~
673 ~~contained in the exhibit; methods used in statistical~~
674 ~~compilations, including explanations and justifications;~~
675 ~~assumptions, estimates and judgments, together with the bases,~~
676 ~~justifications and results; formulas or algorithms used for~~
677 ~~calculations, together with explanations of inputs or variables~~
678 ~~used in the calculations. An exhibit offered by a witness shall~~
679 ~~also be presented as an electronic document, an exact copy of the~~
680 ~~paper version, using a format previously approved by the~~
681 ~~Commission.~~

682

683 **R746-1-501[100-8]. Discovery.**

684 ~~(1) Parties shall attempt to complete informal discovery~~
685 ~~through:A. Informal discovery -- The Commission encourages~~
686 ~~parties to exchange information informally. Informational queries~~
687 ~~termed "~~

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

690 ~~(b) written interrogatories;~~

691 ~~(c) requests for admission; and~~

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

694 ~~() A party that receives discovery may file an objection.~~
695 ~~If the party that requested the discovery does not agree with the~~
696 ~~objection, after a good faith attempt to informally resolve~~
697 ~~the discovery matter, may s to a discovery request shall file a~~

698 motion to compel discovery. The receiving party, after a good
699 faith attempt to informally resolve the discovery matter, may also
700 file a motion to quash or modify the request.

701 () An intervenor shall file any request for discovery on
702 the other parties to the docket. Informal discovery is
703 appropriate particularly with respect to the clarification of pre-
704 filed testimony and exhibits before hearing so as to avoid
705 unnecessary on-the-record cross-examination. The Commission may
706 require an informal exchange of information as it judges
707 appropriate. The Commission, on its own motion or the motion of a
708 party, may require the parties to participate in an informal
709 meeting to exchange information informally and otherwise simplify
710 issues and expedite the proceeding.

711 (2) If a party considers informal discovery pursuant to
712 this Subsection 501(1) to be insufficient, the party may move the
713 Commission for formal discover according toB. Formal Discovery --
714 Discovery shall be made in accordance with Rules 26 through 37, of
715 the Utah Rules of Civil Procedure, with the following exceptions
716 and modifications.:

717 C. Exceptions and Modifications --

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

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

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

729 3. At any stage of a proceeding, the Commission may, on its own
730 motion or that of a party, convene a conference of the parties to
731 establish times for completion of discovery, the scope of,
732 necessity for, and terms of, protective orders, and other matters
733 related to discovery.

734 4. Formal discovery shall be initiated by an appropriate
735 discovery request served on the party or person from whom
736 discovery is sought.

737 (c) Discovery requests, regardless of how denominated,
738 discovery responses, and transcripts of depositions shall not be

739 filed with the Commission ~~unless the Commission orders otherwise.~~
740 ~~5. (d) In the~~Any reference in an applicable Rules of Civil
741 Procedure, ~~reference~~ to "the court" shall be considered a
742 reference to the Commission.

743 (3) A party that receives discovery may file an objection.
744 If the party that requested the discovery does not agree with the
745 objection, after a good faith attempt to informally resolve the
746 discovery matter, may file a motion to compel discovery. The
747 receiving party, after a good faith attempt to informally resolve
748 the discovery matter, may also file a motion to quash or modify
749 the request.
750 ~~A party that objects to a discovery request shall file a motion to~~
751 ~~quash or modify the request in accordance with R746-1-301.~~

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

754
755 **R746-1-601[100-16]. [Use of] Identification of Information**
756 **Claimed to Be Confidential or Highly Confidential in Commission**
757 **Proceedings.**

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

761 (a)(i) ~~in the~~if in a paper filing, placing the information
762 on yellow paper; and

763 (ii) ~~if~~ in the electronic filing, highlighting the
764 information in yellow; and

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

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

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

770 (2)(a) A person who files or is requested to provide
771 information that the person considers to be highly confidential
772 may

773 ~~f. Additional protective measures. To the extent a Providing~~
774 ~~Party reasonably claims that additional protective measures,~~
775 ~~beyond those required under this rule for Confidential~~
776 ~~Information, are warranted for certain highly proprietary, highly~~
777 ~~sensitive or highly confidential material (Highly Confidential~~
778 ~~Information), the Providing Party shall promptly inform the~~
779 ~~requester (Requesting Party) of the claimed highly sensitive~~

780 ~~nature of identified material and the additional protective~~
781 ~~measures requested by the Requesting Party. If the Providing Party~~
782 ~~and Requesting Party are unable to promptly reach agreement on the~~
783 ~~treatment of Highly Confidential Information, the Providing Party~~
784 ~~shall~~ petition the Commission for an order granting additional
785 protective measures.

786 (b) The petitioning party—The Providing Party shall set
787 forth:

788 (i) the particular basis for the claim;

789 (ii) the specific, additional protective measures
790 requested; and

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

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

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

800 (i)(A) if in ~~ain~~ the paper filing, place the information on
801 pink paper; and

802 (B) ~~in theif~~ in an electronic filing, highlight the
803 information in pink; and

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

806 (A) "HIGHLY CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE
807 COMMISSION RULE 746-1-601"; or

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

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

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

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

815

816 **R746-1-602. Persons Entitled to Review Confidential and Highly**
817 **Confidential Information.**

818 (1)(a) Except as provided in this Subsection 602(23), the
819 following persons are entitled to receive and review confidential
820 ~~and highly confidential~~ information:

821 (i) Commission, including counsel and staff;
822 (ii) Division of Public Utilities, including counsel and
823 staff;
824 (iii) Office of Consumer Services, including counsel and
825 staff;
826 (iv) counsel for all parties, including, to the extent
827 reasonably necessary:
828 (A) paralegals;
829 (B) administrative assistants; and
830 (C) clerical staff;
831 (v) persons designated by a party as an expert witness,
832 including, to the extent reasonably necessary, the experts':
833 (A) administrative assistants; and
834 (B) clerical staff;
835 (C) persons employed by the parties, to the extent
836 reasonably necessary; and
837 (vi) any ~~person~~ who signs a non-disclosure agreement
838 substantially as follows: "I have reviewed Public Service
839 Commission of Utah Rule 746-100-16 and/or the Protective Order
840 entered by the Public Service Commission of Utah in Docket No. XX-
841 XXX-XX with respect to the review and use of confidential
842 information and agree to comply with the terms and conditions of
843 the rule and/or Protective Order."
844 (2)(a) Except as provided in this Subsection 602(3), the
845 following persons are entitled to receive and review highly
846 confidential information:
847 (i) Commission, including counsel and staff;
848 (ii) Division of Public Utilities, including counsel and
849 staff; and
850 (iii) Any other person deemed appropriate by the Commission
851 on a case by case basis; and
852 ~~(vi)~~ who sign a non-disclosure agreement substantially as
853 follows: "I have reviewed Public Service Commission of Utah Rule
854 746-100-16 and/or the Protective Order entered by the Public
855 Service Commission of Utah in Docket No. XX-XXX-XX with respect to
856 the review and use of highly confidential information and agree to
857 comply with the terms and conditions of the rule and/or Protective
858 Order."
859
860 (23) A person, including an expert who is employed or
861 retained by a party, may not receive confidential or highly

862 confidential information if, in performing the person's normal job
863 functions, the person could use the information to the competitive
864 disadvantage of the person providing the information.
865

866 **R746-1-603. Treatment of Confidential and Highly Confidential**
867 **Information.**, ~~documents and material submitted or requested in or~~
868 ~~relating to any Commission proceeding which is claimed to be~~
869 ~~confidential will be treated as follows:~~

870 1. ~~a. Nature of Confidential Information. A person~~
871 ~~(Providing Party) required or requested to provide documents,~~
872 ~~data, information, studies, and other materials of a sensitive,~~
873 ~~proprietary or confidential nature (Confidential Information) to~~
874 ~~the Commission or to any party in connection with a Commission~~
875 ~~proceeding may request protection of such information in~~
876 ~~accordance with the terms of this rule. Confidential treatment~~
877 ~~shall be requested only to the extent a good faith reasonable~~
878 ~~basis exists for claiming that specific information constitutes a~~
879 ~~trade secret or is otherwise of such a highly-sensitive or~~
880 ~~proprietary nature that public disclosure would be inappropriate.~~
881 ~~Confidential treatment shall be requested narrowly as to only that~~
882 ~~specific information for which protection is reasonably required.~~
883 ~~b. Identification of Confidential Information. All documents,~~
884 ~~data, information, studies and other materials filed in~~
885 ~~conjunction with a Commission proceeding, made available to~~
886 ~~proceeding participants, whether made available pursuant to~~
887 ~~interrogatories, requests for information, subpoenas, depositions,~~
888 ~~or other modes of discovery or otherwise, that are claimed to be~~
889 ~~Confidential Information, shall be furnished pursuant to the terms~~
890 ~~of this rule or any superseding Protective Order, and shall be~~
891 ~~treated by all persons accorded access thereto pursuant to this~~
892 ~~rule or Protective Order, and shall neither be used nor disclosed~~
893 ~~by any recipient thereof~~

894 (1) A person who receives confidential or highly
895 confidential information may not use or disclose the information
896 except:

897 (a) for the purpose of the proceeding in which it was
898 obtained, and must still protect the confidentiality of the
899 information in its use in the proceeding; or

900 (b) pursuant to this Subsection 603(2), as required in
901 response to:

902 (i) interrogatories and other forms of discovery;

903 (ii) administrative requests for information or documents;

904 (iii) subpoenas;

905 (iv) civil investigative demands; or

906 (v) records requests under the Government Records Access
907 and Management Act, Utah Code Title 63G, Chapter 2, and-

908 (vi) in all such cases identified in subsection (i) to (v)
909 above, shall continue to make all efforts to protect the
910 confidentiality of the information.

911 (2) A person who is required by law to disclose
912 confidential or highly confidential information shall, prior to
913 providing the information:

914 (a) give notice of the disclosure requirement, by telephone
915 and in writing, to the person who first provided the information;
916 and

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

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

923
924 ~~and solely in accordance with this rule or superseding Protective~~
925 ~~Order. All material claimed to be Confidential Information shall~~
926 ~~be so marked by the person producing it by stamping or noting the~~
927 ~~same with a designation substantially as follows: "CONFIDENTIAL --~~
928 ~~-- SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULE 746-100-16" or~~
929 ~~"CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL --~~
930 ~~SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting~~
931 ~~the appropriate docket number)." All copies of documents so~~
932 ~~marked shall be made on yellow paper.~~

933 ~~c. Line Numbering in Redacted Documents. Parties shall ensure~~
934 ~~that line numbering in any redacted version of a document shall~~
935 ~~conform to and retain the general formatting and line numbering~~
936 ~~used in the unredacted version of the document. Individuals~~
937 ~~providing electronic documents to the Commission should file both~~
938 ~~a confidential and non-confidential version each clearly marked as~~
939 ~~such. For purposes hereof, notes made pertaining to or as the~~
940 ~~result of a review of Confidential Information shall be considered~~
941 ~~Confidential Information and subject to the terms of this rule.~~

942 ~~d. Use of Confidential Information and Persons Entitled to~~
943 ~~Review. The Commission, Division of Public Utilities, and Office~~

944 ~~of Consumer Services shall be provided with Confidential~~
945 ~~Information and may use the Confidential Information as these~~
946 ~~agencies deem necessary to perform their statutory functions,~~
947 ~~provided they shall protect the confidentiality of the information~~
948 ~~as required by Utah law. Other than these state agencies, all~~
949 ~~Confidential Information made available pursuant to this rule~~
950 ~~shall be given solely to counsel for the participants (which may~~
951 ~~include counsels' paralegals, administrative assistants and~~
952 ~~clerical staff to the extent reasonably necessary for performance~~
953 ~~of work on the matter), and shall not be used nor disclosed except~~
954 ~~for the purpose of the proceeding in which they are provided and~~
955 ~~in accordance with this rule; provided, however, that access to~~
956 ~~any specific Confidential Information may be authorized by~~
957 ~~counsel, solely for the purpose of the proceeding, to those~~
958 ~~persons indicated by the participants as being their experts in~~
959 ~~the matter (including such experts' administrative assistants and~~
960 ~~clerical staff, and persons employed by the participants, to the~~
961 ~~extent reasonably necessary for performance of work on the~~
962 ~~matter). Persons designated as experts shall not include persons~~
963 ~~employed by the participants who could use the information in~~
964 ~~their normal job functions to the competitive disadvantage of the~~
965 ~~person providing the Confidential Information. The Commission,~~
966 ~~the Division of Public Utilities, and the Office of Consumer~~
967 ~~Services, and their respective counsel and staff, pursuant to the~~
968 ~~applicable provisions of Title 54, Utah Code Ann., the Rules of~~
969 ~~Civil Procedure and the Rules of the Commission, may have access~~
970 ~~to any Confidential Information made available pursuant to this~~
971 ~~rule or Protective Order and shall be bound by the terms of this~~
972 ~~rule, except as otherwise stated herein and except for the~~
973 ~~requirement of signing a nondisclosure agreement. Further,~~
974 ~~nothing herein shall prevent disclosure as required by law~~
975 ~~pursuant to interrogatories, administrative requests for~~
976 ~~information or documents, subpoena, civil investigative demand or~~
977 ~~similar process, provided, however, that the person being required~~
978 ~~to disclose Confidential Information shall promptly give prior~~
979 ~~notice by telephone and written notice of such requirement of~~
980 ~~disclosure by electronic mail facsimile and overnight mail to the~~
981 ~~person that provided such Confidential Information, addressed to~~
982 ~~the providing person and attorneys of record for such person, so~~
983 ~~that the person that provided the Confidential Information may~~
984 ~~seek appropriate restrictions on disclosure or an appropriate~~

985 ~~protective order. The disclosing person will not oppose action~~
986 ~~by, and will cooperate with the person that provided the~~
987 ~~Confidential Information to obtain an appropriate protective order~~
988 ~~or other reliable assurance that confidential treatment will be~~
989 ~~accorded the Confidential Information.~~

990 ~~e. Nondisclosure Agreement. Prior to giving or obtaining~~
991 ~~access to Confidential Information, as contemplated in (1)(b)~~
992 ~~above, counsel or any experts shall agree in writing to comply~~
993 ~~with and be bound by this rule and any Protective Order.~~
994 ~~Confidential Information shall not be disclosed to any person who~~
995 ~~has not signed a Nondisclosure Agreement in the form which is~~
996 ~~provided below or referenced in the Protective Order. The~~
997 ~~Nondisclosure Agreement shall require the person to whom~~
998 ~~disclosure is to be made to read a copy of this rule and any~~
999 ~~applicable Protective Order and to certify in writing that he or~~
1000 ~~she has reviewed the same and has consented to be bound by the~~
1001 ~~terms. The agreement shall contain the signatory's full name,~~
1002 ~~permanent address and employer, and the name of the person with~~
1003 ~~whom the signatory is associated. Such agreement shall be~~
1004 ~~delivered to the providing person and counsel for the providing~~
1005 ~~person prior to the expert gaining access to the Confidential~~
1006 ~~Information.~~

1007 ~~_____ The Nondisclosure Agreement may be in the following form:~~
1008 ~~_____ "Nondisclosure Agreement. I have reviewed Public Service~~
1009 ~~Commission of Utah Rule 746-100-16 and/or the Protective Order~~
1010 ~~entered by the Public Service Commission of Utah in Docket No. XX-~~
1011 ~~XXX-XX with respect to the review and use of confidential~~
1012 ~~information and agree to comply with the terms and conditions of~~
1013 ~~the rule and/or Protective Order." Thereafter there shall be lines~~
1014 ~~upon which shall be placed the individual's signature, the typed~~
1015 ~~or printed name of the individual, identification or name of the~~
1016 ~~individual's employer or firm employing the individual (if any),~~
1017 ~~the business address for the individual, identification or name of~~
1018 ~~the party in the proceeding with which the individual is~~
1019 ~~associated, and the date the nondisclosure agreement is executed~~
1020 ~~by the individual.~~

1021 ~~g. Identification of Highly Confidential Information. All~~
1022 ~~documents, data, information, studies and other materials filed in~~
1023 ~~conjunction with a Commission proceeding, made available to~~
1024 ~~proceeding participants, whether made available pursuant to~~
1025 ~~interrogatories, requests for information, subpoenas, depositions,~~

1026 ~~or other modes of discovery or otherwise, that are claimed to be~~
1027 ~~Highly Confidential, shall be furnished pursuant to the terms of~~
1028 ~~this rule or any superceding Protective Order, and shall be~~
1029 ~~treated by all persons accorded access thereto pursuant to this~~
1030 ~~rule or Protective Order, and shall neither be used nor disclosed~~
1031 ~~by any recipient thereof except for the purpose of the proceeding~~
1032 ~~in which it was obtained and solely in accordance with this rule~~
1033 ~~or superceding Protective Order. All material claimed to be~~
1034 ~~Highly Confidential shall be so marked by the person producing it~~
1035 ~~by stamping or noting the same with a designation substantially as~~
1036 ~~follows: "HIGHLY CONFIDENTIAL--SUBJECT OF UTAH PUBLIC SERVICE~~
1037 ~~COMMISSION RULE 746-100-16," "HIGHLY CONFIDENTIAL--SUBJECT TO~~
1038 ~~PROTECTIVE ORDER," or "HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE~~
1039 ~~ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket~~
1040 ~~number)." All copies of documents so marked shall be made on pink~~
1041 ~~paper.~~

1042
1043 **R746-1-604. Challenge to Claim of Confidentiality.**

1044 (1) A party may challenge another party's claim of
1045 confidentiality by filing a motion for an in camera proceeding.

1046 ~~2. a. Challenge to Confidentiality or Proposed Additional~~
1047 ~~Protective Measures. This rule establishes a procedure for the~~
1048 ~~expeditious handling of Confidential Information; it shall not be~~
1049 ~~construed as an agreement, or ruling on the confidentiality of any~~
1050 ~~document.~~

1051 ~~b. In the event that persons are unable to agree that certain~~
1052 ~~documents, data, information, studies, or other matters constitute~~
1053 ~~Confidential Information or Highly Confidential Information~~
1054 ~~referred to in (A)(1)(e) above, or in the event that persons are~~
1055 ~~unable to agree on the appropriate treatment of Highly~~
1056 ~~Confidential Information, the person objecting to the~~
1057 ~~classification as Confidential Information or the person claiming~~
1058 ~~Highly Confidential Information and the need for additional~~
1059 ~~protective measures shall forthwith submit the disputes to the~~
1060 ~~Commission for resolution.~~

1061 ~~c. Any person at any time upon at least ten (10) days prior~~
1062 ~~notice, when practicable, may seek by appropriate pleading, to~~
1063 ~~have documents that have been designated as Confidential~~
1064 ~~Information or Highly Confidential Information, or which were~~
1065 ~~accepted into the sealed record in accordance with this rule or a~~
1066 ~~Protective Order, removed from the protective requirements of this~~

1067 ~~rule or the Protective Order, or from the sealed record and placed~~
1068 ~~in the public record. If the confidential, or proprietary nature~~
1069 ~~of this information is challenged, resolution of the issue shall~~
1070 ~~be made by the Commission after proceedings which shall be~~
1071 ~~conducted under circumstances such that only those persons duly~~
1072 ~~authorized to have access to such confidential matter shall be~~
1073 ~~present.~~

1074 (2) If granted, the record of such an in camera proceeding
1075 shall be marked, as applicable, substantially as follows:

1076 (a) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO RULE 746-
1077 1-604"; or

1078 (b) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO
1079 PROTECTIVE ORDER". ~~or "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER~~
1080 ~~IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket~~
1081 ~~number)" unless the Commission determines, and so provides by~~
1082 ~~order, that such marking need not occur.~~

1083 (3)(a) An in camera hearing may be transcribed ~~it shall be~~
1084 ~~transcribed only upon:~~

1085 (i) agreement of the parties; or

1086 (ii) order of the Commission.

1087 (b) Any transcription, and in that event of an in camera
1088 hearing shall be separately bound, segregated, sealed, and
1089 withheld from inspection by any person not a party to the in
1090 camera hearing.

1091 (4) Following an in camera hearing, if the Commission
1092 issues an order overturning a party's claim of confidentiality,
1093 the order:

1094 (a) shall be subject to reconsideration; and

1095 (b) shall go into effect no sooner than 10 days after
1096 issuance. ~~bound by the terms of this rule or Protective Order,~~
1097 ~~unless and until released from the restrictions of this rule or~~
1098 ~~Protective Order, either through agreement of the parties, or~~
1099 ~~after notice to the parties and hearing, pursuant to an order of~~
1100 ~~the Commission. In the event the Commission should rule in~~
1101 ~~response to such a pleading that any information should be removed~~
1102 ~~from the protective requirements of this rule or Protective Order,~~
1103 ~~or from the protection of the sealed record, such order of the~~
1104 ~~Commission shall not be effective for a period of ten (10) days~~
1105 ~~after entry of the order.~~

1106

1107 R746-1-605 Receipt of Confidential and Highly Confidential

1108 Information into Evidence.

1109 (1)(a) A party that considers it necessary to discuss
1110 confidential or highly confidential information in a filing shall,
1111 to the extent possible, ~~4. Use in Proceedings. Where reference to~~
1112 ~~Confidential Information is required in pleadings, cross-~~
1113 ~~examinations, briefs, arguments, or motions, it shall be by~~
1114 ~~citation of refer to the information by~~ title, exhibit number, or
1115 other nonconfidential description.

1116 (b) A party that is not able to comply with this Subsection
1117 605(1)(a) ~~Any further use of, or substantive references to~~
1118 ~~Confidential Information~~ shall:

1119 (i) place the confidential or highly confidential
1120 information in a separate section of the filing;

1121 (ii) mark the separate section ~~pleading, brief, or document~~
1122 ~~and submitted "UNDER SEAL-"~~ "CONFIDENTIAL" or "HIGHLY
1123 CONFIDENTIAL"; and

1124 (iii) ensure that the ~~sealed~~ confidential or highly
1125 confidential section of the filing ~~. This sealed section shall be~~
1126 is served only on:

1127 (A) counsel of record or other designated representative of
1128 the party (one copy each) who ~~have~~has signed a nondisclosure
1129 agreement;

1130 (B) counsel for the Division; and

1131 (C) ~~counsel for the Office. of Public Utilities and Office~~
1132 ~~of Consumer Services. All the protections afforded in this rule~~
1133 ~~apply to materials prepared and distributed under this paragraph.~~

1134 (2)(a) A party that proposes to use another person's
1135 confidential or highly confidential information as evidence shall,
1136 at least ten (10) days prior to use:

1137 ~~of or substantive reference to any Confidential Information as~~
1138 ~~evidence, if practicable, the person intending to use such~~
1139 ~~Confidential Information shall~~

1140 (i) inform the owner of the information; and
1141 ~~that intention known to the providing person. The requesting~~
1142 ~~person and the providing person shall~~

1143 (ii) make a good faith effort to arrange circumstances that
1144 will allow the information to be used while keeping trade secrets
1145 and proprietary material confidential. ~~reach an agreement so that~~
1146 ~~the Confidential Information can be used in a manner which will~~
1147 ~~not reveal its trade secret, confidential or proprietary nature.~~

1148 (b) If efforts taken pursuant to this Subsection 605(2)(a)

1149 ~~fail, the providing person owner of the information shall~~
1150 ~~separately identify, within five (5) business days, which~~
1151 ~~portions, if any, of the documents to be offered or referenced on~~
1152 ~~the record containing Confidential Information shall be placed in~~
1153 ~~the sealed record~~move the Commission to segregate and withhold any
1154 portion of the record that would reveal trade secrets or
1155 proprietary information. Only one (1) copy of documents
1156 designated by the providing person to be placed in a sealed record
1157 shall be made and only for that purpose. Otherwise, persons shall
1158 make only general references to Confidential Information in any
1159 proceedings.

1160 (c) If the Commission grants a motion to ~~seal~~segregate and
1161 withhold a record, the moving party shall mark the record, as
1162 applicable, substantially as follows:

1163 (i) ~~b. Seal. While in the custody of the Commission,~~
1164 ~~Confidential Information provided pursuant to this rule or a~~
1165 ~~Protective Order shall be marked substantially as follows:~~
1166 "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE
1167 COMMISSION OF UTAH RULE 746-1-605"; or

1168 (ii) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO
1169 PROTECTIVE ORDER". ~~or "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER~~
1170 ~~IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket~~
1171 ~~number)."~~

1172 (3) A party that considers it necessary to discuss a
1173 segregated confidential record during an adjudication shall move
1174 the Commission for an in camera hearing.e. In Camera Hearing.
1175 Any Confidential Information that must be orally disclosed to be
1176 placed in a sealed record of a proceeding shall be offered in an
1177 in camera hearing, attended only by persons authorized to have
1178 access to the Confidential Information under this rule or
1179 Protective Order. Similarly, cross-examination on or substantive
1180 reference to Confidential Information, as well as that portion of
1181 the record containing references thereto, shall be similarly
1182 marked and treated.

1183 d. ~~Appeal. Sealed portions of the record in any proceeding may~~
1184 ~~be forwarded to any court of competent jurisdiction on appeal in~~
1185 ~~accordance with applicable rules and regulations, but under seal~~
1186 ~~as designated herein, for the information and use of the court.~~

1187 (4)(a) e. ~~Return. Unless otherwise ordered, Confidential~~
1188 ~~Information, including transcripts of any depositions to which a~~
1189 ~~claim of confidentiality is made, shall remain under seal, shall~~

1190 ~~continue to be subject to the protective requirements of this rule~~
1191 ~~or Protective Order, and shall be returned to the A person, other~~
1192 ~~than counsel, that obtains another person's confidential or highly~~
1193 ~~confidential information during a proceeding shall, providing~~
1194 ~~person or counsel for the providing person within 30 days after~~
1195 ~~the docket is concluded: final order, settlement, or other~~
1196 ~~conclusion of the matters in which they were used, including~~
1197 ~~administrative or judicial review thereof~~

1198 (i) return to the owner of the information all records in
1199 the party's possession that reference the confidential
1200 information; or

1201 (ii) certify, within 30 days after final order,
1202 settlement, or other conclusion of the matter including
1203 administrative or judicial review thereof, that the Confidential
1204 Information information has been:

1205 (A) turned over, in its entirety, to the person's counsel;
1206 or

1207 (B) destroyed.

1208 (b) Counsel who are provided access to Confidential
1209 Information pursuant to the terms of this rule or Protective Order
1210 may retain confidential information as part of their notes,
1211 workpapers, and other documents constituting as their attorney work
1212 product and subject to privilege. created with respect to their
1213 use and access to Confidential Information in the matter. An
1214 expert witness, accorded access to Confidential Information
1215 pursuant to this rule or Protective Order, shall provide to
1216 counsel for the person on whose behalf the expert was retained or
1217 employed, the expert's notes, work papers or other documents
1218 pertaining or relating to any Confidential Information. Counsel
1219 shall retain these experts' documents with counsel's documents.
1220 In order to facilitate their ongoing responsibility, this
1221 provision shall not apply to the Commission, the Division of
1222 Public Utilities or the Office of Consumer Services, which may
1223 retain Confidential Information obtained under this rule or
1224 Protective Order subject to the other terms of this rule or
1225 Protective Order. Any party that intends to use or disclose
1226 Confidential Information obtained pursuant to this rule or a
1227 Protective Order in any subsequent Commission dockets or
1228 proceedings, shall do so in accordance with the terms of this rule
1229 or any applicable protective orders issued in such other
1230 subsequent Commission dockets or proceedings and only after

1231 ~~providing notice of such intent to the providing person along with~~
1232 ~~an identification of the original source of the Confidential~~
1233 ~~Information.~~

1234 ~~5. Use in Decisions and Orders. The Commission will attempt~~
1235 ~~to refer to Confidential Information in only a general, or~~
1236 ~~conclusionary form and will avoid reproduction in any decision of~~
1237 ~~Confidential Information to the greatest possible extent. If it~~
1238 ~~is necessary for a determination in a proceeding to discuss~~
1239 ~~Confidential Information other than in a general, or conclusionary~~
1240 ~~form, it shall be placed in a separate section of an Order, or~~
1241 ~~Decision, under seal. This sealed section shall be served only on~~
1242 ~~counsel of record (one copy each) who have signed a Nondisclosure~~
1243 ~~Agreement and counsel for the Division of Public Utilities and~~
1244 ~~Office of Consumer Services. Counsel for other parties shall~~
1245 ~~receive the cover sheet to the sealed portion and may review the~~
1246 ~~sealed portion on file with the Commission once they have signed a~~
1247 ~~Nondisclosure Agreement.~~

1248 ~~6. Segregation of Files. Those parts of any writing,~~
1249 ~~depositions reduced to writing, written examination,~~
1250 ~~interrogatories and answers thereto, or other written references~~
1251 ~~to Confidential Information in the course of discovery, if filed~~
1252 ~~with the Commission, will be sealed by the Commission, segregated~~
1253 ~~in the files of the Commission, and withheld from inspection by~~
1254 ~~any person not bound by the terms of this rule or Protective~~
1255 ~~Order, unless such Confidential Information is released from the~~
1256 ~~restrictions of this rule or Protective Order, either through~~
1257 ~~agreement of the parties, or after notice to the parties and~~
1258 ~~hearing, pursuant to an order of the Commission and/or final order~~
1259 ~~of a court having jurisdiction.~~

1260 ~~7. Preservation of Confidentiality. All persons who may be~~
1261 ~~entitled to receive, or who are afforded access to any~~
1262 ~~Confidential Information by reason of this rule or Protective~~
1263 ~~Order shall neither use, nor disclose the Confidential Information~~
1264 ~~for purposes of business or competition, or any other purpose~~
1265 ~~other than the purposes of preparation for and conduct of~~
1266 ~~Commission proceedings, and then solely as contemplated herein,~~
1267 ~~and shall take reasonable precautions to keep the Confidential~~
1268 ~~Information secure in accordance with the purposes and intent of~~
1269 ~~this rule or a Protective Order.~~

1270 ~~8. Reservation of Rights. Persons affected by the terms of~~
1271 ~~this rule or a Protective Order retain the right to question,~~

1272 ~~challenge, and object to the admissibility of any and all data,~~
1273 ~~information, studies and other matters furnished under the terms~~
1274 ~~of this rule or a Protective Order in response to interrogatories,~~
1275 ~~requests for information, other modes of discovery, or cross-~~
1276 ~~examination on the grounds of relevancy or materiality. This rule~~
1277 ~~or a Protective Order shall in no way constitute any waiver of the~~
1278 ~~rights of any person to contest any assertion by another person or~~
1279 ~~finding by the Commission that any information is a trade secret,~~
1280 ~~confidential, or privileged, and to appeal any assertion or~~
1281 ~~finding.~~

1282

1283 **R746-1-606. Commission Compliance with the Utah Government**
1284 **Records Access and Management Act.**

1285 (1) A party's marking information as confidential or highly
1286 confidential does not ensure a classification of "private,"
1287 "protected," or "classified" under the Utah Government Records
1288 Access and Management Act, Utah Code § 63G-2-101 et seq.

1289 (2) a party whose confidential or highly confidential
1290 information is requested pursuant to Utah Code § 63G-2-101 et seq.
1291 shall collaborate with the Commission to determine how the
1292 information should be classified under the statute.

1293

1294 **R746-1-701[100-10]. Witness Subpoenas.**

1295 (1) A party that wishes to subpoena a witness for hearing
1296 shall:

1297 (a) file the subpoena with the presiding officer at least
1298 20 days prior to hearing;

1299 (b) serve the subpoena on the witness pursuant to Utah Rule
1300 of Civil Procedure 45(b)(1); and

1301 ~~(c) and Attendance of Witnesses -- Commissioners, the~~
1302 ~~secretary to the Commission, and administrative law judges or~~
1303 ~~presiding officers employed by the Commission are delegated the~~
1304 ~~authority to sign and issue subpoenas. Parties desiring the~~
1305 ~~issuance of subpoenas shall submit them to the Commission. The~~
1306 ~~parties at whose behest the subpoena is issued shall be~~
1307 ~~responsible for service and paying the person summoned pay the~~
1308 ~~witness the statutory mileage and witness fees, unless the witness~~
1309 ~~waives payment.~~

1310 (2) Failure to obey the Commission's subpoena shall be
1311 considered contempt pursuant to Utah Code § 54-7-23(2).

1312

1313 ~~A. Time and Place -- When a matter is at issue, the Commission~~
1314 ~~shall set a time and place for hearing. Notice of the hearing~~
1315 ~~shall be served in conformance with Sections 63G-4-201(2)(b) and~~
1316 ~~63G-4-201(3)(e) at least five days before the date of the hearing~~
1317 ~~or shorter period as determined by the Commission.~~

1318

1319 **R746-1-702. Continuance of Scheduled Hearing.**

1320 (1) A person requesting to continue a scheduled hearing
1321 shall demonstrate that:

1322 (i) the request is supported by good cause; or

1323 (ii) all parties stipulate to the continuance.

1324 (2) Unless otherwise ordered by the presiding officer, any
1325 objection to a request for continuance shall be filed no later
1326 than five days following the date on which the request is filed
1327 and served.

1328 ~~B. Continuance -- Continuances may be granted upon good cause~~
1329 ~~shown. The Commission may impose the costs in connection with the~~
1330 ~~continuance as it judges appropriate.~~

1331 ~~C. Failure to Appear -- A party's default shall be entered and~~
1332 ~~disposed of in accordance with Section 63G-4-209.~~

1333 ~~E. Conduct of the Hearing --~~

1334

1335 **R746-1-703. Closing a Hearing.**

1336 A party that wishes to close a hearing shall comply with
1337 Utah Code § 54-3-21(4) or a portion of a hearing has the burden to
1338 demonstrate that, unless the hearing is closed, the person will be
1339 damaged by the dissemination of:

1340 (1) proprietary information;

1341 (2) trade secrets; or

1342 (3) confidential material.

1343 1. Generally -- Hearings may be held before the full
1344 Commission, one or more commissioners, administrative law judges
1345 or presiding officers employed by the Commission as provided by
1346 law and as the Commission shall direct. Hearings shall be open to
1347 the public, except where the Commission closes a hearing for the
1348 presentation of proprietary, trade secret or confidential
1349 material. Failure to obey the rulings and orders of the presiding
1350 officer may be considered contempt.

1351 2. Before commissioner or administrative law judge -- When a
1352 hearing is conducted before less than the full Commission, before
1353 an administrative law judge or presiding officer, the presiding

1354 ~~officer shall ensure that the taking of evidence and subsequent~~
1355 ~~matters proceed as expeditiously as practicable. The presiding~~
1356 ~~officer shall prepare and certify a recommended decision to the~~
1357 ~~Commission. Except as otherwise ordered by the Commission or~~
1358 ~~provided by law, the presiding officer may schedule and otherwise~~
1359 ~~regulate the course of the hearing; recess, reconvene, postpone,~~
1360 ~~or adjourn the hearing; administer oaths; rule on and receive~~
1361 ~~evidence; cause discovery to be conducted; issue subpoenas; hold~~
1362 ~~conferences of the participants; rule on, and dispose of,~~
1363 ~~procedural matters, including oral or written motions; summarily~~
1364 ~~dispose of a proceeding or part of a proceeding; certify a~~
1365 ~~question to the Commission; permit or deny appeal of an~~
1366 ~~interlocutory ruling; and separate an issue or group of issues~~
1367 ~~from other issues in a proceeding and treat the issue or group of~~
1368 ~~issues as a separate phase of the proceeding. The presiding~~
1369 ~~officer may maintain order as follows:~~

1370 a. ~~_____ ensure that disregard by a person of rulings on~~
1371 ~~matters of order and procedure is noted on the record or, if~~
1372 ~~appropriate, is made the subject of a special written report to~~
1373 ~~the Commission;~~

1374 b. ~~_____ if a person engages in disrespectful, disorderly, or~~
1375 ~~contumacious language or conduct in connection with the hearing,~~
1376 ~~recess the hearing for the time necessary to regain order;~~

1377 c. ~~_____ take appropriate action, including removal from the~~
1378 ~~proceeding, against a participant or counsel, if necessary to~~
1379 ~~maintain order.~~

1380 3. ~~_____ Before full Commission -- In hearings before the full~~
1381 ~~Commission, the Commission shall exercise the above powers and any~~
1382 ~~others available to it and convenient or necessary to an orderly,~~
1383 ~~just, and expeditious hearing.~~

1384
1385 **R746-1-704. Public Witness Evidence.**

1386 1. ~~_____ Generally -- The Commission is not bound by the technical~~
1387 ~~rules of evidence and may receive any oral or documentary~~
1388 ~~evidence; except that no finding may be predicated solely on~~
1389 ~~hearsay or otherwise incompetent evidence. Further, the~~
1390 ~~Commission may exclude non-probative, irrelevant, or unduly~~
1391 ~~repetitious evidence. Testimony shall be under oath and subject~~
1392 ~~to cross-examination.~~

1393 (1) A person not a party to a docket who does not petition
1394 for intervention may:

- 1395 (a) file comments prior to hearing; or
1396 (b) appear during the public witness portion of a hearing
1397 to provide unsworn testimony.~~A public witness may elect to provide~~
1398 ~~unsworn statements. If providing a sworn statement, a public~~
1399 ~~witness shall be subject to cross examination.~~
1400 (2) A public witness may not conduct cross examination.
1401

1402 **R746-1-705. Exhibits Offered at Hearing.**

1403 ~~a. Except as to oral testimony and items administratively~~
1404 ~~noticed, material offered into evidence shall be in the form of an~~
1405 ~~exhibit. Exhibits shall be premarked.~~

1406 (1) ~~Parties offering exhibits shall:~~

1407 (a) ~~mark their exhibits before hearing; before the hearing~~
1408 ~~begins,~~

1409 (b) ~~provide the original of each exhibit to the court~~
1410 ~~reporter, if applicable; and~~

1411 (c) ~~provide a copy of each exhibit to:~~

1412 (i) ~~the presiding officer; and~~

1413 (ii) ~~each party.~~

1414 (2) If an exhibit offered at hearing contains information
1415 claimed to be confidential or highly confidential, the party
1416 offering the exhibit shall comply with R746-1-601.~~At a party's~~
1417 ~~election, the party may:~~

1418 ~~— (a) provide an unredacted version of an exhibit to the~~
1419 ~~presiding officer and court reporter;~~

1420 ~~— (b) provide a redacted version of the exhibit to the other~~
1421 ~~parties and other participants or their representatives, and the~~
1422 ~~original to the reporter, if there is one, otherwise to the~~
1423 ~~presiding officer. If documents contain information the offering~~
1424 ~~participant does not wish to include, the offering party shall~~
1425 ~~mark out, excise, or otherwise exclude the extraneous portion on~~
1426 ~~the original. Additions to exhibits shall be dealt with in the~~
1427 ~~same manner.~~

1428 ~~b. Exhibits shall be premarked, by the offering party, in~~
1429 ~~the upper right corner of each page by identifying the party, the~~
1430 ~~witness, docket number, and a number reflecting the order in which~~
1431 ~~the offering party will introduce the exhibit.~~

1432
1433 ~~3. Administrative notice -- The presiding officer may take~~
1434 ~~administrative or official notice of a matter in conformance with~~
1435 ~~Section 63G-4-206(1)(b)(iv).~~

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

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

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

~~5. Settlements --~~

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

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

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

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

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

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

1477 examination.

1478

1479 ~~L. Procedure at Conclusion of Hearing -- At the conclusion of~~
1480 ~~proceedings, the presiding officer may direct a party to submit a~~
1481 ~~written proposed order. The presiding officer may also order~~
1482 ~~parties to present further matter in the form of oral argument or~~
1483 ~~written memoranda.~~

1484

1485 ~~**R746-100-11. Commission deliberation.**~~

1486 ~~A. Generally -- Decisions and orders may be drafted by the~~
1487 ~~Commission or by parties as the Commission may direct. Draft or~~
1488 ~~proposed orders shall contain a heading similar to that of~~
1489 ~~pleadings and bear at the top the name, address, and telephone~~
1490 ~~number of the persons preparing them. Final orders shall have a~~
1491 ~~concise summary of the case containing the salient facts, the~~
1492 ~~issues considered by the Commission, and the Commission's~~
1493 ~~disposition of them. A short synopsis of the order, placed at the~~
1494 ~~beginning of the order, shall describe the final resolutions made~~
1495 ~~in the order.~~

1496 ~~B. Recommended Orders -- If a case has been heard by less than~~
1497 ~~the full Commission, or by an administrative law judge, the~~
1498 ~~official hearing the case shall submit to the Commission a~~
1499 ~~recommended report containing proposed findings of fact,~~
1500 ~~conclusions of law, and an order based thereon.~~

1501 ~~C. Final Orders of Commission -- If a case has been heard by the~~
1502 ~~full Commission, it shall confer following the hearing. Upon~~
1503 ~~reaching its decision, the Commission shall draft or direct the~~
1504 ~~drafting of a report and order, which upon signature of at least~~
1505 ~~two Commissioners shall become the order of the Commission.~~
1506 ~~Dissenting and concurring opinions of individual commissioners may~~
1507 ~~be filed with the order of the Commission~~

1508 ~~D. Deliberations -- Deliberations of the Commission shall be in~~
1509 ~~closed chambers.~~

1510 ~~E. Effective Date -- Copies of the Commission's final report and~~
1511 ~~order shall be served upon the parties of record. Orders shall be~~
1512 ~~effective the date of issuance unless otherwise stated in the~~
1513 ~~order. Upon petition of a party, and for good cause shown, the~~
1514 ~~Commission may extend the time for compliance fixed in an order.~~

1515 ~~F. Review or Rehearing -- Petitions for review or rehearing shall~~
1516 ~~be filed within 30 days of the issuance date of the order in~~
1517 ~~accordance with Section 63G-4-301 and served on other parties of~~

1518 ~~record.~~

1519

1520 **R746-1-801. Reconsideration and Agency Review.**

1521 (1) ~~A person who challenges a finding of fact in a request~~
1522 ~~for reconsideration or review shall 1. A party asking the~~
1523 ~~Commission to modify a fact finding must~~ marshal the record
1524 evidence that supports the challenged finding, as set forth in
1525 State v. Nielsen, 2014 UT 10, ~~paragraphs¶¶~~ 33-44, 326 P.3d 645.

1526 (2) Following the filing of a petition for reconsideration
1527 or review, opposing parties may file responsive memoranda or
1528 pleadings within 15 days.

1529 (3) Proceedings on review shall be in accordance with
1530 ~~Section~~Utah Code § 54-7-15.

1531 (4) A petition for reconsideration pursuant to ~~Section~~Utah
1532 ~~Code~~ § 63G-4-302 is not required in order for a party to exhaust
1533 its administrative remedies prior to appeal.

1534

1535 ~~**R746-100-12. Appeals.**~~

1536 ~~Appeals from final orders of the Commission shall be to a court of~~
1537 ~~appropriate jurisdiction.~~

1538

1539 ~~**R746-100-13. Ex Parte Communications.**~~

1540 ~~A. Ex Parte Communications Prohibited -- To avoid prejudice, real~~
1541 ~~or perceived, to the public interest and persons involved in~~
1542 ~~proceedings pending before the Commission:~~

1543 ~~B. Persons Affected -- Except as permitted in R746-100-13(C), no~~
1544 ~~person who is a party, or the party's counsel, agent, or other~~
1545 ~~person acting on the party's behalf, shall engage in ex parte~~
1546 ~~communications with a commissioner, administrative law judge,~~
1547 ~~presiding officer, or any other employee of the Commission who is,~~
1548 ~~or may reasonably be expected to be, involved in the decision-~~
1549 ~~making process regarding a matter pending before the Commission.~~
1550 ~~No commissioner, administrative law judge, presiding officer, or~~
1551 ~~other employee of the Commission who is, or may reasonably be~~
1552 ~~expected to be, involved in the decision-making process shall~~
1553 ~~request or entertain ex parte communications.~~

1554 ~~C. Exceptions -- The prohibitions contained in R746-100-13(B) do~~
1555 ~~not apply to a communication:~~

1556 ~~1. from an interceder who is a local, state, or federal~~
1557 ~~agency which has no official interest in the outcome and whose~~
1558 ~~official duties are not affected by the outcome of the on-the-~~

1559 ~~record proceedings before the Commission to which the~~
1560 ~~communication relates;~~
1561 ~~2. from a party, or the party's counsel, agent, or other~~
1562 ~~person acting on the party's behalf if the communication relates~~
1563 ~~to matters of procedure only;~~
1564 ~~3. from a person when otherwise authorized by law;~~
1565 ~~4. related to routine safety, construction, and operational~~
1566 ~~inspections of project works by Commission employees undertaken to~~
1567 ~~investigate or study a matter pending before the Commission;~~
1568 ~~5. related to routine field audits of the accounts or the~~
1569 ~~books or records of a company subject to the Commission's~~
1570 ~~accounting requirements not undertaken to investigate or study a~~
1571 ~~matter pending in issue before the Commission in a proceeding;~~
1572 ~~6. related solely to a request for supplemental information~~
1573 ~~or data necessary for an understanding of factual materials~~
1574 ~~contained in documents or other evidence filed with the Commission~~
1575 ~~in a proceeding covered by these rules and which is made in the~~
1576 ~~presence of or after coordination with counsel.~~
1577 ~~H. Time When Prohibitions Apply -- The prohibitions contained~~
1578 ~~in this rule shall apply from the at which the point a proceeding~~
1579 ~~is noticed for hearing or the point the person responsible for the~~
1580 ~~communication has knowledge that it will be noticed for hearing or~~
1581 ~~when a protest or a request to intervene in opposition to~~
1582 ~~requested Commission action has been filed, whichever occurs~~
1583 ~~first.~~
1584 ~~D. Records of Ex Parte Communications -- Written communications~~
1585 ~~prohibited by R746-100-13(B), sworn statements reciting the~~
1586 ~~substance of oral communications, and written responses and sworn~~
1587 ~~statements reciting the substance of oral responses to prohibited~~
1588 ~~communications shall be delivered to the secretary of the~~
1589 ~~Commission, who shall place the communication in the case file,~~
1590 ~~but separate from the material upon which the Commission can rely~~
1591 ~~in reaching its decision. The secretary shall serve copies of the~~
1592 ~~communications upon parties to the proceeding and serve copies of~~
1593 ~~the sworn statement to the communicator and allow him a reasonable~~
1594 ~~time to file a response.~~
1595 ~~E. Treatment of Ex Parte Communications -- A commissioner,~~
1596 ~~administrative law judge, presiding officer, or an employee of the~~
1597 ~~Commission who receives an oral offer of a communication~~
1598 ~~prohibited by R746-100-13(B) shall decline to hear the~~
1599 ~~communication and explain that the matter is pending for~~

1600 ~~determination. If unsuccessful in preventing the communication,~~
1601 ~~the recipient shall advise the communicator that the communication~~
1602 ~~will not be considered. The recipient shall, within two days,~~
1603 ~~prepare a statement setting forth the substance of the~~
1604 ~~communication and the circumstances of its receipt and deliver it~~
1605 ~~to the secretary of the Commission for filing. The secretary~~
1606 ~~shall forward copies of the statement to the parties.~~

1607 ~~F. Rebuttal -- Requests for an opportunity to rebut on the record~~
1608 ~~matters contained in an ex parte communication which the secretary~~
1609 ~~has associated with the record may be filed in writing with the~~
1610 ~~Commission. The Commission may grant the requests only if it~~
1611 ~~determines that fairness so requires. If the communication~~
1612 ~~contains assertions of fact not a part of the record and of which~~
1613 ~~the Commission cannot take administrative notice, the Commission,~~
1614 ~~in lieu of receiving rebuttal material, normally will direct that~~
1615 ~~the alleged factual assertion on proposed rebuttal be disregarded~~
1616 ~~in arriving at a decision. The Commission will not normally~~
1617 ~~permit a rebuttal of ex parte endorsements or oppositions by civic~~
1618 ~~or other organizations by the submission of counter endorsements~~
1619 ~~or oppositions.~~

1620 ~~G. Sanctions -- Upon receipt of a communication knowingly made in~~
1621 ~~violation of R746-100-13(B), the presiding officer may require the~~
1622 ~~communicator, to the extent consistent with the public interest,~~
1623 ~~to show cause why the communicator's interest in the proceeding~~
1624 ~~should not be dismissed, denied, disregarded, or otherwise~~
1625 ~~adversely affected because of the violation.~~

1626

1627 ~~**R746-100-14. Rulemaking.**~~

1628 ~~A. How initiated --~~

1629 ~~1. By the Commission -- When the Commission perceives the~~
1630 ~~desirability or necessity of adopting a rule, it shall~~
1631 ~~draft or direct the drafting of the rule. During the~~
1632 ~~drafting process, the Commission may request the opinion~~
1633 ~~and assistance of any appropriate person. It may also, in~~
1634 ~~its discretion, conduct public hearings in connection with~~
1635 ~~the drafting. When the Commission is satisfied with the~~
1636 ~~draft of the proposed rule, it may formally propose it in~~
1637 ~~accordance with the Utah Rulemaking Act, 63G-3-301.~~

1638 ~~2. By others -- Persons may petition the Commission for the~~
1639 ~~adoption of a rule. The petitions shall be accompanied by~~
1640 ~~a draft of the rule proposed. Upon receipt the Commission~~

1641 ~~shall review the petition and draft and if it finds the~~
1642 ~~proposed rule desirable or necessary, it shall proceed as~~
1643 ~~with proposed rules initiated by the Commission, including~~
1644 ~~amending or redrafting. If the Commission finds the~~
1645 ~~proposal unnecessary or undesirable, it shall so notify~~
1646 ~~the petitioner in writing, giving reasons for its~~
1647 ~~findings. No public hearing shall be required in~~
1648 ~~connection with the Commission's review of a petition for~~
1649 ~~rulemaking.~~

1650 ~~B. Hearing Procedure -- Hearings conducted in connection with~~
1651 ~~rulemaking shall be informal, subject to requirements of~~
1652 ~~decorum and order. Absent a finding of good cause to proceed~~
1653 ~~otherwise, testimony and statements shall be unsworn, and~~
1654 ~~there shall be no opportunity for participants to cross-~~
1655 ~~examine. The Commission shall have the right, however, to~~
1656 ~~freely question witnesses. Public hearings shall be recorded~~
1657 ~~by shorthand reporter or electronically, at the discretion of~~
1658 ~~the Commission, and the Commission may allow or request the~~
1659 ~~submission of written materials.~~