

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Potential Amendments to
R746-100-3

DOCKET NO. 16-R100-01

In the Matter of Potential Amendments to
Utah Administrative Code R746-100

DOCKET NO. 16-R100-02

RESPONSE TO CONCERNS AND
QUESTIONS REGARDING
AVAILABLE PROTOCOL FOR
PAPERLESS FILING

REQUEST FOR FINAL COMMENTS
REGARDING PROPOSED RULE
R746-100

ISSUED: November 8, 2016

The Public Service Commission of Utah (Commission) provides the following information in response to questions and concerns raised by Rocky Mountain Power, CenturyLink, and Questar Gas Company regarding the available protocol for paperless filing.

1. What type of authentication mechanism will be used? ¹

Authentication will be handled via SSH keys using TLSv1.2 encryption instead of a common password. Each client must provide the Commission with an RSA public key for each user/server that will be connecting to the SFTP server.

2. What version of SSH will be used?

TLS1.2 **only**.

3. Will 2-Factor authentication be implemented?

No. However, the Commission will utilize combined network firewalls and RSA keys to limit access to the SFTP server. By default, the network firewalls block all traffic to the SFTP server. Each user/server that will access the Commission SFTP server must provide the Commission with the static public IP address from which information will be sent. Once the Commission receives the public IP address, rules will be created on the network

¹ At the technical conference and in the October 14, 2016 notice, the Commission erroneously used the term "web portal" to describe the paperless filing system. In fact, the system will utilize direct communication between the Commission's SFTP server and one or more specified IP addresses that are under the control of the filer.

firewall to allow SFTP traffic on port 22 to the SFTP server. Once firewall rules are in place, users/servers will be able to attempt authentication to the server via their SSH keys.

4. Will the Commission require multi-factor authentication to use the SFTP server?

Authentication will be accomplished through verification of an authorized IP address and the corresponding SSH key.

5. What tools/systems are used to document access requests and changes? Who will be responsible for approving access? Who will be responsible for provisioning/deprovisioning access? Will user accounts and access rights periodically be reviewed for appropriateness?

Filers must document for the Commission the personnel who are approved to file material on the SFTP server, and must update the Commission with any changes. Upon receiving a request to create or terminate access, the Commission will instruct state IT personnel accordingly. Employees of the Commission, the Division of Public Utilities (Division), and the Office of Consumer Services (Office) will lose access immediately upon terminating employment.

6. Will accounts on the SFTP server map to individuals or to companies?

An account will be created on the SFTP server for each filer, but the system also could accommodate up to five individual users per company. Each user who needs access must use the SSH key that the user provides to the Commission to be associated with the user.

7. Will user A at the utility be able to see what user B at the utility has filed?

Yes, but only temporarily. Files will not be stored long-term on the SFTP server. Files sent to the server will be copied automatically to the Commission's private file server. A copy of each file will remain on the SFTP server temporarily so that users may verify a successful upload. It is anticipated that files on the SFTP server will be wiped daily. After that occurs, no one will be able to use the SFTP server to see what has been filed. In order to review a docket, filers will need to consult the Commission's website, www.psc.state.ut.us.

8. **Will it be possible to use a program such as WinSCP to drag-and-drop files onto the SFTP server?**

Any SFTP client that supports TLSv1.2 (e.g., Filezilla, WinSCP, FireFTP, Apple/Windows/Linux terminal) may be used, and must be installed on the user's local machine.

9. **Will the software for submitting confidential documents be browser-based, or will the utility need to install third-party software to submit files?**

The system is not browser-based. The sending utility will need a client of its own choosing. The client must support TLSv1.2.

10. **Will utilities be allowed to bundle and encrypt files with a user-friendly industry standard tool such as 7-zip?**

No. Files will be encrypted during transport and encrypted in storage, with user authentication required for both the sending user and all regulatory personnel who access the stored file.

11. **Will the servers that store encrypted confidential data be hosted by the state or a third party?**

All servers that will be used by the Commission for this process are hosted and owned by the state.

12. **Please clarify what is meant by the statement "with no passwords or file data transferred" as used in Commission notices regarding the paperless filing protocol.**

Passwords will not be used for authentication to the Commission SFTP server. Materials filed on the SFTP server will not be transferred to other parties in the docket. Only the Commission² will have access to retrieve and store materials that are filed through the SFTP server.

² After the Commission processes filings made through the SFTP server, the documents will be stored on the same internal database currently being used by the Commission. The Division and the Office have access to that database.

13. Is there a standard process supporting user administration and access management to systems housing utility data?

Yes. Commission personnel have secured access³ to the servers that store filed data. Should an employee leave the Commission, the user name and password are immediately inactivated. This system has been in place for many years, without incident.⁴

14. What data encryption algorithm will be used with the protocol, and what is the key size?

All SFTP transfers will utilize SSH encryption using TLSv1.2. Filers will be responsible to create the public-private key and may make it as long as they wish. However, RSA-2048 encryption or greater is recommended.

15. Will statutory protections for confidential information be applicable to files submitted through the SFTP server?

Yes.

At this time, Dallas Harris is leading the creation of the SFTP server and is the best contact for any further questions. He has graciously agreed to work directly with concerned parties and may be reached by e-mail at dtharris@utah.gov.

The Commission is satisfied that use of the proposed SFTP server will not compromise the security of confidential and highly confidential filings. Therefore, the Commission has revised its proposed rule R746-100 to require electronic filing and has eliminated the requirement to provide paper copies of all filings. Two documents setting forth the revised rule are attached. In one, the changes made since the technical conference are tracked. The other is a clean version. To accommodate the change to paperless filings and enable Commission

³ Access to all secured materials by state employees is managed by the Department of Technology Services using encrypted storage behind the state firewall, with access controlled by active directory security groups, and using all other state data security protocols.

⁴ These same protocols apply to personnel from the Division and the Office who access the Commission's existing internal database.

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personnel to process filings without a paper copy to use as a "road map," the rule requirements and penalties related to electronic file names have been strengthened.

Any final comments may be submitted by no later than **Wednesday, December 7, 2016**.

DATED at Salt Lake City, Utah, November 8, 2016.

/s/ Jennie T. Jonsson
Presiding Officer

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#289969

CERTIFICATE OF SERVICE

I CERTIFY that on November 8, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

By E-Mail:

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R746-100 – Track Changes Version

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

2
3 **R746-1. Public Service Commission Administrative Procedures Act**
4 **Rule.**

5
6 **R746-1-101. Title and Organization.**

7 This rule R746-1 is:

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

10 (2) organized into the following Parts:

11 (a) Part 100: General provisions;

12 (b) Part 200: Complaints and pleadings;

13 (c) Part 300: Motions;

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

15 (e) Part 500: Discovery;

16 (f) Part 600: Confidential information;

17 (g) Part 700: Hearings; and

18 (h) Part 800: Post-hearing proceedings.

19
20 **R746-1-102. Authority.**

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

22
23 **R746-1-103. Definitions.**

24 (1) "Applicant" means any person:

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

26 (b) requesting agency action from the Commission.

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

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

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

32 ~~(5)(a) "Initial pleading" means a request for agency action,~~
33 ~~which includes:~~

34 ~~(i) an application;~~

35 ~~(ii) a petition;~~

36 ~~(iii) an order to show cause; and~~

37 ~~(iv) any other filing reasonably calculated to initiate an~~
38 ~~adjudicative proceeding.~~

39 ~~(b) "Initial pleading" does not include:~~

40 ~~(i) a complaint;~~

41 ~~(ii) a motion or similar filing in a docket; or~~

42 ~~(iii) an informational filing that does not request or~~
43 ~~require Commission action.~~

44 ~~(6) "Interested person" means a person who requests to be~~
45 ~~placed on the service list for a docket.~~

46 (5) "Intervenor" means a person that:

47 (a) ~~timely~~ files with the Commission a petition for

48 intervention in a pending matter; and
49 (b) receives Commission approval to participate as a party.
50 (6) "Office" means the Office of Consumer Services, State of
51 Utah Department of Commerce.
52 (7) "Party" means a person that is entitled to participate
53 in a proceeding, pursuant to Utah Code § 63G-4-103(1)(f).
54 (8) "Person" is defined at Utah Code § 63G-4-103(1)(g).
55 ~~(11) "Petitioner" means a person seeking relief from the~~
56 ~~Commission other than the issuance of a license, right, or~~
57 ~~authority.~~
58 (9) "Presiding officer" is defined at Utah Code § 63G-4-
59 103(1)(h).
60 (10)(a) "Proceeding" or "adjudicative proceeding" means an
61 action before the Commission, initiated ~~either~~ by:
62 (i) a notice of agency action, pursuant to Utah Code § 63G-
63 4-201(1)(a);
64 (ii) a request for agency action, pursuant to Utah Code §
65 63G-4-201(1)(b); or
66 (iii) a filing made pursuant to Utah Code § 54-7-12(5).
67 (b) "Proceeding" does not include:
68 (i) an informal or preliminary inquiry or investigation
69 undertaken by the Commission to determine whether a proceeding is
70 warranted; or
71 (ii) rulemaking pursuant to Utah Code Title 63G, Chapter 3
72 et seq.
73 (11) "Respondent" means a person:
74 (a) against whom a notice of agency action or request for
75 agency action is directed; or
76 (b) required, or permitted by statute, to respond to an
77 application, petition, or other request for agency action.
78 (12) "Responsive pleading" means any rejoinder to an initial
79 pleading, including:
80 (a) an answer;
81 (b) a protest or opposition; or
82 (c) other similar filing.

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

85 (1) The following requests for agency action shall be
86 adjudicated as informal proceedings:
87 ~~(a) a complaint;~~
88 (a) an unopposed application for a certificate of public
89 convenience and necessity;
90 (b) a request for acknowledgment or approval of a
91 telecommunications utility's name change; and
92 (c) an unopposed request for acknowledgment or approval of a
93 merger, acquisition, or similar organizational restructuring that
94 does not alter or affect the services provided by a

95 telecommunications utility.

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

98

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

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

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

104 (2) Utah Administrative Code R746 et seq; or

105 (3) an order of the Commission.

106

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

108 (1) Unless Subsection R746-1-106(2) applies, periods of time
109 in Commission proceedings shall~~+~~

110 ~~(a) exclude the first day of the act, event, or default from~~
111 ~~which the time begins to run; and~~

112 ~~(b) include the last day unless it is Saturday, Sunday, or~~
113 ~~legal holiday, in which case the period shall run until the end of~~
114 ~~the next day that is not a Saturday, Sunday, or legal holiday~~ be
115 computed pursuant to Utah Code §68-3-7.

116 (2) Subsection R746-1-106(1) is superseded by any
117 conflicting:

118 (a) order of the Commission;

119 (b) statute; or

120 (c) rule.

121

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

123 A party may:

124 (1) be represented by:

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

126 (b) an attorney licensed in a foreign state, pursuant to §
127 14-801 of the Utah Supreme Court Rules of Professional Practice,
128 which is incorporated by reference;

129 (2) represent oneself individually; or

130 (3) if not an individual, represent itself through an
131 officer or employee.

132

133 **R746-1-108. Intervention.**

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

136

137 **R746-1-109. Deviation from ~~Procedural~~ Rules.**

138 (1) A party may move the Commission to deviate from a
139 specified ~~procedural~~ rule.

140 (2) The party making the motion to deviate has the burden to
141 demonstrate that the ~~procedural~~ rule imposes a hardship that

142 outweighs the benefit(s) of the rule.

143
144 **R746-1-201. Complaints.**

145 ~~(1)~~ A person that files a complaint with the Commission
146 shall demonstrate:

147 (1) that the person has attempted to work with the utility
148 to resolve the complaint;

149 (2) that the Division has reviewed the complaint and
150 determined that Commission action is warranted; and

151 (3) that the complaint has been served on the public
152 utility, pursuant to R746-1-203(1)(e).

153 ~~may file with the Commission a complaint against a public utility~~
154 ~~if the person has first:~~

155 ~~— (a) attempted to resolve the complaint with the utility's~~
156 ~~customer relations department; and~~

157 ~~— (b) reported the complaint to the Division for~~
158 ~~investigation.~~

159 ~~(2) To file a complaint, a person shall:~~

160 ~~— (a) provide a concise and legible account of the facts and~~
161 ~~circumstances on the form provided by the Division; and~~

162 ~~— (b) evidence having served the complaint on the public~~
163 ~~utility, pursuant to R746-1-203(2)(b).~~

164
165 **R746-1-202. Title of Pleadings.**

166 (1) This Subsection R746-1-202 does not apply to complaints.

167 (2) A person that files a pleading shall include the
168 following information in the title:

169 (a)(i) name of attorney preparing the pleading; or

170 (ii) if no attorney is involved, name of the person signing
171 the pleading;

172 (b) address and telephone number of the person identified in
173 Subsection R746-1-202(2)(a);

174 (c) nature of the request;

175 (d) description of the action or relief requested;

176 (e) type of pleading; and

177 (f) docket number, if known.

178
179 **R746-1-203. Form and Content of Complete Filing.**

180 (1) In order to be considered complete, a filing other than
181 a complaint shall: ~~conform to the following requirements.~~

182 ~~— (a) The filing shall be filed in both paper and electronic~~
183 ~~formats.~~

184 ~~— (a) The paper format shall be:~~

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

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

187 ~~— (iii) if longer than five pages, printed on doubled-sided~~
188 ~~and three-hole-punched paper.~~

189 ~~(b) The electronic format shall be:~~
190 (a) be presented as a functional and searchable electronic
191 word processing or spreadsheet document; ~~as applicable; that is~~
192 ~~substantially the same as the paper version filed;~~
193 (b) unless Subsection R746-1-203(5) applies, be filed
194 electronically:
195 (i) by e-mail to psc@utah.gov, if the filing is strictly
196 non-confidential; or
197 (ii) through the Commission's SFTP server;
198 ~~(ii) filed by:~~
199 ~~(A) e-mail or;~~
200 ~~(B) compact disc; and~~
201 (c) be identified by an electronic file name that includes
202 the following information, as applicable, in the following order:
203 (i) docket number;
204 (ii) identification of the type of filing, such as:
205 (A) testimony, specified as:
206 (I) confidential or redacted; and
207 (II) direct, rebuttal, surrebuttal, etc.;
208 (B) exhibit or workpaper:
209 (I) including exhibit or workpaper number; and
210 (II) specified as confidential or redacted;
211 (C) motion, including description; or
212 (D) response or reply to specified motion;
213 (iii) last name of the person providing the content of the
214 filing; and
215 (iv) name of the party on whose behalf the filing is made;
216 ~~(2) The filing shall:~~
217 (d) be signed by an individual who has read the filing and
218 believes that it is supported in fact and in law, which individual
219 may include, as applicable, by:
220 (i) the party;
221 (ii) the party's counsel; or
222 (iii) other authorized representative of the party; and
223 (e) include a certificate of service:
224 (i) stating that a true and correct copy of the filing was
225 served upon each of the parties;
226 (ii) identifying the manner of service; and
227 (iii) identifying the date of service.
228 (2) An electronic filing that does not comply with R746-1-
229 203(1)(c) shall be rejected and, if re-filed, may be deemed
230 untimely.
231 (3) An initial pleading shall:
232 (a) comply with Utah Code § 63G-4-201(3)(a); and
233 (b) if a statute, rule, regulation, or other authority
234 requires the Commission to act within a specific time period,
235 include a specific section setting forth:

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

238 (ii) the applicable time period; and

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

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

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

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

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

251
252 **R746-1-204. Effective date of filing.**

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

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

257
258 ~~**R746-1-205. Content of Initial Pleading.**~~

259 ~~An initial pleading shall include the following information,~~
260 ~~to the extent it is known and applicable:~~

261 ~~(1) the reference numbers, docket numbers, or other~~
262 ~~identifying symbols of relevant tariffs, rates, schedules,~~
263 ~~contracts, applications, rules, or similar matter or material;~~

264 ~~(2)(a) the name of each participant for whom the filing is~~
265 ~~made; or~~

266 ~~(b) if the filing is made for a group of participants, the~~
267 ~~name of the group;~~

268 ~~(3) if a statute, rule, regulation, or other authority~~
269 ~~requires the Commission to act within a specific time period, a~~
270 ~~specific section of the pleading:~~

271 ~~(a) located after the heading or caption;~~

272 ~~(b) entitled "Proceeding Time Period"; and~~

273 ~~(c) setting forth:~~

274 ~~(a) a reference or citation to the statute, rule,~~
275 ~~regulation, or other authority;~~

276 ~~(b) the applicable time period; and~~

277 ~~(c) the expiration date of the applicable time period,~~
278 ~~identified by day, month, and year.~~

279 ~~(4) the specific authorization or relief sought;~~

280 ~~(5) copies of, or references to, tariff or rate sheets~~
281 ~~relevant to the pleading;~~

282 ~~(6) the relevant facts, if not set forth in a previously~~

~~filed document that is identified within the filing being made;
(7) the position taken by the person filing the pleading,
including the basis in fact and law for the position; and
(8) the name, address, and telephone number of an individual
who, with respect to a matter contained in the filing, represents
the person for whom the filing is made.~~

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

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

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

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

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

R746-1-206. Responsive Pleadings.

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

R746-1-301. Motions.

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

- (1) Any response shall be filed within ~~30~~15 days of the service date of the motion.
- (2) Any reply shall be filed within ~~15~~10 days of the service date of the response.

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

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

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

- (a) utilize a sequential line numbering system; and
- (b) ~~be filed in both paper and electronic formats~~comply with

Subsection R746-1-203(1)

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

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

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

330 ~~_____ (c) as to testimony, be identified by an electronic file~~
331 ~~name including the following:~~

332 ~~_____ (i) the word "direct," "rebuttal" or "surrebuttal," as~~
333 ~~applicable;~~

334 ~~_____ (ii) the last name of the witness;~~

335 ~~_____ (iii) the name of the party on whose behalf the witness~~
336 ~~offers testimony; and~~

337 ~~_____ (iv) as applicable, the word "exhibit" or "workpapers,"~~
338 ~~followed by any applicable identification number or letter.~~

339 (3) ~~If an exhibit accompanying pre-hearing testimony~~
340 ~~utilizes any embedded formula or algorithm, it shall be filed in~~
341 ~~an electronic format that allows the embedded data to be accessed~~
342 a filing includes any calculation, the calculation shall be
343 provided in the original format with formulas intact.
344

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

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

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

350 (2) Pre-hearing testimony that is entered into evidence
351 shall be subject to cross-examination.
352

353 **R746-1-501. Discovery.**

354 (1) Parties shall attempt to complete informal discovery
355 ~~through:~~

356 ~~_____ (a) data requests;~~

357 ~~_____ (b) written interrogatories;~~

358 ~~_____ (c) requests for admission; and~~

359 ~~_____ (d) requests for production of documents and other~~

360 record through written requests for information and records (data
361 requests).

362 (2) If a party considers informal discovery pursuant to
363 Subsection R746-1-501(1) to be insufficient, the party may move
364 the Commission for formal discovery according to Rules 26 through
365 37 of the Utah Rules of Civil Procedure, with the following
366 exceptions and modifications:

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

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

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

377 by the Commission.

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

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

383 ~~(3) A party that objects to a discovery request shall file a~~
384 ~~motion to quash or modify the request in accordance with R746-1-~~
385 ~~301~~On request from a party or on the presiding officer's own
386 initiative, the presiding officer may include in a scheduling
387 order deadlines for:

388 (a) filing a petition for intervention;

389 (b) objecting to a discovery request;

390 (c) responding to a discovery request;

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

393 (e) completing discovery;

394 (f) filing dispositive and evidentiary motions; and

395 (g) filing pre-hearing testimony.

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

398

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

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

404 ~~(a) (i) in the paper filing, placing the information on~~
405 ~~yellow paper; and~~

406 ~~(ii) in the electronic filing, highlighting the information~~
407 ~~in yellow; and~~

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

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

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

413 (2)(a) A person that files or is requested to provide
414 information that the person considers to be highly confidential
415 may:

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

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

420 (b) The petitioning party shall set forth:

421 (i) the particular basis for the claim;

422 (ii) the specific, additional protective measures requested,
423 which may include restricting or prohibiting specific individuals

424 from accessing information; and

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

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

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

432 (i) ~~(A) in the paper filing, place the information on pink~~
433 ~~paper; and~~

434 ~~(B) in the electronic filing,~~ highlight the information in
435 pink; and

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

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

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

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

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

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

447

448 **746-1-602. Persons Entitled to Review Confidential and Highly**
449 **Confidential Information.**

450 (1)(a) ~~Except as provided in this Subsection 602(2),~~ The
451 following persons are entitled to receive and review confidential
452 and highly confidential information:

453 (i) Commission, including counsel and staff;

454 (ii) Division, including counsel and staff; and

455 (iii) Office, including counsel and staff.

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

460 (A) counsel or other designated representative of ~~for any~~
461 each party, including, to the extent reasonably necessary, the
462 counsel's or representative's:

463 (I) paralegals;

464 (II) administrative assistants; and

465 (III) clerical staff;

466 (B) persons designated by a party as an expert witness,
467 including, to the extent reasonably necessary, the experts':

468 (I) administrative assistants; and

469 (II) clerical staff;

470 (C) persons employed by the parties, to the extent

471 reasonably necessary; and
472 (D) any other person that signs a non-disclosure agreement.

473 (ii) Subsection R746-1-602(1)(b)(i) is superseded by any
474 conflicting:

475 (A) agreement of the parties; or

476 (B) order of the Commission.

477 (c) ~~any person who signs a~~ The non-disclosure agreement
478 required under Subsection 746-1-602(1)(b) shall read substantially
479 as follows: "I have reviewed Public Service Commission of Utah
480 Rule 746-1-603 and/or the Protective Order entered by the Public
481 Service Commission of Utah in Docket No. XX-XXX-XX with respect to
482 the review and use of confidential information and agree to comply
483 with the terms and conditions of the rule and/or Protective
484 Order."

485 (2)(a) A person, including an expert who is employed or
486 retained by a party, may not receive confidential or highly
487 confidential information if, in performing the person's normal job
488 functions, the person could use the information to the competitive
489 disadvantage of the person providing the information.

490 (b) The party that wishes to restrict or deny access to
491 confidential or highly confidential information under Subsection
492 R746-1-602(2)(a) has the burden to demonstrate the competitive
493 disadvantage claimed.

494

495 **R746-1-603. Treatment of Confidential and Highly Confidential**
496 **Information**

497 (1) A person that receives confidential or highly
498 confidential information may not use or disclose the information
499 except:

500 (a) for the purpose of the Commission proceeding in which it
501 was obtained, provided that the use within the Commission
502 proceeding maintains confidentiality; or

503 (b) outside of a Commission proceeding, as required by law,
504 provided that the person complies with Subsection R746-1-603(2),
505 ~~in response to:~~

506 ~~(i) interrogatories and other forms of discovery;~~

507 ~~(ii) administrative requests for information or documents;~~

508 ~~(iii) subpoenas;~~

509 ~~(iv) civil investigative demands; or~~

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

512 (2) A person that is required by law to disclose
513 confidential or highly confidential information outside of a
514 Commission proceeding shall, prior to providing the information:

515 (a) give notice of the disclosure requirement, by telephone
516 and in writing, to the person that first provided the information;
517 and

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

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

524

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

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

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

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

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

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

533 (i) agreement of the parties; or

534 (ii) order of the Commission.

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

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

541 (a) shall be subject to ~~reconsideration~~ Utah Code § 63G-4-
542 301; and

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

545

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

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

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

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

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

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

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

562 (B) counsel for the Division; and

563 (C) counsel for the Office.

564 (2)(a) A party that proposes to use another person's

565 confidential or highly confidential information as evidence in a
566 Commission proceeding shall ~~at least ten (10) days~~ prior to use:
567 ~~(i) inform the owner of the information; and~~
568 ~~(ii) make a good faith effort to~~ arrange with the owner of
569 the information circumstances that will allow the information to
570 be used while keeping trade secrets and proprietary material
571 confidential.

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

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

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

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

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

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

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

593 (ii) certify that the information has been:

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

595 or

596 (B) destroyed.

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

600 (i) constituting ~~attorney~~ work product; and

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

603
604 **R746-1-606. Commission Compliance with the Utah Government Records**
605 **Access and Management Act.**

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

610 (2) A party whose confidential or highly confidential
611 information is requested pursuant to Utah Code Title 63G, Chapter

612 2 et seq shall collaborate with the Commission to determine how
613 the information should be classified under the statute.

614

615 **R746-1-701. Witness Subpoenas.**

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

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

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

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

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

626

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

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

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

631 (b) all parties stipulate to the continuance.

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

636

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

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

640

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

642 ~~(1) A person not a party to a docket who does not petition~~
643 ~~for intervention may:~~

644 (1) file comments prior to hearing; or

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

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

648

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

650 (1) Parties shall:

651 (a) mark their exhibits before hearing;

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

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

655 (i) the presiding officer; and

656 (ii) each party.

657 (2) If an exhibit offered at hearing contains information
658 claimed to be confidential or highly confidential, the party

659 offering the exhibit shall comply with Subsection R746-1-605.

660

661 **R746-1-801. ~~Reconsideration and Agency Review~~Post-hearing**
662 **Proceedings.**

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

665 (2) A person that challenges a finding of fact in a ~~request~~
666 ~~for reconsideration or review~~ proceeding brought under Subsection
667 R746-1-801(1) shall marshal the record evidence that supports the
668 challenged finding, as set forth in State v. Nielsen, 2014 UT 10,
669 ¶¶ 33-44, 326 P.3d 645.

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

673 (4) A petition for ~~reconsideration~~ rehearing pursuant to Utah
674 Code § ~~63C-4-302~~ 54-7-15 is ~~not~~ required in order for a party to
675 exhaust its administrative remedies prior to appeal.

DOCKET NOS. 16-R100-01 and 16-R100-02

- 23 -

R746-100 – Clean Version

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

2
3 **R746-1. Public Service Commission Administrative Procedures Act**
4 **Rule.**

5
6 **R746-1-101. Title and Organization.**

7 This rule R746-1 is:

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

10 (2) organized into the following Parts:

11 (a) Part 100: General provisions;

12 (b) Part 200: Complaints and pleadings;

13 (c) Part 300: Motions;

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

15 (e) Part 500: Discovery;

16 (f) Part 600: Confidential information;

17 (g) Part 700: Hearings; and

18 (h) Part 800: Post-hearing proceedings.

19
20 **R746-1-102. Authority.**

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

22
23 **R746-1-103. Definitions.**

24 (1) "Applicant" means any person:

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

26 (b) requesting agency action from the Commission.

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

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

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

32 (5) "Intervenor" means a person that:

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

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

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

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

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

41 (9) "Presiding officer" is defined at Utah Code § 63G-4-
42 103(1)(h).

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

45 (i) a notice of agency action, pursuant to Utah Code § 63G-
46 4-201(1)(a);

47 (ii) a request for agency action, pursuant to Utah Code §

48 63G-4-201(1)(b); or
49 (iii) a filing made pursuant to Utah Code § 54-7-12(5).
50 (b) "Proceeding" does not include:
51 (i) an informal or preliminary inquiry or investigation
52 undertaken by the Commission to determine whether a proceeding is
53 warranted; or
54 (ii) rulemaking pursuant to Utah Code Title 63G Chapter 3 et
55 seq.
56 (11) "Respondent" means a person:
57 (a) against whom a notice of agency action or request for
58 agency action is directed; or
59 (b) required, or permitted by statute, to respond to an
60 application, petition, or other request for agency action.
61 (12) "Responsive pleading" means any rejoinder to an initial
62 pleading, including:
63 (a) an answer;
64 (b) a protest or opposition; or
65 (c) other similar filing.
66

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

68 (1) The following requests for agency action shall be
69 adjudicated as informal proceedings:
70 (a) an unopposed application for a certificate of public
71 convenience and necessity;
72 (b) a request for acknowledgment or approval of a
73 telecommunications utility's name change; and
74 (c) an unopposed request for acknowledgment or approval of a
75 merger, acquisition, or similar organizational restructuring that
76 does not alter or affect the services provided by a
77 telecommunications utility.
78 (2) A request for agency action not listed in Subsection
79 R746-1-104(1) shall be adjudicated as a formal proceeding.
80

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

82 The Utah Rules of Civil Procedure and case law interpreting
83 these rules are persuasive authority in Commission adjudications
84 unless otherwise provided by:
85 (1) Title 63G, Chapter 4, Administrative Procedures Act;
86 (2) Utah Administrative Code R746 et seq.; or
87 (3) an order of the Commission.
88

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

90 (1) Unless Subsection R746-1-106(2) applies, periods of time
91 in Commission proceedings shall be computed pursuant to Utah Code
92 § 68-3-7.
93 (2) Subsection R746-1-106(1) is superseded by any
94 conflicting:

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

98

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

100 A party may:

101 (1) be represented by:

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

103 (b) an attorney licensed in a foreign state, pursuant to §
104 14-801 of the Utah Supreme Court Rules of Professional Practice,
105 which is incorporated by reference;

106 (2) represent oneself individually; or

107 (3) if not an individual, represent itself through an
108 officer or employee.

109

110 **R746-1-108. Intervention.**

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

113

114 **R746-1-109. Deviation from Rules.**

115 (1) A party may move the Commission to deviate from a
116 specified rule.

117 (2) The party making the motion to deviate has the burden to
118 demonstrate that the rule imposes a hardship that outweighs the
119 benefit(s) of the rule.

120

121 **R746-1-201. Complaints.**

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

124 (1) that the person has attempted to work with the utility
125 to resolve the complaint;

126 (2) that the Division has reviewed the complaint and
127 determined that Commission action is warranted; and

128 (3) that the complaint has been served on the public
129 utility, pursuant to R746-1-203(1)(e).

130

131 **R746-1-202. Title of Pleadings.**

132 (1) This Subsection R746-1-202 does not apply to complaints.

133 (2) A person that files a pleading shall include the
134 following information in the title:

135 (a)(i) name of attorney preparing the pleading; or

136 (ii) if no attorney is involved, name of the person signing
137 the pleading;

138 (b) address and telephone number of the person identified in
139 Subsection R746-1-202(2)(a);

140 (c) nature of the request;

141 (d) description of the action or relief requested;

- 142 (e) type of pleading; and
- 143 (f) docket number, if known.

144

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

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

148 (a) be presented as a functional and searchable electronic
149 word processing or spreadsheet document;

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

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

154 (ii) through the Commission's SFTP server;

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

157 (i) docket number;

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

159 (A) testimony, specified as:

160 (I) confidential or redacted; and

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

162 (B) exhibit or workpaper:

163 (I) including exhibit or workpaper number; and

164 (II) specified as confidential or redacted;

165 (C) motion, including description; or

166 (D) response or reply to specified motion;

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

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

170 (d) be signed by an individual who has read the filing and
171 believes that it is supported in fact and in law, which individual
172 may include:

173 (i) the party;

174 (ii) the party's counsel; or

175 (iii) other authorized representative of the party; and

176 (e) include a certificate of service:

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

179 (ii) identifying the manner of service; and

180 (iii) identifying the date of service.

181 (2) An electronic filing that does not comply with R746-1-
182 203(1)(c) shall be rejected and, if re-filed, may be deemed
183 untimely.

184 (3) An initial pleading shall:

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

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

189 (i) a reference or citation to the statute, rule,
190 regulation, or other authority;
191 (ii) the applicable time period; and
192 (iii) the expiration date of the applicable time period,
193 identified by day, month, and year.

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

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

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

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

204

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

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

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

210

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

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

215 (a) a responsive pleading has been filed; or

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

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

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

223

224 **R746-1-206. Responsive Pleadings.**

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

228

229 **R746-1-301. Motions.**

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

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

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

236
237 **R746-1-401. Pre-hearing Briefs, Comments, and Testimony - General**
238 **Requirements.**

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

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

243 (a) utilize a sequential line numbering system; and

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

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

247
248 **R746-1-402. Pre-hearing Testimony - Inclusion in Record.**

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

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

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

255
256 **R746-1-501. Discovery.**

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

260 (2) If a party considers informal discovery pursuant to
261 Subsection R746-1-501(1) to be insufficient, the party may move
262 the Commission for formal discovery according to Rules 26 through
263 37 of the Utah Rules of Civil Procedure, with the following
264 exceptions and modifications:

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

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

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

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

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

281 (3) On request from a party or on the presiding officer's own
282 initiative, the presiding officer may include in a scheduling

283 order deadlines for:
284 (a) filing a petition for intervention;
285 (b) objecting to a discovery request;
286 (c) responding to a discovery request;
287 (d) serving disclosures of evidence to be presented at
288 hearing;
289 (e) completing discovery;
290 (f) filing dispositive and evidentiary motions; and
291 (g) filing pre-hearing testimony.
292 (4) An intervenor shall serve any request for discovery on
293 the other parties to the docket.

294
295 **R746-1-601. Identification of Information Claimed to Be**
296 **Confidential or Highly Confidential in Commission Proceedings.**

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

300 (a) highlighting the information in yellow; and
301 (b) including the following designation, as applicable, on
302 each page containing confidential information:

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

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

306 (2)(a) A person that files or is requested to provide
307 information that the person considers to be highly confidential
308 may:

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

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

313 (b) The petitioning party shall set forth:

314 (i) the particular basis for the claim;

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

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

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

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

325 (i) highlight the information in pink; and

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

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

330 (B) "HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".
331 (3) A person that files with the Commission a document
332 containing confidential or highly confidential information shall:
333 (a) file a redacted version for public access; and
334 (b) ensure that the line numbering and formatting in the
335 redacted version match, as closely as practicable, that appearing
336 in the unredacted version.

337

338 **746-1-602. Persons Entitled to Review Confidential and Highly**
339 **Confidential Information.**

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

- 342 (i) Commission, including counsel and staff;
- 343 (ii) Division, including counsel and staff; and
- 344 (iii) Office, including counsel and staff.

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

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

- 352 (I) paralegals;
- 353 (II) administrative assistants; and
- 354 (III) clerical staff;

355 (B) persons designated by a party as an expert witness,
356 including, to the extent reasonably necessary, the experts':

- 357 (I) administrative assistants; and
- 358 (II) clerical staff;

359 (C) persons employed by the parties, to the extent
360 reasonably necessary; and

361 (D) any other person that signs a non-disclosure agreement.

362 (ii) Subsection R746-1-602(1)(b)(i) is superseded by any
363 conflicting:

- 364 (A) agreement of the parties; or
- 365 (B) order of the Commission.

366 (c) The non-disclosure agreement required under Subsection
367 746-1-602(1)(b) shall read substantially as follows: "I have
368 reviewed Public Service Commission of Utah Rule 746-1-603 and/or
369 the Protective Order entered by the Public Service Commission of
370 Utah in Docket No. XX-XXX-XX with respect to the review and use of
371 confidential information and agree to comply with the terms and
372 conditions of the rule and/or Protective Order."

373 (2)(a) A person, including an expert who is employed or
374 retained by a party, may not receive confidential or highly
375 confidential information if, in performing the person's normal job
376 functions, the person could use the information to the competitive

377 disadvantage of the person providing the information.

378 (b) The party that wishes to restrict or deny access to
379 confidential or highly confidential information under Subsection
380 R746-1-602(2)(a) has the burden to demonstrate the competitive
381 disadvantage claimed.

382

383 **R746-1-603. Treatment of Confidential and Highly Confidential**
384 **Information**

385 (1) A person that receives confidential or highly
386 confidential information may not use or disclose the information
387 except:

388 (a) for the purpose of the Commission proceeding in which it
389 was obtained, provided that the use within the Commission
390 proceeding maintains confidentiality; or

391 (b) outside of a Commission proceeding, as required by law,
392 provided that the person complies with Subsection R746-1-603(2).

393 (2) A person that is required by law to disclose
394 confidential or highly confidential information outside of a
395 Commission proceeding shall, prior to providing the information:

396 (a) give notice of the disclosure requirement, by telephone
397 and in writing, to the person that first provided the information;
398 and

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

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

405

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

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

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

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

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

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

414 (i) agreement of the parties; or

415 (ii) order of the Commission.

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

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

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

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

424 issuance.

425

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

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

432 (b) A party that is not able to comply with Subsection R746-
433 1-605(1)(a) shall:

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

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

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

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

442 (B) counsel for the Division; and

443 (C) counsel for the Office.

444 (2)(a) A party that proposes to use another person's
445 confidential or highly confidential information as evidence in a
446 Commission proceeding shall arrange with the owner of the
447 information circumstances that will allow the information to be
448 used while keeping trade secrets and proprietary material
449 confidential.

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

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

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

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

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

464 (4)(a) Other than the Division, the Office, and counsel for
465 a party, a person that obtains another person's confidential or
466 highly confidential information during a proceeding shall, within
467 30 days after the docket is concluded:

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

471 (ii) certify that the information has been:
472 (A) turned over, in its entirety, to the person's counsel;
473 or
474 (B) destroyed.
475 (b) The Division, the Office, and counsel for a party may
476 retain confidential information as part of notes, workpapers, and
477 other documents:
478 (i) constituting work product; and
479 (ii) subject to privilege or other applicable disclosure
480 restriction.

481
482 **R746-1-606. Commission Compliance with the Utah Government Records**
483 **Access and Management Act.**

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

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

492
493 **R746-1-701. Witness Subpoenas.**

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

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

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

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

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

504
505 **R746-1-702. Continuance of Scheduled Hearing.**

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

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

509 (b) all parties stipulate to the continuance.

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

514
515 **R746-1-703. Closing a Hearing.**

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

518

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

520 A person not a party to a docket may:

521 (1) file comments prior to hearing; or

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

524

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

526 (1) Parties shall:

527 (a) mark their exhibits before hearing;

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

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

531 (i) the presiding officer; and

532 (ii) each party.

533 (2) If an exhibit offered at hearing contains information

534 claimed to be confidential or highly confidential, the party

535 offering the exhibit shall comply with Subsection R746-1-605.

536

537 **R746-1-801. Post-hearing Proceedings.**

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

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

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

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