

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 proceeding.

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(3).

28 (3) "Complainant" means a person who 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 (7) "Intervenor" means a person who:

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 (8) "Office" means the Office of Consumer Services, State of
51 Utah Department of Commerce.
52 (9) "Party" means a person who is entitled to participate in
53 a proceeding, pursuant to Utah Code § 63G-4-103(1)(f).
54 (10) "Person" is defined at Utah Code § 54-2-2.
55 (11) "Petitioner" means a person seeking relief from the
56 Commission other than the issuance of a license, right, or
57 authority.
58 (12) "Presiding officer" is defined at Utah Code § 63G-4-
59 103(1)(h).
60 (13)(a) "Proceeding" or "adjudicative proceeding" means an
61 action before the Commission, initiated either by a notice of
62 agency action or request for agency action, pursuant to Utah Code
63 § 63G-4-201.
64 (b) "Proceeding" does not include:
65 (i) an informal or preliminary inquiry or investigation
66 undertaken by the Commission to determine whether a proceeding is
67 warranted; or
68 (ii) rulemaking pursuant to Utah Code § 63G-3-1 et seq.
69 (14) "Respondent" means a person:
70 (a) against whom a notice of agency action or request for
71 agency action is directed; or
72 (b) required, or permitted by statute, to respond to an
73 application, petition, or other request for agency action.
74 (15) "Responsive pleading" means any rejoinder to an initial
75 pleading, including:
76 (a) an answer;
77 (b) a protest or opposition; or
78 (c) other similar filing.
79

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

81 (1) The following requests for agency action shall be
82 adjudicated as informal proceedings:
83 (a) a complaint;
84 (b) an unopposed application for a certificate of public
85 convenience and necessity;
86 (c) a request for acknowledgment or approval of a
87 telecommunications utility's name change; and
88 (d) a request for acknowledgment or approval of a merger,
89 acquisition, or similar organizational restructuring that does not
90 alter or affect the services provided by a telecommunications
91 utility.
92 (2) A request for agency action not listed in this
93 Subsection 104(1) shall be adjudicated as a formal proceeding.
94

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

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

- 99 (1) Title 63G, Chapter 4, Administrative Procedures Act; or
100 (2) Utah Administrative Code R746 et seq.

101

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

103 (1) Unless this Subsection 106(2) applies, periods of time
104 in Commission proceedings shall:

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

107 (b) include the last day unless it is Saturday, Sunday, or
108 legal holiday, in which case the period shall run until the end of
109 the next day that is not a Saturday, Sunday, or legal holiday.

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

111 (a) order of the Commission;

112 (b) statute; or

113 (c) rule.

114

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

116 A party may:

117 (1) be represented by:

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

119 (b) an attorney licensed in a foreign state, pursuant to §
120 14-801 of the Utah Supreme Court Rules of Professional Practice,
121 which is incorporated by reference;

122 (2) represent oneself individually; or

123 (3) if not an individual, represent itself through an
124 officer or employee.

125

126 **R746-1-108. Intervention.**

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

129

130 **R746-1-109. Deviation from Procedural Rules.**

131 (1) A party may move the Commission to deviate from a
132 specified procedural rule.

133 (2) The party making the motion to deviate has the burden to
134 demonstrate that the procedural rule imposes a hardship that
135 outweighs the benefit(s) of the rule.

136

137 **R746-1-201. Complaints.**

138 (1) A person may file with the Commission a complaint
139 against a public utility if the person has first:

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

142 (b) reported the complaint to the Division for
143 investigation.

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

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

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

149

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

151 A person who files a pleading shall include the following
152 information in the title:

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

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

156 (2) address and telephone number of the person identified in
157 this Subsection 202(1);

158 (3) nature of the request;

159 (4) description of the action or relief requested;

160 (5) type of pleading; and

161 (6) docket number, if known.

162

163 **R746-1-203. Form of Complete Filing.**

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

166 (1) The filing shall be filed in both paper and electronic
167 formats.

168 (a) The paper format shall be:

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

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

171 (iii) if longer than five pages, printed on doubled-sided
172 and three-hole-punched paper.

173 (b) The electronic format shall be:

174 (i) presented as a functional and searchable electronic word
175 processing or spreadsheet document, as applicable, that is
176 substantially the same as the paper version filed;

177 (ii) filed by:

178 (A) e-mail or;

179 (B) compact disc; and

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

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

182 (B) the type of filing.

183 (2) The filing shall:

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

185 (i) the party;

186 (ii) the party's counsel; or

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

188 (b) include a certificate of service:

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

191 (ii) identifying the manner of service; and

192 (iii) identifying the date of service.

193

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

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

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

199

200 **R746-1-205. Content of Initial Pleading.** An initial pleading
201 shall include the following information, to the extent it is known
202 and applicable:

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

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

208 (b) if the filing is made for a group of participants, the
209 name of the group;

210 (3) if a statute, rule, regulation, or other authority
211 requires the Commission to act within a specific time period, a
212 specific section of the pleading:

213 (a) located after the heading or caption;

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

215 (c) setting forth:

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

218 (ii) the applicable time period; and

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

221 (4) the specific authorization or relief sought;

222 (5) copies of, or references to, tariff or rate sheets
223 relevant to the pleading;

224 (6) the relevant facts, if not set forth in a previously
225 filed document that is identified within the filing being made;

226 (7) the position taken by the person filing the pleading,
227 including the basis in fact and law for the position; and

228 (8) the name, address, and telephone number of an individual
229 who, with respect to a matter contained in the filing, represents
230 the person for whom the filing is made.

231

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

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

236 (a) a responsive pleading has been filed; or
237 (b) the time for filing a responsive pleading has expired.
238 (2) If a defect in a complaint or initial pleading does not
239 affect the substantial rights of the parties, it does not require
240 amendment.

241
242 **R746-1-207. Responsive Pleadings.**

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

246
247 **R746-1-301. Motions.**

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

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

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

254
255 **R746-1-401. Pre-hearing Briefs, Comments, and Testimony - General**
256 **Requirements.**

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

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

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

262 (b) be filed in both paper and electronic formats.

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

265 (4) The electronic format shall:

266 (a) conform to the requirements set forth in R746-1-
267 203(1)(b); and

268 (b) as to testimony, be identified by an electronic file
269 name including the following:

270 (i) the word "direct," "rebuttal" or "surrebuttal," as
271 applicable;

272 (ii) the last name of the witness;

273 (iii) the name of the party on whose behalf the witness
274 offers testimony; and

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

277 (5) If an exhibit accompanying pre-hearing testimony
278 utilizes any embedded formula or algorithm, it shall be filed in
279 an electronic format that allows the embedded data to be accessed.

280
281 **R746-1-402. Pre-hearing Testimony - Inclusion in Record.**

282 (1)(a) A party may move the Commission to accept pre-hearing

283 testimony into evidence without having it read under oath.

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

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

288

289 **R746-1-501. Discovery.**

290 (1) Parties shall attempt to complete informal discovery
291 through:

292 (a) data requests;

293 (b) written interrogatories;

294 (c) requests for admission; and

295 (d) requests for production of documents and other records.

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

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

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

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

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

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

317 (3) A party that objects to a discovery request shall file a
318 motion to quash or modify the request in accordance with R746-1-
319 301.

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

322

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

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

328 (a)(i) in the paper filing, placing the information on
329 yellow paper; and

330 (ii) in the electronic filing, highlighting the information
331 in yellow; and

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

334 (i) "CONFIDENTIAL - - SUBJECT TO PUBLIC SERVICE COMMISSION
335 OF UTAH RULE 746-1-601"; or

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

337 (2)(a) A person who files or is requested to provide
338 information that the person considers to be highly confidential
339 may petition the Commission for an order granting additional
340 protective measures.

341 (b) The petitioning party shall set forth:

342 (i) the particular basis for the claim;

343 (ii) the specific, additional protective measures requested;
344 and

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

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

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

352 (i)(A) in the paper filing, place the information on pink
353 paper; and

354 (B) in the electronic filing, highlight the information in
355 pink; and

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

358 (A) "HIGHLY CONFIDENTIAL - - SUBJECT TO PUBLIC SERVICE
359 COMMISSION OF UTAH RULE 746-1-601"; or

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

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

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

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

367

368 **R746-1-602. Persons Entitled to Review Confidential and Highly**
369 **Confidential Information.**

370 (1)(a) Except as provided in this Subsection 602(2), the
371 following persons are entitled to receive and review confidential
372 and highly confidential information:

373 (i) Commission, including counsel and staff;

374 (ii) Division of Public Utilities, including counsel and
375 staff;

376 (iii) Office of Consumer Services, including counsel and

377 staff;
378 (iv) counsel for all parties, including, to the extent
379 reasonably necessary:
380 (A) paralegals;
381 (B) administrative assistants; and
382 (C) clerical staff;
383 (v) persons designated by a party as an expert witness,
384 including, to the extent reasonably necessary, the experts':
385 (A) administrative assistants; and
386 (B) clerical staff;
387 (C) persons employed by the parties, to the extent
388 reasonably necessary; and
389 (vi) any person who signs a non-disclosure agreement
390 substantially as follows: "I have reviewed Public Service
391 Commission of Utah Rule 746-1-603 and/or the Protective Order
392 entered by the Public Service Commission of Utah in Docket No. XX-
393 XXX-XX with respect to the review and use of confidential
394 information and agree to comply with the terms and conditions of
395 the rule and/or Protective Order."
396 (2) A person, including an expert who is employed or
397 retained by a party, may not receive confidential or highly
398 confidential information if, in performing the person's normal job
399 functions, the person could use the information to the competitive
400 disadvantage of the person providing the information.

401
402 **R746-1-603. Treatment of Confidential and Highly Confidential**
403 **Information.**

404 (1) A person who receives confidential or highly
405 confidential information may not use or disclose the information
406 except:
407 (a) for the purpose of the proceeding in which it was
408 obtained; or
409 (b) pursuant to this Subsection 603(2), as required in
410 response to:
411 (i) interrogatories and other forms of discovery;
412 (ii) administrative requests for information or documents;
413 (iii) subpoenas;
414 (iv) civil investigative demands; or
415 (v) records requests under the Government Records Access and
416 Management Act, Utah Code Title 63G, Chapter 2.
417 (2) A person who is required by law to disclose confidential
418 or highly confidential information shall, prior to providing the
419 information:
420 (a) give notice of the disclosure requirement, by telephone
421 and in writing, to the person who first provided the information;
422 and
423 (b) cooperate with the person who first provided the

424 information to obtain a protective order or similar assurance of
425 confidentiality.

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

429

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

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

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

435 (a) "CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF
436 UTAH RULE 746-1-604"; or

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

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

439 (i) agreement of the parties; or

440 (ii) order of the Commission.

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

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

447 (a) shall be subject to reconsideration; and

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

450

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

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

457 (b) A party that is not able to comply with this Subsection
458 605(1)(a) shall:

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

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

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

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

467 (B) counsel for the Division; and

468 (C) counsel for the Office.

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

471 at least ten (10) days prior to use:
472 (i) inform the owner of the information; and
473 (ii) make a good faith effort to arrange circumstances that
474 will allow the information to be used while keeping trade secrets
475 and proprietary material confidential.
476 (b) If efforts taken pursuant to this Subsection 605(2)(a)
477 fail, the owner of the information shall move the Commission to
478 segregate and withhold any portion of the record that would reveal
479 trade secrets or proprietary information.
480 (c) If the Commission grants a motion to segregate and
481 withhold a record, the moving party shall mark the record, as
482 applicable, substantially as follows:
483 (i) "CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF
484 UTAH RULE 746-1-605"; or
485 (ii) "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER".
486 (3) A party that considers it necessary to discuss a
487 segregated confidential record during an adjudication shall move
488 the Commission for an in camera hearing.
489 (4)(a) A person, other than counsel, that obtains another
490 person's confidential or highly confidential information during a
491 proceeding shall, within 30 days after the docket is concluded:
492 (i) return to the owner of the information all records in
493 the party's possession that reference the confidential
494 information; or
495 (ii) certify that the information has been:
496 (A) turned over, in its entirety, to the person's counsel;
497 or
498 (B) destroyed.
499 (b) Counsel may retain confidential information as part of
500 notes, workpapers, and other documents constituting attorney work
501 product and subject to privilege.

502
503 **R746-1-606. Commission Compliance with the Utah Government Records**
504 **Access and Management Act.**

505 (1) A party's marking information as confidential or highly
506 confidential does not ensure a classification of "private,"
507 "protected," or "classified" under the Utah Government Records
508 Access and Management Act, Utah Code § 63G-2-101 et seq.
509 (2) A party whose confidential or highly confidential
510 information is requested pursuant to Utah Code § 63G-2-101 et seq.
511 shall collaborate with the Commission to determine how the
512 information should be classified under the statute.

513
514 **R746-1-701. Witness Subpoenas.**

515 (1) A party that wishes to subpoena a witness for hearing
516 shall:
517 (a) file the subpoena with the presiding officer at least 20

518 days prior to hearing;

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

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

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

525

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

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

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

530 (b) all parties stipulate to the continuance.

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

535

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

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

539

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

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

543 (a) file comments prior to hearing; or

544 (b) appear during the public witness portion of a hearing to
545 provide unsworn testimony.

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

547

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

549 (1) Parties shall:

550 (a) mark their exhibits before hearing;

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

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

554 (i) the presiding officer; and

555 (ii) each party.

556 (2) If an exhibit offered at hearing contains information
557 claimed to be confidential or highly confidential, the party
558 offering the exhibit shall comply with R746-1-601.

559

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

561 (1) A person who challenges a finding of fact in a request
562 for reconsideration or review shall marshal the record evidence
563 that supports the challenged finding, as set forth in State v.
564 Nielsen, 2014 UT 10, ¶¶ 33-44, 326 P.3d 645.

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

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

570 (4) A petition for reconsideration pursuant to Utah Code §
571 63G-4-302 is not required in order for a party to exhaust its
572 administrative remedies prior to appeal.