

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,
31 State of Utah Department of Commerce.

32 (5)(a) "~~Initial pleading~~Request for Agency Action" means: ~~a~~
33 ~~request for agency action, 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) "Request for Agency Action Initial pleading" does not
40 include:

41 (i) a complaint;

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

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

Commented [KS1]: It seems more streamlined to use "Request for Agency Action" since an initial pleading is defined as a request for agency action.

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

47 (7) "Intervenor" means a person who:

48 (a) ~~timely~~ files with the Commission a petition for
49 intervention in a pending matter; and

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

51 (8) "Office" means the Office of Consumer Services, State
52 of Utah Department of Commerce.

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

55 (10) "Person" is defined at Utah Code § 54-2-2.

56 ~~(11) "Petitioner" means a person seeking relief from the
57 Commission other than the issuance of a license, right, or
58 authority.~~

59 (12) "Presiding officer" is defined at Utah Code § 63G-4-
60 103(1)(h).

61 (13)(a) "Proceeding" or "adjudicative proceeding" means an
62 action before the Commission, initiated either by a notice of
63 agency action or request for agency action, pursuant to Utah Code
64 § 63G-4-201.

65 (b) "Proceeding" does not include:

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

69 (ii) rulemaking pursuant to Utah Code § 63G-3-1 et seq.

70 (14) "Respondent" means a person:

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

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

75 (15) "Responsive pleading" means any rejoinder to a request
76 for agency action ~~initial pleading~~, including:

77 (a) an answer;

78 (b) a protest or opposition; or

79 (c) other similar filing.

80

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

82 (1) ~~Complaints and t~~The following requests for agency
83 action shall be adjudicated as informal proceedings:

84 ~~(a) a complaint;~~

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

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

Commented [KS2]: The Commission can determine the timeliness when considering whether to grant the Petition for Intervention.

Commented [KS3]: This term is not used in the rule and is not needed.

Commented [KS4]: The definition of "initial pleadings" explicitly excludes complaints.

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

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

95
96 (3) Nothing in this rule is intended to limit the
97 Commission's authority granted in Utah Code §63G-4-202.

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.

105
106 **R746-1-106. Computation of Time.**

107 ~~(1) Unless otherwise provided by order of the Commission,~~
108 ~~statute, or rule this Subsection 106(2) applies,~~ periods of time in
109 Commission proceedings shall:

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

112 ~~(2b)~~ 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.

115 ~~(2) This Subsection 106(1) is superseded by any~~
116 ~~conflicting:~~

- 117 ~~(a) order of the Commission;~~
118 ~~(b) statute; or~~
119 ~~(c) rule.~~

120
121 **R746-1-107. Representation of Parties.**

122 A party may:

123 (1) be represented by:

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

128 (2) represent oneself individually; or

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

131
132 **R746-1-108. Intervention.**

Commented [KS5]: A merger could alter or affect the services provided, so a determination should be made that it will not before the matter is informal.

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

135
136 **R746-1-109. Deviation from Procedural Rules.**

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

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

Commented [KS6]: We believe there should be an ability petition to deviate from a rule that is not just procedural.

142
143 **R746-1-201. Complaints.**

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

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

148 (b) reported the complaint to the Division for
149 investigation.

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

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

153 (b) provide evidence of having served the complaint on the
154 public utility, pursuant to R746-1-203(2)(b).

155
156 **R746-1-202. Headings and Title of Pleadings. Pleadings shall bear a
157 heading substantially as follows:**

158 TABLE

159
160 Name of Attorney preparing or Signer of Pleading
161 Address
162 Telephone Number

163
164 BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH
165 -----

166
167 In the Matter of the)
168 Application, petition,) Docket Number
169 etc.-- for complaints,)
170 names of both complainant) Type of pleading
171 and respondent should)
172 appear)
173
174 -----

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175
176 A person who files a pleading shall include the following
177 information in the title:

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

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

- 181 ~~(2) address and telephone number of the person identified~~
182 ~~in this Subsection 202(1);~~
183 ~~(3) nature of the request;~~
184 ~~(4) description of the action or relief requested;~~
185 ~~(5) type of pleading; and~~
186 ~~(6) docket number, if known.~~

Commented [KS7]: The form previously contained in the Commission Rule R747-100-03 was more clear than this proposed rule. It is unclear what a "description of the relief requested" would be.

187
188 **R746-1-203. Form of Complete Filing.**

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

191 (1) ~~The filing shall be filed in an both paper and~~
192 ~~electronic formats.~~

Commented [KS8]: This language is inconsistent with the Commission's proposed rule change in Docket 16-R100-01 which proposed to eliminate the need for paper copies. URTA is in support of eliminating the filing of paper copies.

193 ~~(a) The paper format shall be:~~

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

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

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

198 ~~(b) The electronic format shall be:~~

199 ~~(i) presented as a functional and searchable electronic~~
200 ~~word processing or spreadsheet document, as applicable, and shall~~
201 ~~include the docket number if known, and shall be dated and time-~~
202 ~~stamped upon receipt by the Commission, that is substantially the~~
203 ~~same as the paper version filed;.~~

204 (2) the electronic format shall be:

205 ~~(ii) (a) filed by:~~

206 ~~(A(i)) e-mail; or;~~

207 ~~(iiB) compact disc;~~

208 ~~(iii) thumb drive; or~~

209 ~~(iv) other acceptable electronic media; and~~

210 ~~(b)(iii) identified by an electronic file name that~~
211 includes:

212 ~~(iA) the name of the person making the filing; and~~

213 ~~(iiB) the type of filing.~~

214 (3) The filing shall:

215 ~~(a) be signed, as applicable, by:~~

216 ~~(i) the party;~~

217 ~~(ii) the party's counsel; or~~

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

219 ~~(b) include a certificate of service:~~

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

222 ~~(bii) identifying the manner of service; and~~

223 ~~(ciii) identifying the date of service.~~

224 (3) If an electronic filing is not possible or practical, a paper

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225 shilling may be made. If filed in paper format the pleading shall
226 be presented on 8½ x 11 inches paper format typed in font of at
227 least 12 points.

228
229 **R746-1-204. Effective date of filing.**

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

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

234
235 ~~**R746-1-205. Content of Initial Pleading.** An initial pleading
236 shall include the following information, to the extent it is known
237 and applicable:~~

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

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

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

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

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

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

250 ~~(c) setting forth:~~

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

253 ~~(ii) the applicable time period; and~~

254 ~~(iii) the expiration date of the applicable time period,
255 identified by day, month, and year;~~

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

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

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

261 ~~(7) the position taken by the person filing the pleading,
262 including the basis in fact and law for the position; and~~

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

266
267 **R746-1-206. Amendment of Complaint or Initial PleadingRequest for**
268 **agency action.**

Commented [KS9]: URTA questions the usefulness of this section since the content of the request for agency action is dependent on the nature of the action requested. Additionally, much of this is contained in the Heading/title.

269 (1) A party that has filed a complaint or a ~~complete and~~
270 ~~effective complaint or initial pleading~~ request for agency action
271 may amend the filing without leave of the Commission at any time
272 before:

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

275 (2) If the responsive pleading has been filed, or the time
276 for filing the responsive pleading has expired, a party may amend
277 with leave from the Commission.

278 ~~(3)~~ If a defect in a complaint or ~~initial pleading~~ request
279 for agency action does not affect the substantial rights of the
280 parties, it does not require amendment.

281
282 **R746-1-207. Responsive Pleadings.**

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

286
287 **R746-1-301. Motions.**

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

- 290 (1) Any response shall be filed within 30 days of the
291 service date of the motion.
- 292 (2) Any reply shall be filed within 15 days of the service
293 date of the response.

294
295 **R746-1-401. Pre-hearing Briefs, Comments, and Testimony - General**
296 **Requirements.**

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

- 300 (2) Pre-hearing filings and accompanying exhibits shall:
 - 301 (a) utilize a sequential line numbering system; and
 - 302 (b) be filed in both paper and electronic format that: s-

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

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

306 ~~(a) (i)~~ conforms to the requirements set forth in R746-1-
307 203(1)(b); and

308 (ii) as to testimony, be identified by an electronic file
309 name including the following:

310 (A) the word "direct," "rebuttal" or "surrebuttal," as
311 applicable;

- 312 (B) the last name of the witness;

Commented [KS10]: According to Section R746-1-203, a complaint is not required to conform to the "Complete Filing" rule.

313 (iiiC) the name of the party on whose behalf the witness
314 offers testimony; and
315 (Div) as applicable, the word "exhibit" or "workpapers,"
316 followed by any applicable identification number or letter.
317 (35) If an exhibit accompanying pre-hearing testimony
318 utilizes any embedded formula or algorithm, it shall be filed in
319 an electronic format that allows the embedded data to be accessed.

320
321 **R746-1-402. Pre-hearing Testimony - Inclusion in Record.**

322 (1)(a) A party may move the Commission to accept pre-
323 hearing testimony into evidence without having it read under oath.
324 (b) Any such motion shall be subject to objection and
325 argument.
326 (2) Pre-hearing testimony that is entered into evidence
327 shall be subject to cross-examination.

328
329 **R746-1-501. Discovery.**

330 (1) Parties shall attempt to complete informal discovery
331 through:
332 ~~(a) data requests;~~
333 ~~(b) written interrogatories;~~
334 ~~(c) requests for admission; and~~
335 ~~(d) requests for production of documents and other records.~~

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

341 (a)(i) If no responsive pleading is required in a
342 proceeding, parties may begin discovery immediately upon the
343 filing and service of an initial pleading request for agency
344 action.

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

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

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

356 (d) Any reference in an applicable Rule of Civil Procedure

Commented [KS11]: Data requests have historically included interrogatories and requests for production of documents.

357 to "the court" shall be considered a reference to the Commission.
358 (3) A party that objects to a discovery request shall file
359 a motion to quash or modify the request in accordance with R746-1-
360 301.

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

Commented [KS12]: this is not needed because an intervenor is a Party after being granted intervention.

363
364 **R746-1-601. Identification of Information Claimed to Be**
365 **Confidential or Highly Confidential in Commission Proceedings.**

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

369 (a)(i) in athe paper filing, placing the information on
370 yellow paper; and

371 (ii) in the electronic filing, highlighting the information
372 in yellow; and

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

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

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

378 (2)(a) A person who files or is requested to provide
379 information that the person considers to be highly confidential
380 may petition the Commission for an order granting additional
381 protective measures.

382 (b) The petitioning party shall set forth:

383 (i) the particular basis for the claim;

384 (ii) the specific, additional protective measures
385 requested; and

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

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

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

393 (i)(A) in athe paper filing, place the information on pink
394 paper; and

395 (B) in the electronic filing, highlight the information in
396 pink; and

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

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

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

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

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

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

408

409 **746-1-602. Persons Entitled to Review Confidential and Highly**
410 **Confidential Information.**

411 (1)(a) Except as provided in ~~this~~ Subsection 602(2), the
412 following persons are entitled to receive and review confidential
413 and highly confidential information:

414 (i) Commission, including counsel and staff;

415 (ii) Division of Public Utilities, including counsel and
416 staff;

417 (iii) Office of Consumer Services, including counsel and
418 staff;

419 (iv) counsel for all parties, including, to the extent
420 reasonably necessary:

421 (A) paralegals;

422 (B) administrative assistants; and

423 (C) clerical staff;

424 (v) persons designated by a party as an expert witness,
425 including, to the extent reasonably necessary, the experts':

426 (A) administrative assistants; and

427 (B) clerical staff;

428 (C) persons employed by the parties, to the extent
429 reasonably necessary; and

430 (vi) any person who signs a non-disclosure agreement
431 substantially as follows: "I have reviewed Public Service
432 Commission of Utah Rule 746-1-603 and/or the Protective Order
433 entered by the Public Service Commission of Utah in Docket No. XX-
434 XXX-XX with respect to the review and use of confidential
435 information and agree to comply with the terms and conditions of
436 the rule and/or Protective Order."

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

442

443 **R746-1-603. Treatment of Confidential and Highly Confidential**
444 **Information**

445
446 (1) A person who receives confidential or highly
447 confidential information may not use or disclose the information
448 except:

449 (a) for the purpose of the proceeding in which it was
450 obtained; or

451 (b) subject and pursuant to this Subsection 603(2), as
452 required by law in response to:

453 (i) ~~interrogatories and other forms of discovery;~~
454 ~~(ii) administrative requests for information or documents;~~
455 ~~(iii) valid subpoenas;~~
456 ~~(ii) court orders;~~
457 ~~(iv) civil investigative demands;~~ or
458 ~~(iiiv) valid~~ records requests under the Government Records
459 Access and Management Act, Utah Code Title 63G, Chapter 2.

460 (2) A person who is required by law to disclose
461 confidential or highly confidential information shall, prior to
462 providing the information:

463 (a) give notice of the disclosure requirement, by telephone
464 and in writing, to the person who first provided the information;
465 and

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

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

472
473 **R746-1-604. Challenge to Claim of Confidentiality.**

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

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

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

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

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

481 (i) agreement of the parties; or

482 (ii) order of the Commission.

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

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

Commented [KS13]: ``this`` is Subsection 603(1).

Commented [KS14]: The information should not be disclosed in normal discovery, but rather only in response a valid subpoena, court order, or valid GRAMA request.

Commented [KS15]: The order should be treated as any other Commission Order, subject to the same review, reconsideration, or appeal.

489 (a) ~~shall be subject to 63G-4-301~~ shall be subject to
490 ~~reconsideration~~; and
491 (b) shall go into effect no sooner than 10 days after
492 issuance.

493
494 **R746-1-605 Receipt of Confidential and Highly Confidential**
495 **Information into Evidence.**

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

500 (b) A party that is not able to comply with this Subsection
501 605(1)(a) shall:

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

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

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

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

510 (B) counsel for the Division; and

511 (C) counsel for the Office.

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

515 (i) inform the owner of the information; and

516 (ii) make a good faith effort to arrange circumstances that
517 will allow the information to be used while keeping trade secrets
518 and proprietary material confidential.

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

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

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

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

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

532 (4)(a) A person, other than counsel, that obtains another

533 person's confidential or highly confidential information during a
534 proceeding shall, within 30 days after the docket is concluded:

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

538 (ii) certify that the information has been:

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

540 or

541 (B) destroyed.

542 (b) Counsel may retain confidential information as part of
543 notes, work papers, and other documents constituting attorney work
544 product and subject to privilege.

545

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

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

552 (2) A party whose confidential or highly confidential
553 information is requested pursuant to Utah Code § 63G-2-101 et seq
554 shall collaborate with the Commission to determine how the
555 information should be classified under the statute.

556

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

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

560 (a) file the subpoena with the presiding officer at least
561 20 days prior to hearing unless good cause for the delay is shown;

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

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

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

568

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

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

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

573 (b) all parties stipulate to the continuance.

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

577 and served.

578

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

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

582

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

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

586 (a) file comments prior to hearing; or

587 (b) appear during the public witness portion of a hearing
588 to provide sworn or unsworn testimony.

589 (2) A public witness who provides sworn testimony shall be
590 subject to cross examination.

591 (3) A public witness may not conduct cross examination.

592

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

594 (1) Parties shall:

595 (a) mark their exhibits before hearing;

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

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

599 (i) the presiding officer; and

600 (ii) each party.

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

604

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

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

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

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

615 (4) A petition for reconsideration pursuant to Utah Code §
616 63G-4-302 is not required in order for a party to exhaust its
617 administrative remedies prior to appeal.

Commented [KS16]: If a person petitions for intervention and it is granted, they are a "party". If the Petition is not granted, they should be permitted to act as a public witness.

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