

NOTICE OF PROPOSED RULE AMENDMENT

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301 and Subsection 53C-1-201(3)(c).
Please address questions regarding information on this notice to the agency.
The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
The full text of all rule filings may also be inspected at the Office of Administrative Rules.

Corrections

Form Corrections Requested : 08/01/2017: Sheri, I am unlocking the form so you can combine the changes from Filing No. 41967 with this one. You will need to send an email to Administrative Rules asking us to withdraw Filing No. 41967. Let me know if you have any questions, 801-538-3218. Nancy 0 Due Date: 08/02/2017

Agency Information
1. Agency: Public Service Commission - Administration
Room no.:
Building: HEBER M WELLS BLDG
Street address 1: 160 E 300 S
Street address 2:
City, state, zip: SALT LAKE CITY UT 84111-2316
Mailing address 1: PO BOX 45585
Mailing address 2:
City, state, zip: SALT LAKE CITY UT 84111-5585
Contact person(s):
Name: Phone: Fax: E-mail:
Sheri Bintz 801-530-6714 801-530-6796 sbintz@utah.gov
Jennie Jonsson 801-530-6763 jjonsson@utah.gov
(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Information
DAR file no: 41989 Date filed: 08/01/2017 02:49 PM
State Admin Rule Filing Key: 159241
Utah Admin. Code ref. (R no.): R 746 - 1 -
Changed to Admin. Code ref. (R no.): - -

Title
2. Title of rule or section (catchline):
Public Service Commission Administrative Procedures Act Rule

Notice Type
3. Type of notice: Amendment

Rule Purpose

4. Purpose of the rule or reason for the change:

(1) To clarify requirements that apply to persons granted intervenor status in an administrative proceeding. (2) To clarify requirements that apply to attorneys appearing before the Public Service Commission (PSC), but not licensed with the Utah State Bar. (3) To enact provisions consistent with the Open and Public Meetings Act.

Response Information

5. This change is a response to comments by the Administrative Rules Review Committee.

No

Rule Summary

6. Summary of the rule or change:

(1) Intervenors are required to file briefs, memoranda, etc. in accordance with deadlines set forth in the PSC's scheduling order, and may not file public comments. (2) Attorneys not licensed in Utah may appear before the PSC after providing to the PSC a certificate of good standing from the state where licensed. (3) The Open and Public Meetings Act contains provisions addressing electronic meetings and minutes of open meetings. These amendments address both of these provisions.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: Yes

The rule amendments dealing with intervention and attorney representation are for clarification. They does not create any new obligation or program that would increase the PSC's administrative burden. Therefore, no fiscal impact to the state budget is anticipated from these changes. The proposed amendment dealing with electronic meetings could affect the local budget if the Public Service Commission's (PSC's) bridge number is used for a telephonic meeting. Costs of \$.02 a minute per user could be incurred by the Commission.

B) Local government:

Affected: No

Local governments are not required to comply with or administer the rules that are amended by this filing. Therefore, no fiscal impact to local government is anticipated.

C) Small businesses:

Affected: Yes

("small business" means a business employing fewer than 50 persons)

(1) The rule change requiring intervening businesses, including small businesses, to comply with the PSC's scheduling order will not create costs because such businesses are not required to make filings at all. However, if they choose to make filings, they must do so according to the deadlines set by the PSC. (2) The rule change regarding representation of a party by an attorney will not affect businesses, including small businesses, that have a primary place of business in Utah. Utah businesses uniformly hire local counsel to assist them in proceedings before the PSC and will not be affected by this rule change. However, a business that has a primary place of business outside of Utah and that seeks authorization to provide utility service within the state will be affected positively. Most such businesses use an attorney to ensure compliance with all regulations, but they rarely employ an attorney who is licensed in Utah. Historically, out-of-state attorneys have been required to apply for pro hac vice admission to the Utah State Bar, which costs \$300. They have also been required to partner with local counsel, which means that the business must pay an hourly rate (generally between \$150 and \$450 per hour) for two attorneys rather than for one. The rule change exempting out-of-state attorneys from the pro hac vice admission requirement and the local partnership requirement will result in significant savings for small businesses outside of Utah. Such businesses will save at least \$300 (the pro hac vice admission fee) in each proceeding before the PSC. (3) As to electronic meetings, if the PSC's bridge number is not used for a call, and the business or representative of the business would like to use their own personal device, they will incur the cost of the call at the rate of their wireless plan or a long distance charge if calling from a Landline.

D) Persons other than small businesses, businesses, or local government entities:

Affected: Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

(1) Affected persons that intervene in a PSC proceeding must comply with any scheduling order issued by the PSC, but are not required to take any action that has associated costs. (2) Persons that retain the assistance of counsel in appearing before the PSC may hire an attorney who is licensed outside of Utah without incurring fees to the Utah State Bar and without having to pay a Utah attorney to partner with the out-of-state attorney. At a minimum, such person will save the \$300 fee for pro hac vice admission to the Utah State Bar. Such person will also save the hourly charges that would otherwise be incurred to the Utah attorney. It is very likely that affected persons who live in Utah will hire local counsel. Therefore, the persons most likely to be positively affected by this rule amendment are those that live/operate out of state. (3) As to electronic meetings, if the PSC's bridge number is not used for a call, and the individual would like to use their own personal device, they will incur the cost of the call at the rate of their wireless plan or a long distance charge if calling from a Landline.

Compliance Cost Information

8. Compliance costs for affected persons:

(1) To comply, intervenors must make any filings according to the PSC's scheduling order. There are no associated costs. (2) Persons that wish to use out-of-state attorneys to assist them in proceedings before the PSC are relieved of current requirements, with associated savings of at least \$300. (3) This amendment regarding electronic meetings should have no impact on compliance costs for affected persons. The rule is only being amended to enact the provisions consistent with the open and public meetings act.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

As stated in the rule analysis, no fiscal impact to businesses is anticipated by adding language to govern electronic meetings and intervention. The rule amendment regarding attorney representation relieves an affected business from costs that would otherwise be required before an out-of-state attorney could represent the business before the PSC. Those costs include a \$300 application fee for the out-of-state attorney to obtain pro hac vice admission to the Utah State Bar. The costs would also include the hourly rate (generally between \$150 and \$450 per hour) of a Utah-licensed attorney to act as local counsel. It should be emphasized that this positive fiscal impact is anticipated to affect only out-of-state businesses, because Utah businesses uniformly hire or retain local counsel. Therefore, after conducting a thorough analysis, it was determined that this proposed rule change will not result in a fiscal impact to Utah businesses. Any fiscal impact to out-of-state business will be positive, in the amount of at least \$300.

B) Name and title of department head commenting on the fiscal impacts:

Thad LeVar, Public Service Commission Chair

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :

54-1-1

54-3-21

54-4-1

63G-4

54-1-6

54-1-3

54-7-17

54-4-2

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by reference (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page):

Publisher:

Date Issued:

Issue, or version:

ISBN Number:

ISSN Number:

Cost of Incorporated Reference:

Adds, updates, removes:

Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) :

09/14/2017

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): At (hh:mm AM/PM): At (place):

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy):

09/21/2017

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):

public utilities

administrative proceedings

confidential information

electronic filings and meetings

File Information

15. Attach an RTF document containing the text of this rule change (filename):

There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and title:

Jennie Jonsson
Administrative Law Judge

Date (mm/dd/yyyy): 07/31/2017