

**RULES
OF
TENNESSEE PUBLIC UTILITY COMMISSION**

**CHAPTER 1220-01-02
PRACTICE AND PROCEDURE - CONTESTED CASES**

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1220-01-02-.01 DEFINITIONS.

- (1) Terms used in this chapter will have the meanings given them in the Uniform Administrative Procedures Act, in the provisions governing the Commission as codified in Title 65 Tennessee Code Annotated and in Rule 1220-01-01-.01 of these rules.
- (2) In addition, for the purposes of this chapter, the following terms will have the following meanings:
 - (a) "Appearance" means any act during the course of a contested case by which a person, either in person or by counsel, recognizes and submits to the jurisdiction of the Commission for all purposes except where it is expressly stated to be limited to a particular purpose, such as challenging the jurisdiction of the Commission.
 - (b) "Party" means any person having a right, under the provisions of the laws applicable to the Commission, to appear and be heard in a contested case and includes:
 1. Persons who initiate a contested case by the filing of an initial petition;
 2. Persons against whom relief is sought or against whom action by the Commission is directed; and
 3. Persons who are given leave by the Commission to intervene in a contested case in accordance with applicable law and these rules.
 - (c) "Initial Petition" means any filing with the Commission by which a person seeks to initiate action by the Commission and which requires a contested case hearing however denominated, including applications and complaints.
 - (d) "Petitioner" means a person filing or joining with others in filing an initial petition.
 - (e) "Respondent" means a person against whom relief is sought, or against whom action by the Commission is directed.

(Rule 1220-01-02-.01, continued)

Authority: T.C.A. § 65-2-102. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; “Tennessee Regulatory Authority” references were changed to “Tennessee Public Utility Commission,” “Authority” references were changed to “Commission,” “Authority Director” references were changed to “Commissioner,” and “Chief” references were changed to “Director.”

1220-01-02-.02 COMMENCEMENT OF CONTESTED CASES.

- (1) The Commission may commence a contested case at any time with respect to any matter within its jurisdiction.
- (2) The Commission may commence a contested case upon the initial petition of any person, unless:
 - (a) The Commission lacks jurisdiction of the subject matter;
 - (b) As a matter of law, no hearing is required for the disposition of the matter;
 - (c) The relief which the petition seeks is on its face barred as a matter of law;
 - (d) The initial petition was not submitted in a form substantially complying with any applicable provisions of law; or
 - (e) The initial petition was not accompanied by the appropriate fees.
- (3) If an initial petition does not expressly request the commencement of a contested case, an initial petition shall be deemed to include such a request to the Commission to conduct an appropriate contested case, provided the proceeding is warranted by law and meets the statutory criteria.
- (4) A tariff filing does not constitute a contested case; however, any interested person may object to the tariff filing by filing a complaint. Any such complaint shall state the nature of the interest, the grounds for any such objection and the relief sought. A copy of the complaint shall be served on the company filing the tariff. The company filing the tariff shall have the right to respond to such complaint. It shall be within the discretion of the Commission to convene a contested case. A complaint opposing the tariff shall be filed no later than seven (7) days prior to the Commission Conference immediately preceding the proposed effective date of the tariff.
- (5) If the Commission determines, on its own motion, not to convene a contested case in response to a complaint or initial petition, the Commission shall enter an order dismissing the complaint or petition and state the basis of the Commission’s action.

Authority: T.C.A. §§ 4-5-102 and 65-2-102. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; “Tennessee Regulatory Authority” references were changed to “Tennessee Public Utility Commission,” “Authority” references were changed to “Commission,” “Authority Director” references were changed to “Commissioner,” and “Chief” references were changed to “Director.”

1220-01-02-.03 DEFENSES - ANSWERS - MOTIONS TO DISMISS.

- (1) A respondent shall serve on the petitioner and file with the Commission a responsive pleading within thirty (30) days after the service of the complaint or initial petition, except where otherwise provided by statute, by these rules or by order of the Commission.

(Rule 1220-01-02-.03, continued)

- (2) Every defense, in law or fact, to an order or notice commencing a contested case or to an initial petition, shall be asserted in an answer, except that the following defenses may, at the option of the respondent, be made by motion in writing:
 - (a) Lack of jurisdiction over the subject matter;
 - (b) Lack of jurisdiction over the person;
 - (c) Insufficiency of notice;
 - (d) Insufficiency of service of the order, notice or petition;
 - (e) Failure to state a claim upon which relief can be granted; or
 - (f) Failure to join an indispensable party.
- (3) A motion raising any of the defenses in (2) may be made prior to filing an answer, or may be combined with the answer. Such motions shall be disposed of prior to a hearing on the merits.
- (4) If the initial petition is so vague or ambiguous that the respondent cannot reasonably be required to frame a response, the respondent may move for a more definite statement before filing an answer. Such a motion shall point out the defects complained of and the details desired. If the motion is granted, a more definite statement shall be furnished by a date certain fixed in the order granting the motion.
- (5) Upon motion made by any party within ten (10) days after the service of a petition or answer upon that party, or upon its own initiative, the Commission or Hearing Officer may order stricken from any petition, answer or motion to dismiss, any insufficient defense or any irrelevant, immaterial, impertinent or scandalous matter.
- (6) A respondent waives all defenses listed in (2) which are not presented either by motion, answer, or any amendment thereto, except that lack of jurisdiction over the subject matter may be raised at any time. The defenses enumerated in subparagraphs (2)(b), (c) and (d) shall not be raised by amendment.

Authority: T.C.A. §§ 65-2-102, 65-4-101, and 65-4-104. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.04 REPRESENTATION BY COUNSEL.

- (1) Any party to a contested case may be advised and represented, at the party's own expense, by a licensed attorney or attorneys.
- (2) Any party to a contested case may represent himself or herself. In the case of a corporation or other artificial person recognized by law, the party may participate through a duly authorized representative, such as an officer, director or appropriate employee, whether or not that person is a licensed attorney.
- (3) The Commission shall notify all parties in a contested case of their right to be represented by counsel. An appearance by a party without counsel may be deemed a waiver of the right to counsel.

(Rule 1220-01-02-.04, continued)

- (4) Entry of an appearance by counsel shall be made by:
 - (a) The signing of any filing;
 - (b) The filing of a notice of appearance; or
 - (c) Appearance as counsel at an Commission Conference, pre-hearing conference or a hearing.
- (5) After appearance of counsel has been made, all orders, notices and filings shall be served only upon such counsel unless otherwise requested.
- (6) Counsel wishing to withdraw shall give written notice to the Commission. Permission to withdraw shall not be unreasonably withheld.
- (7) Out of state counsel shall comply with T.C.A. § 23-3-103(a) and Tennessee Supreme Court Rule 19, except the affidavit referred to in the latter rule shall be filed with the Chair of the Commission.

Authority: T.C.A. §§ 4-5-305 and 65-2-102. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Editorial changes made by the Secretary of State pursuant to Public Chapter 826 of 2002 by replacing “Executive Secretary” with “Chair of the Authority”; effective March 28, 2003. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; “Tennessee Regulatory Authority” references were changed to “Tennessee Public Utility Commission,” “Authority” references were changed to “Commission,” “Authority Director” references were changed to “Commissioner,” and “Chief” references were changed to “Director.”

1220-01-02-.05 DECLARATORY ORDERS.

- (1) Pursuant to T.C.A. §§ 4-5-223 and 65-2-104, any affected person may petition the Commission for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the Commission.
- (2) The Commission does not have jurisdiction to determine the constitutionality of a statute on its face, and any petition seeking such a declaration shall be denied. The Commission may grant petitions to determine questions as to the constitutional application of a statute to specific circumstances, or as to the constitutionality of a rule promulgated, or order issued, by the Commission.
- (3) Petitions for declaratory orders shall be filed in the same form and manner as other petitions, as specified in these rules. Any such petition shall state the factual circumstances warranting a declaration by the Commission; the specific statute, rule or order as to which a declaration is sought; how the application of that statute, rule or order, affects or threatens to affect the petitioner; and a statement of the declaration requested.
- (4) The Commission may allow persons other than the petitioner to file statements as to whether the Commission should commence a contested case, or refuse to issue a declaratory order, as provided in T.C.A. § 4-5-223. Any such statements shall be served on all parties.

Authority: T.C.A. §§ 4-5-223, 65-2-102, and 65-2-104. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; “Tennessee Regulatory Authority” references were changed to “Tennessee Public Utility Commission,” “Authority” references were changed to “Commission,” “Authority Director” references were changed to “Commissioner,” and “Chief” references were changed to “Director.”

1220-01-02-.06 PRELIMINARY MOTIONS.

- (1) Any request for an action or ruling prior to a hearing on the merits in a contested case shall be made in writing, in the same form as other filings. The request shall state the grounds therefor, set forth the relief or order sought, and may be accompanied by a brief as to any issues of law, by affidavits, requests for official notice or other appropriate proof as to any issue of fact.
- (2) Any party opposing a motion shall file and serve a response within seven (7) days after service of the motion. The Commission or Hearing Officer may shorten or extend the time for responding to any motion.
- (3) No reply to a response shall be filed except upon leave given or upon the order of the Commission or Hearing Officer.
- (4) Any party may, in a motion or response, request oral argument or the presentation of oral testimony or the Commission or Hearing Officer may order oral argument or the presentation of oral testimony. If such a request is granted or such an order entered, the Commission or Hearing Officer shall set the date and time therefor and may order that the argument be heard by telephone conference call.
- (5) Preliminary motions, responses, matters submitted in support thereof, and any orders with respect thereto shall be filed with the Chair of the Commission and shall be served on all parties.
- (6) Any party who wishes to seek interlocutory review by the Commission of a Hearing Officer decision on a preliminary motion shall make application by motion to the Hearing Officer. Permission for interlocutory review shall not be unreasonably withheld.
- (7) Any order dismissing a case or otherwise substantially disposing of the merits of the case is not an interlocutory order and any such order issued by a Hearing Officer shall be considered as an initial order subject to review by the Commission as specified in § 4-5-315.
- (8) Nothing in this rule shall affect the right to seek interlocutory judicial review pursuant T.C.A. § 4-5-322.

Authority: T.C.A. §§ 4-5-308 and 65-2-102. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Editorial changes made by the Secretary of State pursuant to Public Chapter 826 of 2002 by replacing "Executive Secretary" with "Chair of the Authority"; effective March 28, 2003. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.07 CONTINUANCES AND OTHER RESCHEDULING.

- (1) Any party desiring a continuance or other resetting of any hearing or pre-hearing conference shall file with the Chair of the Commission and serve on all parties a motion setting forth the grounds for the relief sought. Before filing such a motion, the movant shall attempt to contact the parties to the proceeding and shall state in the motion the position of each party.
- (2) Motions to continue or reschedule a hearing or pre-hearing conference in a case which has been referred to a Hearing Officer shall be addressed to the Hearing Officer. Motions to continue or reset any other hearing or pre-hearing conference shall be addressed to the Commission.

(Rule 1220-01-02-.07, continued)

- (3) Any party opposing the continuance or rescheduling may file a response setting forth the basis for such opposition, but the motion may be decided without waiting for responses.
- (4) In determining whether to grant such a motion, the Hearing Officer or the Commission may consider the relative convenience of the parties, the Commission's calendar for hearings and the necessity for the expeditious disposition of the case.

Authority: T.C.A. §§ 4-5-308 and 65-2-10. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Editorial changes made by the Secretary of State pursuant to Public Chapter 826 of 2002 by replacing "Executive Secretary" with "Chair of the Authority"; effective March 28, 2003. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.08 INTERVENTION.

- (1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T.C.A. § 65-2-107.
- (2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.
- (3) A petition for intervention shall be filed at least seven (7) days prior to the date of the contested case hearing.

Authority: T.C.A. §§ 4-5-310, 65-2-102, and 65-2-107. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.09 COMPLAINTS

- (1) A formal complaint filed against a public utility regulated by the Commission shall:
 - (a) Be in writing and signed by the complainant, or by a duly authorized representative or attorney of the complainant;
 - (b) Contain the name and address of the complainant and the name and address of the defendant or respondent;
 - (c) Set forth with specificity the factual basis and legal grounds upon which the complaint is based;
 - (d) Enumerate each statute allegedly violated by the defendant and state each fact demonstrating a violation of the statute so that the defendant can be duly apprised of each statutory violation charged; and
 - (e) Enumerate any Commission rule or regulation relied upon for a claim and set forth the manner of each alleged violation of that Commission rule or regulation.

(Rule 1220-01-02-.09, continued)

- (2) For good cause shown, the Commission may waive the provisions of this section in order to prevent manifest injustice or hardship to the complaining party.

Authority: T.C.A. §§ 65-2-102 and 65-2-103. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.10 NOTICE TO ATTORNEY GENERAL.

When the validity of a statute of this State or an administrative rule or regulation of this State is drawn into question in any case, the Commission shall give notice to the Office of the Attorney General of Tennessee, specifying the pertinent statute, rule or regulation.

Authority: T.C.A. § 65-2-102. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.11 DISCOVERY.

- (1) Any party to a contested case may petition for discovery. In any case where discovery is sought, no discovery shall be undertaken until a discovery schedule is set in accordance with these rules. Parties are encouraged where practicable to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter at hand. When such attempts have failed or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.
- (2) Any party may at any time prior to the hearing of a case on its merits move for the setting of a discovery schedule, either in a pre-hearing conference or by order of the Commission or a Hearing Officer. Any such motion may be denied if it appears the movant has unreasonably delayed in seeking discovery and if discovery would unreasonably delay disposition of the case on its merits.
- (3) Each petition for discovery shall state with reasonable specificity the issues to which discovery may be directed and the manner in which discovery is proposed to be accomplished.
- (4) Stipulations extending the time for responding to discovery shall not be effective without the approval of the Commission or Hearing Officer. Any party unable to respond to discovery within the time provided and who cannot obtain the agreement of the parties for an agreed order extending the time for responding may move, in writing, for an extension of the time for responding.
- (5) (a) No party shall serve on any other party more than forty (40) discovery requests including sub-parts without first having obtained leave of the Commission or a Hearing Officer. Any motion seeking permission to serve more than forty (40) discovery requests shall set forth the additional requests. The motion shall be accompanied by a memorandum establishing good cause for the service of additional interrogatories or requests for production. If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first forty (40) requests.

(Rule 1220-01-02-.11, continued)

- (b) All responses to interrogatories shall be signed under oath.
- (6) The party responding to any form of discovery shall respond or object to each request, serve a copy containing the original signature upon the requesting party, serve copies thereof on all other parties and upon request of the Commission or a Hearing Officer, file a copy with the Commission.
- (7) All objections to discovery requests shall be presented in the manner set forth in the Tennessee Rules of Civil Procedure.
- (8) If counsel for any party advises the Commission or Hearing Officer in writing that an opposing counsel has refused or delayed a discussion of any discovery problems covered in this subsection, the Commission or Hearing Officer may take such action as appropriate to avoid delay.
- (9) Motions to compel discovery shall be accompanied by a copy of the discovery request that shows the question and objection or response and shall state the reasons supporting the motion with reasonable specificity.
- (10) Motions for protective orders filed pursuant to Tennessee Rules of Civil Procedure 26.03, motions to quash subpoenas for discovery, or any motion asking that discovery be postponed or restricted shall:
 - (a) Be accompanied by a copy of the discovery request or subpoena;
 - (b) State with reasonable specificity the factual and legal grounds for the motion; and
 - (c) Be accompanied by an affidavit or other evidence showing the need for the order.
- (11) Whenever a request for discovery is made, the party seeking discovery shall serve each party with a copy of the request. Such service shall be made even though the discovery sought may be directed to fewer than all parties.
- (12) The Commission may adopt, and from time to time modify, a model protective order, the use of which shall not be mandatory, but which shall provide guidance as to appropriate provisions of such orders.

Authority: T.C.A. §§ 4-5-311 and 65-2-102. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.12 PRE-HEARING CONFERENCES.

- (1) In any contested case, the Commission or the Hearing Officer may, on his or her own motion or on the motion of any party, enter an order, pursuant to T.C.A. § 4-5-306, directing counsel for the parties and any unrepresented parties to appear for a conference or conferences before the hearing on the merits to consider:
 - (a) The simplification of issues for the hearing on the merits;
 - (b) The necessity or desirability of any amendments to the filings;
 - (c) The possibility of obtaining admissions of fact and of documents which may avoid unnecessary proof;

(Rule 1220-01-02-.12, continued)

- (d) The limitation of the number of expert witnesses;
 - (e) The disposition of any pending motions;
 - (f) The adoption or amendment of a discovery schedule in accordance with these rules, including the adoption of a statement of the issues for the purpose of discovery;
 - (g) The steps which may be taken to expedite the disposition of the case or to facilitate settlement of the case, or any aspect thereof;
 - (h) The adoption of a schedule for the filing of briefs and any pre-filed testimony; and
 - (i) Such other matters as may facilitate the just, efficient and economical disposition of the case including alternative dispute resolution.
- (2) At least one of the counsel or other representative for each party participating in a pre-hearing conference shall have authority to enter into stipulations, make admissions, or enter into agreements with respect to any matters which the parties may reasonably anticipate will be considered.
 - (3) The Hearing Officer shall enter an order which recites the actions taken at the pre-hearing conference and embodies all decisions made, and such order shall control the subsequent course of the case, unless modified by order of the Hearing Officer or the Commission.
 - (4) Upon reasonable notice to all parties, the Hearing Officer may convene a hearing or convert a pre-hearing conference to a hearing, to be conducted by the Hearing Officer, to consider arguments and any relevant evidence on any question of law. The Hearing Officer may enter an initial order, as provided in the Uniform Administrative Procedures Act, on any such question of law.
 - (5) In the discretion of the Hearing Officer, all or part of the pre-hearing conference may be conducted by electronic means, provided each participant in the conference has an opportunity to participate in, hear, and if technically and economically feasible, see the entire proceeding while it is taking place.
 - (6) If a pre-hearing conference is not held, the Hearing Officer for the hearing may issue a pre-hearing order based on the filings to regulate the conduct of the proceedings.

Authority: T.C.A. §§ 4-5-306, 65-2-102 and 65-2-111. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.13 SUBPOENAS AND SUBPOENAS DUCES TECUM.

- (1) At the request of any party, the Chair of the Commission or the Hearing Officer shall issue signed subpoenas, including subpoenas duces tecum, in blank in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified, return receipt mail, in addition to the means of service provided in the Tennessee Rules of Civil Procedure. Parties shall complete and serve their own subpoenas. This section may not be used to circumvent the provisions of Rule 1220-01-02-.11.

Authority: T.C.A. §§ 4-5-311, 65-1-209, 65-2-102, and 65-3-112. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Editorial changes made by the Secretary of State

(Rule 1220-01-02-.13, continued)

pursuant to Public Chapter 826 of 2002 by replacing "Executive Secretary" with "Chair of the Authority"; effective March 28, 2003. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.14 NOTICE OF HEARING.

- (1) Except as may be otherwise provided by statute or by these rules, the Chair of the Commission shall give all parties reasonable notice of any pre-hearing conference or any hearing to be held for the disposition of any preliminary motion.
- (2) The Chair of the Commission shall give all parties at least ten (10) days notice of any hearing on the merits.

Authority: T.C.A. §§ 4-5-307, 65-2-102, and 65-2-108. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Editorial changes made by the Secretary of State pursuant to Public Chapter 826 of 2002 by replacing "Executive Secretary" with "Chair of the Authority"; effective March 28, 2003. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.15 RESERVED.

1220-01-02-.16 EVIDENCE - TESTIMONY AND BURDEN OF PROOF.

- (1) The admissibility of evidence is governed by T.C.A. §§ 65-2-109 and 4-5-313.
- (2) The burden of proof shall be on the party asserting the affirmative of an issue, provided that when the Commission has issued a show cause order pursuant to T.C.A. § 65-2-106, the burden of proof shall be on the party thus directed to show cause.
- (3) In lieu of the oral examination of a witness or when required by the Commission or by these rules, the direct or redirect examination of such witness may be presented in written, question-and-answer form. Pre-filed testimony shall be filed no later than ten (10) days prior to the hearing unless otherwise provided by the Commission or the Hearing Officer. Presentation of pre-filed testimony may be required by the Commission in accordance with this rule, if it is deemed by the Commission that doing so would be in the public interest and would be conducive to a fair and expeditious disposition of the proceeding. Any party may object to the use of pre-filed testimony by a witness, and the objecting party shall have the right to be heard by the Commission or the Hearing Officer at a hearing on the objection.
- (4) All pre-filed testimony shall be filed in electronic or written form consistent with these rules. The lines on each page shall be double-spaced and numbered consecutively down the left side of the page, and the left-hand margin of each page shall not be less than 1 1/4 inches wide. At the hearing, after any such pre-filed testimony has been properly identified and authenticated under oath or affirmation by the witness presenting the same, it may upon motion be incorporated into the record in the same way as if the questions had been asked of the witness and the answers had been given orally by the witness. Such pre-filed testimony shall be treated as if given orally and the witness presenting such pre-filed testimony shall be subject to cross-examination during the hearing on the merits.
- (5) Any party shall have the right to cross-examine witnesses who testify and shall have the right to submit rebuttal testimony, subject to the standards of admissibility and such limitations as

(Rule 1220-01-02-.16, continued)

the Hearing Officer or the Chair, whichever is presiding at the hearing, may reasonably require.

- (6) In the discretion of the Commission or the Hearing Officer or on motion of any party witnesses may be excluded from the hearing room prior to their testimony.

Authority: T.C.A. §§ 4-5-313, 65-2-102, and 65-2-109. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.17 DEFAULTS - UNOPPOSED CASES.

- (1) Failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of a contested case proceeding, after due notice thereof, shall be cause for finding such party in default, pursuant to T.C.A. § 4-5-309. Failure to comply with an order of the Commission or a Hearing Officer may be deemed a failure to participate in a contested case and, therefore, be cause for finding a party in default.
- (2)
 - (a) Upon entry into the record of the default of the petitioner at a contested case proceeding, the petition shall be dismissed.
 - (b) Upon entry into the record of the default of a respondent at a contested case proceeding, the matter shall be tried as unopposed relative to such respondent.
- (3) Where the case is unopposed, the petitioner has the burden of making out a prima facie case, which may be done on the basis of written filings. In order to carry out statutory policies, however, the Commission or Hearing Officer may require further proof.

Authority: T.C.A. §§ 4-5-309, 4-5-317, 65-2-102, and 65-2-108. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; "Tennessee Regulatory Authority" references were changed to "Tennessee Public Utility Commission," "Authority" references were changed to "Commission," "Authority Director" references were changed to "Commissioner," and "Chief" references were changed to "Director."

1220-01-02-.18 INITIAL AND FINAL ORDERS.

- (1) The review and effectiveness of initial and final orders are governed by the Uniform Administrative Procedures Act.
- (2) The Commission may review all initial orders.
- (3) Any final order shall be signed by the Commissioners making the decision and attested by the Executive Director. If any Commissioner was not present at the proceeding where the decision was made, abstained from voting, or voted in opposition to the decision, that fact shall be reflected in the final order.
- (4) Any Commissioner may file a statement explaining his or her position. The statement may be attached to the final order, or filed separately in the record.
- (5) When requested by the Commission parties of record may submit proposed final orders for approval by the Commission. Any such final order shall conform to the statutory requirements for final orders.

(Rule 1220-01-02-.18, continued)

Authority: T.C.A. §§ 4-5-314, 4-5-318, 65-2-102, and 65-2-112. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Editorial changes made by the Secretary of State pursuant to Public Chapter 826 of 2002 by replacing “Executive Secretary” with “Chair of the Authority”; effective March 28, 2003. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; “Tennessee Regulatory Authority” references were changed to “Tennessee Public Utility Commission,” “Authority” references were changed to “Commission,” “Authority Director” references were changed to “Commissioner,” “Chair of the Commission” references were changed to “Executive Director,” and “Chief” references were changed to “Director.”

1220-01-02-.19 STAYS.

- (1) Any petition for stay, filed pursuant to T.C.A. § 4-5-316, shall state the grounds therefor with reasonable particularity; may be supported by a brief, affidavit or other supporting evidentiary materials; and shall be served on all parties of record.
- (2) Any party opposing a stay may file a brief in opposition within ten (10) days after the service of the petition for stay.
- (3) In deciding whether to grant a stay, the Commission shall consider and give appropriate weight to:
 - (a) The likelihood of the success of the petitioner on appeal;
 - (b) The hardship or injury which may be imposed on the petitioner if a stay is not granted;
 - (c) The hardship or injury which may be imposed on others if a stay is granted; and
 - (d) The public interest.

Authority: T.C.A. §§ 4-5-316 and 65-2-102. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; “Tennessee Regulatory Authority” references were changed to “Tennessee Public Utility Commission,” “Authority” references were changed to “Commission,” “Authority Director” references were changed to “Commissioner,” and “Chief” references were changed to “Director.”

1220-01-02-.20 PETITIONS FOR RECONSIDERATION.

- (1) Any petition for reconsideration shall be filed within fifteen (15) days after the date of the entry of an order. The petition shall be served on all parties and include a statement of the grounds upon which relief is requested with reasonable specificity. If the petitioners seek to present new evidence, the petition shall contain a statement of the cause for the failure to introduce the proposed new evidence in the original proceeding, a detailed description of any such new evidence proposed to be introduced, including copies of documents sought to be introduced, identities of proposed witnesses, and summaries of any testimony sought to be presented. However, documents that are unavailable to the party seeking reconsideration at the time of filing the petition may be described in as much detail as is possible and may be provided at a later time, should reconsideration be granted, but not later than three (3) working days prior to any reconsideration hearing.
- (2) The Commission may grant or deny petitions for reconsideration of final orders under T.C.A. § 4-5-317, to the following extent:
 - (a) Any such petition shall be granted within the twenty (20) day period fixed by T.C.A. § 4-5-317(c), or it shall be deemed denied;
 - (b) If the petition is granted, the matter shall be heard as soon as practicable;

(Rule 1220-01-02-.20, continued)

- (c) The party seeking reconsideration may be allowed to present new evidence only if the party shows that good cause existed for the failure to introduce the new evidence at the original hearing, and the opposing party shall be allowed to present rebuttal proof if the party seeking reconsideration is allowed to present new evidence; and
 - (d) Any new evidence allowed to be introduced by the party seeking reconsideration shall be limited to that described in the petition for reconsideration.
- (3) The filing of a petition for reconsideration shall not toll the period for review of a final order unless the petition for reconsideration is granted.

Authority: T.C.A. §§ 4-5-317 and 65-2-102. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; “Tennessee Regulatory Authority” references were changed to “Tennessee Public Utility Commission,” “Authority” references were changed to “Commission,” “Authority Director” references were changed to “Commissioner,” and “Chief” references were changed to “Director.”

1220-01-02-.21 STAFF PARTICIPATION AS A PARTY.

- (1) In any show cause proceeding, designated staff members, represented by the general counsel or other counsel employed by the Commission, shall participate as a party.
- (2) In any contested case commenced by the Commission, designated staff members, represented by the general counsel or other counsel employed by the Commission, may participate as a party.
- (3) In any other contested case proceeding, designated staff members, represented by the general counsel or other counsel employed by the Commission, may participate as a party.
- (4) Staff members who participate as a party shall be bound to follow the same requirements as any other party.
- (5) As soon as practicable after the commencement of any proceeding in which the staff will participate as a party, the Chair of the Commission shall identify those staff members to all interested parties and staff so as to prevent ex parte communications.

Authority: T.C.A. §§ 4-5-303, 4-5-304, 65-2-102, 65-2-106, and 65-2-107. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Editorial changes made by the Secretary of State pursuant to Public Chapter 826 of 2002 by replacing “Executive Secretary” with “Chair of the Authority”; effective March 28, 2003. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; “Tennessee Regulatory Authority” references were changed to “Tennessee Public Utility Commission,” “Authority” references were changed to “Commission,” “Authority Director” references were changed to “Commissioner,” and “Chief” references were changed to “Director.”

1220-01-02-.22 GENERAL PROCEDURAL POWERS.

In any contested case the Commission or the Hearing Officer:

- (1) May determine that there is no genuine issue as to any material fact. In reaching such determination, the Commission or Hearing Officer may, in its discretion, hear and determine all or any part of a case, without hearing oral testimony;
- (2) May, on its own motion or the motion of any party, allow amendments, consolidate cases, join parties, sever aspects of the case for separate hearings, permit additional claims or contentions to be asserted, bifurcate or otherwise order the course of proceedings in order to

(Rule 1220-01-02-.22, continued)

- further the just, efficient and economical disposition of cases consistent with the statutory policies governing the Commission; and
- (3) Shall afford all parties an opportunity to be heard after reasonable notice before exercising these general procedural powers.

Authority: T.C.A. § 65-2-102. **Administrative History:** Original rule filed June 30, 2000; effective September 13, 2000. Administrative changes made to this chapter on April 27, 2018 pursuant to Public Chapter 94 of 2017; “Tennessee Regulatory Authority” references were changed to “Tennessee Public Utility Commission,” “Authority” references were changed to “Commission,” “Authority Director” references were changed to “Commissioner,” and “Chief” references were changed to “Director.”