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TITLE 810 - PUBLIC UTILITIES COMMISSION

CHAPTER 00 - GENERAL ADMINISTRATION

SUBCHAPTER 00 - N/A

PART 1 - Rules of Practice and Procedure

1.1 Authority and Purpose

- A. These regulations are promulgated pursuant to R.I. Gen. Laws § 39-1-11.
- B. It is the purpose of these rules to aid anyone who wishes to appear before the Rhode Island Public Utilities Commission. It is the Commission's intention to be accessible and to make these Rules of Practice and Procedure clear and understandable for counsel and the general public.
- C. Issues not addressed in these rules or for which a party seeks clarity are to be considered in light of R.I. Gen. Laws § 42-35-1 et seq. These rules govern only adjudicatory and rule-making proceedings commenced after their effective date.

1.2 Definitions

- A. As used in these rules, except as otherwise required by the context:
 - 1. "Applicant" means, in proceedings involving filings for permission or authorization which the Commission may give under statutory or other authority delegated to it, the party on whose behalf the filings are made.
 - 2. "Clerk" means the Commission clerk, appointed by the Commission pursuant to R.I. Gen. Laws § 39-1-9.
 - 3. "Commission" and "Commissioner" means the Public Utilities Commission, and a member thereof, respectively. "Chair" means the Chairperson of the Public Utilities Commission.
 - 4. "Commission counsel" means the legal counsel of the Commission, and includes any outside attorney hired by the Commission to participate in any proceeding before the Commission.
 - 5. "Commission-initiated investigation" means an investigation initiated by the Commission itself based on its general authority.
 - 6. "Consensus" means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under this rule.

7. "Convener" means a person who impartially assists the Commission in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate in a particular rulemaking.
8. "Contested case" means a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a specific party are required by law to be determined by the Commission after an opportunity for hearing.
9. "Division" means the Division of Public Utilities and Carriers described in R.I. Gen. Laws §§ 39-1-2(4) and 39-1-3.
10. "Division counsel" means the representative of the Division, including but not limited to its legal counsel, participating in a proceeding before the Commission.
11. "*Ex parte*" means direct or indirect communication outside of a hearing, in connection with any issue of fact or law in a pending proceeding, except upon notice and opportunity for all parties to participate, between any party or representative and any Commissioner.
12. "Facilitator" means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. It also refers to a person who is charged to develop a recommendation for Commission review in a contested adjudicatory proceeding; in such case, the facilitator may not serve the Commission in any capacity thereafter.
13. "Filing" means written applications, comments, petitions, pleadings, protests, motions, briefs, objections, rate schedules, notices, reports and compliance filings.
14. "Interest" means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.
15. "Intervenor" means a party who intervenes in a pending matter or proceeding by statutory right or by order of the Commission on petition to intervene.
16. "Matter" or "Proceeding" means the docket initiated by a filing or submittal or a Commission notice or order.
17. "Negotiated rulemaking" means rulemaking through the use of a facilitator and committee.
18. "Negotiated rulemaking committee" or "Committee" means an advisory committee established by the Commission to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

19. "Notice and comment rulemaking" or "Rulemaking" means a proceeding for the purpose of promulgating rules and regulations.
20. "Party" means the Division and each person named or admitted as a party to a proceeding before the Commission.
21. "Petitioners" means persons seeking relief, not otherwise designated in this section.
22. "Presiding officer" or "Lead Commissioner" means the Chair or other Commissioner authorized by the Chair to conduct or preside over any hearing before the Commission.
23. "Respondents" means persons subject to any statute or other delegated authority administered by the Commission to whom an order or notice is issued by the Commission instituting a proceeding or investigation on its own initiative.

1.3 The Commission

- A. Description and Organization. The Public Utilities Commission is an impartial, independent, governmental body having the powers of a court of record, and charged under the General Laws of the State of Rhode Island with responsibility for implementing and enforcing standards of conduct under R.I. Gen. Laws § 39-1-27.6, and holding hearings and conducting investigations "involving the rates, tariffs, tolls and charges and the sufficiency and reasonableness of facilities and accommodations of railroad, gas, electric distribution, water, telephone, telegraph and pipeline public utilities, the location of railroad depots and stations and the control of grade crossings, the revocation, suspension or alteration of certificates issued pursuant to R.I. Gen. Laws § 39-19-4, appeals under R.I. Gen. Laws § 31-9-30, petitions under R.I. Gen. Laws § 39-1-31 and proceedings under R.I. Gen. Laws § 39-1-32.
- B. The Commission consists of three members appointed by the Governor to six-year terms with the advice and consent of the Senate. Additional information on the Commission and its members can be found on the Commission's World Wide Web site, <http://www.ripuc.org>.
- C. Offices. The principal office of the Commission is at Providence, Rhode Island. All communications to the Commission shall be addressed to the Clerk, Public Utilities Commission, 89 Jefferson Boulevard, Warwick, RI 02888, unless otherwise specifically directed.
- D. Hours. The offices of the Commission will be open to accept filings Monday through Friday from 8:45 a.m. to 3:45 p.m. unless otherwise provided.
- E. Quorum. Except as otherwise permitted by law, two (2) Commissioners shall constitute a quorum for the transaction of any business.

- F. Action by Members. To the extent permitted by law, the Commission may conduct any inquiry, investigation, hearing or other process necessary to its duties and functions.
- G. Meetings and Hearings. Meetings of the Commission may be held at any time or place at the request of any member after reasonable notice to the other members, and shall be held at such times and places as in the judgment of the Commission will best serve the convenience of all parties.
- H. Public Information.
1. Access to public records shall be granted in accordance with the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.* Except where the Commission directs otherwise, all pleadings, orders, communications, exhibits and other documents shall become matters of public record as of the day and time of their filing. Any claim of privilege shall be governed by the policy underlying the Access to Public Records Act, with the burden of proof resting on the party claiming the privilege.
 2. Any party submitting documents to the Commission may request a preliminary finding that some or all of the information is exempt from the mandatory public disclosure requirements of the Access to Public Records Act. A preliminary finding that some documents are privileged shall not preclude the Commission's release of those documents pursuant to a public request in accordance with R.I. Gen. Laws § 38-2-1 *et seq.*
 3. Claims of privilege are made by filing a written request with the Commission. One copy of the original document, boldly indicating on the front page, "Contains Privileged Information - Do Not Release", shall be filed with a specific indication of the information for which the privilege is sought, as well as a description of the grounds upon which the party claims privilege. Nine additional copies in which the privileged information is redacted shall be filed with the Clerk. If a document is filed electronically, it shall contain a statement that information has been redacted; however, the original document must be filed as delineated above.
 4. The Clerk shall place documents for which privilege is sought in a secure, non-public file until the Commission determines whether to grant the request for privileged treatment.
 5. Any person, whether or not a party, may apply to the Commission for release of the information, pursuant to the Access to Public Records Act.
 6. Public records may be examined at the offices of the Commission from 8:45 a.m. to 3:45 p.m. on regular business days. No officially filed document shall be taken out of the offices except by the direction of the Commission Clerk. Requests for information may be addressed to the Public Utilities Commission, 89 Jefferson Boulevard, Warwick, Rhode Island 02888. A charge of \$0.15 per page for copies and \$15.00 per hour after the first half-

hour (or whatever rate currently prevails pursuant to R.I. Gen. Laws § 39-2-4), for research and retrieval of documents, shall be assessed. Certain public records may also be posted on the Commission's World Wide Web site.

I. *Ex Parte* Communications.

1. Except as permitted below, no person who is a party to or a participant in any proceeding pending before the Commission, or the person's counsel, employee, agent, or any other individual acting on the person's behalf, shall communicate *ex parte* with any Commissioner about or in any way related to the proceeding, and no Commissioner shall request or entertain any such *ex parte* communications.
2. The prohibitions contained above do not apply to a communication from a party or participant or counsel, agent or other individual acting on the person's behalf, if the communication relates solely to general matters of procedure or scheduling and is directed to the Clerk or the Commission Counsel.

1.4 The Clerk

- A. Powers and Duties. The Clerk shall have the powers and duties granted pursuant to R.I. Gen. Laws § 39-1-10.
- B. Authentication of Commission Action. All orders of the Commission shall be signed by at least one Commissioner, provided that at least one additional Commissioner concurs (and so states in the order), and may be authenticated by the Clerk or such other person as may be authorized by the Commission.
- C. Filings with the Commission. The filing of written applications, petitions, protests, motions, briefs, objections, rate schedules, notices, reports, or amendments to such documents with the Commission as required or allowed by these rules, by any rule, regulation, or order of the Commission, or by any applicable statute, shall be made by delivering them within the time limit, if any, for such filing, by one of the following methods:
 1. by hand-delivery, addressed to the Clerk of the Commission; or
 2. by United States mail or express delivery, addressed to the Clerk; or
 3. by electronically filing in the format prescribed by the Clerk.
- D. Electronic filings must be supplemented by hard copies of the written materials, as directed by the Clerk, pursuant to § 1.6(G) of this Part; however, signature pages for settlement documents will be accepted by facsimile and incorporated in the docket.
- E. Docket. The Clerk shall maintain a docket of all proceedings, and each new proceeding shall be assigned an appropriate docket number after preliminary

review. The docket shall be available for inspection and copying by the public during the office hours of the Commission. If a portion of the docket has been judged proprietary, it shall not be available for public inspection.

- F. **General Rate Filings.** The time periods set forth in R.I. Gen. Laws § 39-3-11 shall commence thirty (30) days from the date of the general rate filing as received by the Clerk, as long as the filing substantially conforms in all material respects to the filing requirements set forth in these rules. However, after preliminary review, if the Clerk determines that the filing does not substantially conform to the filing requirements in all material respects, the time periods set forth in R.I. Gen. Laws § 39-3-11 shall commence thirty (30) days after the date of docketing. The Clerk, in such cases, will not docket the filing until the applicant cures any non-conformance to the satisfaction of the Clerk.
- G. **Hearing Calendar.** The Clerk shall maintain a hearing calendar of all proceedings set for hearing.

1.5 Appearances and Practice before the Commission

- A. **Appearances.**
 - 1. Each party to and participant in a proceeding, other than individuals who appear pro se, shall be represented by an attorney, who shall enter an appearance in writing with the Clerk.
 - a. Members of the Bar of the State of Rhode Island are eligible to practice before the Commission.
 - b. Members of the Bar of a Federal Court or of the highest court of any State or Territory of the United States are eligible to practice before the Commission subject to the provisions of Rhode Island Supreme Court Rule Article II, Rule 9, or any successor rule.
 - 2. Any person compelled to appear or voluntarily testifying or making a statement before the Commission or the presiding officer may, but shall not be required to be accompanied, represented, and advised by an attorney.
 - 3. All attorneys appearing before the Commission or the presiding officer must conform to the standards of ethical conduct required of practitioners before the courts of Rhode Island. An attorney may not represent two or more parties unless the parties have substantially similar interests; provided, however, that in the event a conflict develops between the Division and the Attorney General, as counsel for the Division, the Division may engage independent counsel, or continue to utilize the services of the Department of Attorney General, in which case the Attorney General shall designate different assistants to represent the Division and the State or its citizens, respectively.

4. Any person appearing before or transacting business with the Commission in a representative capacity may be required by the Commission or the presiding officer to file evidence of authority to act in such a capacity.

B. Suspension.

1. After hearing, the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found:
 - a. not to possess the requisite qualification to represent others, or
 - b. to have engaged in unethical or improper professional conduct, or
 - c. otherwise to be not qualified.
2. Contumacious conduct at any hearing before the Commission or a presiding officer shall be ground for exclusion of any person from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

C. Appearances of Present and Former Employees.

1. No person who is a Public Utilities Commissioner or an employee or legal consultant of the Commission or the Division, or the Department of the Attorney General, may appear personally or on behalf of or represent any other person or act as an expert witness before the Commission except in the performance of official duties.
2. No person having been so employed may, within one (1) year after employment has ceased, appear personally or on behalf of any other person or act as an expert witness before the Commission.
3. § 1.5(C)(2) of this Part shall not apply to any person whose employment has been solely as a technical consultant and/or expert witness, or to any employee or legal consultant to the Department of the Attorney General who has not engaged in the presentation or preparation of any matter before the Commission.

D. Appearances of Business Associates.

1. A business associate is an individual who owns a business, participates in a business partnership, or otherwise engages in a business in association with an employee or legal consultant of the Commission, the Division, or the Department of the Attorney General.
2. No business associate may appear personally or on behalf of or represent any other person or act as an expert witness before the Commission without Commission approval of a motion to so appear, in which the particulars of the business association are fully disclosed.

1.6 Formal Requirements as to Filings

- A. Title. All initial applications, petitions and other papers filed with the Commission in any proceeding shall clearly show, in the title, the names of all persons in whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title of subsequent papers filed. All subsequent filings shall show the docket designation assigned by the Clerk.
- B. Form and Size. All pleadings shall be typed or printed on paper 8.5" wide and 11" long. The impression may be on both sides of the paper and shall be double-spaced. Footnotes and quotations may be single-spaced. Pleadings shall be fastened only on the left side; one copy shall be provided unbound. Unless otherwise directed, an original and nine (9) copies of any pleading shall be filed with the Clerk. Reproductions may be made by any process provided that all copies are clear and permanently legible.
- C. Signature. Except as may be otherwise required by the rules and regulations of the Commission or ordered or requested by the Commission, the original copy of each application, petition, protest, motion, objection, brief, rate schedule, notice, report, statement and other paper or amendment thereto, shall be signed by the party in interest, or by its attorney, as required by these rules, and shall show the office, address and telephone number of the same. In any filing, a conformed copy may be substituted for the signed original as long as the signed original is submitted within ten (10) days thereafter. All other copies filed shall be fully conformed thereto.
- D. Effect of Signature. The signature of the person, officer or attorney on any paper filed with the Commission constitutes a certification that the signatory has read the paper being subscribed and filed, and knows the contents thereof; that to the best of the signatory's knowledge, information, and belief formed after a reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose; that if executed in any representative capacity, the matter has been subscribed and executed in the capacity specified upon the pleading or matter filed with full power and authority to so do; and that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that those matters and things are believed to be true.
- E. Construction. All pleadings shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of the parties involved shall be disregarded.
- F. Rejection of Pleadings and Documents. Pleadings and documents which are not in substantial compliance with these or other Commission rules, orders of the Commission, or applicable statutes may be rejected within thirty (30) days after filing. If rejected, such papers will be returned with an indication of the deficiencies therein. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the Commission and is

not a waiver of such requirements. The Commission Counsel is authorized to reject pleadings and documents under this rule.

- G. Electronic Filing. § 1.6(B) of this Part shall not apply to any pleadings or documents which are filed electronically. The Clerk shall establish requirements for the format and transmission of such documents. Parties will be obligated to provide hard copies as directed by the Clerk.
- H. Confidential Information. Claims of privilege may be made pursuant to § 1.3(H)(3) of this Part.

1.7 Time

- A. Computation. Except as otherwise provided by law, in computing any period of time prescribed or allowed by any Commission rule, regulation, or order, or by any applicable statute, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included, but the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday in Rhode Island, in which event the period shall run until the end of the next business day.
- B. Extensions of Time. Except as otherwise provided, whenever by any Commission rule, regulation, or order, or any notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, for good cause, be extended by the presiding officer upon request made before expiration of the period originally prescribed or as previously extended, and upon request made after the expiration of the specified period, the act may be permitted to be done, where reasonable grounds are shown for the failure to act.
- C. Continuances. Except as otherwise provided by law, the Commission may, for good cause at any time, with or without request, continue or adjourn any hearing. A hearing before the Commission or a presiding officer shall begin at the time and place fixed in an order or a notice, but thereafter may be adjourned from time to time or from place to place by the Commission or the presiding officer.

1.8 Service

- A. Service Upon Parties. A copy of all pleadings and other documents filed in any proceeding governed by these rules shall be served upon all other parties and the Administrator of the Division. If a party appears after the original documents have been filed, a copy of all papers previously filed shall be furnished to such party on request. Service shall also be effected on any other person designated to receive service by the Commission, a Commissioner, the presiding officer, or the Clerk.
- B. Manner of Service. Unless otherwise ordered by the Commission or the presiding officer, service under these rules shall be made upon a party or upon his or her attorney, if an appearance has been entered, by first class mail, express delivery,

hand-delivery to his or her place of business, or by electronic service if the parties agree that it is appropriate.

- C. Receipt to Govern. In addition to the provisions of § 1.7(A) of this Part, the time for response shall commence on the date of receipt by mail, express delivery, or hand delivery. By agreement, parties may use the date of facsimile transmission to comply with this Rule.
- D. Certificate of Service. There shall accompany and be attached to the original of each paper filed with the Commission in a proceeding, when service is required to be made, a certificate of service.

1.9 Notice of Hearing

- A. Notice Required. The Commission shall give, or shall require any designated party to give, notice of the commencement of scheduled hearings in any pending matter to all parties and to such other persons as the Commission designates. After commencement, a hearing may be adjourned upon oral notice to those present at the time of adjournment.
 - 1. The Commission may give, or may require any designated party to give, notice of an informational or record conference to all parties and to such other persons as the Commission designates.
 - a. Such notice is required for matters which have been docketed but not scheduled for hearing.
 - b. The Commission will follow the requirements of R.I. Gen. Laws § 42-46-6 for any informational or record conference which is not noticed under § 1.9(B) of this Part.
 - 2. The Commission shall give, or shall require the applicant to give, annual notice of hearings in on-going adjustment clause dockets.
 - 3. The Commission may give notice of an informational or record conference, to the general public and other persons as the Commission designates, for matters which have not been docketed. If such a conference is not noticed under § 1.9(B) of this Part, the Commission will follow the requirements of R.I. Gen. Laws § 42-46-6.
- B. Form of Notice. Notice shall be by first class mail or personal service unless otherwise specified by the Commission, and shall be published in The Providence Journal-Bulletin or other newspaper of general circulation serving the affected ratepayers. Nothing herein, however, shall limit the power of the Commission to order notice by other means, including but not limited to notice by publication or notice in periodic bills sent to utility customers.
- C. Contents of Notice. The notice shall include:
 - 1. A statement of the time, place and nature of the hearing;

2. A statement of the legal authority and jurisdiction under which the hearing is held;
 3. A reference to the particular sections of any statutes and rules involved; and
 4. A short and plain statement of the matters involved. If at the time notice is given the Commission or the party giving notice is unable to state the matters in detail which are to be the subject of the hearing, the initial notice may be limited to a statement of the issues involved.
 5. A statement that the Public Utilities Commission is accessible to the handicapped, and that individuals requesting interpreter services for the hearing impaired must contact the Clerk seventy-two hours in advance of the hearing.
 6. In general rate schedule change filings, a statement that motions for intervention must be filed within forty-five (45) days after publication of the notice of filing.
- D. Timing of Notice. Unless otherwise provided by statute, or unless the Commission finds that a shorter period of notice is reasonable and consistent with the public interest, notice of a hearing shall be given at least ten (10) days prior thereto.
- E. Address. Unless written advice to the contrary has been received by the Commission, notices shall be sufficient if mailed or delivered to the following:
1. If the addressee is a holder of a certificate, permit or license, the address shown on the last application for the issuance or amendment thereof.
 2. If the addressee has tariffs on file, to the address shown on any tariff in effect at the time of notice.
 3. If an attorney has entered an appearance on behalf of the addressee, to the office of the attorney.
- F. Notice Regarding Adoption of Rules.
1. Prior to the adoption, amendment, or repeal of any rule, the Commission will:
 - a. give at least thirty (30) days notice of its intended action. The notice shall include a statement of either the terms or the substance of the intended action or a description of the subjects and issues involved, and of the manner in which interested persons may present their views thereon. The notice will be mailed to all persons who have made timely requests to the Commission for advance notice of its rulemaking proceedings, and published in The Providence Journal-Bulletin, provided, however, that if said action is limited in its applicability to a particular area, then said publication may be in a newspaper having general circulation in said area.

- b. afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing.
2. If the Commission finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon less than thirty (30) days notice, and states in writing the reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule so adopted may be effective for a period of not longer than one hundred twenty (120) days, but the adoption of an identical rule under § 1.9(F)(1) of this Part is not precluded.

1.10 Applications

- A. Contents. All applications shall be in writing and under oath, shall state clearly and concisely the authorization or permission sought, shall cite by appropriate reference the statutory provision or other authority under which Commission authorization or permission is sought, and shall set forth in the order indicated the following (unless otherwise provided by Commission rules or regulations for the specific type of application involved):
 1. The exact legal name of the applicant, if the applicant is a corporation, trust, association or other organized group, the State or Territory under the laws of which the applicant was created or organized, the location of applicant's principal place of business, and the names of all states where applicant is authorized to do business.
 2. The name, title and post office address of the person to whom correspondence and communications in regard to the application are to be addressed. The Commission will serve, where required, all notices, orders and other papers upon the person so named and such service shall be deemed to be service upon applicant.
- B. Rate Change Filings. In addition to the requirements of § 1.10(A) of this Part, any filings for a general change in rate schedules pursuant to R.I. Gen. Laws § 39-3-11 shall be accompanied by the documents and information required by Part 5 of this Subchapter, Additional Requirements for Filings of General Rate Schedule Changes.
- C. Tariff Advices.
 1. Public utilities may file tariffs adding new services, providing for new rules, or otherwise adding to their tariff schedules without amending existing tariffs by tariff advice. Public utilities may also file minor changes to existing schedules by tariff advice. The tariff advice must include a letter of transmittal from the utility listing all tariff pages changed or added by the tariff advice and stating briefly the reason for filing the tariff advice. If existing tariffs are changed, the advice must contain two legible copies of each changed page, one showing all the changes with appropriate symbols for

deletions or additions (see "Public Utilities Commission's Guidance on Formatting Tariffs"), and one showing the pages after the changes as they will appear in the new tariffs.

2. No tariff advice can be effective unless thirty (30) days' notice is given to the public, the Division, the Attorney General, and any other known parties, by the utility. The utility must provide proof of notice to the Clerk.
3. In the absence of an order approving or suspending the tariff advice, the tariff advice not suspended or approved goes into effect thirty (30) days after notice or on the proposed effective date, whichever is later. If a tariff advice is suspended, the Commission will open a formal proceeding and treat the tariff advice as an application.

D. Terms and Conditions.

1. Public utilities may file terms and conditions, or changes thereto, through a letter of transmittal listing all terms and conditions changed or added, and stating briefly the reason for the filing. If existing terms and conditions are changed, the filing must contain two legible copies of each changed page, one showing all the changes with appropriate symbols for deletions or additions (see "Public Utilities Commission's Guidance on Formatting Tariffs"), and one showing the pages after the changes as they will appear in the new terms and conditions.
2. No term or condition can be effective unless thirty (30) days' notice is given to the public, the Division, the Attorney General, and any other known parties, by the utility. The utility must provide proof of notice to the Clerk.
3. In the absence of an order approving or suspending the terms and conditions, the filing not suspended or approved goes into effect thirty (30) days after notice or on the proposed effective date, whichever is later.

1.11 Petitions

A. General. Petitions for relief under any statute or other authority delegated to the Commission shall be in writing, shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon, and the relief sought, and shall cite by appropriate reference the statutory provision or other authority relied upon for relief.

B. Petitions for Issuance, Amendment, Waiver, or Repeal of Rules.

1. A petition for the issuance, amendment, waiver, or repeal of a rule by the Commission shall, in addition to the specific rule, amendment, waiver, or repeal requested, state in detail with citations to appropriate references, the reasons for the requested action.

2. Upon submission of such a petition, the Commission will within thirty (30) days, either deny the petition in writing or initiate rulemaking procedures in accordance with R.I. Gen. Laws § 42-35-3.
- C. Petitions for Declaratory Judgment. In addition to the requirements of § 1.11(A) of this Part, a petition for a declaratory judgment pursuant to R.I. Gen. Laws § 42-35-8 shall set forth the rule or statutory provision in question and shall state in detail, with appropriate citations, whether the rule or provision should or should not apply.

1.12 Amendments and Withdrawals of Applications and Petitions

- A. Amendments. Leave to amend any filing shall be requested by motion and will be allowed or denied as a matter of discretion.
- B. Amendments to Conform to the Evidence. When, at a hearing, issues not raised by the application or petition are introduced by express or implied consent of the parties, they shall be treated in all respects as if they had been raised. Such amendment of the application or petition as may be necessary to cause them to conform to the evidence and to raise these new issues may be made upon motion of any party at any time during the hearing. If evidence upon such new issues is objected to on the ground that it is not within the issues raised, the Commission may allow the application or petition to be amended and such evidence to be received, when it appears that the presentation of the merits of the proceeding will be served thereby without prejudicing the public interest or the rights of any participant. When, in the discretion of the Commission, a continuance is necessary in order to enable the objecting participant to meet such new issues and evidence, a continuance may be granted by the Commission, as provided in § 1.7(C) of this Part.
- C. Withdrawal. A participant desiring to withdraw an application or petition filed with the Commission may file a notice of withdrawal with the Clerk. Such notice shall state the reasons for the withdrawal and conform to the requirements of this rule and §§ 1.6 and 1.8 of this Part. A certificate shall accompany every notice showing service on all participants. Unless otherwise ordered by the Commission for good cause, such notice shall, twenty (20) days after the filing thereof, be deemed to have effected the withdrawal of the application or petition, including amendments, if any; provided, however, that this paragraph shall not be construed as effecting without express permission of the Commission, withdrawal of any application or petition in any proceeding in which a hearing has been held or convened.

1.13 Commission-Initiated Investigations

An investigation initiated by the Commission sua sponte or upon request of the Division shall be commenced by an order which, unless the circumstances of the investigation require otherwise, shall be served upon all public utilities or persons under investigation. The investigative order shall be docketed in the same manner as other proceedings under these rules. All public hearings held pursuant to a Commission-initiated investigation shall be conducted in accordance with these rules.

1.14 Intervention

- A. Initiation of Intervention. Participation in a proceeding as an intervenor may be initiated by order of the Commission upon a motion to intervene.
- B. Who may Intervene. Subject to the provisions of these rules, any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene in any proceeding before the Commission. Such right or interest may be:
 - 1. A right conferred by statute.
 - 2. An interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Commission's action in the proceeding. (The following may have such an interest: consumers served by the applicant, defendant, or respondent; holders of securities of the applicant, defendant, or respondent.)
 - 3. Any other interest of such nature that movant's participation may be in the public interest.
- C. Form and Contents of Motion. A motion to intervene shall set out clearly and concisely facts from which the nature of the movant's alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the movant in the proceeding.
- D. Filing and Service of Motion. Except as otherwise provided, motions to intervene and notices of intervention may be filed at any time following the filing of an application, petition, investigation or other document seeking Commission action, but in no event later than the date fixed for the filing of motions to intervene in any order or notice with respect to the proceedings issued pursuant to these rules, or, where no date is fixed for the filing of motions, the date of hearing, unless, for good cause shown, the Commission authorizes a late filing. Service shall be made as provided in §§ 1.8(A) through (D) of this Part. Intervention other than as a matter of right may be granted with such limitations and/or upon such conditions as the Commission shall determine.
- E. Disposition of Motion. Unless the Commission denies a motion for leave to intervene, all timely motions to intervene not objected to by any party within ten (10) days of service of the motion for leave to intervene shall be deemed allowed, provided that the Commission, on its own motion after notice and hearing, may thereafter terminate the party status of any intervenor.
- F. Late Intervention. Intervenors who are granted party status are bound by the agreements reached and orders entered in the proceedings prior to their intervention. The Commission will not allow the broadening of issues unless the public interest requires it and no undue prejudice or hardship will result to other parties to the proceeding.

- G. Intervention in General Rate Schedule Change Filings. Any person desiring to intervene in a proceeding initiated by filing for general rate schedule changes shall file with the Clerk a notice of intervention or motion to intervene within forty-five (45) days after the publication of the notice of filing as provided by these rules. Any motion filed after the pre-hearing conference is considered a motion for late intervention.

1.15 Protests

- A. General. Any person other than a party who objects to the approval of an application, petition, motion, or other matter which is, or will be, under consideration by the Commission may file a protest. No particular form of protest is required, but the letter or writing should contain the name and address of the protestant and a concise statement of the protest. If possible, nine (9) legible copies of the protest should be forwarded to the Commission with the original. The Clerk shall serve copies of all protests filed upon all parties.
- B. Effect of Protest. A protest is intended solely to alert the Commission and the parties to a proceeding of the fact and nature of the protestant's objection to an application, petition, or any other proposed Commission action and does not become evidence in the proceeding. The filing of a protest does not make the protestant a party to the proceedings.

1.16 Motions

- A. General. Other than oral motions made during a hearing, any application to the Commission to take any action or to enter any order after commencement of a proceeding or of an investigation by the Commission shall be made by a filing with the Clerk, stating specifically the grounds therefor and setting forth the action or order sought. The motion shall be served upon all parties.
- B. Movant's Certification. The movant shall make a good faith effort to determine whether a motion will be opposed. If the motion will not be opposed, the movant shall so state in the motion. Opposed motions shall state affirmatively that concurrence of other parties has been requested but denied, or shall state why no request for concurrence was made.
- C. Delay of Proceeding. Except as otherwise directed by the presiding officer or the Commission, the filing of a motion, either prior to or during any proceeding, and any action thereon, shall not delay the conduct of such proceeding.
- D. Objections. Any party objecting to a written motion filed pursuant to this rule shall, within ten (10) days of the service of the motion, file an objection thereto in writing setting forth in detail the grounds for the objection. The time for filing objections may be varied by order of the Commission.
- E. Summary Disposition. The Division or any intervenor may file a motion for summary disposition of all or part of the rate tariff filing. If the Commission

determines that there is no genuine issue of fact material to the decision, it may summarily dispose of all or part of the rate tariff filing.

1.17 Pre-Hearing Procedure

A. General.

1. It is the policy of the Commission to encourage the use of pre-hearing conferences as a means of making more effective use of hearing time and to otherwise aid in the disposition of the proceeding or the settlement thereof. Having the issues clearly delineated in advance of hearing and the ground rules for the conduct of the hearing well understood may be particularly beneficial in complex or multi-party proceedings.
2. The Commission may, with reasonable written notice, require that all parties attend one or more pre-hearing conferences for the purpose of formulating and simplifying the issues in the proceeding or addressing other matters that may expedite orderly conduct and disposition of the proceeding. Such matters may include but are not limited to:
 - a. details of the procedural schedule;
 - b. the necessity or desirability of amendments to the pleadings;
 - c. the possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
 - d. limitations on the number of witnesses or time allocated to particular witnesses or issues at the hearings;
 - e. procedures at the hearing;
 - f. the compilation of a stipulated list of written testimony and exhibits to be admitted at the hearing;
 - g. the consideration of outstanding motions;
 - h. agreements to modify the time for or method of transmitting and responding to discovery requests, and for service of other documents; and
 - i. the status of any settlement negotiations and, if appropriate, identification of any interest in and resources to support professional assistance therewith or other alternative means of dispute resolution.

B. Attendance.

1. All parties shall attend the pre-hearing conference fully prepared for a productive discussion of all matters and fully authorized to make commitments or take positions. Preparation should include advance study of

all material filed and materials obtained through formal and informal discovery and, if feasible, advance informal communication among the parties to ascertain the extent to which the parties will be able to agree upon the pending matter.

2. Failure of any party to attend or be prepared for a pre-hearing conference without good cause shown shall constitute a waiver of any objection to any agreement reached or to any order or ruling made as a result of the conference.
- C. Proposed General Rate Increases. In a proceeding initiated by filing of revised schedules proposing a general increase in rates, a pre-hearing conference for the purposes set forth above shall be held within sixty (60) days after the filing unless otherwise ordered by the Commission.

1.18 Interim Relief

- A. Motions for interim relief may be included in a pleading filed by any party. The title of the pleading must clearly indicate that such relief is requested.
- B. Contents. In addition to the usual contents of a pleading, the motion must allege such extraordinary facts of immediate and irreparable injury as would justify the Commission's exercise of discretion by granting interim relief prior to a final decision.
- C. Testimony and Exhibits. The motion requesting interim relief shall be accompanied by written testimony and exhibits in support of the motion, unless the Commission or presiding officer waives this requirement for good cause shown.
- D. Notice. Copies of the motion seeking interim relief and the testimony and exhibits filed in support thereof shall be served upon the Division, the Department of Attorney General, and any other known parties.
- E. Hearing. Motions for interim relief other than interim rate relief may be acted upon with or without hearing.
- F. Bond. Interim relief may be granted subject to refund and conditioned upon a bond or other adequate protection.
- G. Emergency Situations. In circumstances when delay may cause immediate and irreparable harm, the Commission may waive the usual requirements for interim relief, or condition such relief on whatever conditions it deems reasonable.

1.19 Discovery

- A. General.
 1. The Commission favors prompt and complete disclosure and exchange of information and encourages informal arrangements amongst the parties for this exchange. It is further the Commission's policy to encourage the timely

use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes.

2. Techniques of pre-hearing discovery permitted in state civil actions may be employed by any party. Upon experiencing any difficulties in obtaining discovery, the parties may seek relief from the Commission by filing a proper motion.

B. Depositions.

1. The testimony of any witness may be taken by deposition at any time before the hearing is closed. Objection to the deposition, if any, shall be made in accordance with § 1.16 of this Part.
2. The deposition shall proceed in the same manner and pursuant to the same procedures as govern depositions in the Superior Court in the State of Rhode Island.

C. Data Requests.

1. In any proceeding pending before the Commission, the Commission staff and any party may request such data, studies, workpapers, reports, and information as are reasonably relevant to the proceeding and are permitted by these rules or by statute.
2. Data requests shall be in writing, shall be directed to the party or its attorney, and shall specify in as much detail as possible the material requested. Oral data requests may be allowed at the Commission's discretion when made on the record during a hearing. Any requested material or portion thereof to which objection is not made as set forth below shall be produced for the requesting party as soon as practicable and in no event later than twenty-one (21) days after service of the request, unless the time for production is otherwise shortened or extended by agreement or order.
3. Objection to a data request in whole or in part on the ground that the request is unreasonable and/or the material is not relevant or not permitted or required by law shall be made by motion filed as soon as practicable and in no event later than ten (10) days after service of the request. An oral objection may be made at a hearing when the Commission has allowed an oral data request. Objections shall include the portions of the data request objected to and shall detail the basis for the objection. The presiding officer shall thereupon determine the validity of the request and shall establish a date for compliance. The relevancy of a request shall be determined under the standards established for such determinations under Rule 26 of the Superior Court Rules of Procedure.
4. The failure of a party to comply with a data request or a Commission order related thereto shall be grounds for striking any testimony related to such request.

5. Copies of all data requests shall be served on all parties, unless a protective order has been granted, and a party has declined to execute a confidentiality agreement. Copies of the responses shall be provided to the Division, and to other parties upon request. In addition, three copies of both requests and responses shall be filed with the Clerk, unless otherwise directed by the Clerk.
 6. Data requests and responses, though part of the docket, are not evidence unless admitted during a hearing, or by consent of the parties.
- D. **Supplementation of Responses to Discovery Requests.** A party who has responded to a request for discovery is under a duty to reasonably and promptly amend or supplement the previous response if information is obtained which would have been required in the previous response if it had been available to the respondent at the time the response was served.
- E. **Protective Orders.** Upon motion by a party from whom discovery is sought, and for good cause shown, the presiding officer may make an order when justice requires to protect the party from unreasonable annoyance, embarrassment, oppression, burden or expense, or from disclosure of confidential business and financial information. If the motion for a protective order is denied in whole or in part, the presiding officer may order that the party provide or permit discovery.

1.20 Subpoenas

- A. **Issuance.** Subpoenas for the attendance of witnesses or for the production of documentary evidence may be issued by any notary public pursuant to R.I. Gen. Laws § 9-17-3, or by the Clerk.
- B. **Service and Return.** Return of service evidences service of a subpoena made by a Rhode Island sheriff or deputy sheriff; if service is made by another person, an affidavit describing the manner in which service was made, returned on or with the original subpoena, evidences service. In making service, a copy of the subpoena shall be shown to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return or affidavit, shall be delivered to the Clerk.
- C. **Fees of Witnesses.** Witnesses who are subpoenaed shall be paid fees as provided by the Superior Court Rules of Procedure.

1.21 Hearings

- A. **Public Hearings.** Except as permitted or required by law, or by order of the Commission with regard to matters exempt from disclosure under the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*, all hearings shall be public. The Commission may, however, limit the number of spectators and participants to the extent that safety and good order require. The Commission may also eject or bar the admission of any person who disrupts or threatens to disrupt a public hearing.

- B. Site. All hearings shall be held in Providence at the offices of the Commission, unless by statute or decision of the presiding officer a different place is designated.
- C. Presiding Officer. The hearing shall be conducted by a presiding officer who shall be the Chair or a Commissioner. The presiding officer, if a notary public, the court stenographer, or the Clerk may administer oaths and affirmations. The presiding officer shall make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise in the course of the hearing, unless such authority is delegated to Commission counsel.
- D. General. Parties shall have the rights to present evidence, cross-examine witnesses, object, file motions and briefs, and present arguments. The Commission and its staff may examine witnesses and require additional testimony.
- E. Direct testimony.
 - 1. All direct testimony shall be presented in writing, unless otherwise allowed by the Commission. Written testimony, when properly authenticated by the witness under oath, may be transcribed into the record or admitted as an exhibit. Where time permits, direct testimony shall be prefiled at least fourteen (14) days prior to a scheduled hearing.
 - 2. Written testimony shall be prepared in question and answer form, numbering each line of text along the left-hand margin, if possible; shall contain a statement of the qualifications of the witness; shall be signed under oath; and shall be accompanied by any exhibits to which it relates. Testimony shall have a cover sheet on which the exhibit number may be stamped. Such written testimony shall be subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally.
 - 3. Cross-examination of the witness presenting such written testimony shall proceed at the hearing at which it is authenticated if, not less than fourteen (14) days prior to such hearing, service of the written testimony has been made upon each party, unless the presiding officer for good cause shall otherwise direct.
 - 4. The filing and service of testimony and exhibits by the Division and any other party shall be made in accordance with the pre-hearing conference schedule, if any.
- F. Rebuttal testimony. All rebuttal testimony shall be presented in writing, unless otherwise allowed by the Commission. Written testimony, when properly authenticated by the witness under oath, may be transcribed into the record or admitted as an exhibit. Where time permits, rebuttal testimony shall be prefiled at least seven (7) days prior to a scheduled hearing. Cross-examination of a witness presenting rebuttal testimony shall proceed at the hearing at which it is authenticated if, not less than seven (7) days prior to such hearing, service of the rebuttal testimony has been made upon each party, unless the presiding officer for good cause shall otherwise direct.

- G. Objections. When objections are made to the admission or exclusion of evidence before the Commission, the grounds relied upon shall be stated briefly. Formal exception to adverse rulings of the Commission is not necessary.
- H. Number of Witnesses. The Commission may limit appropriately the number of witnesses that may be heard upon any issue.
- I. Further Evidence. At any stage of the hearing the Commission may call for further evidence upon any issue, and require such evidence to be presented by the party or parties concerned. At the hearing, the Commission may, if deemed advisable, authorize any participant to file specific documentary evidence as part of the record within a fixed time, expiring not less than ten (10) days before the date fixed for filing and serving briefs. If requested by a party, cross-examination of this material shall be permitted.
- J. Exhibits. All exhibits shall, to the extent practicable, be marked for identification prior to commencement of the hearing. Exhibits shall have a cover sheet on which the exhibit number may be stamped. The parties are encouraged to stipulate to the admissibility of exhibits. A list of the exhibits to be admitted by stipulation shall be prepared by the parties for the convenience of the court stenographer and the Commission (see "Public Utilities Commission's Sample Exhibit List" Appendix B). Except as allowed by the presiding officer, no exhibit shall be marked for identification unless copies have been provided to all parties and to the Commission. Immediately prior to the hearing, corrections to the prefiled testimony shall be made and initialed by the sponsoring witness under the supervision of Commission counsel.
- K. Position Memoranda. If the Division or any other party opposing the application or any portion thereof shall elect not to file testimony, it shall nevertheless file a memorandum which shall summarize the basis for the opposition and also as to each aspect of the applicant's case which is opposed shall state to the extent possible the monetary difference between the applicant's position and that of the opponent.
- L. Recording of Hearings. Hearings shall be stenographically recorded, and a transcript of the hearing shall be a part of the record. Such transcripts shall include a verbatim report of the hearing; nothing shall be omitted therefrom except as is directed on the record by the Commission. Any person may record, with prior notice to the Commission, all or any portion of a hearing by way of camera, video, or tape recorder of any kind. If a hearing is closed by order of the Commission, the transcript shall be treated as a document exempt from disclosure under the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*, and only those persons authorized to be present may independently record the proceedings.
- M. Close of Record. The record in a proceeding shall close after the briefs, if any, have been filed, or otherwise after the dispositive open meeting, and thereafter there shall not be received in evidence or considered as part of the record any document, letter or other evidence submitted except as provided in § 1.21(l) of this

Part, changes in the transcript as provided in § 1.24(B) of this Part, or as otherwise stipulated by the parties with the agreement of the Commission.

1.22 Witnesses

- A. Oral Examination. Witnesses shall be examined orally unless the testimony is taken by deposition as provided in § 1.19 of this Part or the facts are stipulated. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.
- B. Expert Witnesses. Written testimony of an expert witness may be received as provided in § 1.21 of this Part, where properly supported by the oral testimony of its author on direct examination, subject to cross-examination and motions to strike.
- C. Acceptance Subject to Check. When a witness accepts a proposition "subject to check", it is the burden of the party offering the witness to correct the record if subsequent study reveals that the witness erred in accepting the proposition. If the area is not explored further in the proceedings, a witness' statement accepting a proposition "subject to check" will be treated as though the witness had accepted the proposition without reservation.

1.23 Rules of Evidence – Official Notice

- A. Rules of Evidence. In all proceedings wherein evidence is taken, irrelevant, immaterial or unduly repetitious evidence shall be excluded. While the rules of evidence as applied in civil cases in the Superior Courts of this state shall be followed to the extent practicable, the Commission shall not be bound by technical evidentiary rules, and, when necessary to ascertain facts not reasonably susceptible of proof under the rules, evidence not otherwise admissible may be submitted, unless precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply. Objections to evidentiary offers may be made and shall be noted in the record.
- B. Exhibits, Copies. In all cases wherein evidence is taken, documentary evidence may be received in the form of copies or excerpts, if the original is not readily - available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- C. Administrative Notice. In all proceedings wherein evidence is taken, notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any report or data required by law or regulation to be filed with the Commission or the Division, and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence. The burden is on the party

requesting the Commission's notice to produce the documents or other matter for the Commission's review.

1.24 Transcripts

- A. Availability in Public Hearings. Public hearings will be stenographically recorded. Any party who requests and receives transcripts shall pay the specified costs to the official reporter. If such receipt is earlier than the date on which the Commission would otherwise receive transcripts, the reporter shall deliver the Commission's copy to the Commission on the earlier date.
- B. Corrections. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Transcript corrections agreed to by opposing attorneys may be incorporated into the record, if and when approved by the presiding officer, at any time during the hearing, or after the close of evidence, but not more than thirty (30) days from the date of receipt of the transcript, unless the time is shortened by the presiding officer. The presiding officer may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of the proceeding.

1.25 Stipulations and Settlement Offers

- A. Stipulations.
 - 1. The parties may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received in evidence at a hearing, shall be binding on the parties with respect to the matters therein stipulated.
 - 2. Stipulations shall conform to the applicable requirements of Rules 1.6 and 1.8 of this Part, except stipulations made orally on the record during hearings.
- B. Settlement Offers.
 - 1. Any party to a proceeding may submit an offer of settlement at any time. The offer must be filed with the Clerk, who will transmit the offer to the Commission. An offer of settlement must include:
 - a. the signed settlement offer;
 - b. an attestation by signatories that the settlement is reasonable, in the public interest, and in accordance with law and regulatory policy.
 - 2. Settlement agreements reached at a very early stage in a proceeding, before the establishment of an adequate evidentiary basis, must be supported by the proponents' placing the details of the agreement into the record, including its underlying rationale.

3. The failure of all parties to agree to or execute a settlement document should not be fatal to an otherwise reasonable settlement. However, nonsignatory parties must have the right to fully present their evidence and legal arguments and cross-examine all pertinent witnesses of other parties, for the purpose of presenting and litigating the contested issues. A party who does not sign settlement documents may not defeat or challenge a settlement simply by refusing to sign the document.
4. If the Commission determines that any offer of settlement is contested in whole or in part by any party, the Commission may decide the merits of the contested settlement issues, if the record contains substantial evidence upon which to base a reasoned decision, or the Commission determines there is no genuine issue of material fact.
 - a. If the Commission determines that the contested issues are severable from the offer of settlement, it shall so inform the parties and, unless objected to by any party to the offer of settlement, the uncontested portions may be severed and decided upon a finding by the Commission that the settlement appears to be fair and reasonable and in the public interest. The Commission will not sever any contested issues the resolution of which, in the judgment of the Commission or any party to the offer of settlement, would affect the offer of settlement as a whole or the underlying bargain of the parties thereto.
 - b. If the Commission finds that the record lacks substantial evidence or that the contested issues cannot be severed from the offer of settlement, the Commission will establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based.
5. The Commission is not bound by settlement agreements, and it will independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in the public interest, or otherwise in accord with law and regulatory policy. When a settlement agreement is presented for decision, the Commission may accept the settlement, reject the settlement, or state additional conditions under which the settlement will be accepted. If the Commission rejects the settlement or if the Commission's conditional acceptance of the settlement is rejected by the parties to the settlement, the matter shall continue, as though no settlement had been presented, and the settlement shall be deemed withdrawn.
6. An offer of settlement that is not approved by the Commission is not admissible in evidence against any participant who objects to its admission. Any discussion of the parties with respect to an offer of settlement that is not approved by the Commission is not subject to discovery or admissible in evidence against any participant who objects to its admission.

- C. Hearing on Settlement Offer. The Commission has discretion to conduct a public hearing on any settlement it accepts. No separate public notice shall be required prior to such hearing.

1.26 Briefs and Oral Arguments

A. Briefs and Memoranda of Law.

1. Unless waived by the parties with the consent of the Commission, at the close of the taking of the testimony in each proceeding, or at such other time during the proceeding as the Commission shall deem appropriate, the Commission shall fix the time for the filing and service of briefs or memoranda of law, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved; and shall fix the order in which such briefs shall be filed. Reply briefs shall only be permitted by leave of the presiding officer.
2. Briefs shall contain:
 - a. a concise statement of the case; and
 - b. proposed findings of fact and conclusions of law, together with the reasons therefor, separately stated.
3. Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in the appendix to the brief. Every brief of more than twenty (20) pages shall contain a subject index, with page references. All briefs shall be as concise as possible, and shall in no event exceed fifty (50) pages, exclusive of any appendices, except by leave of the presiding officer. In all other respects, briefs shall conform to the requirements of § 1.6 and 1.8 of this Part.
4. Briefs shall not be accepted for filing out of time, except by leave of the presiding officer. Requests for the extension of time in which to file briefs shall conform to the requirements of § 1.7(B) of this Part and shall be filed at least two (2) days before the time fixed for filing such briefs. All briefs shall be accompanied by a certificate showing service upon all parties or their attorneys who appeared at the hearing or on brief.

- B. Oral Argument. When time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrant, the presiding officer may allow the presentation of oral argument, imposing such limits or time on the argument as deemed appropriate in the proceeding. Such argument shall be transcribed and bound with the transcript of the testimony.

1.27 Reopening Proceedings

- A. By Parties.

1. Except as provided in § 1.27(A)(3) of this Part, at any time after the conclusion of a hearing in a proceeding, but before the issuance of the written order, any party to the proceeding may, for good cause shown, move to reopen the proceedings for the purpose of taking additional evidence. Copies of such motion shall be served upon all participants or their attorneys of record, and shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing, and shall in all other respects conform to the applicable requirements of §§ 1.6 through 1.8 of this Part, inclusive.
 2. Within ten (10) days following the service of such motion, or such shorter or longer time as the Commission shall order, any other party to the proceedings may object or shall be deemed to have waived any objections to the granting of such petition.
 3. The Commission will not consider any motion to reopen the record filed within ten (10) days before the expiration of a final suspension order in a proceeding initiated by a general rate change filing.
- B. By the Commission. At any time prior to the issuance of its written order, after notice to the parties and opportunity to be heard, the Commission may reopen the proceeding for the receipt of further evidence.

1.28 Commission Decisions and Orders

- A. Written Orders; Calculation of Time. The Commission will issue its orders in writing in every proceeding. The Commission may in its discretion make an oral decision at the bench or at an open meeting prior to the issuance of its written order. The timeliness of applications for rehearing and notices of appeal shall be calculated from the date the Commission issues its written order.
- B. Adjudications for Equal Access to Justice for Small Businesses and Individuals. Pursuant to R.I. Gen. Laws § 42-92-1 *et seq.*, the Commission shall award reasonable litigation expenses incurred by the prevailing party in connection with certain adjudicatory proceedings, if the Commission concludes that there was no reasonable basis in fact and law for the Division's position. The following conditions must be met:
1. the adjudicatory proceedings must involve loss of benefits, the imposition of a fine, the suspension or revocation of a license or permit, or the compulsion or restriction of activities;
 2. the prevailing party must be either:
 - a. an individual whose net worth is less than \$500,000 at the time the adjudication is initiated; or
 - b. any individual, partnership, corporation, association, or private organization doing business and located in the state, which is

independently owned and operated, not dominant in its field, and which employs no more than 100 persons at the time the adjudication is initiated;

3. the prevailing party must request reimbursement not later than thirty (30) days following the issuance of the Commission's order, detailing:
 - a. compliance with §§ 1.28(B)(1) and 1.28(B)(2) of this Part; and
 - b. the costs incurred in defending against the unreasonable adjudicatory proceedings, including, but not limited to, attorney's fees and witness fees.
 - c. The Commission shall issue a supplementary order directing the Division to pay reasonable litigation expenses, as limited by R.I. Gen. Laws § 42-92-2(c).

1.29 Relief from Order

- A. Clerical Mistakes. Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Commission at any time on its own initiative, or on motion of any party and after such notice as the Commission orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court and thereafter while the appeal is pending may be corrected with leave of the Supreme Court.
- B. Mistake, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, Other. On motion and upon such terms as are just, the Commission may grant relief for the following reasons:
 1. Mistake, inadvertence, surprise, or excusable neglect;
 2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 1.27 of this Part;
 3. Fraud, misrepresentation, or other misconduct of an adverse party;
 4. The order is void;
 5. A prior order on which the order is based has been reversed or otherwise vacated, or it is no longer equitable that the order should have prospective application; or
 6. Any other reason justifying relief from the operation of the order.
- C. During the pendency of an appeal, relief may be granted before the appeal is docketed in the Supreme Court and thereafter while the appeal is pending may be granted with leave of the Supreme Court.

- D. Time. A motion shall be made within a reasonable time not more than one (1) year after the order is entered. A motion under § 1.29 (B) of this Part does not affect the finality of an order or suspend its operation. This rule does not limit the power of the Commission to entertain an independent action to relieve a party from an order or to set aside an order for fraud upon the Commission.

1.30 Negotiated Rulemaking

- A. Purpose. Because traditional rulemaking procedures may discourage affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions and to engage in expensive and time-consuming litigation over regulations, negotiated rulemaking, in which the parties who will be affected by a rule participate in its development, can provide significant advantages. It can increase the acceptability and improve the substance of rules, and it may also shorten the amount of time needed to issue final rules.
- B. Procedure.
1. The Commission may use the services of a convener to assist it in identifying persons who will be affected by the proposed rule, and conducting discussions with such persons to identify the issues of concern to such persons, and to ascertain whether the establishment of a negotiated rulemaking committee is feasible and appropriate in the particular rulemaking. The convener shall report findings and may make recommendations to the Commission. Upon request by the Commission, the convener shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the proposed rule.
 2. If, after considering the report of a convener or conducting its own assessment, the Commission decides to establish a negotiated rulemaking committee, it shall publish a notice which shall include:
 - a. an announcement that the Commission intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;
 - b. a description of the subject and scope of the rule to be developed, and the issues to be considered;
 - c. a list of the interests which are likely to be affected by the rule;
 - d. a list of the persons proposed to represent such interests and the person or persons proposed to represent the Commission;
 - e. an explanation of how a person may apply or nominate another person for membership on the committee, as provided under § 1.30(B)(3) of this Part.

3. Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person specified in a notice under § 1.30(B)(2)(d) of this Part may apply for, or nominate another person for, membership on the negotiated rulemaking committee to represent such interests with respect to the proposed rule. Each application or nomination shall include:
 - a. the name of the applicant or nominee and a description of the interests such person shall represent;
 - b. evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;
 - c. a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration;
 - d. the reasons that the persons specified in the notice under § 1.30(B)(2)(d) of this Part do not adequately represent the interests of the person submitting the application or nomination.
4. If the Commission determines that a negotiated rulemaking committee can adequately represent the interests that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, it may establish a negotiated rulemaking committee. Membership on the committee shall be limited to ten (10) members, unless the Commission determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership. Each committee shall include at least one person representing the Commission. The Commission shall provide appropriate administrative support to the negotiated rulemaking committee.
5. Each negotiated rulemaking committee established shall consider the matter proposed by the Commission for consideration and shall attempt to reach a consensus concerning a proposed rule with respect to such matter and any other matter the committee determines is relevant to the proposed rule.
6. The person or persons representing the Commission on a negotiated rulemaking committee shall participate in the deliberations and activities of the committee with the same rights and responsibilities as other members of the committee, and shall be authorized to fully represent the Commission in the discussions and negotiations of the committee.
7. The Commission shall select a facilitator for the negotiations of the committee. The facilitator shall not represent the Commission in substantive issues. The facilitator shall:
 - a. chair the meetings of the committee in an impartial manner;

- b. impartially assist the members of the committee in conducting discussions and negotiations; and
 - c. manage the keeping of minutes and records.
- 8. If a committee reaches a consensus on a proposed rule, at the conclusion of negotiations the committee shall transmit to the Commission a report containing the proposed rule. If the committee does not reach consensus on a proposed rule, the committee may transmit to the Commission a report specifying any areas in which the committee reached a consensus. The committee may include in a report any other information, recommendations, or materials that the committee considers appropriate. Any committee member may include as an addendum to the report additional information, recommendations or materials.
- 9. The Commission shall hold an open meeting to determine whether it will adopt the proposed rule. Whether or not the committee reached consensus, if the Commission concurs with the proposed rule, it shall notice the proposed adoption pursuant to § 1.9(F)(1) of this Part. No public hearing will be conducted unless requested pursuant to R.I. Gen. Laws § 42-35-3.

1.31 Judicial Review

- A. Appeal from Commission Orders. Any person aggrieved by a written order of the Commission, other than a telecommunications interconnection order, may, within seven (7) days from the date of such order, petition the Supreme Court for a writ of certiorari to review its legality and reasonableness. The petition for a writ of certiorari shall fully set forth the specific reasons for which it is claimed that the decision or order is unlawful or unreasonable. Parties appealing a Commission decision with regard to a telecommunications interconnection order shall file in the United States District Court for the District of Rhode Island pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 252.
- B. Judicial Review of Rules. The validity or applicability of any rule may be determined in an action for declaratory judgment in the Superior Court of Providence County, when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. The Commission shall be made a party to the action.

1.32 Appeals to the Public Utilities Commission

- A. Petition for Review. When a statute provides for review by the Commission of any action by a municipal body, proceedings for such review shall be instituted by filing a petition with the Commission in accordance with these rules.
- B. Time Limits. The time limits within which review may be sought shall be those specified by statute.

- C. Application of Rules. These rules shall govern the review proceedings, unless otherwise provided by statute.