

PROJECT NO. 39316

RULEMAKING PROCEEDING TO § **PUBLIC UTILITY COMMISSION**
AMEND PUC PROC. R. 22.183, §
FAILURE TO ATTEND HEARING § **OF TEXAS**
AND DISPOSITION BY DEFAULT §

**ORDER ADOPTING AMENDMENT TO §22.183
AS APPROVED AT THE SEPTEMBER 1, 2011 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §22.183, relating to Disposition by Default with no changes to the proposed text as published in the July 1, 2011 issue of the *Texas Register* (36 TexReg 4072). The amendment will allow the presiding officer to issue a default order if the party that does not bear the burden of proof fails to respond to the notice for an opportunity for hearing. Currently, §22.183 allows disposition by default only if a hearing is held and the party fails to appear for the hearing. The amendment is adopted under Project Number 39316.

The commission received no comments on the proposed amendment. No requests for a hearing were received.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 2007 and Supp. 2010) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and Administrative Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 and Supp. 2010), which requires the commission to adopt procedural rules.

Cross Reference to Statutes: PURA §§14.002 and 14.052, and APA §2001.004.

§22.183. Disposition by Default.

- (a) **Default.** A default occurs when a party who does not have the burden of proof fails to request a hearing within 30 days after service of notice of an opportunity for a hearing.

- (b) **Default order.** Upon default, the presiding officer may issue a default order - either a proposal for decision or a final order - disposing of the proceeding without a hearing. A default order requires adequate proof that:
 - (1) The notice of the opportunity for a hearing included a disclosure in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default, if the defaulting party fails to timely request a hearing; and
 - (2) The notice of opportunity for a hearing was sent by certified mail to:
 - (A) the party's last known address in the commission's records, if the party has a license, certificate, or registration approved by the commission;
 - (B) the registered agent for process for the party on file with the Secretary of State, if the party does not have a license, certificate, or registration approved by the commission and is registered with the Secretary of State; or
 - (C) an address for the party identified after reasonable investigation, if subparagraphs (A) and (B) of this paragraph do not apply.

- (c) **Exceptions and replies.** Any party may file exceptions to a default proposal for decision and replies to exceptions pursuant to §22.261(d) of this title (relating to Proposals for Decision).

- (d) **Motions for rehearing.** Any party may file a motion for rehearing to a default final order pursuant to §22.264 of this title (relating to Rehearing).

- (e) **Late hearing request.** If a party requests a hearing after the deadline to request a hearing, but before a default order has become final, the presiding officer may grant the request for good cause shown.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §22.183 relating to Disposition by Default is hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 8th DAY OF SEPTEMBER 2011.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER