

# Arkansas Public Service Commission



## Rules of Practice and Procedure

Last Revised: April 10, 2015

Order No. 3

Docket No. 14-111-R

Effective: 6-12-2015

RULES OF PRACTICE AND PROCEDURE

ADMINISTRATIVE HISTORY

<u>Docket</u>	<u>Date</u>	<u>Order No.</u>	<u>Subject Matter of Docket/Order</u>
14	05-26-35	--	Adoption of Rules of Practice and Procedure.
185	04-22-37	--	Rules pertaining to applications for CCN for rural electrical extension lines.
U-378	06-30-49	--	Amends Section 15, Rule X, regarding filing of exhibits.
U-512	04-24-51	--	Minimum filing requirements for rate cases.
U-873	09-03-53	--	Comprehensive revision of procedural rules.
U-2411	09-20-72	--	Revision of procedural Rules; IAW Economic Stabilization Act of 1970.
U-2682	12-26-77	--	General rulemaking docket. Superseded No. 14; No. 185; U-378; U-512; U-873; U-2411.
U-2918	05-24-78	--	Amended Rule 9 to provide that municipalities are exempt from the filing requirements usually applicable in rate cases.
U-3100	07-17-80	2	Amended Rule 9 to require a utility filing a rate case to give Commission 60 to 90 days notice.
81-238-R	10-26-81	4	Amended Rule 7.07 to require publication of a map and certain disclaimers in the newspaper notice re proposed major utility facility.
83-203-R	08-30-84	7	Amended Rules 2.07 and 9.13. Ratified by Order No. 8.
83-203-R	03-06-85	10	Amends Sections 1, 2, 3, 5, 7, 9, and adds Sections 11, 12, and 13. Revisions republished and attached to Order No. 12.
83-203-R	04-05-85	13	Commission revises final form of Rules 3.04, 3.07, 9.14 as adopted in ALJ Order 10. Reprinted by Order No. 14.

# RULES OF PRACTICE AND PROCEDURE

## ADMINISTRATIVE HISTORY

<u>Docket</u>	<u>Date</u>	<u>Order No.</u>	<u>Subject Matter of Docket/Order</u>
85-076-R	06-28-85	4	Amends Rules 9.13, 12.05. Republished by Order No. 5.
83-203-R	10-15-85	16	Amends Rule 9.14. Republished by Order No. 17.
86-007-R	05-07-86	4	Amends Sections 7 and 11. Revisions republished and attached to Order No. 5.
86-248-R	08-10-89	8	Amends Rule 9.02 (k) and adopts the minimum filing requirements applicable to telephone utilities which is designated as Appendix II of Section 9.
86-248-R	08-17-89	10	Amends Rules 9.03, 9.04, and 9.09.
89-106-R	10-23-89	3	Amends Rules 9.02, 9.03, 9.04, and 9.09, and Appendices II and III, applicable to Class B telecommunications utilities.
89-247-R	01-26-90	3	Adopts Rule 9.15, establishing generic depreciation rates for Class B telecommunications utilities.
87-048-R	05-03-90	11	Adopts amendments to rules applicable to Class K telecommunications carriers.
92-248-R	06-16-94	7	Amends Rules 1.03., 3.03., 7.05., 10.02., 11.02., 11.03., and 12.06. Adopts Appendix 11-1.
94-201-R	01-25-96	6	Amends Rules 1.01., 1.04., 7.06., 7.07., 9.01., 11.01., 11.03., and 11.09. Eliminates Class K Carrier and incorporates Rules for Interexchange Service Providers.
97-040-R	07-24-97	8	Amends Rules to comply with Arkansas Telecommunications Regulatory Reform Act of 1997.
99-290-R	03-31-00	6	Amends Rules 1.01., 7.01., and 7.09. to incorporate Licensing Requirements for Energy Service Providers.

# RULES OF PRACTICE AND PROCEDURE

## ADMINISTRATIVE HISTORY

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<u>Docket</u>	<u>Date</u>	<u>Order No.</u>	<u>Subject Matter of Docket/Order</u>
03-054-R	08-01-03	2	Amends Rules 1.01., 7.01., and 7.09. to delete Licensing Requirements for Energy Service Providers.
03-054-R	09-22-03	4	Amends Rule 9.04. Adopts Appendix IA.
08-135-R	11-15-2010	10	Revises Rule 2.08 and adds Rules 2.12. and 2.13 to implement electronic filing.
08-135-R	09-18-2013	18	Comprehensive revision of Rules of Practice and Procedure.
14-111-R	04-10-2015	3	Amends Rule 6.11. to comply with Act 662 of 2013.

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Rules of Practice and Procedure (RPPs)  
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## SECTION 1. PURPOSE, APPLICABILITY, AND GENERAL MATTERS

### Rule 1.01    Definitions

The following definitions shall apply throughout the *Rules of Practice and Procedure* (RPPs) except as otherwise required by the context and any references to the RPPs shall include these definitions:

- (a) “Applicant” or “Petitioner.” A Person who files a Formal Application.
- (b) “Ark. R. Civ. P.” The *Arkansas Rules of Civil Procedure*.
- (c) “Class A Telecommunications Provider.” Any LEC providing more than 25,000 access lines in Arkansas.
- (d) “Commission.” Commissioners of the Arkansas Public Service Commission as defined in Ark. Code Ann. § 23-2-101 or a Presiding Officer designated to act on behalf of the Commission.
- (e) “Commission Business Hours.” The Commission’s normal business hours as posted on its website.
- (f) “Commissioner.” A member of the Commission, as defined in Ark. Code Ann. § 23-2-101.
- (g) “Commissioners’ Staff.” Employees of the Commission who provide technical and legal support to the Commissioners. The Commissioners’ Staff is not a Party in any Docket.
- (h) “Complainant.” A Person who files a Formal Complaint.
- (i) “Competing Local Exchange Carrier” or “CLEC.” As defined in Ark. Code Ann. § 23-17-403(8).
- (j) “Cost of Service.” The total cost of providing service to each customer class which considers all reasonable expenses, including taxes and depreciation, and a fair rate of return on assets devoted to utility service. The assignment of costs among the customer classes should be made using the criterion that each customer class will bear those costs the utility incurs in providing utility service to customers.
- (k) “Day.” When used to establish a deadline, a calendar day, unless a specific Rule explicitly uses the term “business day.”
- (l) “Docket.” A formal proceeding in which the Secretary has assigned a Docket number.

- (m) "Electronic Filing System" or "EFS." The Commission's online filing system used to make filings in docketed Commission proceedings.
- (n) "*Ex Parte* Communication." Written or oral communication by a Person to a Commissioner or Presiding Officer outside of a public hearing. A written document filed with the Secretary or sent to the Commission and served on other Parties shall not be considered an *Ex Parte* Communication.
- (o) "Formal Application." A written pleading which is filed and seeks to invoke the authority of the Commission to perform an act or to approve an act to be performed by the Applicant.
- (p) "Formal Complaint." A Formal Application in the form of a complaint, initiated by the Commission, Staff, or a Person authorized to complain pursuant to Ark. Code Ann. § 23-3-119.
- (q) "General Rate Change Application." A Formal Application for a rate change pursuant to Ark. Code Ann. §§ 23-4-401, *et seq.*
- (r) "Incumbent Local Exchange Carrier" or "ILEC." As defined in Ark. Code Ann. § 23-17-403(16).
- (s) "Informal Complaint." A complaint in oral or letter form, which is not part of a Docket, received by the Commission or Staff from Persons having a complaint about a utility's service, rates, or actions.
- (t) "Interexchange Carrier" or "IXC." Any Person not a Local Exchange Carrier that provides interexchange communications services to the public for compensation in Arkansas.
- (u) "Intervenor." A Person who has been granted permission to intervene in a Docket pursuant to Rule 4.02.
- (v) "Legal Holiday." A day designated as a holiday by Arkansas laws or executive proclamation.
- (w) "Local Exchange Carrier" or "LEC." As defined in Ark. Code Ann. § 23-17-403(19).
- (x) "Major Electric Utilities." As defined in the Federal Energy Regulatory Commission Electric *Uniform System of Accounts*.
- (y) "Major Natural Gas Utilities." As defined in the Federal Energy Regulatory Commission Gas *Uniform System of Accounts*.
- (z) "Non-electing ILEC." An ILEC that is not regulated pursuant to Ark. Code Ann. §§ 23-17-406 through -408 or 23-17-412.

- (aa) “Official Service List.” A list maintained by the Secretary in each Docket of the names, addresses, and other information listed in Rule 3.04 for the individual(s) designated by each Party to whom pleadings, notices, and correspondence are to be addressed.
- (bb) “Party.”
  - (1) Any Person who:
    - (A) initiates a Docket before the Commission by filing a Formal Application consistent with the RPPs;
    - (B) is named as a respondent in a Formal Complaint filed pursuant to Rule 9.02;
    - (C) is an Intervenor;
    - (D) is otherwise specifically designated by Commission order as an official Party to any Docket.
  - (2) The Attorney General of Arkansas, acting pursuant to Ark. Code Ann. §§ 23-4-301, *et seq.*, upon filing a “notice of intent” to participate as a Party in any Docket.
  - (3) The Staff where Staff is participating as a Party in any Docket pursuant to Rule 1.04.
- (cc) “Person.” As defined in Ark. Code Ann. § 23-1-101.
- (dd) “Presiding Officer.” The chair of the Commission; in the absence of the chair, another Commissioner; or a representative the Commission designated to preside over a proceeding.
- (ee) “Pro Forma Adjustments.” Consistent with Ark. Code Ann. § 23-4-406, adjustments to any test year so utilized to reflect the effects on an annualized basis of any and all changes in circumstances which may occur within twelve (12) months after the end of the test year where such changes are both reasonably known and measurable.
- (ff) “Pro Forma Year.” Consistent with Ark. Code Ann. § 23-4-406, the twelve (12) month period immediately following the test year.
- (gg) “Rate Schedule.” A schedule of rates and conditions of service for a specific classification of customer or for other specific services.
- (hh) “RPPs.” The Commission’s *Rules of Practice and Procedure*, which include all Appendices.
- (ii) “Rule.” Any Commission statement of general applicability and future

effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of the Commission, issued following notice and hearing as required by statute.

- (jj) “Rulemaking.” The Commission process for the formulation, amendment, or repeal of a Rule pursuant to statute.
- (kk) “Rural Telephone Company.” As defined in Ark. Code Ann. § 23-17-403(22).
- (ll) “Secretary.” The Secretary of the Commission, an Assistant Secretary, or such other person the Commission may assign.
- (mm) “Section 6 Electing Company.” An ILEC regulated pursuant to Ark. Code Ann. §§ 23-17-406 through -408.
- (nn) “Section 12 Electing Company.” An ILEC regulated pursuant to Ark. Code Ann. § 23-17-412.
- (oo) “Staff.” Commission employees who may collectively participate in and appear as a Party in investigations at and Dockets before the Commission. Staff includes the Executive Director and the Tax Division Director of the Commission and employees who report to those directors. Staff does not include Commissioners’ Staff.
- (pp) “Telecommunications Provider.” Any Person that offers Telecommunications Services to the public for compensation.
- (qq) “Telecommunications Services.” The offering to the public for compensation the transmission of voice, data, or other electronic information at any frequency over any part of the electromagnetic spectrum, notwithstanding any other use of the associated facilities. Such term does not include radio and television broadcast or distribution services, or providing or publishing yellow pages, regardless of the entity providing such services, or services to the extent that such services are used in connection with operating a government-owned electric utility system.
- (rr) “Test Year.” As defined in Ark. Code Ann. § 23-4-406, a historical test period of twelve (12) consecutive calendar months or a forward-looking test period of twelve (12) consecutive calendar months consisting of six (6) months actual historical data derived from the books and records of the utility and six (6) months of projected data.
- (ss) “Tier One Company.” Any ILEC that, together with its Arkansas affiliates that are also ILECs, provided basic local exchange services to greater than one hundred fifty thousand (150,000) access lines in Arkansas on February 4, 1997.

- (tt) “Uniform System of Accounts” or “USOA.” The basic account descriptions, instructions, and accounting definitions to which jurisdictional utilities are required to adhere in maintaining their books and records. The required USOA for each utility is listed as follows and shall include any future updates, revisions, or interpretations made to the referenced USOA:
- (1) Electric Investor Owned Utilities – The Federal Energy Regulatory Commission's (FERC) USOA prescribed by 18 C.F.R. § 101. In addition, 18 C.F.R. § 125 prescribes the rules regarding the preservation of records.
  - (2) Gas Investor Owned Utilities – The FERC's USOA prescribed by 18 C.F.R. §201. In addition, 18 C.F.R. §225 prescribes the rules regarding the preservation of records.
  - (3) Electric Cooperatives – The Rural Utilities Service's (RUS) USOA prescribed by 7 C.F.R. §1767.
  - (4) Water and Sewer Utilities – The National Association of Regulatory Utility Commissioners' (NARUC) USOA. In addition, NARUC's rules and regulations govern the preservation of records.
  - (5) Telecommunications Utilities – The Federal Communications Commission's (FCC) USOA prescribed by 47 C.F.R. §32.

Where the otherwise applicable USOA has been modified by Arkansas statute or Commission order, the modification shall control for ratemaking purposes.

- (uu) “Workpapers.” Workpapers shall include information sufficient to verify all inputs and replicate all calculations and analyses specifically relied upon to support all recommendations made, positions taken, or conclusions reached in testimony, exhibits, Appendix schedules, or any other document that are filed or provided.

## Rule 1.02 Purpose

The purpose of the RPPs is to establish practices and procedures before the Commission.

## Rule 1.03 Applicability

The RPPs shall apply to all practices and procedures before the Commission unless otherwise specifically stated. For any additional matters of practice or procedure having general applicability to regulated entities and Parties appearing before the Commission, please refer to Docket No. 14-001-A.

**Rule 1.04**     **Secretary**

- (a) The Secretary is the custodian of the Commission's Docket records, reports, forms, Rules, and all other documents filed with or received by the Secretary.
- (b) All Commission orders and other actions shall be authenticated or signed by the Secretary. Unless otherwise provided by statute, Rule, or Commission order, or unless waived by a Party, the Secretary shall serve a copy of each order on Persons on the Official Service List for the Docket in which the order was entered.
- (c) The Secretary shall assign to each Docket a Docket number and title descriptive of the subject matter, which number and title shall be placed on all notices issued, orders made, and documents filed in such Docket.
- (d) Documents to be filed with the Commission shall be filed in the office of the Secretary, who shall mark the date and time of the filing and file the document into the record of the appropriate Docket.
- (e) Requests for official information, copies of Commission orders, or opportunities to inspect public records maintained by the Commission shall be made to the office of the Secretary.
- (f) The Secretary shall compile and maintain an Official Service List in every Docket. The Official Service List shall be available on the Commission's web-site and shall be furnished by the Secretary upon request.
- (g) The Commission may by administrative order from time to time delegate additional authority to the Secretary. Copies of said order(s) shall be served on jurisdictional utilities and any Person giving notice to the Secretary to receive notice of these orders.
- (h) The Secretary of the Commission shall maintain a list of each jurisdictional public utility or other jurisdictional Person in Arkansas. With the name of each jurisdictional public utility, the list shall contain the name and business address, telephone number, facsimile number, if any, electronic mail address, if any, and other contact information of the Person(s) the utility designates to receive all process and official correspondence from the Commission. All jurisdictional public utilities and other jurisdictional Persons shall ensure that the information maintained on this list is current

and accurate. Other jurisdictional Persons include entities such as pipeline operators, master meter operators, or other providers which otherwise do not meet the definition of a public utility but are jurisdictional to the Commission for some purpose.

**Rule 1.05**     **Staff Participation**

- (a) Staff is a Party to any Docket in which it participates and is bound by and shall conform to the RPPs in any Docket in which it participates.
- (b) When participating in and appearing as a Party in investigations at and Dockets before the Commission, Staff's duties include but are not limited to:
  - (1) ensuring that its recommendations are consistent with the public interest;
  - (2) ensuring that its recommendations are consistent with the applicable statutes and court decisions;
  - (3) ensuring that its recommendations are consistent with the provision of safe, reliable and reasonably priced utility service;
  - (4) ensuring that natural gas operators are in compliance with the Arkansas Gas Pipeline Code and the Federal Pipeline Safety Code; and
  - (5) ensuring that it efficiently and effectively renders ad valorem assessments for utilities and carriers.

**Rule 1.06**     **Ex Parte Communication**

In order to avoid all possibilities of prejudice, real or apparent, to the public interest and Persons involved in proceedings pending before the Commission:

- (a) No Person shall submit *Ex Parte* Communications to any Commissioner or Presiding Officer in such proceeding, reasonably designed to influence a decision on any issue of law or fact in any such proceeding. Independent advice and counsel rendered by the Commissioners' Staff to the Commission or Presiding Office is not *Ex Parte* Communication, nor is attendance by the Commissioners or a Presiding Officer at public conferences and other educational events. No Commissioner or Presiding

Officer shall request or entertain any *Ex Parte* Communication herein prohibited.

- (b) A Commissioner or Presiding Officer in such proceeding who receives an offer of any *Ex Parte* Communication concerning any issue of law or fact in any such proceeding shall decline to listen to such communication and shall explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he/she will not consider the communication, and he/she shall promptly and fully inform the Commission and all other Parties to the proceeding of the substance of the communication and circumstances thereof.
- (c) A Party may request an opportunity to rebut, on the record, any facts or contentions contained in any prohibited *Ex Parte* Communication. The Commission or Presiding Officer shall grant such requests only where fairness so requires. If the Commission or Presiding Officer declines to grant such request, the requesting party may proffer its rebuttal for the record. Where the *Ex Parte* Communication contains assertions of fact not a part of the record of which the Commission or Presiding Officer cannot take official notice, the Commission or Presiding Officer in lieu of receiving rebuttal material normally will direct that the alleged factual assertion in the *Ex Parte* Communication and any proposed rebuttal be disregarded in arriving at a decision.

#### Rule 1.07    Show Cause Orders

The Commission may issue a show cause order stating matters to be addressed and requiring the respondent(s) to appear and show cause why a particular order should not be issued. The Secretary shall immediately serve a copy thereof upon each respondent.

#### Rule 1.08    Fees

A list of fees authorized by statute or Commission Order shall be posted on the Commission's website and available in the Secretary's office.



## **SECTION 2. RULES**

### **Rule 2.01    Rules Available for Public Inspection**

The Secretary shall maintain, display, and make available for public inspection all Rules and other written statements of policy or interpretations formulated, adopted, or used by the Commission.

### **Rule 2.02    Adoption of Rule Changes, Generally**

- (a) As provided in this Section, the Commission may adopt, amend, or repeal any of its Rules, either on its own motion or upon a Formal Application for Rulemaking filed by any Person.
- (b) Changes to Commission Rules shall be made only following notice and a hearing, pursuant to this Section and Ark. Code Ann. § 23-2-305.
- (c) The Secretary of the Commission shall assign an "R" Docket number to each Rulemaking proceeding.

### **Rule 2.03    Order and Notice of Rulemaking**

- (a) Before adopting, amending, or repealing any Rule, the Commission shall:
  - (1) Issue an order and notice of Rulemaking, which shall give at least thirty (30) days' notice of its intended action. The order shall include a statement of the terms or substance of the intended action or a description of the subject and issues involved, and the time, place, and manner in which interested Persons may present their views. The notice shall be served on any Person specified by law and to all Persons who have requested advance notice of all Rulemaking proceedings.
  - (2) Afford all interested Persons reasonable opportunity to submit written or oral public comments.
  - (3) Afford Parties reasonable opportunity to submit written comments or argument on the specific proposed Rule changes in accordance with the applicable procedural schedule.
- (b) Upon issuance of the order giving notice of any hearing on a proposed Rule, the Secretary shall:

- (1) At least thirty (30) days before the period for public comment expires, transmit copies of the order, proposed Rule changes, financial impact statement(s) and other information required by law or regulation(s) to the Arkansas Legislative Council and to the Joint Interim Committee on Insurance and Commerce of the Arkansas General Assembly. (See Ark. Code Ann. §§ 10-3-309 and 25-15-204.)
- (2) Publish newspaper notice to the public once a week for two (2) consecutive weeks in a newspaper(s) having substantial circulation in Arkansas. The notice shall contain the following information:
  - (A) a general description of the proposed Rule changes;
  - (B) the Commission Docket number;
  - (C) a statement that interested Persons may submit public comments in writing or orally at the hearing;
  - (D) the date, place, and time of the hearing;
  - (E) that further information may be obtained by writing or calling the Secretary or viewing the Commission's web-site; and
  - (F) the name, address, and telephone number of the Secretary and the URL address of the Commission's web site shall be set forth.

The publication shall be completed no later than thirty (30) days before the date of the hearing.

#### Rule 2.04    Transmission of Final Rule

Upon issuance of a final order adopting, amending, or repealing a Rule, the Secretary shall transmit the appropriate copies of the order and Rule and other required documentation to the Arkansas Legislative Council, the Secretary of State, and the Arkansas State Library. (See Ark. Code Ann. §§ 10-3-309 and 25-15-204)

#### Rule 2.05    Exemptions From the RPPs

- (a) The Commission may grant an exemption from any of its Rules if the exemption is found to be in the public interest and for good cause shown.
- (b) No exemption from the Commission's Special Rules-Gas shall be granted if

**the exemption would conflict with the Arkansas Gas Pipeline Code.**

### **SECTION 3. PLEADINGS AND OTHER DOCUMENTS**

#### **Rule 3.01 Filing Procedures**

(a) **Generally**

- (1) All documents submitted to the Commission for filing in a Docket or to be received by the Secretary shall fully conform to the RPPs. Any filing not conforming to the requirements of the RPPs or applicable order may be rejected by the Secretary or stricken by the Commission, either *sua sponte* or upon motion. The filing of a document is not a determination or waiver of compliance with the RPPs or applicable order.
- (2) For purposes of these Rules, use of the term “filing” (or “filings” or “filed” or similar usage) shall include, where appropriate, those documents which are “received” by the Secretary.
- (3) Users of the Commission’s Electronic Filing System shall comply with all applicable instructions for electronic filing which are presented on the Commission’s website.

(b) **Filing Methods**

All filings shall be made with the Secretary and shall be by one of the following means:

- (1) Electronic filings through the Commission’s Electronic Filing System on its website;
- (2) In person at the Secretary’s Office at 1000 Center Street, Little Rock, Arkansas; or
- (3) By mail to P.O. Box 400, Little Rock, Arkansas 72203.

Electronic filing is the Commission’s preferred filing method. All Persons filing documents with the Commission are encouraged to file electronically to the greatest extent possible.

(c) **Copies**

Filings in person or by mail shall include the original and one copy. Only one copy of protected material in unredacted form shall be filed.

(d) **Protected Documents Filing Exception**

Unredacted documents which contain materials subject to a protective

order shall not be filed electronically, but rather submitted in person or by mail with the Secretary until such time as the user agreement maintained on the Commission's website expressly allows the electronic filing of protected documents.

(e) Time of Filing

Electronic filings may be downloaded to the Commission's Electronic Filing System at any time. All other filings (in person or by mail) shall be made during Commission Business Hours. Any electronic filing received after Commission Business Hours but before midnight or received on a non-business day shall be deemed filed and served on Persons on the Official Service List with electronic mail on the next business day. Any electronic filing received between midnight and the beginning of Commission Business Hours on a business day shall be deemed filed and served on Persons on the Official Service List with electronic mail on that business day. If the Commission offices are closed at the time of a filing deadline, the time for complying with the filing deadline shall be extended to the same filing deadline time on the next business day.

(f) Acceptance of Filing

- (1) A document shall not be considered filed electronically until submitted via the Commission's Electronic Filing System and the Commission's Electronic Filing System generates a receipt of electronic filing.
- (2) Risk of loss of transmission, of non-receipt, or of illegibility is upon the Person transmitting and filing electronically. If a filing is made electronically, the filer must receive a notice of filing from the Secretary to be assured that the filing was received and accepted for filing. Otherwise, a filing is confirmed by the file stamp on the document.

(g) Technical Failures

- (1) The standards for declaring a technical failure of the Electronic Filing System shall be posted on the Commission's website.
- (2) A filing Party whose filing is made untimely as the result of a technical failure of the Commission's Electronic Filing System may seek appropriate relief from the Commission.

(h) Correction of Electronic Filings

Once a document is filed electronically, corrections to the filing may only be made by the Secretary. The Commission's Electronic Filing System shall not permit the filing Party to make changes to the document(s) or

filing information once the transaction has been submitted. If a filing error is made, the filing Party shall contact the Secretary as soon as possible with the correct document(s) or filing information, as appropriate.

(i) **Discovery Documents**

- (1) Except as referenced in Subsection (2) below, formal discovery documents and responses thereto shall not be filed in the Docket unless directed by the Commission, but must be served on all Parties in accordance with Rule 3.07(b). Whenever relevant to a filing, such discovery documents or portions thereof may be attached as an exhibit.
- (2) Requests for admissions and responses to requests for admissions shall be filed and shall be a separate document so titled and shall not be combined with data requests or any other material.

**Rule 3.02 Form and Size Requirements**

(a) **All documents submitted for filing shall be:**

- (1) Double-spaced and a normal margin (no less than 1") on all four sides; and
- (2) Numbered on each page of all filings. Each page of any document filed shall be sequentially numbered at the bottom right hand corner of each page (including the title page or cover sheet). This numbering is in addition to any numbering of the document as it was originally prepared.

(b) **A document submitted to the Secretary in person or by mail shall also be:**

- (1) Legibly printed or typewritten and on one side of the paper only;
- (2) Securely bound (stapled, clipped, cone binding, etc.) except for the original, which shall be unbound; and
- (3) On white 8½ x 11 inch paper (unless protected material is included, and then the instructions regarding paper color for protected material in Rule 3.02.(g) are to be followed).

(c) **Exceptions**

- (1) Complaints and other pleadings filed by an individual on his or her own behalf may be legibly hand-written.

(2) Financial, numerical, or other exhibits may be on paper larger than 8½ x 11 inches, if necessary, but said exhibits shall be folded to 8 ½ x 11 inch dimension when filed or made an exhibit for the record at a hearing, and this type of document shall be presented to the Secretary in electronic format when available.

(3) Any oversized part of a filing (map, graphs, etc.) shall be filed in paper and electronic format (on a CD or other appropriate media).

(d) Notification of Color Documents

A Person making a filing which contains graphs, pictures or other material in color shall, contemporaneous with the filing, notify the Secretary of this fact.

(e) Docket Summary Cover Sheet

A properly completed Docket summary cover sheet in the form required by the Commission shall be filed with (1) every original action which opens a new Docket and (2) any new or revised tariff for any jurisdictional public utility excluding telecommunications utilities filed in an existing Docket. The cover sheet form is available on the Commission's web-site and from the Secretary's Office.

(f) Testimony and Exhibits

(1) To the greatest extent practical, each line of all filed testimony and exhibits shall be sequentially numbered in the left margin, beginning with "1" on each page.

(2) Each witness' exhibits shall reference the round of testimony and shall be numbered sequentially beginning with the witness' initials and followed by the number of the exhibit. For example, the exhibits to the direct testimony of John Q. Public would be identified as Direct Exhibit JQP-1, Direct Exhibit JQP-2, etc., with the numbering continuing sequentially within each set of testimony (i.e., direct, rebuttal, etc.). The exhibits to the surrebuttal testimony of John Q. Public would be identified as Surrebuttal Exhibit JQP-1, Surrebuttal Exhibit JQP-2, etc.

(3) Corrections to exhibits shall be filed using the same exhibit number as the original with a designation that the exhibit is corrected, such as Corrected Direct Exhibit JQP-1.

(g) Additional Requirements for Protected Material

(1) Redacted and Unredacted Form

Filed documents containing protected material shall be filed in both redacted and unredacted form. The unredacted form shall include the entire document, including protected material.

(2) Form for Protected Material

The Person filing protected material shall identify such material by conspicuously marking it “CONFIDENTIAL PURSUANT TO COMMISSION PROTECTIVE ORDER NO. \_\_\_\_ IN DOCKET NO. \_\_\_\_\_” (or substantially similar language) on each page containing protected information. Protected material shall be submitted in a sealed envelope, with a copy of the protective order attached to the front of the envelope along with a cover letter stating what is being filed. The protected material cover sheet shall also be attached to the outside of the envelope containing the protected material. In order to file a document under seal, there must be a protective order granted by the Commission. The protected material filed under seal shall not be submitted to the Secretary for filing until the protective order has been entered by the Commission.

(3) Use of Pink Paper and Highlighting

(A) On Unredacted Version

- (i) For any filed document that contains protected information, the entire document shall be filed as the unredacted version of the protected material, but the pages of that unredacted version that contain protected information shall be submitted on pale pink paper. Only the pages of a document which contain protected material shall be pink in color. All other pages shall be on white paper.
- (ii) The pages containing protected material shall also contain distinctive highlighting on the protected words, numbers, sentences, or other portions of the page as such: confidential information. Only those words, numbers, sentences, or other portions of the page which are subject to a Commission protective order shall be highlighted on the page. The highlighting of the protected material in the unredacted version of the document shall be done with no more than a twenty-five percent (25%) gradient to assure that the text is readable. This allows, with absolute certainty, the identification of material that is subject to a protective order.



(B) On Redacted Version

The redacted version of a document shall clearly identify the words, numbers, sentences, or other portions of the page that are redacted by blacking out the protected portion as such: [REDACTED]. If the entire page is protected material, it may be submitted as an otherwise blank page with the notation that the page is protected in its entirety. If two or more sequential pages are entirely protected, they may be submitted as one otherwise blank page with the notation that the pages are protected in their entirety and an identification of the corresponding page numbers (e.g., pages 4-8 of this document are protected in their entirety).

(4) Numbering of Redacted and Unredacted Documents

The protected material must be removed in the redacted version with blank spaces remaining so that the lines and pages of the redacted version remain the same as the unredacted version. The redacted document shall also be sequentially numbered pursuant to this Rule 3.02(a).

Rule 3.03      Title and Docket Number

All filings shall show the venue as "Arkansas Public Service Commission," the title of the proceedings, the Docket number assigned, and an appropriate designation (e.g., Petition, Motion, Brief, Application, Complaint). It shall be sufficient that a cover sheet contains the required information.

Rule 3.04      Official Service List

- (a) Each Party's initial pleading or other document filed in any Docket shall clearly state the name, title, address, telephone number, facsimile transmission number (if any), and electronic mail address (if any) of the individual(s) to whom pleadings, notices, and correspondence are to be addressed and to be shown on the Official Service List, in accordance with Subsection (b) below. The electronic mail address, if any, shall be the official address for the Official Service List.
- (b) Unless otherwise ordered by the Commission, each Party shall be allowed to designate no more than two (2) individuals to be included on the Official Service List for a Docket.
- (c) A Party may change the individual(s) to be shown on the Official Service

List by filing a notice of addition, deletion, or substitution. Each Party is responsible for ensuring its contact information is current and accurate.

- (d) In all appeals of Commission orders, each Party to the appeal shall simultaneously serve the Secretary with all of that Party's appellate filings in addition to the Parties required to be served by the respective court.

### Rule 3.05    Incorporation by Reference

Whenever any Rule requires a document to be filed with any pleading or other document, or in all other cases when a document filed by a Party refers or cites to another document previously filed with the Secretary, whether for incorporation by reference into such document or to otherwise support an assertion made in such document, such document may be incorporated by reference if it is already on file with the Commission. Such reference or citation shall include the name of the previously filed document, the Docket number in which it was filed, and the filing date. Incorporation by reference is permitted only if the previously filed document is identical to the referenced document and if the previously filed document is not under seal. Any document incorporated by reference shall not be attached to the referencing document. The Secretary shall include in a record on appeal any document incorporated by reference in a Docket if a Party requests in writing its inclusion in the record.

### Rule 3.06    Signature and Verification

- (a) Pleadings, excluding testimony and exhibits, shall be signed by one of the following methods:
  - (1) If the Party is an individual, by the individual. For all Parties other than individuals, pleadings, with the exception noted in Subsection (b), shall be signed by an attorney.
  - (2) Customer releases pursuant to Rule 6.07(b), exchanges and releases of allocated territory pursuant to Rule 6.07(c), and tariff filings pursuant to Rule 7.02 which are assigned to a "TF" Docket may be signed by an authorized representative of the Party.
  - (3) The attorney for any Party may sign for that Party provided, however, that any attorney who signs for a Party thereby represents that he/she is authorized to do so and that he/she is a licensed attorney at law in this State or another United States jurisdiction, that he/she agrees to conform to the standards of conduct required by attorneys before the courts of Arkansas and that he/she agrees to comply with the Commission's Rules. The attorney shall indicate his/her bar number and jurisdiction of licensure on all pleadings.

(4) All pleadings shall be verified by the Party filing the same unless signed by the Party's attorney, in which event such signature shall constitute a verification. A verification shall include a certificate by the Party that he/she has read the pleading; that to the best of his/her knowledge, information, and belief there are good grounds to support it; and that it is not interposed for delay.

(b) Signatures on Electronically Filed Documents

(1) A pleading or other document filed electronically which requires a signature may be signed in the following manner: “/s/ (name).”

(2) If the filed document bears an original non-electronic signature, the Person filing the document shall maintain the original document. This includes all notarized documents.

Rule 3.07    Service

(a) By the Commission

Process issued by the Commission, as well as notices, complaints, Rules, orders, and regulations of the Commission, may be served by any Person authorized to serve process issued out of courts of law, by mail, by facsimile, by commercial delivery service, by electronic mail, or other method as directed by the Commission. Where service is by mail, a duplicate of the instrument served shall be enclosed, upon which duplicate the Person served shall endorse the date of his or her receipt of the original and promptly return the duplicate to the Commission. Where service is by electronic mail, the Secretary shall request a read receipt or similar process to indicate reception of the electronic mail and shall preserve the receipt until the Docket is closed. The recipient shall have the duty to acknowledge receipt of the electronic mail.

(b) By Parties

(1) Except for a pleading which initiates a Docket, and unless otherwise provided in the RPPs or by Commission order, all documents a Party files shall include a certificate showing simultaneous service of the document upon all Persons on the Official Service List and noting the name of each and the method and date of service.

(2) Service shall be made by electronic mail via EFS; electronic mail; personal delivery; properly addressed first class mail or commercial delivery service (with charges prepaid); facsimile transmission; or other method approved by the Commission.

- (3) Service of formal discovery documents shall be made by electronic mail for Persons on the Official Service List with electronic mail, unless such service is impractical because of technical limitations, in which case service shall be made by the next most prompt means reasonably available. Service of formal discovery documents shall be made pursuant to Subsection (2) above for Persons on the Official Service List without electronic mail.
- (c) Service is presumptively complete as follows:
- (1) When the document is filed and sent to the Persons on the Official Service List with an electronic mail address by the Secretary via the EFS;
  - (2) By electronic mail, upon sending to the electronic mail address on the Official Service List;
  - (3) By facsimile, upon sending to the facsimile number on the Official Service List;
  - (4) By personal delivery, upon delivery to the address on the Official Service List;
  - (5) By mail, upon mailing to the address on the Official Service List; or
  - (6) By commercial delivery service, upon depositing the papers with the commercial delivery company properly addressed to the address on the Official Service List.

### Rule 3.08 Computation of Time for Performance or Response

In computing the time within which an act must be performed or a response made, the Day of the act from which the designated period of time begins to run shall not be included and the last Day shall be included unless it is a Saturday, Sunday, Legal Holiday, or other Day in which the Commission's office is closed, in which event the period shall extend to the next business Day. If service to a Party is by mail, or commercial delivery service, three (3) business Days shall be added to the time allowed for that Party for response to, or compliance with, any pleading or order.

### Rule 3.09 Formal Applications

- (a) Except as otherwise provided in the RPPs or in any other Rule or order of the Commission, a Formal Application shall be used to request Commission action pursuant to the RPPs and any other Rule or statute giving the Commission power and authority to act.

- (b) A declaratory order to terminate a controversy or remove an uncertainty about the applicability of a statute, Rule, or order shall be sought by Formal Application. However, the decision whether to consider any such requested relief is discretionary.
- (c) All Formal Applications shall state the full name and address of the Applicant, the facts and applicable law upon which the application is based, and the particular relief requested. If the Rule or statute under which the Formal Application is made requires any additional documentation to be included therewith, such as a permit, license, or authority, a copy shall be attached or incorporated by reference pursuant to Rule 3.05.
- (d) If the Applicant is a legal entity, a certified copy of its articles of organization, as amended, shall be attached or incorporated by reference pursuant to Rule 3.05.
- (e) If the Applicant is an unincorporated association, a list of its members shall be attached.
- (f) If the Applicant is an entity representing ratepayers, it shall provide a list of the ratepayers it represents regardless of the form of its organization.
- (g) Except as otherwise provided in Rule 4.08(c)(2), an Applicant who initiates a Docket shall file written testimony and/or exhibits with its Formal Application in conformance with Rule 4.08(c)(2).

**Rule 3.10    Motions**

A Party may seek relief by motion, including motions available under the *Ark. R. Civ. P.* All motions shall be in writing and filed, except such oral motions as may be entertained by the Commission during any hearing. Unless a different time is ordered by the Commission, any Party desiring to file a response shall file the response within ten (10) Days after the filing of the motion, and any Party desiring to file a reply to a response to a written motion shall file such reply within seven (7) Days after the filing of the response. No additional responses or replies shall be permitted unless specifically authorized by the Commission.

**Rule 3.11    Extensions of Time**

For good cause shown, the Commission may grant an extension of any deadline set by Rule or order. Such request shall be made on or before such deadline.

## **SECTION 4. PROCEEDINGS**

### **Rule 4.01    Representation of Parties**

- (a) Any individual may enter an appearance on his or her own behalf in any Docket before the Commission.
- (b) Except as provided in Subsection (a), no one but a licensed attorney may represent any Person other than himself or herself in any Docket. The attorney need not be licensed in Arkansas, but must be licensed by and in good standing with the highest court of another United States jurisdiction. Any attorney not licensed in Arkansas may appear before the Commission without formally moving to be admitted *pro hac vice*, so long as the attorney verifies his/her compliance with this licensure standard in the first filing made in each Docket, complies with all Commission Rules, and agrees to conform to the standards of conduct required by all attorneys before the courts of Arkansas. Any appearance before the Commission by an attorney constitutes verification of and compliance with this standard.
- (c) Representation includes, but is not limited to, the following activities, when performed on behalf of another in a formal Commission proceeding:
  - (1) Instruction or advice regarding the law applicable to the proceeding;
  - (2) Preparation of documents requiring a familiarity with legal principles not ordinarily found among non-lawyers; or
  - (3) Advocacy in contested or uncontested proceedings, whether or not a hearing is held. Advocacy includes, for example, opening and closing statements; oral argument; submission of briefs; examination or cross-examination of witnesses; and petitions for rehearing.

### **Rule 4.02    Intervention and Limited Appearance**

#### **(a)    Petitions to Intervene**

Any Person whose interest may be directly affected by Commission action and whose interest is not adequately represented by other Parties may petition the Commission for leave to intervene as a Party in any Docket.

#### **(1)    Contents of Petition to Intervene**

Every petition to intervene shall be in writing and contain:

- (A) a clear and concise statement of the nature of the right or

interest of the Petitioner in the proceeding which entitles it to participate and which will be directly affected by the Commission's action;

- (B) a demonstration that the Petitioner's interests are not adequately represented by any other Party to the proceeding;
- (C) the specific objections, if any, of the Petitioner to the Applicant's proposal(s);
- (D) the grounds and issues of fact and law upon which Petitioner wishes to be heard; and
- (E) any other reasonable information which may be required by Rule or order.

(2) **Deadlines Generally**

- (A) Except as provided in Rules 6.04 (CCNs and CECPNs) and 7.04 (tariff filings), and unless otherwise specified in a procedural schedule issued before a petition for intervention is filed, the deadline to file a petition to intervene in all Dockets shall be no later than sixty (60) days from the filing of the Formal Application requesting the ultimate relief sought by the Applicant.
- (B) The time when such petition is filed shall not extend any time limit, set by procedural schedule, Rule, or law, applicable to an Intervenor in a Docket. The filing of a petition to intervene after these deadlines and after any deadline for filing, discovery, etc. shall constitute a waiver of any right or opportunity to submit such filing, discovery, etc. and shall constitute acceptance of any established procedural schedule.
- (C) Any intervention deadline set by the RPPs does not prevent or delay the Commission from acting in a Docket before such deadline has passed.

(3) **Time to Respond**

The time to respond to a petition to intervene shall be governed by Rule 3.10.

(4) **Commission Ruling on Intervention**

The Commission shall rule on the petition to intervene within twenty (20) days from the date the petition is filed. If the



Commission does not rule within that time, the petition to intervene shall be deemed denied.

(b) Limited Appearances

- (1) Any Person may make a limited appearance in a Docket by filing and serving upon all Parties a verified statement of position.
- (2) No Person making a limited appearance shall be a Party or have the right to receive further notice or present oral testimony or argument or cross-examine witnesses, but is subject to being called for cross-examination at the hearing on the subject of such statement of position. If such Person is called and fails to appear for cross-examination, such statement of position may be stricken from the record upon motion of any Party or by the Commission *sua sponte*.
- (3) Deadlines Generally

Except as provided in Rule 6.04 (CCNs and CECPNs), a limited appearance shall be filed at least twenty (20) days prior to the date set for the hearing, but not afterward, except for good cause shown.

Rule 4.03    Notice Generally

- (a) Except as otherwise provided by Rule or statute, the Commission shall fix the time and place of all hearings and notice of the place, day, and hour of a hearing shall be served on all Parties to the proceeding at least forty-five (45) days before the hearing, unless the Commission finds that public interest requires shorter notice or the hearing to be held earlier.
- (b) The Commission may order that notice of the initiation of a Docket be given to all Persons who may be affected thereby. Unless otherwise provided herein (*see* Rules 2.03 (Rulemaking), 6.03 (CCNs and CECPNs), and 8.07 (General Rate Change Application)), notice may be given by:
  - (1) service of a copy of the Formal Application, or
  - (2) publication of the substance thereof with notice of the place, day, and time of the hearing on the Formal Application, if known, for such length of time and in a newspaper(s) or other public media as the Commission may designate.

In such cases, in which the Commission orders notice be given, the Commission may prescribe the form of notice, may designate the Persons to whom notice shall be sent, and may order that the notice be at the

Applicant's or other Party's expense.

- (c) Proof of notice given by publication or other means, as may be required, shall be made by the Applicant or other Party as ordered at least two (2) weeks before the hearing unless a later time is ordered.
  - (1) Proof of notice by publication may be made by filing a copy of the notice, accompanied by a declaration of which newspaper or publication published it, and the dates of publication.
  - (2) Proof of personal notice by mail, facsimile, electronic mail, or other means may be made by filing a copy of the notice sent to each Person. If a form notice was sent to each Person, then the Applicant shall file a copy of the text of the form notice and a list of the names and addresses or other contact information of the Persons to whom the notices were sent.

#### Rule 4.04    Protective Order of Non-Disclosure

An Applicant may file a written motion requesting that the Commission enter a Protective Order of Non-Disclosure (protective order). *See also* Ark. Code Ann. § 23-2-316.

- (a) Timing Generally
  - (1) If the information sought to be protected is required to be or will be a part of any filed document other than discovery, including but not limited to an initial application or petition, Applicant shall apply for a protective order as soon as reasonably practicable and to the greatest extent practicable not less than thirty (30) days before the required or desired filing date to allow a reasonable time for entry of the protective order before the filing date. For purposes of a General Rate Change Application filed pursuant to Section 8, Applicant shall apply for a protective order no later than thirty (30) days after filing the Notice of Intention to File pursuant to Rule 8.06 and Ark. Code Ann. § 23-4-401.
  - (2) If the information sought to be protected is requested by discovery, Applicant shall apply for a protective order as soon as reasonably practicable after receipt of the discovery request so as to avoid any delays in responding to discovery, and to the greatest extent practicable no later than ten (10) days after receipt of the discovery request.

(b) Grounds for Entering a Protective Order

- (1) Applicant may request an interim protective order by an assertion, supported by testimony or affidavit, that the information meets the following criteria:
  - (A) the information sought has not been publicly disclosed;
  - (B) the information has been maintained as confidential while in Applicant's possession; and
  - (C) disclosure of the information would have one or more of the following consequences:
    - (i) Applicant could suffer material damage to its competitive or financial position;
    - (ii) A proprietary fact or trade secret of Applicant or a third party would be revealed; and/or
    - (iii) The public interest would be impaired.
- (2) Upon challenge of an interim protective order by any Party at any time, Applicant has the burden of establishing by a preponderance of the evidence that the information meets the above criteria.
- (3) An interim protective order shall become a final protective order by operation of law upon the issuance by the Commission of a formal order closing the Docket in which the interim protective order was issued.

(c) Commission Interim Order on Information

The Commission may decide the motion by:

- (1) Declining to enter an interim protective order based on the following findings and/or conclusions:

The Applicant has not established adequate grounds to refuse to disclose the information, and therefore the information shall be made available to the other Parties and to the public without restriction.
- (2) Entering an appropriate interim protective order which includes, but is not limited to, the following findings and/or conclusions:

The Applicant has shown grounds for non-disclosure under

Subsection (b)(1) of this Rule 4.04, but the information appears to the Commission to be relevant to the case at hand. The Applicant's information should therefore be made available only to the Commissioners, Commissioners' Staff, and representative(s) of the Parties, directly involved in the case. No one else, including representatives of the Parties who are not directly involved in the case at hand, the press and the public shall have access to the information. The Commission may, for good cause shown, further limit the availability of the Applicant's information.

Of necessity, those portions of the hearings which may involve the sensitive information which is the subject of the protective order shall be closed to all except those Persons to whom the information was made available under this subpart. (See Ark. Code Ann. § 23-2-316)

- (d) For each specific item of information subject to a protective order which is filed or submitted in a Docket, the Applicant shall affix a written confidential information transmittal cover document in the form prescribed by the Commission, which is accessible on its web-site.
- (e) Any Party may contest at a future date, upon reasonable notice, Applicant's continuing entitlement to protection from public disclosure all or any portions of any information subject to a protective order. The Party shall promptly file an objection if such Party determines that any portion of the information should be removed from the scope of the protective order. Upon challenge of an interim protective order by any Party, the Commission may modify its interim protective order or enter any further orders as appropriate. After notice to the Parties and after any hearing that may be necessary, the Commission may issue any appropriate final protective order as may be needed.
- (f) Affidavit of Non-Disclosure
  - (1) If the Commission orders limited disclosure pursuant to this Rule 4.04, the Commission or Applicant may require that every individual granted access to the information, subject to the order, sign an affidavit of non-disclosure in the form prescribed by the Commission. The affidavit may bind those Persons having access to the information to the following provisions:
    - (A) The individual shall not disclose the information to any Person not immediately involved in the Docket or matter;
    - (B) The information may be used only for pursuing the Docket or matter, and for no other purpose at all, but specifically not for competitive business purposes;

- (C) Improper disclosure by an individual may result in civil liabilities or sanctions; and
  - (D) If the interim protective order is subsequently amended and/or further interim or final protective orders are entered in the Docket, the individual shall be bound by the same terms as they relate to any additional protected information which may be protected by subsequent protective orders without the need for the execution of further affidavits of non-disclosure in the Docket.
- (2) In the event the Commission further limits the availability of the Applicant's information, the Commission may further require additional affidavits, certifications, or other actions of individuals granted access other than individuals for Staff or the Attorney General.
- (g) Affidavits of Non-Disclosure shall be filed in the Docket in which the protective order was granted but need not be served on the Parties to the Docket.
  - (h) Information protected by a protective order which is filed or provided to Parties shall comply with the RPPs concerning form requirements for protected information.

**Rule 4.05**      **Subpoenas**

- (a) Any Commissioner, Presiding Officer, or the Secretary may issue subpoenas requiring the attendance of a witness or the production of documentary evidence, from any place in the State, at any designated place for the purpose of taking the testimony of such witness or producing the documentary evidence.
- (b) Except as provided herein, subpoenas and related proceedings shall be governed by the applicable statutes and the *Ark. R. Civ. P.*, including Ark. Code Ann. §§ 23-2-313, 23-2-407, 23-2-408, and 23-2-409 and *Ark. R. Civ. P.* 45.

**Rule 4.06**      **Presiding Officer**

- (a) The Presiding Officer shall control the course of the hearing; administer

oaths; receive evidence; rule upon all objections and motions; receive offers of proof; hear arguments; and fix the time for filing of briefs, if briefs are ordered. The Presiding Officer also may take any action consistent with the Commission's statutory authority and its Rules and policies.

- (b) In any proceeding not assigned to a Presiding Officer, the Commission may designate a Presiding Officer for any limited purpose(s).
- (c) At any time, the Commission may terminate or substitute the designation of a Presiding Officer.
- (d) The final order entered by the Presiding Officer shall represent the findings and conclusions of the Commission, subject to the following provisions:
  - (1) If the Commission does not stay or otherwise act to modify the Presiding Officer's final order within thirty (30) days of the date said final order was entered by the Presiding Officer, the Presiding Officer's final order then shall become the final order of the Commission.
  - (2) Thereafter, any Party may file an Application for Rehearing pursuant to Rule 4.14 of any final order of the Commission.
  - (3) If the Commission grants an Application for Rehearing, it may redesignate the matter for further consideration and action. Absent such redesignation, the Commission shall conduct such rehearing proceedings as it may deem appropriate.

**Rule 4.07**    **Hearings**

- (a) The Commission may call a hearing to assist it in deciding any matter. Any matter may be decided without a hearing based on the filed materials unless a hearing is required by law or any Rule.
- (b) The conduct of the hearing is at the Commission's discretion unless required by due process of law, statute or any Rule.
- (c) Unless otherwise ordered, the Commission shall provide an opportunity for relevant public comment at the hearing.
- (d) Unless otherwise ordered or agreed by the Parties, the order of presenting evidence at hearing shall be the Applicant, Complainant, or other moving Party; other Parties in interest and Intervenors; the Attorney General (if a Party); and Staff. If the Attorney General or Staff is the Applicant or

moving Party, it shall present its evidence first.

- (e) The burden of proof in any case shall be on the Applicant, Complainant, or other moving Party.
- (f) At its discretion, the Commission may allow opening statements or closing arguments and if allowed, may impose reasonable limitations thereon.

**Rule 4.08 Evidence**

- (a) The rules of evidence shall not strictly apply in Commission proceedings.
- (b) The Commission may take official notice of any document, fact, or circumstance that may be officially noticed in an administrative proceeding. Any such document which the Commission or any Party desires to use in evidence or rely upon must be specifically identified in a filing or during the hearing and all Parties shall be accorded an opportunity to examine the document and interrogate witnesses on the document.
- (c) Testimony and Exhibits
  - (1) Unless the Commission shall otherwise order, with the exception of cross and redirect examinations at a hearing, all Parties desiring to offer evidence in a Docket shall do so in the form of written prefiled testimony, in question and answer form, with or without exhibits. Normally, live direct testimony in addition to the written prefiled testimony, other than the correction of minor typographical or wording errors that do not alter the substance of the written prefiled testimony, shall not be accepted into evidence unless the sponsoring Party shows good cause why the additional testimony could not have been a part of the written prepared testimony or should otherwise be admitted. This Rule shall not apply to an individual filing a Formal Complaint who is participating on his or her own behalf.
  - (2) Unless the Commission shall otherwise order, an Applicant or Complainant who initiates a Docket shall file supporting written testimony with or without exhibits concurrently with its application, tariff, petition, request, or complaint. This shall not apply to:
    - (A) an individual filing a Formal Complaint who is appearing on his or her own behalf;
    - (B) a Formal Application filed pursuant to Rules 6.07(b) or (c);

or

- (C) a pleading which initiates a Docket, such as a notice, that is not a Formal Application and that does not seek to invoke the authority of the Commission to perform an act or to approve an act to be performed by the Applicant; in such a case, testimony with or without exhibits shall be filed when the Formal Application is filed.

A request for protective order which initiates a Docket shall also comply with Rule 4.04(b).

This Rule 4.08(c)(2) shall also apply when a Formal Application is filed in an existing Docket, except for pleadings such as motions that do not require the development of facts in testimony and/or exhibits.

- (3) In any case in which a procedural schedule is entered, testimony with or without exhibits shall be filed in accordance with the applicable procedural schedule. The Party bearing the burden of proof shall have the right to file the final prepared testimony in any proceeding.
- (4) An Applicant may supplement the testimony or exhibits filed with its application to correct material errors or take into account unforeseeable material changes in circumstances since the preparation of the testimony, if such supplemental testimony or exhibits are filed and served on all Parties as soon as the errors are discovered and to the greatest extent practicable at least fifteen (15) days before the day for filing of testimony by Staff and Intervenors and if the corrections will not unduly burden other Parties or delay proceedings and are in the interest of a fair hearing.
- (5) All Parties shall file material corrections to testimony or exhibits as soon as errors are discovered or changed circumstances occur. Corrections to the testimony and exhibits of any Party caused by inadvertence or unforeseeable changes in circumstances may be allowed by the Commission at any time, if the corrections will not unduly burden other Parties or delay proceedings and are in the interest of a fair hearing.
- (6) A Party's Workpapers shall comply with each of the requirements of these RPPs and shall be provided to the other Parties during Commission Business Hours on the same day that Party files its testimony and exhibits.
  - (A) For any recommendation made, position taken, or conclusion reached that is based on a statistical analysis or



other study, the Workpapers shall additionally include a complete description of the statistical model utilized, the data utilized, and the results of the analysis.

- (B) A Party shall provide to Staff any computer model including the software necessary for Staff to independently run any analysis relied on by the Party. Alternatively, the Applicant may provide Staff reasonable access to the computer model at the Commission's offices or at another mutually agreeable location. Such access shall be adequate to enable Staff to replicate the results and may include the utility manipulating the computer model according to instructions or inputs from Staff.
- (C) If the Party relies on proprietary programs or applications for computations to support any part of its filing, copies of those programs must be provided to Staff with explanations and instructions adequate to replicate the results. Alternatively, the Applicant may provide Staff reasonable access to the programs at the Commission's offices or at another mutually agreeable location. Such access shall be adequate to enable Staff to replicate the results and may include the utility manipulating the programs according to instructions or inputs from Staff. When the Party seeks to limit access to the program or application to other Parties, the Commission will determine the appropriate access to the program or its output.
- (D) Workpapers which are available in electronic form shall be provided electronically in native format. Electronic copies shall be clearly legible and complete.
- (E) All formulae and viable links shall be left intact for all electronic files.
- (F) Any source documents not publicly available or readily accessible that are referenced in the testimony, exhibits, or Workpapers, shall also be provided. If a source document is publicly available on the Internet, a specific link (URL address) to the source document may be provided. If a source document is a study, report, book, periodical, or other publication not publicly available or readily accessible to the Parties, the Party may provide copies of the relevant pages from such source document rather than copies of the entire study, report, book, periodical, or other publication, but all pages necessary to understand the relevant pages in context shall be provided. Upon request, the Party shall make

available the entirety of such source document for inspection at the Commission's offices.

- (7) Exhibits which are available in electronic format shall be provided electronically in native format. Electronic copies shall be clearly legible and complete. All formulae and viable links shall be left intact for all electronic files.
- (8) A witness' testimony at hearing shall be under oath or affirmation.
- (9) Unless the Commission otherwise orders, written testimony admitted into evidence at hearing shall, upon the witness' adoption of the testimony, be entered into the record as testimony without having the witness read it aloud.

#### Rule 4.09 Post-Hearing Evidence

The evidentiary record shall normally be closed at the conclusion of the hearing on the merits. However, the Commission may require the production of further evidence upon any issue and that the evidentiary record be kept open after adjournment to receive additional evidence.

#### Rule 4.10 Stipulations and Settlements

##### (a) Procedure

- (1) Parties may stipulate to the resolution of any issue of law or fact or settle upon an acceptable disposition of a proceeding or some portion thereof with or without resolving material issues.
- (2) Parties shall propose by written motion that the Commission adopt stipulations or settlements. Such motion shall be filed, along with supporting testimony, no later than ten (10) days prior to the scheduled date of the evidentiary hearing in that Docket. If the tenth day falls on a weekend or a state holiday, such settlement agreement and supporting testimony shall be filed on the last business day prior to the tenth day. The motion shall set forth the factual, legal, policy, and other considerations which form the basis for the Parties' recommendation that the stipulation or settlement be adopted, and shall be supported by written testimony.
- (3) Whenever a Party does not join a proposed stipulation or settlement, such Party may respond to the motion as permitted under Rule 3.10 or applicable order. Such response shall set forth the factual, legal, policy, and other considerations which form the basis for that Party's opposition to the proposed stipulation or settlement or portions thereof.

(b) **Commission Action Regarding Stipulation or Settlement**

After consideration of a proposed stipulation or settlement, the Commission may, consistent with the public interest and without limitation:

- (1) approve the proposed stipulation or settlement;
- (2) reject the proposed stipulation or settlement and set the case for a full hearing;
- (3) reject the proposed stipulation or settlement and grant the Parties additional time to renegotiate the stipulation or settlement and propose alternative terms acceptable to the Commission;
- (4) modify the terms of the stipulation or settlement and allow the parties a reasonable time to accept the Commission's proposed modifications or request other relief; or
- (5) take any other action it deems appropriate.

**Rule 4.11**     **Adjournment and Closing**

The Commission may adjourn a hearing to any future date or place. Such adjournment shall be noted in the record and further notice shall not be required. A hearing shall be deemed concluded when the Commission so determines.

**Rule 4.12**     **Briefs and Oral Argument**

At its discretion, the Commission may allow the filing of briefs or oral arguments, and if allowed, shall fix the time for the filing of briefs or hearing of such argument and may impose reasonable limitations thereon. Briefs shall not be filed absent a Commission request for a brief or without the Commission's prior approval.

**Rule 4.13**     **Reciprocity of Final Orders Between States**

If a regulatory agency of some state other than Arkansas renders a final order after a hearing on the merits has been held by that other state's regulatory agency and if the number of customers in Arkansas affected by the final order does not exceed the lesser of either 1,500 customers or ten percent (10%) of the total number of customers of the affected utility, then the Commission, after reviewing the facts and the issues presented, may adopt the final order, in whole or in part, even though it is inconsistent with the Commission's procedural or substantive Rules.

**Rule 4.14    Rehearing**

- (a) Rehearing of any Commission order shall be pursuant to Ark. Code Ann. § 23-2-422.
- (b) If any Party applies for a rehearing based in whole or in part on additional evidence which was not a part of the original record, the Party shall:
  - (1) provide good cause for omitting the evidence from the original record;
  - (2) show that such evidence will not be merely cumulative; and
  - (3) state in detail in the application:
    - (A) the name and identification of the witness and the subject matter of the proposed testimony if the additional evidence is proposed as testimony; and
    - (B) a description of any proposed exhibits if the additional evidence is proposed as exhibits.

This proposed additional evidence shall not be filed with the application. The proposed additional evidence shall not be filed or considered unless ordered by the Commission.

- (c) Any Party may file a response to an application for rehearing within ten (10) days after the filing of the application; however, the Commission may rule upon an application at any time, regardless of the timing of a response by other parties.
- (d) In response to an application for rehearing, the Commission may:
  - (1) uphold the order without modification;
  - (2) modify or clarify the order without further hearing based upon the existing record;
  - (3) upon notice to the Parties, reopen the Docket for the receipt of further evidence on particular issues;
  - (4) reverse the order in whole or in part;
  - (5) issue an order granting rehearing solely for the purpose of further consideration; or
  - (6) take any other action it deems appropriate.

- (e) If the Commission issues an order granting rehearing “solely for the purpose of further consideration” (Limited Rehearing Order) prior to the thirty-day (30) period established by Ark. Code Ann. § 23-2-422, the application for rehearing shall not be deemed denied. However, if the Commission does not, within sixty (60) days of the Limited Rehearing Order, issue an order granting or denying the requested rehearing or setting a hearing on the request, the application for rehearing shall be deemed denied, for purposes of Ark. Code Ann. §§ 23-2-422 and 423.

## **SECTION 5. DISCOVERY**

### **Rule 5.01    Purpose**

This Section is intended to promote just, economical, and expeditious discovery and facilitate the disposition of Dockets and investigations by providing an orderly means by which the Parties may obtain relevant information in an efficient and timely manner to assist in the resolution of such matters. All Parties shall fairly adhere to its provisions and shall participate in discovery fully within this Section, and to that end, this Section should be liberally construed.

### **Rule 5.02    Scope of Discovery**

- (a) Unless otherwise limited or expanded by order, Parties may obtain discovery regarding any matter, not privileged, relevant to the issues in the Docket. Control of the scope, frequency of use and extent of discovery rests in the Commission's sound discretion.
- (b) Discovery shall not be used to circumvent an established procedural schedule or the time limits for the filing of testimony and exhibits.

### **Rule 5.03    Discovery Methods**

Any Party to the extent relevant and material to the issues as to which intervention has been granted, may obtain discovery by one or more of the following methods:

- (a) depositions upon oral examination or written questions;
- (b) written interrogatories;
- (c) production of documents or things or permission to enter upon land or other property for inspection and other purposes;
- (d) requests for admission; or
- (e) upon motion to the Commission, by any means otherwise authorized by the Commission.

Parties shall be reasonable in the frequency and extent of use of discovery.

### **Rule 5.04    Supplementation of Responses**

All discovery pursuant to this Section shall be considered continuing, and a Party is under a duty to timely amend a prior response to a data request if the Party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other Parties during the discovery process or in writing. The duty to supplement shall continue until the hearing on the merits in the Docket.

**Rule 5.05**     **Sequence, Timing and Format of Discovery**

(a)     **Discovery Sequence**

Any Party may conduct discovery in any sequence by any method permitted under this Section. The fact that a Party is conducting discovery shall not operate to delay discovery by another Party, unless the Commission orders otherwise.

(b)     **Discovery Initiation**

Unless otherwise ordered, a Party may initiate discovery at any time up to thirty (30) days before the hearing on the merits, provided that responses or objections shall be due and depositions shall be completed no later than fifteen (15) days before the hearing on the merits.

(c)     **Time Within Which to Respond or Object**

The Party upon whom discovery is sought shall serve a written response or objection within fifteen (15) days after service of the discovery. Responses or objections to requests for admission shall be filed within the fifteen (15) day period. The Commission may prescribe a shorter or longer time. Any objections shall state the specific reasons for such objection.

(d)     **Service and Format**

Discovery documents shall, to the greatest extent possible, be served electronically, pursuant to Rule 3.07. Attachments to documents shall be provided in native electronic format, with formulae and viable links intact.

Any discovery document served electronically or by facsimile after Commission Business Hours but before midnight or received on a non-business day shall be deemed served on Persons on the Official Service List with electronic mail on the next business day. Any discovery document served electronically or by facsimile between midnight and the beginning of Commission Business Hours on a business day shall be deemed filed and served on Persons on the Official Service List with

electronic mail on that business day. Any discovery document served by other means of service (personal delivery, mail, commercial delivery service), shall be deemed served pursuant to Rule 3.07.

(e) **Filing Discovery**

Except as provided in Rules 3.01(i) and 5.11, discovery documents shall not be filed.

**Protected Information**

- (f) Any information submitted pursuant to discovery which is subject to a protective order shall comply with the RPPs concerning form requirements for protected information.

**Rule 5.06    Depositions**

A deposition upon oral examination or on written questions pursuant to these Rules may be taken as provided in Rules 27, 28, 30 and 31, of the Ark. R. Civ. P. Depositions shall not be taken before the time set for the filing of the deponent's Party's initial written testimony in proceedings where written testimony is required or scheduled.

**Rule 5.07    Stipulating as to Discovery Procedures**

Unless otherwise ordered, Parties may agree in writing to modify these procedures for discovery.

**Rule 5.08    Commission or Staff Requests for Information in Undocketed Matters**

In the discharge of its investigative duties in undocketed matters, the Commission or Staff may obtain discovery regarding any matter subject to the Commission's jurisdiction by any of the methods described in this Section or any statute.

**Rule 5.09    Interrogatories**

(a) **Procedures for Use**

Any Party may serve on any other Party written interrogatories to be answered by the Party served. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which case the reasons for the objection must be stated in lieu of the answers. The Party answering the interrogatories shall repeat each interrogatory immediately



before the answer or objection. The answers and/or objections are to be signed by the Person making them or by a Person authorized under Rule 3.06. Any Party in so signing certifies that the information therein is true and correct to the best of that Party's information and belief.

(b) Option to Produce Business Records

Where the answers to an interrogatory may be derived or ascertained from the business records of the Party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the Party serving the interrogatory as for the Party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the Party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

(c) A data request which contains written interrogatories shall be governed by this Rule 5.09.

Rule 5.10      Production of Documents and Things and Entry upon Land for Inspection and Other Purposes

(a) Scope

Any Party may serve on any other Party a request:

- (1) to produce and permit the Party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, records in any form, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of this Section and which are in the possession, custody, or control of the Party upon whom the request is served;
- (2) to permit entry upon designated land or other property in the possession or control of the Party upon whom the request is served for inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of this Section; or
- (3) to preserve any designated documents or other information identified in Subsection (1) above for discovery during the course of

a Docket or Staff investigation.

(b) Procedure

The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

(c) A data request which contains requests for production shall be governed by this Rule 5.10.

Rule 5.11      Requests for Admissions

(a) Scope and Form

A Party may serve upon any other Party a written request for admission of the truth of any matters within the scope of Rule 5.02 or set forth in the request that relate to statements, representations, or opinions of fact, or the application of law to fact, including the genuineness of any documents described in the request. Copies of documents referred to in the request shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth. If objection is made, the reasons therefore shall be stated. The Party answering the requests for admission shall repeat each request immediately before the answer or objection. The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering Party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a Party qualify his/her answer or deny only a part of the matter of which an admission is requested, the Party shall specify so much of it as is true and qualify or deny the remainder. An answering Party may not give lack of information or knowledge as a reason for failure to admit or deny unless he/she states he/she has made reasonable inquiry and that the information known or readily available to him/her is insufficient to enable him/her to admit or deny. Requests for admission and responses to requests for admission shall be filed.

(b) Failure to Respond

A matter is admitted unless the Party to whom the request is directed timely files and serves upon the Party requesting the admission a written answer or objection addressed to the matter, signed by the Party or the Party's attorney.

(c) Sufficiency of Answer or Objection

The Party who has requested the admissions may file a motion requesting that the Commission determine the sufficiency of the answers or objections. In response to such a motion, the Commission may, consistent with the public interest and without limitation:

- (1) determine that the answer is sufficient;
- (2) determine that the answer does not comply with the requirements of this Rule 5.11 and either that the matter is admitted or that an amended answer be served;
- (3) determine that the objection is justified;
- (4) determine that the objection is not justified and order that an answer be served; or
- (5) take any other action it deems appropriate.

(d) Effect of Admission

Any matter admitted under this Rule 5.11 is deemed conclusively established.

**Rule 5.12**     **Failure to Make Discovery: Sanctions**

(a) Motion for Order Compelling Discovery

After a good faith effort to seek resolution of a discovery dispute, a Party, upon reasonable notice to all Parties and all Persons affected thereby, may apply for an order compelling discovery as follows:

- (1) An application for an order to a Party may be made to the Commission.
- (2) If a deponent fails to answer a question propounded or submitted, or a corporation or other entity fails to make a designation under Rule 5.09(b) or 5.10, or a Party fails to answer an interrogatory or request for admission submitted under Rule 5.09 or Rule 5.11, or if a Party, in response to a request for inspection submitted under

Rule 5.10, fails to respond that inspection will be permitted as requested, or fails to permit inspection as requested, the discovering Party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before the proponent applies for an order.

- (b) If the Commission denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion pursuant to Rule 4.04.
- (c) Any Party to a proceeding who is unable to receive a timely response to discovery requests made in conformity with this Rule and other applicable provisions of these Rules may petition the Commission for an appropriate order directing the nonresponsive Party to comply with such discovery request, to the extent and in the manner which the Commission deems appropriate under the circumstances.
- (d) In connection with any order directing discovery, the Commission may take appropriate actions designed to assure prompt and orderly responses thereto. In the event of any failure of any Party to comply with any Commission order of discovery, the Commission may enter an appropriate order providing for the imposition of just and reasonable sanctions including, without limitation, the following:
  - (1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the Party obtaining the order;
  - (2) An order refusing to allow the disobedient Party to support or oppose designated claims or prohibiting such Parties from introducing designated matters in evidence;
  - (3) An order striking out filings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any Party thereof, or rendering an order by default against the disobedient Party; and
  - (4) An order directing the disobedient Party to reimburse the Party obtaining the order appropriate costs and expenses, including where applicable reasonable legal and/or expert fees, incurred as a result of the failure to comply with the Commission's order, except to the extent permitted by statute and fees may not be awarded against the State of Arkansas under this Rule.



## **SECTION 6. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED, AND RELATED FEES AND FILINGS**

### **Rule 6.01    Subject Matter**

If a Certificate of Public Convenience and Necessity (CCN) is required by Ark. Code Ann. §§ 23-3-201, *et seq.* or a Certificate of Environmental Compatibility and Public Need (CECPN) is required by Ark. Code Ann. §§ 23-18-501, *et seq.* for the construction or operation of any new equipment or facilities for supplying a public service, such certificate shall be sought by Formal Application unless otherwise provided in this Section.

### **Rule 6.02    Allocated Area**

Where the Commission has by its order authorized a public utility to serve within a municipality, territorial district, or other geographic area (hereinafter called an allocated area), such order shall be considered a CCN to construct and operate within such allocated area all distribution facilities and equipment necessary in the ordinary course to serve all consumers, both present and future, located within such allocated area.

### **Rule 6.03    Notice of Filing**

- (a) Certificate of Public Convenience and Necessity – New Construction for Electric and Natural Gas Utilities

The Applicant shall, no less than ten (10) days before filing the application, notify each owner of record (or the Person to whom property tax statements have been mailed in the most recent tax year) of lands which the Applicant proposes in its application to traverse. A utility facility traverses property when the facility is located on or crosses the property. Such notice shall be given by first-class mail, properly addressed with charges prepaid and shall include the following information:

- (1) the date on or about which the application is to be filed;
- (2) the application's Docket number, if known;
- (3) the name, address, email address, and phone number of the Secretary and the URL address of the Commission's web-site where information on the deadline for intervention and the place and date of the hearing may be obtained;

- (4) a brief description of the facilities to be constructed and the owner's land(s) to be traversed; and
- (5) a notice that interventions or limited appearances must be filed with the Commission within thirty (30) days after the date set forth as the date of filing, unless good cause is shown or unless otherwise ordered by the Commission.

For a proposed electric transmission substation only, the above notice shall also be given to each owner of record (or the Person to whom property tax statements have been mailed in the most recent tax year) of lands which abut, touch, or border the land upon which the Applicant proposes to construct the substation.

(b) **Certificate of Environmental Compatibility and Public Need**

Notice of filing an application for a CECPN under Rule 6.06. shall be given by the Applicant in the following manner, unless the Commission otherwise provides.

- (1) The Applicant shall give notice as required by Ark. Code Ann. §§ 23-18-513 and 23-18-515 and this Rule 6.03(b), and such other notice as the Commission may require in each case.
- (2) The newspaper notice required by Ark. Code Ann. § 23-18-513 shall, in addition to the statutory requirements:
  - (A) Be published at least twice in the newspaper the Applicant chooses;
  - (B) Contain a map at least five (5) inches on a side depicting the preferred and alternate locations of the proposed major utility facility or a reference to a web site address which contains a viewable map; and
  - (C) Contain statements substantially similar to the following:
    - (i) The Commission will hear evidence of the general economic and environmental impact of the proposed facility, as opposed to individual objections to the presence of the facility;
    - (ii) The Commission does not award compensation for damages to a landowner. Compensation is awarded by Circuit Court in an eminent domain proceeding if the Applicant and the landowner cannot settle privately; and

- (iii) One of the purposes of the hearing is to choose the location with the least generally adverse economic and environmental consequences, and in the course of selecting a location, the Commission may modify one of the proposed locations if it is in the public interest.
  - (3) The copies of applications served pursuant to Ark. Code Ann. § 23-18-513(a) and (b) must be accompanied by the same map and statements required by this Rule 6.03(b)(2).
- (c) Certificate of Public Convenience and Necessity – Customer Releases and Exchanges and Releases of Allocated Territory for Electric Utilities

Before filing an application under Rule 6.07(b) or (c), the Applicant shall notify the affected customer(s) in writing of its intent to request a customer release or request an exchange or release of allocated territory, as applicable.

#### Rule 6.04 Deadlines for Intervention and Limited Appearance

This Rule 6.04 applies to Dockets pertaining to CECPN applications (Rule 6.06), CCN applications by an electric utility for new construction (Rule 6.07), and CCN application by a natural gas utility for new construction (Rule 6.08).

- (a) Petitions for leave to intervene must be filed within thirty (30) days after the date given in the notice as the date of filing the application.
- (b) Any Person may make a limited appearance by filing a verified statement of position within thirty (30) days after the date given in the notice as the date of filing the application.
- (c) For good cause shown, the Commission may grant a petition for leave to intervene or to make a limited appearance after the deadlines set in subsections (a) and (b) above.
- (d) The Commission must find that the potential Intervenor's interests are not otherwise adequately represented by another Party and that participation will not delay the proceedings. The time when such petition is filed shall not extend any time limit, set by procedural schedule, Rule, or law, applicable to an Intervenor in a Docket. The filing of a petition to intervene after these deadlines and after any deadline for filing, discovery, etc. shall constitute a waiver of any right or opportunity to submit such filing, discovery, etc. and shall constitute acceptance of any established procedural schedule.



Rule 6.05     Action on Non-construction or Completion

- (a) If any construction authorized by a CCN or a CECPN is not started within four (4) months from the date of the certificate, the utility shall file a statement stating why the construction was not started and when it will be started.
- (b) Within thirty (30) days after booking of the final expenses of the construction authorized by any CCN or CECPN, or by such other time which may be fixed by Commission order, the utility shall file a report showing the date the requested construction was completed. The report shall include a map showing changes, if any, from the application for the certificate and a detailed statement of the estimated costs of the construction and the final costs of the construction by major cost category. The report shall reference the Docket number in which the certificate was granted.

Rule 6.06     Certificates of Environmental Compatibility and Public Need

- (a) An application for a CECPN shall, in addition to the exhibits, documents, or other information required by statute, include:
  - (1) a statement of the facts and circumstances upon which Applicant relies to establish that present or future public convenience and necessity require the new construction, acquisition, or operation of such facilities;
  - (2) financial data related to the project as of the latest practical date;
  - (3) a statement of life estimates, value of salvage, cost of removal, and re-use potential of the proposed facility(ies);
  - (4) for applications filed by natural gas utilities, the technical information required by Rule 6.08(a)(4);
  - (5) a statement that notice of the filing has been given in accordance with Rule 6.03(b); and
  - (6) supporting written prepared testimony and exhibits.
- (b) An application for an amendment to a CECPN shall, in addition to the exhibits, documents, or other information required by statute, include:
  - (1) a description of any changes to the information submitted in the original CECPN application;
  - (2) a description of any material increase in any environmental or

economic impact of the facility;

- (3) a description of any substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application;
  - (4) a statement that notice of the filing has been given in accordance with Rule 6.03(b); and
  - (5) supporting written prepared testimony and exhibits.
- (c) An application shall not be considered complete, and the applicable statutory timeframes do not begin, until all information required by the statutes and Rules is filed.

**Rule 6.07      Certificates of Public Convenience and Necessity – Electric Utilities**

**(a)      New Construction or Operation**

An application for a CCN for new construction or operation by any electric utility shall include:

- (1) Facts showing that the proposed new construction is or will be required by public convenience and necessity;
- (2) A description of the proposed location or route of the new construction or operation and a description of the manner in which it will be constructed;
- (3) A map(s) to suitable scale showing the location or route of the proposed new construction or operation, locations of nearby airports, and reference to all allocation boundaries;
- (4) All data, including an estimate of cost, as necessary for a complete understanding of the application;
- (5) The manner proposed to finance the new construction or operation or extension; and
- (6) A statement that notice of the filing has been given in accordance with Rule 6.03(a).

**(b)      Customer Releases**

- (1) An electric utility (releasing utility) may voluntarily waive its right and obligation to serve a customer at a location within its allocated territory if another utility (successor utility) agrees to serve that

customer, at that location, indefinitely. The successor utility may continue to serve the location and all future customers at that location, even after service to the original customer has been discontinued for any reason. This agreement between the releasing and successor utilities is a “customer release.”

- (2) To request a customer release, either the releasing utility or the successor utility shall file a letter reciting the reasons for the customer release. The letter shall state that the filing is an application for customer release under this Rule 6.07(b). Attached to the letter shall be written evidence from the other utility indicating its agreement to the customer release and a copy of the written notice to the affected customer(s) of the utility’s intent to request a customer release. The filing shall include a map and legal description identifying the approximate location of the customer.
- (3) The Secretary shall assign an "A" Docket number to the filing.
- (4) A customer release shall not be final until it has been approved by a written order. However, an emergency ruling on the written application may be granted orally by two Commissioners or a designated Presiding Officer. A written order shall follow within thirty (30) days from the date of the oral approval.
- (5) The order granting the customer release shall not constitute a change in allocated territory.

(c) Exchanges and Releases of Allocated Territory

- (1) Two or more electric utilities may seek Commission authorization to exchange service territory previously allocated to them. In the alternative, one utility may seek to release previously allocated territory to another utility.
- (2) To request an exchange or release of allocated territory, one or more of the affected utilities shall file a letter reciting the reasons for the exchange or release of allocated territory . The letter shall state that the filing is an application for exchange or release of allocated territory under this Rule 6.07(c). Attached to the letter shall be written evidence indicating the other utility’s agreement to the exchange of allocated territory and a copy of the notice to the affected customer(s) of the utilities’ intent to request an exchange or release of allocated territory. The filing shall include a map(s) to suitable scale and a legal description showing the geographical area being exchanged or released.
- (3) The Secretary shall assign an "A" Docket number to the filing.

(d) **Application for a CCN to Commence Operation as an Electric Utility in Arkansas**

An application for a CCN by an electric utility to provide electric services shall include:

- (1) Its name and address and the full name of its owner if a sole proprietorship, of each partner if a partnership, or a full list of the officers and directors if a corporation;
- (2) A copy of the articles of a partnership or a certified copy of the Articles of Incorporation or other articles of organization. A copy of the Certificate of Authority of a Foreign Corporation, unless incorporated under Arkansas law;
- (3) The designated geographic area proposed to be served, including a map(s) to suitable scale and a legal description;
- (4) A description of the services the Applicant intends to provide;
- (5) Information demonstrating the Applicant's financial, managerial and technical capacity to provide the services;
- (6) An initial tariff or price list for the services to be offered; and
- (7) Such other information as the Commission may require.

**Rule 6.08 Certificate of Public Convenience and Necessity – Natural Gas Utilities**

- (a) An application for a CCN for new construction or operation by a natural gas utility shall include:
  - (1) A statement of the facts showing the proposed operation or construction is or will be required by public convenience and necessity; the proposed dates for beginning and completing construction; and the commencement of operations;
  - (2) A statement as to whether any other application to supplement or effectuate such application must or will be filed by Applicant, any of Applicant's customers, or any other Person, with any other federal, state, or other regulatory body; and if so, the nature and status of each such application;
  - (3) A table of contents listing all exhibits and documents filed with the application identifying them by their appropriate titles and alphabetical letter designations;

- (4) A general description of the facilities proposed to be constructed, acquired or operated, giving such pertinent information including the size, capacity, length and location of facilities; the extent of distribution systems, the location, rating, and capacity of all compressor or central stations; the location and description of other important property units; estimates of maximum and minimum day demands; and other pertinent facts showing that such facilities will be capable of performing adequately the service which Applicant proposes to render. In connection herewith the Applicant shall furnish:
  - (A) A map delineating the size and location of Applicant's proposed lines or distribution system, the communities to be served, and the points of connection with existing facilities.
  - (B) A statement setting forth all contracts for the construction, purchase, or lease of the proposed facilities and giving the affiliation, if any, between Applicant and any other party to said contracts.
  - (C) A statement that the specifications conform to the Arkansas Gas Pipeline Code, as promulgated, as of the filing of the application;
- (5) A statement of the source of supply for the market which is proposed to be served;
- (6) A statement setting forth all facts bearing upon economic feasibility including:
  - (A) The estimated total overall capital cost of the proposed facility or acquisition, including all expenditures involved in the constructing or acquiring of the proposed facilities, proposed cost of financing, working capital, and other incidental costs, amount of engineering and contracting fees to be paid and a brief statement of Applicant's proposed plan of financing.
  - (B) A statement of the extent to which such plan is supported by firm or contingent commitment from all financial sources, including commitments from banks, trust companies, insurance companies, investment bankers, suppliers, and other sources.
  - (C) A statement showing:

- (i) estimates of total revenues expected from the proposed new facilities to be constructed, acquired, or operated;
  - (ii) total fixed charges; and
  - (iii) total operating expenses.
- (D) A general statement covering the rates the Applicant proposes to charge for each kind of service to be rendered, and the expected sales, revenues, and average revenue per unit of measurement to be derived therefrom;
- (7) A general description of the proposed method of supervising the operations of the proposed project, including reference to any relevant service or management contracts, existing or contemplated; and
- (8) A statement that notice of the filing has been given in accordance with Rule 6.03(a).
- (b) Except as provided in Ark. Code Ann. § 23-3-201(b)(1), any installation of a new compressor shall require a CCN.
- (c) Application for a CCN to Commence Operation as a Natural Gas Utility in Arkansas

An application for a CCN by a natural gas utility to provide natural gas services shall include:

- (1) Its name and address and the full name of its owner if a sole proprietorship, of each partner if a partnership, or a full list of the officers and directors if a corporation;
- (2) A copy of the articles of a partnership or a certified copy of the Articles of Incorporation or other articles of organization. A copy of the Certificate of Authority of a Foreign Corporation, unless incorporated under Arkansas law;
- (3) The designated geographic area proposed to be served, including a map(s) to suitable scale and a legal description;
- (4) A description of the services the Applicant intends to provide;
- (5) Information demonstrating the Applicant's financial, managerial and technical capacity to provide the services;
- (6) An initial tariff or price list for the services to be offered; and

- (7) Such other information as the Commission may require.

**Rule 6.09 Certificates of Public Convenience and Necessity -- Local Exchange Carriers**

**(a) Request for Unallocated Area(s)**

- (1) A LEC may request that the Commission allocate a geographic area(s) not previously allocated to that utility. The application may be in the form of a letter stating that the filing is in accordance with this Rule 6.09.(a) . The application shall state that it is to provide service to territory not previously allocated to that utility.

- (2) The application shall include the following:

- (A) A map(s) to suitable scale and a legal description showing the geographic area proposed to be served and depicting the change in territory and exchange boundary(ies) affected by the change; and

- (B) A letter(s) from other telephone utilities whose allocated service territories are adjacent to the proposed new service area, indicating whether the adjacent utilities desire to serve that area. In the event more than one utility files an application to serve the same unallocated territory, the Commission may award part or all of the territory to one or more utilities as may be in the public interest, after notice and hearing. If an unallocated territory is totally surrounded by the Applicant's allocated territory or does not border another utility's territory, the application shall state this and that the letter required by this section is not applicable.

- (3) The Secretary shall assign an "A" Docket number to the application.

**(b) Long Distance Telephone Service**

When application is made to provide long distance telephone service to or between geographic areas, such application shall include the information required in Subsection (a) of this Rule 6.09 to the degree pertinent and shall include a schematic map of the proposed long distance route and its point(s) of connection with other telephone utilities. This Subsection (b) shall apply to non-electing ILECs only.

**(c) Exchanges of Allocated Territory**

- (1) Two or more LECs may request that the Commission exchange

service territory previously allocated to them. The application may be in the form of a letter stating that the filing is in accordance with this Rule 6.09(c). The application shall state that the filing is an application for exchange or release of allocated territory.

(2) The application shall include the following:

(A) A map(s) to suitable scale and a legal description showing the geographic area proposed to be served and depicting the change in territory and exchange boundary(ies) affected by the change; and

(B) Written evidence indicating the other LEC(s)'s agreement to exchange of allocated territory.

(3) The Secretary shall assign an "A" Docket number to the application.

(d) Changes to Base Rate Areas

(1) A LEC may apply to alter an existing base rate area. An application under this subsection shall state the reasons for the application. The application may be in the form of a letter to the Commission. The letter shall state that the filing is an application to change one or more base rate areas, pursuant to this Rule 6.09(d).

(2) Applications under this Subsection (d) shall contain a map to suitable scale indicating the proposed change(s) and depicting the change in base rate boundary(ies) affected by the change.

(3) The Secretary shall assign a "TF" Docket number to the application.

(e) Changes to Local Exchange Boundaries

(1) A LEC may apply to alter existing local exchange areas by changing the boundaries between two or more of the LECs' exchanges.

(2) An application under this Subsection (e) shall be in the form of a letter stating the purpose of the modifications and explaining in detail any changes in rates or in the calling scopes of existing customers. The letter shall state that the filing is an application to change two (or more) exchange areas, pursuant to this Rule 6.09(e).

(3) The application shall include the letter; the proposed final version of a tariff map and legal description for each exchange; each currently approved tariff map with proposed changes marked in red; and each currently approved legal description with changes highlighted.

(4) The Secretary shall assign an "A" Docket number to the application.



(f) **Certificates of Public Convenience and Necessity -- Competing Local Exchange Carriers**

An application for a CCN by a CLEC to provide Telecommunications Services including basic local exchange service and/or switched access service to an ILEC's local exchange area shall include:

- (1) Its name and address and the full name of its owner if a sole proprietorship, of each partner if a partnership, or a full list of the officers and directors if a corporation;
- (2) A copy of the articles of a partnership or a certified copy of the Articles of Incorporation or other articles of organization. A copy of the Certificate of Authority of a Foreign Corporation, unless incorporated under Arkansas law;
- (3) The designated geographic area proposed to be served, including a map(s) to suitable scale and a legal description;
- (4) A description of the services the Applicant intends to provide in addition to basic local exchange and switched access services;
- (5) Information demonstrating the Applicant's financial, managerial and technical capacity to provide the services;
- (6) An initial tariff or price list for the services to be offered; and
- (7) Such other information as the Commission may require.

**Rule 6.10 Certificate of Public Convenience and Necessity – Telecommunications Providers Excluding Local Exchange Carriers**

An application for a CCN by a Telecommunications Provider other than a LEC, shall include:

- (a) The name and address of the Telecommunications Provider and the full name of its owner if a sole proprietorship, of each partner if a partnership, or a full list of the officers and directors if a corporation;
- (b) A copy of the articles of a partnership or a certified copy of the Articles of Incorporation or other articles of organization. A copy of the Certificate of Authority of a Foreign Corporation unless incorporated under Arkansas law;
- (c) A description of the Telecommunications Provider and the Telecommunications Service(s) it proposes to provide;

- (d) A description of the Telecommunications Provider's technical means to provide the proposed service;
- (e) Information setting forth the financial condition of the Telecommunications Provider;
- (f) An initial tariff or price list proposed for the services to be offered;
- (g) A detailed description of the transmission facilities, whether owned or leased, switching equipment, and the points at which the transmission facilities or switching equipment connects to the local exchange network through switched, special or private access service, together with a description of the type of access service used to connect to the local exchange network. This same information shall be provided with regard to direct access to any customer; and
- (h) Such other information as the Commission may require.

**Rule 6.11      Petition Process for Class B or Lower Water and Sewer Companies**

This Rule 6.11 governs the process by which a Class B or lower water or sewer company may become subject to regulation as a public utility under Ark. Code Ann. § 23-1-101(9)(G).

(a)      **Petition Process**

A Class B or lower water or sewer company, otherwise exempt from regulation as a public utility, shall become subject to the Commission's jurisdiction upon the Commission's order approving either of the following petitions:

(1)      **By the Company**

The petition shall include, but not be limited to, the following information:

- (A)      A request that the Commission declare the company to be a public utility and issue a CCN to the company;
- (B)      A description of the facilities being operated, under construction, or proposed to be constructed for the purpose of providing water or sewer services. Such description shall include information pertaining to the size, capacity, and location of the facilities (including a map of the service area) and the customers served, or to be served, by those facilities;
- (C)      A description of the current business organization,

ownership and management of the company, including an identification (i.e., name, address, telephone number, and electronic mail address) of the company's officers and those Persons responsible for supervising the provision of water or sewer services;

- (D) A description of any contracts or agreements for the construction, purchase, lease, or operation of any facilities providing water or sewer service. Such description shall identify any affiliation, if any, between the parties to such contracts or agreements;
- (E) A schedule of the company's rates and charges for its water or sewer service as of the date of the filing of the petition and an explanation of those rates and charges;
- (F) An income and expense statement for the previous fiscal year's water or sewer operations and a statement of the revenues, fixed charges, and operating expenses estimated for the current fiscal year's water or sewer operations; and
- (G) A statement that, as of the filing of the petition hereunder, the company has notified each of its water or sewer customers of the company's filing hereunder by first-class mail, properly addressed with charges prepaid.

(2) By a Majority of the Metered Customers

The petition shall include, but not be limited to, the following information:

- (A) A general description of the company, including the location of its business office, an identification of its management and a description of its service area and customer base;
- (B) A request that the company be made subject to the Commission's jurisdiction, supported by the attachment of completed petitions which include the names, addresses, and signatures of all petitioning customers; and
- (C) If the company is a water company, a statement setting forth the basis for the customers' belief that the water company's combined annual operating revenues exceed the threshold set by Ark. Code Ann. § 23-1-101 for such companies.

The company shall, upon request of the Commission or the Staff, provide a list of metered customers.

(b) Subsequent Requirements

After hearing and upon finding that a Class B or lower water or sewer company is subject to jurisdiction under this Section, the Commission shall, as appropriate:

- (1) If the petition was filed by customers, order the company to file the information required under Subsection (a)(1)(B-F);
- (2) Prescribe any other terms and conditions which must be satisfied before the issuance of a permanent CCN;
- (3) Issue an interim or permanent CCN to the company, as appropriate;
- (4) Establish interim rates and charges, subject to refund, for the company's services;
- (5) Order the company to give notice of its intention to file a General Rate Change Application; and
- (6) Order the company to file an application for a General Rate Change Application pursuant to Section 8.

Rule 6.12 Notification of Utility Name Change

A public utility shall file a Notice of Name Change at least fifteen (15) days before the effective date of a name change. Name changes shall include changes to the name of the business organization as well as the use of or change to a fictitious or assumed name.

- (a) The Notice shall be filed in the Docket designated by the Commission for this purpose.
- (b) If the name change is incidental to another pending Docket, such Notice shall also be filed in that Docket.
- (c) The Notice shall contain the following information:
  - (1) The old name of the utility;
  - (2) The new name for the utility along with the effective date for the new name; and
  - (3) Copies of all documents to establish that the proposed change in name has been purposefully and legally accomplished, including but not limited to all filings with the Arkansas Secretary of State or other appropriate state agencies.

- (d) The public utility shall file revised tariffs properly reflecting the new name of the public utility as follows:
  - (1) For all jurisdictional Telecommunications Providers except non-electing ILECs, the tariffs shall be filed in Docket No. 95-530-A;
  - (2) For all other jurisdictional utilities, the tariffs shall be filed in a new “TF” Docket; and
  - (3) If the name change is incidental to another pending Docket, such as approval of a merger or acquisition, and the Notice was filed in that Docket, the tariffs shall also be filed in that Docket.

**Rule 6.13**     **Annual Reporting Requirements**

- (a) Each jurisdictional utility shall submit an annual report on the form required by the Commission by March 31 for the preceding calendar year ending December 31 in accordance with Ark. Code Ann. §§ 23-2-308, 23-3-109, and 23-3-112.
- (b) Each natural gas transporter, owner, or operator shall report to the Commission annually in accordance with Ark. Code Ann. § 23-15-214.

**Rule 6.14**     **Annual Fee Requirements**

- (a) In accordance with Ark. Code Ann. § 23-3-110, on or before August 15 annually, the Commission shall prepare and transmit to each jurisdictional utility a statement of the fees due for utilities costs during the preceding fiscal year. On or before August 31 annually, each jurisdictional utility shall pay to the Secretary of the Commission all fees shown to be due by the statement.
- (b) In accordance with Ark. Code Ann. § 25-15-214, on or before June 1 annually, the Commission shall prepare and transmit to each natural gas pipeline transporter, owner, or operator a statement of the assessment due for the cost of operating the pipeline safety program of the Commission during the preceding fiscal year. On or before June 30 annually, each natural gas pipeline transporter, owner, or operator shall pay to the Secretary of the Commission any annual assessment fee due.

**Rule 6.15**     **Revocation of CCN and Other Penalties**

- (a) The Commission may assess a civil sanction in accordance with Ark. Code

Ann. § 23-1-103 and/or revoke the CCN of a utility for failure of the utility to timely file its annual report pursuant to Ark. Code Ann. §§ 23-2-308, 23-3-109, 23-3-112, and 23-15-214 and Rule 6.13.

- (b) The Commission may assess a penalty of twenty-five percent (25%) in accordance with Ark. Code Ann. §§ 23-3-110 and 23-15-214 and/or revoke the CCN of a utility for failure to pay the annual fees assessed by the Commission pursuant to Ark. Code Ann. §§ 23-3-110 and 23-15-214.
- (c) Any Telecommunications Provider that without just cause fails to pay the Arkansas High Cost Fund charge that is due and payable pursuant to Ark. Code Ann. § 23-17-404, after notice and opportunity for hearing, shall have its authority to do business as a Telecommunications Provider in the State of Arkansas revoked by the Commission.
- (d) The Commission may terminate a Telecommunications Provider's CCN if the Telecommunications Provider fails to comply with the Arkansas Intrastate Carrier Common Line Pool procedures or fails to make a payment due under Ark. Code Ann. § 23-17-416.

#### **Rule 6.16 Cancellation of CCN – Telecommunications Providers**

A Telecommunications Provider requesting cancellation of its CCN to operate shall file written notice in the Docket originally approving the CCN. The notice shall certify that the Telecommunications Provider is currently in compliance with:

- (a) filing of its annual reports pursuant to Ark. Code Ann. §§ 23-2-308, 23-3-109, 23-3-112, and 23-15-214 and Rule 6.13;
- (b) payment of the annual fees assessed by the Commission pursuant to Ark. Code Ann. §§ 23-3-110 and 23-15-214;
- (c) payment of the Arkansas High Cost Fund charge that is due and payable pursuant to Ark. Code Ann. § 23-17-404; and
- (d) the Arkansas Intrastate Carrier Common Line Pool procedures and payments due under Ark. Code Ann. § 23-17-416.

The cancellation shall not be effective until an order is entered in the Docket.

## **SECTION 7. TARIFFS**

### **Rule 7.01    Applicability**

Rule 7.09 applies to Telecommunications Providers except for non-electing ILECs. The remaining Rules in this Section 7 apply to Non-electing ILECs and the other regulated public utilities except as otherwise noted.

### **Rule 7.02    Procedure for Filing Tariffs**

(a) The tariff shall:

- (1) Be accompanied by a letter of transmittal, describing the purpose of the tariff and the Docket number, if known. Tariffs intended to revise or supplement rates or schedules that constitute a part of an ongoing General Rate Change Application shall be filed only in the Docket containing that Application. The transmittal letter accompanying the tariffs shall inform the Secretary of the proper General Rate Change Application Docket in which the tariffs should be filed. Improper filing of said tariffs in a "TF" Docket may be grounds for disapproval;
- (2) Be accompanied by supporting testimony which describes, at a minimum:
  - (A) the reason for and justification of the requested change;
  - (B) the approximate number of customers expected to be affected by class;
  - (C) the utility's current authorized retail revenue requirement;
  - (D) the estimated monthly impact on an average residential customer, in both dollars and percentage increase;
  - (E) the estimated annual retail revenue impact of the proposal, if approved, in both dollars and as a percentage of current retail revenue requirement; and
  - (F) any change in rate design which will result in any change in revenue allocation within a class or between classes.

Workpapers shall also be provided in conformance with Rule 4.08;

- (3) In the case of a revision to a filed tariff, be accompanied by a

marked-up copy showing deletions by overstriking and additions by underlining;

- (4) Be on Commission approved forms (*See Appendix 7-1*). The forms shall not show any stamp or mark indicating previous Commission approval;
  - (5) Consist of sheets that are identified by a section title, section number, page number, and whether that page is original or, if applicable, a revision number; and
  - (6) Be provided electronically in native format. Electronic copies shall be clearly legible and complete. All formulae and viable links shall be left intact for all electronic files.
- (b) Upon accepting a tariff for filing:
- (1) If the tariff is not a part of a General Rate Change Application or existing Docket, the Secretary shall assign a Docket number to include the letters "TF." New tariff filings containing substitutions, withdrawals, additions, corrections, or other changes to previously approved tariffs shall be assigned to a new "TF" Docket.
  - (2) The Secretary shall stamp the filing date on each page of the tariff that will become a permanent, official Commission record.

### **Rule 7.03 Form and Content of Tariffs**

Each utility shall have tariffs containing the following information on file with the Commission and available for inspection by customers in each utility business office open to the public (*See also* General Service Rule 2.01(D) or Telecommunications Providers Rule 2.01(D)):

- (a) Table(s) of Contents or Index(es)
  - (1) The table(s) of contents or index(es) shall describe each section contained in the tariff. Tables of contents or indexes shall have sufficient detail so that a particular type of equipment, policy, etc. can be located.
  - (2) A revised table of contents and/or index shall be filed with any revised tariff that makes the current table(s) of contents and/or index(es) obsolete.
  - (3) Tariff sections consisting of more than ten (10) pages shall include a separate table of contents, listing each major subsection and subpart.



(b) Rate Schedules

(1) Rate schedules shall incorporate the amounts charged for services rendered and any other information required to identify or quantify a utility's services or rates. The rates, conditions of service, character of service, etc., associated with special contracts shall be included as a separate tariff schedule along with a copy of the contract or redacted contract if subject to a protective order. The term "special contracts" does not include special assembly requests or one time construction orders.

(2) Each rate schedule shall contain the following information unless inappropriate to that schedule's character or class of service:

(A) The Service Area of LECs

The service area is the city, town, or other area to which the schedule applies.

Local exchange area tariff maps and legal descriptions which adequately define the different rate areas, e.g., base rate or rural areas and special zones;

(B) Customer Class

Customer classes may include, for example, residential, commercial, or large power classes. The description of customer classes shall include additional appropriate descriptions, such as interruptible, time of use, and off-peak;

(C) Availability of Service

Classification of premises or customers to which the schedule applies;

(D) Character of Service

(i) Electric Utilities

Where applicable, the tariff shall state the service voltage, phase, and frequency of electricity for electrical service.

(ii) Natural Gas Utilities

The tariff shall state the established absolute pressure base, the assumed atmospheric pressure, and the normal gauge pressure at which natural gas is supplied to customers' piping. The tariff shall state

the minimum average heating value of natural gas delivered to its distribution plant(s);

(E) Rates

Rates shall be shown in schedule form;

(F) Minimum Charges

Where applicable, the tariff shall state all minimum charges with their terms and conditions;

(G) Additional Charges

Examples of additional charges include the adjustment riders applicable to the schedule, such as fuel adjustment, cost of gas adjustment, etc.;

(H) Special Conditions

Where applicable, the tariff shall state any special conditions applied to the customers by rate schedule; and

(I) Term of Contract

The tariff shall state the minimum period for which service will be rendered under the schedule.

(c) Separate, Additional Schedules Required

Riders to the rate schedules shall be filed as separate tariff schedules and shall not be incorporated on the same tariff sheet(s) with the rate schedules of the customer classes. The rider shall describe the terms of payment, including a list of the rate schedules to which the terms apply.

(1) Adjustment Riders

Adjustment riders shall be filed for all adjustments, such as the cost of fuel adjustment, and the cost of debt adjustment. These riders shall set forth the adjustment and any special conditions contained therein.

(2) Charges Related to Customer Activity

Charges associated with deposits, membership fees, returned check fees, reconnect fees, meter test fees, and other charges related to customer activity shall be listed on a separate sheet entitled "Charges Related to Customer Activity." Information required by the General Service Rules and the Telecommunications Providers

Rules is contained in Appendix 7-2 to this Section.

(3) Miscellaneous Charges

Miscellaneous charges are any rates or charges for equipment or service not included in another tariff section.

(d) Rules, Regulations, and Policies

(1) Utilities are not required to file customer service regulations already addressed in any Commission Rules. Rules and regulations adopted by a utility which supplement the requirements of Commission Rules shall be filed as tariffs with the Commission.

(2) Policies required by Telecommunications Providers Rules 5.08(B) and 5.09(B), or by General Service Rules 5.09(B), 5.10(C), 5.11(B), and 6.19(A) shall be filed as tariffs with the Commission.

(e) Extension of Facilities

(1) Each utility shall set forth in its tariffs the conditions and circumstances under which line extension or extensions of service will be made, including the methods of computing the contribution in aid of construction.

(2) The method may permit equal or proportional distribution of excess construction costs to multiple Applicants requesting service at the same time in the immediate area.

(f) Natural Gas Utility Requirements

(1) Minimum Heating Value for Natural Gas

Each natural gas utility shall file as a tariff the minimum heating value for natural gas. (See Special Rules-Gas, Rule 6.02(B)).

(2) Base or Absolute Natural Gas Pressure

Each natural gas utility shall file as a tariff the value of its base or absolute pressure. (See Special Rules-Gas, Rule 6.03).

(3) Normal Gauge Pressure for Natural Gas

Each natural gas utility shall file as a tariff the normal gauge pressure at which natural gas will be supplied through the meter to a customer's piping. (See Special Rules-Gas, Rule 6.04(D)).

(4) Natural Gas Curtailment Policy

Each natural gas utility shall file as a tariff its policy governing the curtailment of natural gas service to customers. (See Special Rules-Gas, Rule 3.06).

(g) Electric Utility Requirements

(1) Nominal Electric Voltage

Each electric utility shall file as a tariff the nominal voltage to be supplied to a customer. (See Special Rules-Electric, Rule 6.01(A)(1)).

(2) Test Method for In-Service Electric Meters

Each electric utility shall file as a tariff the test method to be used for in-service meters. (See Special Rules-Electric, Rule 7.08(B)).

(3) Electric Voltage Verification Plan

Each electric utility shall file as a tariff its plan for verifying voltage standards at each distribution substation. (See Special Rules-Electric, Rule 6.01(C)(2)(b)).

(4) Electric Utility Emergency Curtailment Plan

Each electric utility shall file as a tariff its Emergency Curtailment Plan, maintain and update its Plan as necessary, and provide a report to the Commission subsequent to any emergency curtailment.

(h) Service Area Maps

Each jurisdictional utility which provides service in an allocated area shall provide an electronic file(s) showing a current map(s) of its service territory boundaries and shall also provide an electronic file(s) containing legal description(s) of its allocated area.

**Rule 7.04 Intervention Deadline for Tariff Dockets**

Except for good cause shown, any petition to intervene in a tariff (TF) Docket shall be filed within fifteen (15) days of the filing of the tariff.

Rule 7.05    Time for Filing of Testimony

Unless otherwise provided in a Commission order or pursuant to the terms of an approved tariff, within twenty (20) days of the date upon which a new TF docket has been initiated, Staff shall file, and other Parties may file, appropriate responsive testimony or request suspension of the proposed tariff pursuant to Ark. Code Ann. § 23-4-407. If Staff believes the supporting discussion and analysis is inadequate, Staff may request additional data and justification. If additional data and justification is not furnished within a reasonable time or if Staff needs additional time to review the filing, Staff may ask the Commission to suspend the tariff and require the filing of such additional financial or cost of service data as the Commission may deem to be reasonably necessary.

Rule 7.06    Effective Date of Tariffs

Unless otherwise provided in a Commission order or pursuant to the terms of an approved tariff, tariffs become effective thirty (30) days after filing. (See Ark. Code Ann. § 23-4-402.) The date of any Commission order approving a tariff becomes the effective date of that tariff, unless otherwise provided in a Commission order or pursuant to the terms of an approved tariff.

Rule 7.07    Failure to Comply

Failure to comply with any Rule, statute, or order regarding tariff filings may be the basis for rejection of any filing.

Rule 7.08    Tariffs to Comply with Rules, Statutes and Orders

The Commission may require a utility to revise its existing tariffs to comply with any Rule, statute, or order.

Rule 7.09    Telecommunications Rates Not Subject to Commission Approval

No tariffs or filings are required for commercial mobile radio service providers, unless such providers are ILECs using radio technologies to provide basic local exchange services where there is no alternative basic local exchange service provided by another telecommunications provider.

APPENDIX 7-1

**ARKANSAS PUBLIC SERVICE COMMISSION**

_____ Sheet No. _____
Replacing _____ Sheet No. _____
_____
Name of Company _____
Kind of Service: _____ Class of Service: _____
<b>Part    Rate Schedule No.</b> _____
Title: _____

PSC File Mark Only

THIS SPACE FOR PSC USE ONLY

APPENDIX 7-2

Charges Related to Customer Activity (Rule 7.03(c)(2))

Customer Account Record .....	(GSR 2.04.A. and TPR 2.04.)
Energy Consumption Statement.....	(GSR 2.04.B.)
Membership Fee.....	(GSR 3.01.E.(1)c. and TPR 3.01.E.(1)c.)
Deposit from Applicant .....	(GSR 4.01.B. and TPR 4.01.B.)
Deposit from Landlords .....	(GSR 4.01.B.(1)Exception)
Deposit Due to Bankruptcy.....	(GSR 4.01.B.(5) and 4.02.A.(7) and TPR 4.01.B.(5) and 4.02.A.(7))
Deposit from Customers .....	(GSR 4.02.B. and TPR 4.02.B.)
Late Payment Charge.....	(GSR 5.07. and TPR 5.07.)
Processing Fee for Levelized Billing Withdrawal .....	(GSR 5.10.C.(3))
Returned Check Charge.....	(GSR 5.13. and TPR 5.11.)
Meter Reading Report Charge .....	(GSR 5.16.B.(3))
Meter Test Fee .....	(GSR 5.18.C.(1))
Collection Fee .....	(GSR 6.11.)
Reconnection Fee .....	(GSR 6.12.C. and TPR 6.11.C.)
Finance Charge on Delayed Payment Agreements.....	(GSR 6.13.I. and TPR 6.12.J.)
Additional Meter Charge.....	(Special Rules-Gas 3.05.A.)
.....	(Special Rules-Electric 3.06.A.)
.....	(Special Rules-Water 3.06.)

GSR refers to the General Service Rules. TPR refers to the Telecommunications Providers Rules.

## **SECTION 8. ACCOUNTING STANDARDS AND GENERAL RATE CHANGE APPLICATION FILING REQUIREMENTS**

### **Rule 8.01    Purpose**

#### **(a)    Purpose**

This Section sets forth certain ongoing standards and requirements regarding accounting information and recordkeeping, and defines the specific financial and statistical information that must be filed by a jurisdictional public utility with a General Rate Change Application. This Section is not intended to establish any ratemaking principles or modify the provisions of Arkansas statutes. This Section does not preclude filing any additional data, information, or calculations not herein specified.

#### **(b)    Exclusion**

This Section does not apply to Telecommunications Providers other than Non-electing ILECs and Section 12 Electing Companies.

### **Rule 8.02    Uniform System of Accounts**

All jurisdictional public utilities shall adhere to the applicable Uniform System of Accounts in maintaining their books and records.

### **Rule 8.03    Production of Out-of-State Books and Records**

A jurisdictional public utility shall produce or deliver in this State or in another mutually-agreeable location all or any of its formal accounting records and related documents the Commission or Staff may request. With Commission approval, the utility may provide verified copies of original records and documents.

### **Rule 8.04    Separation of Non-Jurisdictional Properties, Revenues and Expenses**

Utility properties, operating revenues, and operating expenses associated with providing a utility's service not subject to the Commission's jurisdiction must be specifically identified and properly separated. In addition, all non-utility properties, revenues, and expenses shall likewise be segregated.



### Rule 8.05     Staff Assistance in Preparing a Filing

The Staff, consistent with other workload requirements, may provide general guidance when needed to an Applicant in preparing a filing. Applicants desiring guidance are encouraged to inform the Staff of their intention to make a filing pursuant to this Section 8 at the earliest practicable date.

### Rule 8.06     Notice of Intention to File a General Rate Change Application

Pursuant to Ark. Code Ann. § 23-4-401, every Applicant shall notify the Secretary in writing of its intention to file a General Rate Change Application at least sixty (60) days but no earlier than ninety (90) days before the application is filed. Following the receipt of the written notification of an Applicant's intention to file a General Rate Change Application, the Executive Director of the Commission shall provide to the Applicant a schedule of the approximate dates on which Staff will conduct its field investigation and audit of the intended rate request. Pursuant to the written petition by the Applicant and for reasonable cause shown therein, the Commission may grant a waiver of compliance to this Rule 8.06.

### Rule 8.07     Public Notice of Filing

- (a) An Applicant shall give public notice of the filing of a General Rate Change Application in the following manner, within thirty (30) days of the filing, unless the Commission otherwise provides. The Applicant shall publish the notice once each week for two (2) consecutive weeks in a newspaper(s) having substantial circulation in the area served by the Applicant. The notice shall be at least one-eighth (1/8) page with print in at least six (6) point type. The Applicant shall also display the notice prominently on its website. Said notice shall contain the following information:
- (1) Name of Applicant;
  - (2) A general description of the purpose of the Application, the total amount of the requested rate increase, the classes of customers affected, and the approximate amount of the dollar change and percentage change proposed for each rate schedule under test period conditions together with a brief statement that rates of other rate schedules or services may be affected by the final Commission order;
  - (3) The present and proposed unit price, telephone basic service charge, and customer charges, if any, based on the respective per unit prices such as per kw, per kwh, per gallon, per ccf, and per mcf contained in the present rate schedule and the proposed rate

schedule;

- (4) A statement that the Applicant will, upon request, provide to the consumer an estimate of the calculated average monthly dollar amount by which the proposed rates will change the customer's utility bill. If applicable, the estimate shall be based on the consumer's average consumption level, unless such consumption data is not reasonably ascertainable by the Applicant. The Applicant may advise those customers requesting the calculated average monthly dollar amount that the information is subject to the following qualifications:
    - (A) the calculated average is an estimate which may change depending upon the rates the Commission approves and the customer's actual usage; and
    - (B) the calculated average will be provided in only those cases where a customer's proposed rate schedule is the same rate schedule under which the customer presently takes service;
  - (5) The Application's filing date, the Commission Docket number, and the proposed effective date of the new rates;
  - (6) If an Applicant also files a petition for immediate and impelling relief pursuant to Ark. Code Ann. § 23-4-408, the notice shall include:
    - (A) the date the Applicant is requesting the rates go into effect under bond;
    - (B) a statement that the amount requested is subject to refund with interest; and
    - (C) the information required by subsections (a)(2), (a)(3), and (a)(4) to the extent that the information differs from that provided for the General Rate Change Application;
  - (7) A statement that these RPPs provide procedures for interested Persons to intervene as a Party, make limited appearances, or submit public comments in writing or orally at the hearing, and that further information may be obtained by contacting the Secretary or viewing the Commission's website; and
  - (8) The name, address, phone number and email address of the Secretary and the URL address of the Commission's website.
- (b) The Applicant shall file proof of notice of publication by filing a copy of the

notice in accordance with Rule 4.03(c), except that the proof shall be filed at least sixty (60) days before the date of the hearing.

**Rule 8.08**     **Information Required at Filing of General Rate Change Application**

- (a) Testimony and exhibits shall be filed simultaneously with the General Rate Change Application in conformance with Rule 4.08.
- (b) Workpapers shall be provided to Staff simultaneously with the General Rate Change Application in conformance with Rule 4.08.
- (c) The Applicant shall prepare and file all applicable schedules contained in Appendices 8-1 and 8-1A of this Section 8 (Minimum Filing Requirements). Appendix 8-1A applies only to electric utilities.
- (d) Substitute Schedule Option
  - (1) If the requirements in (2) through (6) are met, an Applicant may provide a substitute schedule in lieu of one or more of the following Appendix 8-1 schedules:  

B-5, B-6, B-7, B-8, B-9, C-6, C-7, D-6.2, D-6.3, D-7, E-3, E-4, E-5, E-6, E-9, E-10, E-13, E-17, G-4, G-5.1, G-5.2, H-4, and H-5, and for any utility that is a wholly-owned subsidiary of another company, D-1.1, D-1.2, D-1.3, D-2.1, D-2.2, D-2.3, D-3.1, D-3.2, D-3.3, D-4, D-5.1, D-5.2, D-5.3, D-6.1, D-6.2, D-6.3, and E-1 for the parent corporation on a stand-alone basis.
  - (2) The substitute schedule provided is in a comparable format to the Appendix 8-1 schedule which the substitute schedule replaces.
  - (3) The substitute schedule provided includes all of the data or information required on the Appendix 8-1 schedule which the substitute schedule replaces including following any instructions, explanations, notes and supporting Workpaper requirements.
  - (4) All references to account or subaccount in the substitute schedule conform to the applicable Uniform System of Accounts.
  - (5) The substitute schedule complies with the requirements of Rule 8.09(c) through (i).
  - (6) The substitute schedule is filed as part of the Application in the place of the required Appendix 8-1 schedule.
- (e) For a recommendation made, position taken, or conclusion reached that is based on a statistical analysis or other study, including but not limited to

the cost of equity, depreciation rate studies, billing determinant analysis, or the cost of service study, the Workpapers shall additionally include a complete description of the statistical model utilized, the data utilized, and the results of the analysis if not addressed in testimony or exhibits.

- (f) If changes to existing depreciation rates are requested, the Applicant must provide a comprehensive depreciation study, or for electric cooperatives the Rural Utilities Services guideline, which addresses life and salvage estimates in support of such new rates.
- (g) The Applicant, except Telecommunications Providers, shall submit a cost of service study to support a General Rate Change Application.
- (h) The Applicant shall provide to Staff the computer model including the software necessary for Staff to independently run the Applicant's cost of service. Alternatively, the Applicant may provide Staff reasonable access to the computer model at the Commission's offices or at another mutually agreeable location. Such access shall be adequate to enable Staff to replicate the results and may include the Applicant manipulating the computer model according to instructions or inputs from Staff.
- (i) If the Applicant relies on proprietary programs or applications for computations to support its General Rate Change Application, copies of those programs must be provided to Staff with explanations and instructions adequate to replicate the results. Alternatively, the Applicant may provide Staff reasonable access to the programs at the Commission's offices, or at another mutually agreeable location. Such access shall be adequate to enable Staff to replicate the results and may include the Applicant manipulating the programs according to instructions or inputs from Staff. When the Applicant seeks to limit access to the program or application to other Parties, the Commission will determine the appropriate access to the program or its output.
- (j) The Applicant shall file only those tariff schedule pages which are new or proposed to be revised and in conformance with the applicable provisions of RPP 7.02 and 7.03.

#### Rule 8.09    Filing Instructions

In preparing the information specified in this Section, the Applicant shall follow these instructions:

- (a) The Appendix schedule formats, instructions, explanations, notes, and supporting Workpapers are a part of the requirements of this Section 8. Schedule forms are available on the Commission's web-site.

- (b) All Appendix schedules shall conform to the schedule format as closely as practicable and all instructions, explanations, and notes shall be followed. All references to account or subaccount in the Appendix schedules shall conform to the applicable Uniform System of Accounts.
- (c) In addition to Workpapers, exhibits, Appendix schedules, and tariff schedule pages shall be provided to Staff electronically in native format. Electronic copies shall be clearly legible and complete.
- (d) All Appendix schedules shall be mathematically correct and properly cross-referenced.
- (e) Amounts may be rounded, where appropriate, to the nearest thousand dollars for Major Electric and Gas Utilities, and Class A Telecommunications Providers. Amounts may be rounded to the nearest hundred dollars for all other utilities.
- (f) All Appendix schedules shall be numbered as provided in Appendices 8-1 and 8-1A, where applicable. Appendix schedules prepared by all classes of utilities shall contain a reference to the filing date.
- (g) Appendix schedules, titles, and row and column headings shall clearly indicate the nature and intent of the schedule and the dates or time periods covered. Row and column headings shall be clearly indicated.
- (h) All formulae and viable links shall be left intact for all electronic files and all electronic files shall be provided in the native format including, but not limited to, the application Appendix schedules, Workpapers, and cost of service study.
- (i) Any Workpaper that is a document, not publicly available or readily accessible, which is referenced in the application and supporting Appendix schedules, testimony, exhibits, or Workpapers, shall also be provided. If a Workpaper is a document that is publicly available on the Internet, a specific link (URL address) to the Workpaper may be provided. If a Workpaper is a document which is a study, report, book, periodical, or other publication not publicly available or readily accessible to the Parties, the Applicant may provide copies of the relevant pages from such Workpaper rather than copies of the entire study, report, book, periodical, or other publication, but all pages necessary to understand the relevant pages in context shall be provided. Upon request, the Applicant shall make available the entirety of such Workpaper for inspection at the Commission's offices or at another mutually agreeable location.
- (j) Supporting testimony and/or exhibits shall address, at a minimum:
  - (1) A description of the adjustments proposed, projections made,

recommendations made, positions taken, and conclusions reached;

- (2) Any material tariff modification proposed; and
- (3) Any other proposed change for which the Applicant requests Commission approval.

**Rule 8.10**    **Waiver of Requirements**

The Applicant may omit specific items of information from the filing only with prior Commission approval.

**Rule 8.11**    **Failure to Comply with Filing Requirements**

(a)    Determination of Deficiencies

Staff shall review each filing to ascertain whether it complies with the provisions of these RPPs. If Staff determines that any deficiencies exist Staff shall file a notice detailing the deficiencies within ten (10) days after the Applicant's application and required exhibits and schedules are filed. The Applicant shall correct the deficiencies in writing, within fourteen (14) days of filing of the notification of deficiency, or upon objection by the Applicant, within such longer period as the Commission shall find appropriate.

(b)    Staff shall review the filing as revised by the Applicant to determine compliance with all information required by these RPPs. No more than seven (7) days from the filing as revised, Staff shall file:

- (1)    A statement of compliance; or
- (2)    A second notice of deficiencies, listing each requirement not met and a brief explanation in support. This second notice of deficiencies shall not include any Deficiencies that were not equally present in the initial application and identified by Staff pursuant to (a).

(c)    Failure by the Applicant to comply in a timely manner may be grounds to dismiss the application.

(d)    Sanctions

If the Commission determines that the nature and extent of the deficiencies in the Applicant's filing are of such nature and scope whereby

the orderly review and analysis of the filing may be materially impaired or delayed, the Commission, provided it deems such action appropriate and in the public interest, shall issue an order directing the Applicant to show cause why the filing should not be dismissed for want of sufficient compliance to constitute a "filing" within the intent and meaning of the applicable law.

**Rule 8.12**     **Appendix Schedules and Cost of Service Information Required Subsequent to Initial Filing**

- (a) Staff may request updates of one or more of the schedules specified in Subsections (b) and (c), and the Applicant shall be required to provide such updated schedules in accordance with the time frames indicated.
- (b) If a General Rate Change Application uses a test year derived from any projected data, the Applicant, at Staff's request, shall as soon as practicable after such data becomes available provide updated Appendix 8-1 schedules B-1, B-2, B-4, B-5, C-1, C-2, C-9, C-10, C-11, C-12, D-6.2, and E-11.1 to reflect actual data; and updated Appendix 8-1 schedules D-1.3, D-2.3, D-3.3, D-5.3, D-6.1, and E-1 with each schedule beginning with actual per book information as of the end of the test year. An Applicant which is a wholly-owned subsidiary of another company, at Staff's request, shall also provide the information for its parent corporation on a stand-alone basis for schedules D-1.3, D-2.3, D-3.3, D-5.3, D-6.1, and E-1 as required in Appendix 8-1 with each schedule beginning with actual per book information as of the end of the test year.
- (c) The Applicant, at Staff's request, shall provide updated schedules reflecting the most current information available, whether for the test year or pro forma year period, ninety (90) days in advance of the filing deadline for Staff's Direct Testimony and forty-five (45) days in advance of the filing deadline for Staff's Surrebuttal Testimony for Appendix 8-1 schedules B-1, B-2, B-4, B-5, B-8, B-9, C-9, C-10, D-6.2, and E-11.2 to reflect the most current information available; and for Appendix 8-1 schedules D-1.3, D-2.3, D-3.3, D-5.3, D-6.1, and E-1 with each schedule beginning with actual per book information as of the most current information available. An Applicant which is a wholly-owned subsidiary of another company, at Staff's request, shall also provide the information for its parent corporation on a stand-alone basis for schedules D-1.3, D-2.3, D-3.3, D-5.3, D-6.1, and E-1 as required in Appendix 8-1 with each schedule beginning with actual per book information as of the most current information available.
- (d) To the extent that the revenue requirement of any class is effectively revised by written testimony or exhibits by the Applicant within the course of the proceeding, a revised cost of service study (including Appendix 8-1

Schedules A-1, B-1, B-2, C-1, C-2, D-1.3, G-1, G-2, G-3, and G-4 and Appendix 8-1A Schedules (if applicable) shall be filed with the Applicant's testimony or exhibits.

**Rule 8.13**     **Immediate and Impelling Relief**

(a)     **Separate Petition Required in General Rate Case**

Whenever a Petition for immediate and impelling relief is filed pursuant to Ark. Code Ann. § 23-4-408 contemporaneously with a General Rate Change Application, the Petition shall not be incorporated within the General Rate Change Application, but shall be a separate Petition designated "Petition for Immediate and Impelling Relief" and shall be filed in the same Docket as the General Rate Change Application.

(b)     **Content of Petition and Supporting Testimony**

The Petition shall explain the circumstances justifying such relief and be accompanied by supporting testimony which shall include a discussion of the following information:

- (1)     The Applicant's ability to meet current payroll, debt service costs, accounts payable, and other fixed costs and expenses which represent actual cash outlays, and which are or will be currently due and owing;
- (2)     An analysis of the Applicant's rate base, with short term and long term Construction Work in Progress (CWIP) stated separately;
- (3)     The overall rate of return and return on equity, on an unadjusted book basis, currently being earned, and the return on equity granted to the Applicant in its most recent rate application. The Docket number, order number, and date of order shall be stated;
- (4)     A description of the duration of time the Applicant has experienced one or more of the circumstances requiring immediate relief (*i.e.*, how long has the Applicant been unable to meet payroll or debt service); and
- (5)     Any other information deemed by the Applicant to be relevant to its Petition.

(c)     **Exhibits**



- (1) A Petition for immediate and impelling relief shall contain exhibits showing actual, unadjusted data, with no year end level adjustments or projections. The exhibits shall reflect the period representing twelve (12) consecutive historical months inclusive of all historical months in the test year in the General Rate Change Application (the I & I Period). The Applicant may provide additional exhibits showing its projected revenue and expenses.
- (2) Exhibits in support of the Petition shall be attached to the Petition and shall be labeled as exhibits in support of the Petition.
- (3) The exhibits shall include, at a minimum, the following:
  - (A) Income statement for the I & I Period absent any adjustments;
  - (B) Rate base items, thirteen (13) month averaged. Net plant in service shall be measured as an average of the balances at the beginning and end of the I & I Period. Both the income statement and rate base components as contemplated in subparts (3)(A) and (3)(B) shall be jurisdictionally allocated using the same factors approved or stipulated in the Applicant's most recent Arkansas rate case;
  - (C) Calculation of an interim jurisdictional revenue requirement using the weighted sum of the embedded cost of debt, equity, and other funding sources as of the end of the I & I Period, and the allocated rate base and expenses determined in subpart (3)(B) of this Rule 8.13. This exhibit shall also include a calculation of the revenue deficiency, which shall be the difference between the above-described revenue requirement and unadjusted I & I Period rate schedule revenue for Arkansas retail customers.

If allocation factors are not available from the Applicant's most recent general rate case, as contemplated in subpart (3)(B) of this Rule 8.13, then the interim jurisdictional revenue requirement shall be determined by calculating the total company revenue requirement and allocating it to the jurisdiction based on the ratio of the Arkansas retail revenue requirement to the total company revenue requirement in the Applicant's last approved General Rate Change Application; and

- (D) Cash flow statement for the twelve (12) month I & I Period. A cash flow statement is a statement of cash receipts and disbursements. The statement should include the beginning

cash balance and cash receipts and cash disbursements for each month of the I & I Period, and should indicate the nature and amount of obligations unpaid each month due to lack of funds.

(d) Award of Immediate and Impelling Relief

In the event that the Commission finds that the Applicant qualifies for immediate and impelling relief, the Commission shall calculate the revenue requirement and require a rate structure for the interim rates as follows:

(1) Calculation of Revenue Requirement

The Commission shall determine a revenue requirement to be calculated on the Commission's ordered rate of return, rate base and expenses. Under a showing of extraordinary circumstances, the Commission may allow interim recovery of a return on part or all of the Applicant's CWIP.

(2) Rate Structure and Design

The Commission, upon proper finding, shall approve interim rates to recover the approved Arkansas retail revenue requirement. Such rates shall be designed to produce uniform increases above currently-effective rates while maintaining the general structure and design of the currently-effective rates. If such procedure is deemed to result in a gross inequity for any customer or class of customers, the Commission may order such other rates as it may deem more appropriate.

## **SECTION 9. COMPLAINTS**

### **Rule 9.01    Informal Complaints**

Informal Complaints will be investigated and handled by the Staff in the normal course of its activities and shall not be formally docketed.

### **Rule 9.02    Formal Complaints**

- (a) Each Formal Complaint shall fully and clearly set out any act or thing done or not done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any Commission order or Rule and the exact relief desired. The complaint shall contain facts and information sufficient to fully apprise the Commission and the respondent of the facts and issues involved and to enable the respondent to prepare its answer to the complaint.
- (b) Formal Complaints shall be docketed and shall comply with the pleading and service requirements set forth in Section 3 except as specified by this Section. If the complaint is made by a municipality challenging the reasonableness of any rate or charge, or act or proposed act by any public utility, a certified copy of the resolution of the governing body of said municipality directing the filing of the complaint shall be attached.
- (c) If the Commission finds that a Formal Complaint was brought in bad faith and that there was no genuine basis for a dispute, the Commission may award the prevailing Party interest on the disputed amount from the date it was due.
- (d) Procedures
  - (1) Upon the filing of a Formal Complaint, the Secretary shall immediately serve a copy thereof upon each respondent along with the Summons in Appendix 9-1 and notify each respondent that the complaint must be answered in writing within twenty (20) days after the date of service and that in case of failure to answer, an order may be entered against the respondent for the relief demanded in the complaint. The Commission may, for good cause shown, require the answer to be filed within a shorter time or extend the time in which an answer may be filed.
  - (2) Respondent's answer shall contain a specific denial of such material allegations of the complaint as are controverted and a statement of any new matter constituting a defense. If respondent has

insufficient information to specifically admit or deny an allegation, respondent may so state and deny the allegation upon that ground.

- (3) Any respondent failing to answer within the period prescribed shall be deemed in default and all relevant basic facts stated in said complaint shall be deemed admitted, unless the Commission waives the default for good cause shown.
- (4) If a respondent shall make satisfaction before answering, the respondent may in its answer state, without more, the fact and manner of satisfaction. If satisfaction is made after the filing and service of any answer, a supplemental answer setting forth only the fact and manner of satisfaction shall be filed immediately upon such satisfaction. The answer or supplemental answer alleging satisfaction shall contain a prominent notice that the complaint shall be deemed fully resolved unless the Complainant files a response disputing the alleged satisfaction within twenty (20) days after the answer or supplemental answer is filed. Whenever satisfaction is alleged by the respondent in accordance with this subsection and the Complainant does not file a timely response, the complaint shall be dismissed.

Appendix 9-1

BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION

SUMMONS FOR COMPLAINT

Plaintiff: \_\_\_\_\_

vs. Docket No. \_\_\_\_\_

Defendant: \_\_\_\_\_

THE STATE OF ARKANSAS TO THE DEFENDANT:  
\_\_\_\_\_

NOTICE:

1. You are hereby notified that a complaint has been filed against you; the relief asked is stated in the attached complaint.

2. The attached complaint will be considered admitted by you and an order by default may be entered against you for the relief asked in the complaint unless you file a pleading and thereafter appear and present your defense. Your pleading or answer must meet the following requirements:

- A. It must be in writing, and otherwise comply with the Arkansas Public Service Commission's Rules of Practice and Procedure.
- B. It must be filed in the Commission Secretary's office within twenty (20) days from the day you were served with this summons.

3. If you desire to be represented by an attorney you should immediately contact your attorney so that an answer can be filed for you within the time allowed.

4. Additional notices:

Witness my hand and the seal of the Commission this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Address of Commission Secretary's office: 1000 Center Street  
P.O. Box 400  
Little Rock, AR 72203-0400  
www.arkansas.gov/psc

(SEAL)

\_\_\_\_\_  
Secretary of the Commission

## **SECTION 10. FINANCING AND CORPORATE STRUCTURE TRANSACTIONS**

### Rule 10.01 Stocks, Stock Certificates, Bonds, Notes, and Other Evidences of Indebtedness and Creation of Liens

(a) Subject Matter

- (1) Public utilities incorporated under the laws of this State must file a Formal Application for authority to issue stocks, stock certificates, bonds, notes, or other evidences of indebtedness payable at periods of more than thirty-six (36) months after the date of issuance thereof.
- (2) Public utilities incorporated under the laws of any state or foreign country must file a Formal Application for authority to create liens upon properties in this State.

(Ark. Code Ann. §§ 23-3-103 to 107)

**EXCEPTION:** This Rule 10.01 does not apply to Telecommunications Providers, unless such provider is a Non-electing ILEC.

(b) Content

- (1) When application is made by any utility for an order authorizing the issue of stocks, stock certificates, or bonds, notes, or other evidences of indebtedness payable at periods of more than thirty-six (36) months after the date thereof, under the provisions of Ark. Code Ann. §§ 23-3-103 to 107, or to create a lien on property in this state, the application shall include, in addition to any other requirements of any statute, order, or Rule:
  - (A) A general description of the utility's property with a statement of the original cost of the same, or the book value thereof if the original cost cannot be reasonably determined;
  - (B) The amount and kind of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of bonds, notes, or other evidences of indebtedness, if any, which the public utility desires to issue, with terms, anticipated rate of interest, and whether and how to be secured;
  - (C) A list of any liens or other evidence of indebtedness upon

property of the utility, giving the name of the lienholder or other debtholder and the amount of indebtedness actually secured;

- (D) The use to which the capital to be secured by the issue of such stock or stock certificates, bonds, notes, or other evidences of indebtedness is to be put;
  - (E) The anticipated interest rate or dividend rate for any debt financing or preferred stock with a description of the basis for the estimation;
  - (F) The estimated costs of the issue and sale of each proposed financing with a description of the basis for the estimation;
  - (G) A representation that the aggregate amount of stocks, stock certificates, notes, bonds, or other evidences of indebtedness, including the proposed financings, will not exceed the fair value of properties of the issuer and the estimated cost of the issuance and sale of the issues, with a description of the basis for such representation;
  - (H) Identification by Docket number and order number of any current authorizations to issue securities, the amount of any such authorization which has not been issued, and the expiration date of such authorization;
  - (I) Such other facts and information which may be material or pertinent for consideration by the Commission or which may be required by order of the Commission;
  - (J) The beginning and end time frame for which such authorization is sought; and
  - (K) The date by which an order is required, and if filed less than ninety (90) days prior to such requested date, an explanation of the basis for the need for an expedited order.
- (2) When application is made by any public utility pursuant to this section which concurrently therewith seeks an appropriate order from the United States Securities and Exchange Commission (SEC), or other federal agency, said utility should identify by proceeding or other appropriate reference the approval sought or received. Said utility may file its petition, reciting the foregoing and submitting therewith copies of all such documents and exhibits on file, or to be filed, with the SEC, or other federal agency, in satisfaction of one or more of the respective requirements of subsection (b)(1) of this Rule 10.01. Said documents and exhibits may be filed either at the

time the petition is filed with this Commission or simultaneously with its filing with the SEC or other federal agency. However, the Commission, upon its own motion, may require the Applicant utility to also submit any or all of the information required by subsection (b)(1) of this Rule 10.01 in addition to such other information as the Commission deems pertinent.

(3) The following exhibits shall be filed with the application:

- (A) Copy of Deeds of Trust or mortgages or other security instruments, if any, unless the same have already been filed with the Commission, in which case they may be made an exhibit by reference; and
- (B) Financial statements (balance sheet and income statement) per books and *pro forma* showing separately the effect of each proposed financing, including any anticipated retirements, refunding, or refinancing of current issues and the cost of issuance.

(c) Reports

The Commission may require public utilities to account for the disposition of the proceeds or to report the details of financings authorized under this Rule 10.01.

Rule 10.02 Organization, Reorganization, Consolidation, Merger, Acquisition, or Stock Purchase of a Public Utility, or Sale, Acquisition, Lease, or Rent of Utility Plant or Properties

(a) Subject Matter

Public utilities must file a Formal Application for approval of the organization, reorganization, consolidation, merger, acquisition, or stock purchase of a public utility, or the sale, acquisition, lease or rental of any utility plant or property constituting an operating unit or system under Ark. Code Ann. §§ 23-3-101 and 23-3-102.

**EXCEPTION:** This Rule 10.02 does not apply to Telecommunications Providers, unless such provider is a Non-electing ILEC.

(b) Content

In addition to other requirements of any statute, order, or Rule, the application shall contain:

- (1) The reasons on the part of each Applicant for entering into the



proposed organization, reorganization, consolidation, merger, acquisition, or stock purchase of a public utility or the sale, lease, or rental of any utility plant or property constituting an operating unit or system and a showing that it is consistent with the public interest;

- (2) An accurate detailed description of the plant or property affected, together with the original cost to Applicant and Applicant's statement as to the present value thereof;
- (3) If required by the Commission, financial statements (balance sheet and income statement) per books and *pro forma* showing separately the effect of the proposed transaction;
- (4) A detailed description of the instrument or proposed instrument used in the transaction and a copy, in draft form if necessary, as soon as available;
- (5) Documentation of approval of the proposed transaction by the public utility board of directors;
- (6) Identification of the anticipated impacts on Arkansas ratepayers, including the quality of service and potential rate impacts with an explanation of how such impacts were determined;
- (7) Identification of all other regulatory approvals required or being sought; and
- (8) All information necessary for valuation of any property pursuant to Ark. Code Ann. §23-4-111, if applicable.

**Rule 10.03 Merger or Acquisition of Control of Public Utilities Without Board Approval**

The proposed merger or acquisition or attempted acquisition of control of a public utility which has not been approved by the public utility's board of directors shall require the filing of a Formal Application under each of the provisions of Ark. Code Ann. §§23-3-301, *et seq.*

**EXCEPTION:** This Rule 10.03 does not apply to Telecommunications Providers, unless such provider is a Non-electing ILEC.