

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

PUBLIC SERVICE COMMISSION

PRACTICE AND PROCEDURE BEFORE THE COMMISSION

(By authority conferred on the public service commission by section 7 of Act No. 106 of the Public Acts of 1909, as amended, section 1 of Act No. 144 of the Public Acts of 1909, as amended, section 2 of Act No. 300 of the Public Acts of 1909, as amended, section 13 of Act No. 206 of the Public Acts of 1913, as amended, section 5 of Act No. 419 of the Public Acts of 1919, as amended, section 6 of article 5 of Act No. 254 of the Public Acts of 1933, as amended, section 6 of Act No. 3 of the Public Acts of 1939, as amended, and section 33 of Act No. 306 of the Public Acts of 1969, as amended, being SS460.557, 460.301, 462.2, 484.113, 460.55, 479.6, 460.6, and 24.233 of the Michigan Compiled Laws)

PART 1. GENERAL PROVISIONS

R 460.17101 Definitions.

Rule 101. As used in these rules:

- (a) "Applicant" means one who applies, requests, or petitions for permission, authorization, or approval.
- (b) "Commission" means the Michigan public service commission.
- (c) "Complainant" means one who files a complaint pursuant to these rules.
- (d) "Complaint" means an initial pleading filed by a complainant.
- (e) "Intervenor" means one permitted to intervene in a proceeding pursuant to these rules.
- (f) "Party" means a person by or against whom a proceeding is commenced or a person who is permitted to intervene, a person who protests an application for motor carrier authority, or the staff of the commission in any proceeding in which the staff participates. Parties to a proceeding shall designate themselves as applicants, complainants, intervenors, respondents, protestants, or staff according to the nature of the proceeding and the relationship of the parties.
- (g) "Person" means any of the following entities:
 - (i) A natural person.
 - (ii) Corporation.
 - (iii) Municipal corporation.
 - (iv) Public corporation.
 - (v) Body politic.
 - (vi) Government agency.
 - (vii) Association.
 - (viii) Partnership.
 - (ix) Receiver.
 - (x) Joint venture.
 - (xi) Trustee.
 - (xii) Common law or statutory trust guardian.
 - (xiii) Executor.
 - (xiv) Administrator.
 - (xv) Fiduciary of any kind.
 - (xvi) Staff.
- (h) "Pleading" means any of the following:
 - (i) An application, petition, complaint, or other document requesting initiation of a proceeding before the commission.
 - (ii) An answer to a document described in paragraph (i) of this subdivision.
 - (iii) A reply to an answer described in paragraph (ii) of this subdivision.
 - (iv) A petition to intervene or the staff's written appearance or notice of intention to participate.
 - (v) An objection to a petition to intervene.

(i) "Presiding officer" means the person assigned by the commission to preside over and hear a proceeding or part of a proceeding held before the commission. The commission or a commissioner is a presiding officer only when it or he or she presides over and hears a proceeding or part of a proceeding.

(j) "Prima facie case" means a case in which, assuming all the facts in the complaint are true, the complainant is requesting a remedy that is within the jurisdiction of the commission to grant.

(k) "Proof of publication" means an affidavit stating the facts of publication, including the date, publication, and manner of publication with a copy of the publication attached.

(l) "Proof of service" means an affidavit stating the facts of service, including the date, place, and manner of service and the parties served.

(m) "Protestant" means a motor carrier who files a written protest to an application for motor carrier authority pursuant to the provisions of Act No. 254 of the Public Acts of 1933, as amended, being S475.1 et seq. of the Michigan Compiled Laws.

(n) "Respondent" means one against whom a complaint is filed or against whom an investigation, order to show cause, or other proceeding on the commission's own motion is commenced and a utility rendering the same kind of service within a municipality or part of a municipality proposed to be served by another utility in a proceeding under the provisions of R 460.17601.

(o) "Secretary" means the person designated by the commission as its secretary or, in the absence of the secretary, the person designated by the commission as its acting secretary.

(p) "Staff" means an employee or employees of the commission other than the presiding officer and commissioners.

History: 1992 AACS.

R 460.17103 Applicability; construction.

Rule 103. (1) These rules govern practice and procedure in all proceedings before the commission, except as otherwise provided by statute or these rules. In areas not addressed by these rules, the presiding officer may rely on appropriate provisions of the currently effective Michigan court rules.

(2) These rules shall be liberally construed to secure a just, economical, and expeditious determination of the issues presented.

History: 1992 AACS.

R 460.17105 Information, documents, and communications.

Rule 105. (1) Pleadings and other documents shall be in writing and shall conform to all requirements of these rules. The secretary, upon reasonable request, shall provide advice about the form of pleadings and other documents to be filed in a proceeding.

(2) Pleadings and other documents filed with the commission shall be printed, typewritten, or reproduced and shall be on paper 8 1/2 inches by 11 inches in size, or folded to that size, or shall be on forms supplied by the commission, except when specific permission to the contrary is granted by the commission, its secretary, or the presiding officer.

History: 1992 AACS.

R 460.17107 Pleadings; verification and effect; adoption by reference; signature of attorney.

Rule 107. (1) Unless otherwise provided by these rules, statute, or commission order, a pleading need not be verified or accompanied by an affidavit.

(2) Statements in a pleading may be adopted by reference when they are clearly identified and a copy is attached.

(3) Every pleading of a party represented by an attorney shall be signed by an attorney of record. A party who is not represented by an attorney shall sign the pleading.

(4) If a pleading is not signed, it shall be subject to rejection by the presiding officer or the commission unless it is signed promptly after the omission is called to the attention of the pleader.

(5) The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer of all of the following:

(a) He or she has read the pleading.

(b) To the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(c) The pleading is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of the proceeding.

History: 1992 AACS.

R 460.17109 Filing and service of documents.

Rule 109. (1) Pleadings and other documents are filed with the commission by filing with the secretary. Unless otherwise provided by statute or order of the commission or presiding officer, the filing and service of notices, pleadings, motions, and other documents or copies required to be filed or served in a proceeding may be made by deposit with the United States postal service for first-class mailing or by delivery in person.

(2) Unless otherwise provided by rule or statute, the date of filing is the date the pleading or other document is received by the commission. The date of service is the date it is deposited with the United States postal service for first-class mailing or is delivered in person, unless otherwise provided by the commission.

(3) In all utility cases, unless fewer copies are permitted by the commission, the presiding officer, or the secretary, a party shall file an original and 15 copies of each document that the party is required to file or that the party elects to file. In all motor carrier cases, a party shall file an original and 7 copies of each document.

(4) When directed to do so by the presiding officer or the Commission, a party shall file notices, pleadings, motions, and other documents in electronic media, which shall be defined as a 5 1/4" IBM compatible disk containing the information in American Standard Code for Information Interchange (ASCII) form, in addition to the copies required in subsection 3 of this rule.

(5) If the required number of copies are not filed, a document shall be subject to rejection by the presiding officer or the commission unless the party files the additional copies promptly after the omission is called to the attention of the party.

(6) A party shall serve, on all other parties, a copy of each document that the party files with the commission. After notice of hearing has been given in a proceeding, a party shall serve, on the assigned presiding officer or, if a presiding officer has not been assigned, on the commission's division of administrative law judges, a copy of each document that the party files.

(7) When a party has appeared by attorney, service upon the attorney is service upon the party.

(8) Service on municipalities shall be made on supervisors of townships and on clerks of other municipalities.

(9) Within 7 days after a document is served, the person serving the document shall file proof of service or acceptance of service by the person served or that person's attorney.

History: 1992 AACS.

R 460.17111 Proceedings; location; time.

Rule 111. Meetings of the commission and hearings in all proceedings held pursuant to any statute or these rules shall be held in Lansing or such other place as the commission may direct on such days and at such hours as the commission, the secretary, or the presiding officer may direct.

History: 1992 AACS.

R 460.17113 Cost of copies of decisions and transcripts.

Rule 113. A copy of the decision or order in a proceeding will be furnished free of charge to each party to the proceeding. Copies of transcripts and additional copies of decisions shall be furnished at rates consistent with current policy and statutes.

History: 1992 AACS.

R 460.17115 Computation of time.

Rule 115. In computing any period of time prescribed or allowed by these rules, by order of the commission or the presiding officer, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a day on which the commission's offices are not open for business, in which case the period will run until the end of the next day on which the commission's offices are open for business.

History: 1992 AACS.

R 460.17117 Rescission.

Rule 117. R 460.11 to R 460.99 of the Michigan Administrative Code, appearing on pages 4682 to 4695 of the 1979 Michigan Administrative Code, are rescinded.

History: 1992 AACS.

PART 2. INTERVENTIONS

R 460.17201 Petitions.

Rule 201. (1) A person who is not a complainant, respondent, protestant, applicant, or staff, as defined in these rules, and who claims an interest in a proceeding may petition for leave to intervene. Unless otherwise provided in the notice of hearing, a petition for leave to intervene shall be filed with the commission not less than 7 days before the date set for the initial hearing or prehearing conference, and the petition shall be served on all parties to the proceeding. All parties shall have an adequate opportunity to file objections to, and to be heard with respect to, the petition for leave to intervene. A petition for leave to intervene that is not filed in a timely manner may be granted upon a showing of good cause and a showing that a grant of the petition will not delay the proceeding or unduly prejudice any party to the proceeding. Except for good cause, an intervenor whose petition is not filed in a timely manner, but who is nevertheless granted leave to intervene, shall be bound by the record and procedural schedules developed before the granting of leave to intervene.

(2) A petition for leave to intervene shall set out clearly and concisely the facts supporting the petitioner's alleged right or interest, the grounds of the proposed intervention, and the position of the petitioner in the proceeding to fully and completely advise the parties and the commission of the specific issues of fact or law to be raised or controverted. If affirmative relief is sought, the petition for leave to intervene shall specify that relief. Prayers for relief may be stated in the alternative.

History: 1992 AACS.

R 460.17203 Objections; answers.

Rule 203. Any party may file an objection to a petition for leave to intervene or an answer to a request for affirmative relief contained in a petition for leave to intervene on or before the date set for the

initial hearing or prehearing conference. The objection or answer shall be served on the person filing the petition and all parties. Any party may file an objection or answer to a petition that is not filed in a timely manner on or before the date set by the presiding officer. The objection shall set out clearly the supporting facts, law, and argument.

History: 1992 AACS.

R 460.17205 Grant or denial.

Rule 205. (1) At the initial hearing or prehearing conference or as soon as otherwise practicable and appropriate, the presiding officer shall grant or deny, in whole or in part, a petition for leave to intervene or, if appropriate, may authorize limited participation.

(2) When 2 or more parties have substantially identical interests and positions, the presiding officer may, to avoid repetitive, cumulative, or redundant evidence, require coordinated participation.

History: 1992 AACS.

R 460.17207 Participation without intervention.

Rule 207. (1) In a proceeding to fix rates or investigate conditions of service of a utility or motor carrier subject to the jurisdiction of the commission, a person may appear without a formal petition for leave to intervene. There shall be a full disclosure of the identity of the person and the interest of the person in the proceeding. The position to be taken shall be fully and fairly stated, the contentions of the person shall be reasonably pertinent to the issues in the proceeding, and any right to unduly broaden the issues shall be disclaimed.

(2) An appearance pursuant to this rule entitles the person to make a statement at a time provided for that purpose by the presiding officer, but the person shall not be regarded as a party to the proceeding. A statement shall not be given under oath and will not be subject to cross-examination by the parties.

(3) A person participating in a case pursuant to this rule is not entitled to notice of adjournment or any other notice, except as otherwise provided by law, and is not entitled to be served with pleadings or other documents.

History: 1992 AACS.

R 460.17209 Motor carrier proceedings.

Rule 209. A motor carrier or other person desiring to participate in a motor carrier proceeding shall comply with the provisions of Act No. 254 of the Public Acts of 1933, as amended, being S475.1 et seq. of the Michigan Compiled Laws, the commission's motor carrier rules, being R 460.18101 et seq., and these rules. When these rules conflict with the motor carrier act or the motor carrier rules, the motor carrier act and the motor carrier rules shall prevail.

History: 1992 AACS.

PART 3. HEARINGS

R 460.17301 General provisions.

Rule 301. (1) A contested case proceeding shall be held when required by statute and may be held when the commission so directs.

(2) After a proceeding has been assigned to a presiding officer, the presiding officer may rule on all matters of evidence, scheduling, and motions. The presiding officer shall seek to secure a timely disposition of the proceeding, recognizing any applicable legislative directives.

(3) An oral hearing before the commission shall be made a matter of

record. The record of the hearing in a contested case shall be transcribed. In all other cases, the record of the hearing need not be transcribed unless a request for a transcript is made by the commission, a party, or the presiding officer. A transcript shall be indexed to show the location of the testimony of each witness and the introduction and receipt into evidence or rejection of all prepared testimony and exhibits. If offered by a party, prefiled testimony shall be bound into the record.

(4) The presiding officer may make provision for any party to request material and relevant corrections of the transcript within a reasonable time after the filing of each volume of the transcript. If the presiding officer does not provide otherwise, any party may file with the commission, within 7 days after each volume of the transcript is filed with the commission, a request for correction of the transcript. Within 7 days after the filing of any request, other parties may file responses in support of, or in opposition to, all or part of the proposed corrections. Thereafter, the presiding officer shall, either upon the record or by order served on all parties, specify the corrections to be made to the transcript. Further, the commission or the presiding officer may specify corrections to be made to the transcript by providing 7 days' notice to all parties and providing a time for responses.

(5) The commission or the presiding officer, or the chief administrative law judge in any proceeding in which a presiding officer has not been assigned, may order proceedings consolidated for hearing on any or all matters at issue in the proceedings or may order the severance of proceedings or issues in a proceeding if consolidation or severance will promote the just, economical, and expeditious determination of the issues presented.

(6) Tape recorders and other mechanical or electronic devices are permitted at an oral hearing if they are unobtrusive and do not cause a witness to be intimidated or interfere with the orderly conduct of the proceeding.

History: 1992 AACCS.

R 460.17303 Simplified procedure.

Rule 303. When agreed to by all parties, the commission or the presiding officer may direct that a proceeding be processed under simplified procedure if it appears that substantially all issues of material fact can be resolved by means of written submissions and that efficient disposition of the proceeding can be made without an oral hearing.

History: 1992 AACCS.

R 460.17305 Initial notice of hearing.

Rule 305. (1) Except as otherwise provided by statute, not less than 14 days before the date set for the initial hearing, written notice of the hearing shall be provided to all parties and such other persons as the commission or its secretary may direct. For good cause, the commission or its secretary may determine a shorter or longer period for notice. The notice shall contain all of the following information:

- (a) A statement of the date, hour, place, and nature of the hearing.
- (b) The jurisdiction under which the hearing is to be held, including reference to the statutes, or sections of statutes, or rules involved.
- (c) A short and plain statement of the matters asserted and issues involved. The commission or its secretary may prescribe the form and manner of notice to be given.

(2) Publication in the commission's biweekly information bulletin, issued in accordance with the provisions of article 5, section 6, of Act No. 254 of the Public Acts of 1933, as amended, being S479.6 of the Michigan Compiled Laws, shall constitute notice to all motor carriers holding intrastate motor carrier authority from the commission of the applications, transfers, orders, and other business of the commission that appear in the bulletin.

History: 1992 AACCS.

R 460.17307 Participation by staff.

Rule 307. The staff may enter an appearance in any proceeding before the commission and present testimony as to the results of its accounting, engineering, and economic investigations, studies, inspections, enforcement activities, or other technical investigations or studies. The staff may enter an appearance in any proceeding and file briefs, cross-examine witnesses, and state its position, policy, or recommendations based upon the evidence.

History: 1992 AACS.

R 460.17309 Appearances; attorneys.

Rule 309. (1) In any proceeding before the commission that is a contested case as defined in section 3(3) of Act No. 306 of the Public Acts of 1969, as amended, being §24.203(3) of the Michigan Compiled Laws, all parties shall be represented by licensed attorneys, except that individuals who are not licensed attorneys may represent themselves or other parties as permitted by law.

(2) An attorney who is duly licensed to practice law in another state or in the courts of the United States may be permitted to practice before the commission on the same basis as in the circuit courts of this state.

(3) The presiding officer may, in his or her discretion, permit law students or recent law school graduates who are members of legal aid clinics or participants in organized programs of the prosecutor's or city attorney's office to represent a person to the same extent as permitted in the circuit courts of this state.

(4) An attorney who wishes to withdraw from a proceeding shall file a motion to withdraw.

History: 1992 AACS; 1997 AACS.

R 460.17311 Initial procedures.

Rule 311. An initial hearing may be either an evidentiary hearing or a prehearing conference, as directed by the commission in the notice of hearing. For good cause, the presiding officer may convert an initial hearing from an evidentiary hearing to a prehearing conference.

History: 1992 AACS.

R 460.17313 Prehearing conferences.

Rule 313. (1) A prehearing conference may be held for any of the following purposes:

- (a) Identifying and simplifying the factual and legal issues to be resolved.
- (b) Amending pleadings by agreement or by prehearing order.
- (c) Ruling on petitions to intervene and prehearing motions.
- (d) Determining the scope of the hearing.
- (e) Separating issues.
- (f) Providing for joint, coordinated, or consolidated presentations by parties having substantially identical interests to avoid repetitive, cumulative, or redundant evidence.
- (g) Disclosing the number, names, and order of presentation of witnesses.
- (h) Producing and exchanging proposed exhibits and prepared testimony of proposed witnesses, and considering the authenticity of proposed exhibits and other documents.
- (i) Providing for expeditious completion of discovery.
- (j) Presenting and considering appropriate legal authorities in support of, or in opposition to, the contentions of the parties.
- (k) Estimating the time required for hearing and establishing a schedule.
- (l) Discussing the possibility of voluntary dismissal or settlement of the proceeding.
- (m) Requiring production and distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session at which the proposed exhibits and written testimony will be offered.
- (n) Considering and ruling on other matters that may aid in the expeditious disposition of the proceeding.

(2) Notice of the time and place of any prehearing conference shall be given to all parties. Any person failing to attend or otherwise participate in a prehearing conference after having been served appropriate notice of the time and place shall, with respect to procedural matters, be bound, except for good cause, by any agreements reached and any orders or rulings made. If a transcript of the conference is not prepared, the presiding officer shall ensure that a written summary of the conference is prepared and served on all parties.

(3) Additional conferences may be held, as appropriate, during the course of any proceeding.

(4) At any conference held pursuant to this rule, the presiding officer may dispose of, by ruling, any procedural matter upon which the presiding officer is authorized to rule during the course of the proceeding if the parties have had appropriate notice. All rulings made at any conference held pursuant to this rule shall be binding on all parties to the proceeding unless the rulings are, for good cause, subsequently modified or reversed by the presiding officer or the commission.

(5) After proper notice, the presiding officer may, on his or her own initiative or upon the request of a party, direct that a conference telephone or other electronic device be used for a prehearing or status conference. If a transcript of the conference is not prepared, the presiding officer shall ensure that a written summary of the conference is prepared and served on all parties.

History: 1992 AACS.

R 460.17315 Adjournments.

Rule 315. (1) Unless the presiding officer allows otherwise, a request for adjournment shall be by motion or stipulation made orally at a hearing or in writing and shall be based on good cause.

(2) A motion or stipulation for adjournment shall state the party who is requesting the adjournment and the reason for the adjournment.

(3) An adjournment may be granted for good cause and shall be in writing or on the record.

(4) In granting an adjournment, the presiding officer, chief administrative law judge, or commission may impose reasonable conditions.

History: 1992 AACS.

R 460.17317 Discovery.

Rule 317. Discovery shall, as far as practicable, be conducted in the same manner as in the circuit courts of this state pursuant to the Michigan court rules or as otherwise provided by law. When appropriate, the presiding officer shall set time limitations for the conduct of discovery. Every party shall respond promptly and fully to requests for discovery. The parties shall not use discovery to harass or cause needless delay.

History: 1992 AACS; 1997 AACS.

R 460.17319 Subpoenas; orders to attend.

Rule 319. (1) At any time in a proceeding, a commissioner or the presiding officer may issue a subpoena or order for a party or witness to attend and testify orally on a date and time certain and from time to time and day to day until excused by the presiding officer and to produce specified notes, records, documents, photographs, or other tangible things.

(2) A subpoena signed by an attorney of record or the secretary or a commissioner shall have the force and effect of a subpoena signed by the commission.

(3) Except as otherwise provided in this rule and R 460.17321, the provisions of the court rules or statutes governing subpoenas in civil actions in circuit court shall apply.

History: 1992 AACS; 1997 AACS.

R 460.17321 Subpoenas; service; failure to comply with subpoenas.

Rule 321. A subpoena shall be served in the manner prescribed by statute or court rule for subpoenas in civil actions in circuit court. It may be served at any place within the state. If a person fails to comply with a subpoena, or fails to attend or refuses to be sworn or testify, the presiding officer may stay further proceedings until the subpoena is obeyed. If the person who fails to obey the subpoena is a party to the proceeding or an officer, member, or employee of a party, the presiding officer may do any of the following:

- (a) Strike all or part of any pleading of that party.
- (b) Refuse to allow that party to support or oppose designated claims and defenses.
- (c) Delay the proceeding or part of the proceeding.
- (d) Take such further action as is appropriate under the circumstances.

History: 1992 AACS.

R 460.17323 Summary disposition.

Rule 323. A party may make a motion for summary disposition of all or part of a proceeding. If the presiding officer determines that there is no genuine issue of material fact or that there has been a failure to state a claim for which relief can be granted, the presiding officer may recommend, to the commission, summary disposition of all or part of the proceeding. If the entire proceeding is disposed of, the presiding officer shall issue a proposal for decision. If only part of a proceeding is disposed of, the presiding officer may issue a partial proposal for decision.

History: 1992 AACS.

R 460.17325 Evidence generally.

Rule 325. (1) The rules of evidence as applied in nonjury civil cases in circuit court shall be followed as far as practicable, but the commission may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objections to offers of evidence may be made and shall be noted in the record.

(2) Evidence, including records and documents in the possession of the commission, that a party desires or intends to rely on shall be offered and made a part of the record in the proceeding and other factual information or evidence shall not be considered in the determination of the case, except as otherwise permitted by law. Documentary evidence may be received in the form of copies or excerpts. Upon timely request, a party shall be given an opportunity to compare the copy with the original. If the original is so voluminous as to make its entry in evidence impracticable, the evidence may be incorporated by reference if the materials to be incorporated are made available for examination by the parties at a time and place designated by stipulation of the parties or as directed by the presiding officer. The evidence shall not be admitted where a party has failed, upon timely request, to provide other parties with reasonable access to the original document referred to or excerpted.

(3) A party shall have the right of cross-examination and shall have the right to submit rebuttal evidence. Surrebuttal evidence may be permitted at the discretion of the presiding officer or the commission.

History: 1992 AACS.

R 460.17327 Evidence; official notice.

Rule 327. Except as otherwise provided by law, the commission and the presiding officer may take official notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within the commission's specialized knowledge. The commission or the presiding officer shall notify the parties at the earliest practicable time of any noticed fact that pertains to a materially disputed issue that is being adjudicated and, on timely request, the parties shall be given an opportunity before the final decision to dispute the fact or its materiality. The commission may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

History: 1992 AACS.

R 460.17329 Evidence; documents and exhibits.

Rule 329. (1) When the evidence consists of technical matters or figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form, supplemented and explained, but not duplicated by testimony.

(2) Documentary exhibits shall be on 1 side only, on paper not exceeding 8 1/2 inches by 11 inches, and have a sufficient margin for binding, preferably a margin of 1 1/2 inches on the left side of each sheet. A larger exhibit shall be folded to not more than 8 1/2 inches by 11 inches, if practicable. An exhibit of 2 or more sheets shall be stapled together and a notation made at the top of the first sheet as to the number of sheets contained in the exhibit. Each page of the exhibit shall be numbered. An exhibit shall show, at the top right-hand corner, the docket number of the proceeding and provide space for the name of the witness and the number and date of the exhibit. Except as otherwise directed by the commission or the presiding officer, all exhibits offered in a proceeding shall be numbered sequentially regardless of the identity of the party offering them. The number of the exhibit shall be preceded with a letter indicating the identity of the party offering it; for example, "A" for applicant, "I" for intervenor, "P" for protestant, and "S" for the staff.

(3) A party introducing an exhibit shall furnish copies to all parties and such additional copies as the presiding officer may direct.

(4) Nothing in this rule shall prohibit the use by a witness of charts, graphs, pictures, or other means of visual demonstration that are large enough to be viewed by the presiding officer and all persons in the hearing room; however, when charts, graphs, pictures, or other means of visual demonstration are used, copies conforming to the requirements of subrule (2) of this rule shall be provided to all parties and the presiding officer, together with such additional copies as the presiding officer may direct, unless the provision of copies would, in the judgment of the presiding officer, be impracticable.

(5) Documentary evidence may be submitted after the close of the record by stipulation of the parties and with the approval of the presiding officer.

(6) Written or printed documents, maps, charts, graphs, pictures, or other means of visual demonstration that are received in evidence shall not be returned to the parties, except upon approval of the commission.

History: 1992 AACS.

R 460.17331 Evidence; testimony in written form.

Rule 331. (1) Direct testimony of a witness under oath shall be offered in written form, except in motor carrier cases or as otherwise provided by the commission or the presiding officer. In motor carrier cases, the presiding officer may require that direct testimony be offered in written form. Unless otherwise ordered by the presiding officer, the testimony shall be filed with the commission and a copy served on each party and the presiding officer not less than 7 days in advance of the session of the proceeding at which it is to be offered. However, if all parties in attendance on the day on which the testimony is offered agree, any part of the 7 days may be waived. In the absence of agreement, the presiding officer may permit the offering of the testimony after providing all parties who are present not less than 24 hours to examine it, unless, for good cause, the presiding officer finds a shorter time to be reasonable.

(2) The presiding officer may authorize any witness to present oral direct testimony.

(3) In any proceeding, a witness whose testimony is submitted in written form shall be made personally available for cross-examination at the time directed by the presiding officer, unless all parties in attendance on that day waive cross-examination of the witness. If the witness whose testimony is submitted in written or exhibit form is not made available for cross-examination, the testimony shall not be received in evidence, except by stipulation of all parties in attendance on the day the testimony is submitted and with the approval of the presiding officer or as otherwise provided by law.

(4) All testimony in written form shall include page and line numbers and shall be in question and answer form.

History: 1992 AACCS.

R 460.17333 Settlements.

Rule 333. (1) All parties to proceedings before the commission are encouraged to enter into settlements when possible and the provisions of these rules shall not be construed in any way to prohibit settlements.

(2) The parties to a proceeding may agree upon some or all of the facts. The agreement shall be evidenced by a written stipulation filed with the commission or entered upon the record. The stipulation shall be regarded and used as evidence in the proceeding.

(3) When a written settlement agreement is proposed by some of the parties, it shall be served on all parties to the proceeding. Each party shall file and serve on all parties, within 14 days after being served, its agreement, objection, or nonobjection to the settlement agreement. Failure to respond in writing within 14 days, unless a different time is set by the presiding officer for good cause, shall constitute nonobjection to the settlement agreement. A party who objects to a settlement agreement shall state those objections with particularity and shall specify how it would be adversely affected by the settlement agreement.

(4) In every proceeding, the parties to the settlement agreement shall, upon request, submit a proposed order to the presiding officer.

(5) The commission may approve a settlement agreement if all of the following conditions are met:

(a) Any party that has not agreed to the settlement has signed a statement of nonobjection or has failed to object within the 14 days provided in subrule (3) of this rule, or such other time established by the presiding officer, or the objecting party or parties under subrule (3) have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement.

(b) The commission finds that the public interest is adequately represented by the parties who entered into the settlement agreement.

(c) The commission finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and, if the settlement is contested, is supported by substantial evidence on the record as a whole.

(6) The nature and extent of the precedential value accorded an order approving a settlement agreement shall be as specified by the parties in the settlement agreement.

History: 1992 AACCS.

R 460.17335 Motion practice.

Rule 335. (1) In a pending proceeding, a request to the commission or presiding officer for a ruling or order, other than a final order, shall be by motion. Unless made during a hearing, a motion shall be in compliance with all of the following provisions:

(a) Be in writing.

(b) State with particularity the grounds and authority on which the motion is based.

(c) State the relief or order sought.

(d) Be signed by the party or the party's attorney.

(2) Unless a different time is set by the commission or presiding officer or unless the motion is one that may be heard ex parte, a written motion, notice of the hearing on the motion, and any supporting brief or affidavits shall be served as follows:

(a) Not less than 9 days before the hearing, if served by mail.

(b) Not less than 7 days before the hearing, if served by delivery to the attorney or party under Michigan court rule 2.107(c)(1) or (2).

(3) Unless a different time is set by the commission or presiding officer, any response to a motion, including a brief or an affidavit, shall be served as follows:

(a) Not less than 5 days before the hearing, if served by mail.

(b) Not less than 3 days before the hearing, if served by delivery to the attorney or party under Michigan court rule 2.107(c)(1) or (2).

(4) Motions shall be noticed for hearing at the time designated by the commission or presiding officer.

(5) When a motion is based on facts not appearing on the record, the commission or presiding officer may hear the motion on affidavits presented by the parties or may direct that the motion be heard wholly or partly on oral testimony or deposition.

(6) The commission or presiding officer may limit oral arguments on motions and may require the parties to file briefs in support of, and in opposition to, a motion. The commission may dispense with oral argument on matters brought before the commission.

History: 1992 AACS.

R 460.17337 Appeals to commission from rulings of presiding officers.

Rule 337. (1) During the course of a proceeding, a party may appeal a ruling of the presiding officer by filing an application for leave to appeal the ruling to the commission. Unless otherwise provided by the presiding officer, the application shall be filed within 14 days after an oral ruling or service of a written ruling and any response shall be filed within 14 days after service of the application.

(2) The commission will grant an application and review the presiding officer's ruling if any of the following provisions apply:

(a) A decision on the ruling before submission of the full case to the commission for final decision will materially advance a timely resolution of the proceeding.

(b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large.

(c) A decision on the ruling before submission of the full case to the commission for final decision is consistent with other criteria that the commission may establish by order.

(3) An offer of proof shall be made in connection with an appeal of a ruling excluding evidence. The offer of proof shall be made on the hearing record. If the ruling excluded oral testimony, the offer of proof shall consist of a statement of the substance of the evidence that the appellant contends would be established by the testimony. If the ruling excluded written evidence or evidence that refers to documents or records, the offer of proof shall consist of a copy of the evidence, documents, or records.

(4) The application shall be supported by a clear and concise brief, in accordance with the provisions of R 460.17339, stating the basis for the appeal and showing that it complies with the provisions of this rule. The brief shall be supported by specific factual allegations as appropriate.

(5) The commission's failure to grant the application does not bar a party from asking the commission to consider the presiding officer's ruling on final disposition of the proceeding. A party's failure to file an application for leave to appeal does not constitute a waiver of the right to challenge any ruling of the presiding officer either in a brief or in exceptions to a proposal for decision.

History: 1992 AACS.

R 460.17339 Oral argument and briefs.

Rule 339. (1) Oral argument may be made before the commission or the presiding officer at the discretion of the commission or the presiding officer, respectively. Oral argument before the presiding officer shall be requested before the close of the record. Oral argument before the commission shall be requested not later than the date for filing of exceptions.

(2) Initial briefs and reply briefs may be filed at the discretion of the parties unless the commission or presiding officer requires the filing of briefs and reply briefs by all parties. Unless otherwise provided, initial briefs shall be filed within 21 days after the date of the filing of the last volume of transcript, and reply briefs shall be filed within 14 days after the date for filing initial briefs.

(3) Briefs containing factual allegations claimed to be established by the evidence shall include a reference to the specific portions of the record where the evidence may be found. Materials incorporated by reference shall be attached. Any factual or legal issue that is not addressed in a party's initial brief shall not be addressed by that party in a reply brief, except in response to another party's brief.

(4) Proposed findings of fact, if any, shall be filed not later than the date for filing initial briefs. Each proposed finding of fact shall be numbered, stated clearly, and limited to a single proposed fact.

History: 1992 AACCS.

R 460.17341 Exceptions to proposals for decision.

Rule 341. (1) Unless otherwise provided, exceptions to a proposal for decision shall be filed within 21 days after service of the proposal for decision, and replies to exceptions, if provided for, shall be filed within 14 days after the date for filing exceptions.

(2) If a party does not file exceptions to a proposal for decision within the time permitted by this rule, any objection to the proposal for decision is waived. If a party does not object to a part of a proposal for decision, any objection by the party to that part of the proposal for decision is waived.

(3) Exceptions and replies to exceptions shall be supported by reasoned discussion of the evidence and the law. Exceptions and replies to exceptions containing factual allegations claimed to be established by the evidence shall include a reference to the specific portions of the record where the evidence may be found. Materials incorporated by reference shall be attached.

(4) Exceptions shall clearly and concisely recite the specific findings of fact and conclusions of law to which exception is taken or the omission of, or imprecision in, specific findings of fact and conclusions of law to which the party excepts.

History: 1992 AACCS.

PART 4. REOPENINGS AND REHEARINGS

R 460.17401 Reopening of proceedings.

Rule 401. (1) A proceeding may be reopened for the purpose of receiving further evidence when a reopening is necessary for the development of a full and complete record or there has been a change in conditions of fact or law such that the public interest requires the reopening of the proceeding.

(2) After providing due notice and an opportunity for the parties to be heard, the presiding officer, upon his or her own motion or upon motion of any party, may reopen the proceeding at any time before the date for the filing of exceptions to a proposal for decision or, if provided for, replies to exceptions. After the date for filing exceptions or replies to exceptions and until the expiration of the statutory time period for filing a petition for rehearing, the commission may reopen a proceeding upon its own motion or motion of any party.

(3) Within 21 days after service of a motion to reopen a proceeding, any party may file an answer. Any party failing to do so shall be considered to have waived objection to the granting of the motion. As soon as practicable after the time for filing answers to a motion to reopen, the presiding officer or the commission shall, in writing, grant or deny the motion. The presiding officer or the commission may provide for hearing and oral argument on a motion to reopen.

History: 1992 AACCS.

R 460.17403 Rehearings.

Rule 403. (1) A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.

(2) Within 21 days after service of a petition for rehearing, any party may file an answer. Any party failing to do so shall be considered to have waived objection to the granting of the petition.

History: 1992 AACCS.

R 460.17405 Proceedings within 90 days after dismissal.

Rule 405. When an application, petition, or complaint has been dismissed by the commission because the party instituting the proceeding failed to appear and proceed at the hearing, the commission will refuse, except for good cause, to accept for filing an application, petition, or complaint relating to the same or substantially the same subject matter from the same party for a period of 90 days after the date of a commission order dismissing the case.

History: 1992 AACS.

PART 5. COMPLAINTS

R 460.17501 Complaints; limited matters; initiating complaint.

Rule 501. A complaint shall be limited to matters involving alleged unjust, inaccurate, or improper rates or charges or unlawful or unreasonable acts, practices, or omissions of a utility or motor carrier, including a violation of any commission rule, regulation, or order, including a tariff filed or published by a utility or motor carrier, or a violation of a statute administered or enforced by the commission. A complaint may be either formal or informal and may be made by a person having an interest in the subject matter of the complaint or may be made by the commission on its own motion or by the staff, subject to applicable statutory standards.

History: 1992 AACS; 1997 AACS.

R 460.17503 Informal complaints.

Rule 503. The commission will attempt to resolve as an informal complaint any matter brought to its attention by any person not requesting initiation of a contested case proceeding.

History: 1992 AACS.

R 460.17505 Formal complaints; content.

Rule 505. (1) A formal complaint shall be in writing and shall set forth all of the following:

- (a) The name and address of the complainant and the complainant's attorney, if any.
- (b) The name and address of the respondent.
- (c) The interest of the complainant in the subject matter.
- (d) A concise statement of the facts on which the complainant relies in requesting relief, with the specific allegations necessary to reasonably inform the respondent of the nature of the claims the respondent is called upon to defend, with specific reference where practicable to the section or sections of all statutes, rules, regulations, orders, and tariffs upon which the complainant relies in filing a complaint.
- (e) A demand for a contested case proceeding.
- (f) A clear and concise statement of the relief sought and the authority upon which the complainant relies for the relief.
- (g) The signature of the person or persons filing the complaint.

(2) Two or more complainants may join in 1 complaint if their complaints are against the same respondent, involve substantially the same purposes and subjects, and are predicated upon substantially similar facts. This rule shall not be construed to authorize class actions in proceedings before the commission.

History: 1992 AACS.

R 460.17507 Formal complaints; examination; rejection.

Rule 507. If the commission finds that a complaint does not state a prima facie case or does not conform to these rules, it shall notify the complainant or the complainant's attorney that the complaint is rejected, give the reasons for the rejection, and return the complaint. Nothing in this rule shall prohibit a complainant whose complaint has been rejected from amending and refileing the complaint. Upon the filing of a formal complaint that conforms to the provisions of R 460.17505 and states a prima facie case, the commission, acting through its staff, will commence an investigation of the matters raised in the complaint.

History: 1992 AACS.

R 460.17509 Formal complaints; service; offers of relief; answers.

Rule 509. (1) If the complaint does state a prima facie case and conforms to the provisions of these rules, the commission shall serve upon the respondent, a notice, accompanied by a copy of the complaint, requiring that the matter complained of be satisfied or that the complaint be answered within 21 days after the date of service of the notice or within such time as the commission may, for good cause, provide.

(2) Every answer to a formal complaint shall specifically admit or deny each material allegation contained in the complaint and shall also set forth any facts relied upon by the respondent as constituting an affirmative defense. If the respondent lacks knowledge or information sufficient to form a belief as to the truth of an allegation contained in the complaint, the respondent shall so state, which shall operate as a denial.

History: 1992 AACS.

R 460.17511 Formal complaints; motions to make more definite and certain.

Rule 511. If the respondent believes that a complaint is so vague or ambiguous that the respondent cannot reasonably be required to respond to it, the respondent may file and serve, upon the complainant, a motion requesting that the allegations or other matters contained in the complaint be made more definite and certain. The motion shall specify the defect complained of and the details requested. The respondent shall answer those portions of the complaint that are not subject to the motion. If the motion is granted, the complainant shall have an opportunity to file an amended complaint within the time specified in the order granting the motion.

History: 1992 AACS.

R 460.17513 Formal complaints; motions to dismiss and defenses.

Rule 513. A defense that the complainant is without standing to make the complaint, that the commission lacks jurisdiction over the subject matter of the complaint, or that the complaint fails to state a prima facie case or otherwise fails to conform to these rules may be raised by motion to dismiss or answer, at the option of the respondent. All other defenses to a complaint shall be raised by the answer.

History: 1992 AACS.

R 460.17515 Formal complaint; burden of proof.

Rule 515. The complainant generally shall have the burden of proof as to matters constituting the basis for the complaint and the respondent shall have the burden of proof as to matters constituting affirmative defenses. The burden of proof, however, may be differently placed, or may shift, as provided by law or as may be appropriate under the circumstances.

History: 1992 AACS.

PART 6. SPECIFIC PROCEEDINGS

R 460.17601 Public utilities; new construction.

Rule 601. (1) An entity listed in this subrule shall file an application with the commission for the necessary authority to do the following:

(a) A gas or electric utility within the meaning of the provisions of Act No. 69 of the Public Acts of 1929, as amended, being §460.501 et seq. of the Michigan Compiled Laws, that wants to construct a plant, equipment, property, or facility for furnishing public utility service for which a certificate of public convenience and necessity is required by statute.

(b) A natural gas pipeline company within the meaning of the provisions of Act No. 9 of the Public Acts of 1929, as amended, being §483.101 et seq. of the Michigan Compiled Laws, that wants to construct a plant, equipment, property, or facility for furnishing public utility service for which a certificate of public convenience and necessity is required by statute.

(c) A corporation, association, or person conducting oil pipeline operations within the meaning of the provisions of Act No. 16 of the Public Acts of 1929, being §483.1 et seq. of the Michigan Compiled Laws, that wants to construct facilities to transport crude oil or petroleum or any crude oil or petroleum products as a common carrier for which approval is required by statute.

(2) The application required in subrule (1) of this rule shall set forth, or by attached exhibits show, all of the following information:

(a) The name and address of the applicant.

(b) The city, village, or township affected.

(c) The nature of the utility service to be furnished.

(d) The municipality from which the appropriate franchise or consent has been obtained, if required, together with a true copy of the franchise or consent.

(e) A full description of the proposed new construction or extension, including the manner in which it will be constructed.

(f) The names of all utilities rendering the same type of service with which the proposed new construction or extension is likely to compete.

(3) A utility that is classified as a respondent pursuant to the provisions of R 460.17101 may participate as a party to the application proceeding without filing a petition to intervene. It may file an answer or other response to the application.

History: 1992 AACS; 1997 AACS.

R 460.17603 Rescinded.

History: 1992 AACS; 1997 AACS.

R 460.17605 Rescinded.

History: 1992 AACS; 1997 AACS.

R 460.17607 Rescinded.

History: 1992 AACS; 1997 AACS.

PART 7. DECLARATORY RULINGS

R 460.17701 Declaratory rulings.

Rule 701. (1) Any person may request a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the commission or of a rule or order of the commission, pursuant to the provisions of sections 33 and 63 of Act No. 306 of the Public Acts of 1969, as amended, being

SS24.233 and 24.263 of the Michigan Compiled Laws. A request for a declaratory ruling shall contain, or by attached exhibits show, all of the following:

(a) A complete, accurate, and concise statement of the facts or situation upon which the request is based.

(b) A concise statement of the issues presented.

(c) Specific reference to all statutes, rules, and orders to which the request relates.

(d) An analysis by the person's legal counsel of the issues presented and a proposed conclusion, or the person's analysis of the issues presented and a proposed conclusion.

(2) The commission may require that notice of the request for declaratory ruling be provided and may require a contested case proceeding instead of issuing a declaratory ruling.

(3) The decision to issue a declaratory ruling is within the discretion of the commission.

History: 1992 AACCS.