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ARIZONA CORPORATION COMMISSION

January 5, 2007

TO: All Parties of Record

RE: Docket No. W-01583A-06-0437
LAS QUNITAS SERENAS WATER CO

I am in receipt of Mr. Gay's letter dated December 21, 2006, in which Mr. Gay, an intervenor in this matter, asks several procedural questions. In response to his questions I enclose copies of the Arizona Administrative Code, Title 14, Chapter 3, addressing Corporation Commission Rules of Practice and Procedure. I will note specifically that the rule against Ex Parte Communications is addressed in R14-3-113. I note also that all filings should be filed with Docket Control and include the original and 13 copies. Copies of all filings, including all correspondence should be filed with Docket Control and mailed or delivered to all parties of record. All filings should be accompanied by a Cover Sheet which is available on the Commission's website under the heading Forms and subheading Hearing Division/Docket Control.

Sincerely,

Jane L. Rodda
Administrative Law Judge

Encl: AAC Title 14, Chapter 3

Arizona Corporation Commission
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TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS; SECURITIES REGULATION

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ARTICLE 1. RULES OF PRACTICE AND PROCEDURE
BEFORE THE CORPORATION COMMISSION

The Arizona Corporation Commission, by virtue of the powers in it vested under the Constitution and the laws of the state of Arizona, does hereby promulgate these Rules of Practice and Procedure.

The Commission hereby repeals administrative rules and regulations, Title 14, Chapter 3, Article 1, also known as General Order 255 and does hereby adopt a new Title 14, Chapter 3, Article 1.

The revised Rules of Practice and Procedure adopted herein shall be effective for all proceedings held by the Commission subsequent to January 1, 1976.

- R14-3-101. Scope and construction of rules, special orders**
- A. Procedure governed. Except as may be otherwise directed by the Commission, and when not in conflict with law or the regulations or orders of this Commission, these Rules of Practice and Procedure shall govern in all cases before the Corporation Commission including but not limited to those arising out of Article XV of the Arizona Constitution, or Titles 10, 40, or 44 of the Arizona Revised Statutes. In all cases in which procedure is set forth neither by law, nor by these rules, nor by regulations or orders of the Commission, the Rules of Civil Procedure for the Superior Court of Arizona as established by the Supreme Court of the state of Arizona shall govern. Notwithstanding any of the above, neither these rules nor the Rules of Civil Procedure shall apply to any investigation by the Commission, any of its divisions or its staff.
- B. Liberal construction -- waiver. These rules shall be liberally construed to secure just and speedy determination of all matters presented to the Commission. If good cause appears, the Commission or the presiding officer may waive application of these rules when not in conflict with law and does not affect the substantial interests of the parties.
- C. Rate hearing procedure for gas, electric, telephone, telegraph, water and sewer corporations. Special orders of the Commission shall govern over these rules in matters regarding notice, intervention, service of pleadings and exhibits, and discovery for gas, electric, telephone, telegraph, water and sewer corporation rate hearing.

Historical Note

Former Section R14-3-01 repealed, new Section R14-3-01 adopted effective December 17, 1975 (Supp. 75-2). Amended effective March 13, 1979 (Supp. 79-2).

- R14-3-102. Filing, fees, communications, hearing calendar and general provisions**
- A. Offices. The principal office of the Commission is in Phoenix, Arizona. A branch office of the Commission is maintained in Tucson, Arizona.
- B. Place of filing. Formal documents and other papers required to be filed with the Commission shall be addressed to the Commission and not to an individual, may be transmitted by mail or express, or otherwise delivered, but must be received for filing at its offices in Phoenix or Tucson, Arizona, within the time limit, if any, for such filing. All formal documents and other papers filed with the Commission shall be limited in size to 8 1/2 x 11 inches.
- C. Correspondence and communication. Communications should contain the name and address of the correspondent and the appropriate certificate number, permit number, docket number, title of proceeding and case number, if any, pertaining to the subject of the communication.
- D. Docket numbers and title. Each matter coming before the Commission shall be given a docket number and title, descriptive of the subject matter.
- E. Fees and remittances. Fees and remittances to the Commission shall be by money order, bank draft or check payable to "Arizona Corporation Commission". Remittances in currency or coin mailed to the Commission are wholly at the risk of the

remitter and the Commission assumes no responsibility for loss thereof. Postage stamps will not be accepted.

- F. **Hearing calendar.** A hearing calendar will be maintained by the Executive Secretary of the Commission, and hearing assignments shall be noted upon such calendar. A copy of the hearing calendar shall be maintained in the Tucson office of the Commission and both such calendars shall be open for public inspection during regular business hours of the Commission.
- G. **Presiding officer.** Within the context of these rules "Presiding Officer" shall mean a Commissioner or Hearing Officer conducting a hearing.

Historical Note

Former Section R14-3-102 repealed, new Section R14-3-102 adopted effective December 17, 1975 (Supp. 75-2). Amended subsection (B) effective July 8, 1980 (Supp. 80-4).

R14-3-103. Parties

- A. **Classification of parties.** Parties to any proceeding before the Commission shall consist of and shall be designated "Applicant", "Complainant", "Respondent", "Intervenor"; or "Protestant" according to the nature of the proceedings and the relationship of the party thereto.
- B. **Applicant.** Any person requesting a certificate, permit, other authority or any affirmative relief other than a complainant shall be designated "Applicant".
- C. **Complainant.** Any person complaining pursuant to any statute or any rule or order of the Commission shall be designated "Complainant".
- D. **Respondent.** Any person against whom a complaint or petition is filed or any person who may be subject to having any schedule, rate or tariff forfeited or revoked by the Commission, shall be designated as "Respondent".
- E. **Intervenor.** Any person permitted to intervene in any proceeding shall be designated "Intervenor".
- F. **Protestant.** Any person permitted to protest in any proceeding shall be designated "Protestant".
- G. **Two or more complainants.** Two or more complainants may join in one complaint if their respective complaints are against the same matter or thing and a like state of facts.
- H. **Multiple respondents.** If complaint be made of tariffs, rates, fares, charges, regulations or practices involving more than one public service corporation, all such public service corporations shall be made respondents.
- I. **Receivers and trustees.** The receiver or trustee of any person subject to the orders of this Commission shall be a party in any proceeding affecting such person and shall be designated as herein provided.

Historical Note

Former Section R14-3-103 repealed, new Section R14-3-103 adopted effective December 17, 1975 (Supp. 75-2).

R14-3-104. Appearances, rights of parties, representation by attorney, conduct and former employees

- A. **Rights of parties.** At a hearing a party shall be entitled to enter an appearance, to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.
- B. **Taking of appearances.** Parties shall enter their appearances at the beginning of a hearing or at any time as may be designated by the presiding officer or by order of the Commission by giving their names and addresses for the record and stating their position or interest.
- C. **Designation of classes, parties.** When two or more parties have substantially like interests and positions, the presiding officer may declare them a class of parties present and appearing for

purposes of the hearing. The members of a class shall designate one of their number to be representative of a class in the hearing. If the members of a class cannot agree on a representative, the presiding officer may designate one of them to be representative of the class.

The presiding officer may deem participation by other members of the same class to be cumulative and may restrict its presentation accordingly. More than one class may be established for a hearing.

- D. **Notice.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the Commission. Service upon the attorney or upon a party shall be made by delivering or mailing a copy to him at his last known address, unless the Commission otherwise specifies.
- E. **Withdrawal of attorney.** The Commission or presiding officer may permit the withdrawal of an attorney from any proceeding upon written application and good cause shown under such terms, conditions, and notices to clients and other parties as the Commission or presiding officer may direct. Oral application for withdrawal may be made during any open proceeding which is being reported.
- F. **Conduct required**
1. All persons appearing before the Commission or a presiding officer in any proceeding shall conform to the conduct expected in the Superior Court of the state of Arizona.
 2. Any alleged inappropriate conduct before a Commissioner or a Hearing Officer shall be referred to the Commission for appropriate action.
 3. Contemptuous conduct by any person appearing at a hearing shall be grounds for his exclusion by the presiding officer from the hearing.
 4. If the Commission finds that any person has committed any improper or contemptuous conduct in any hearing before the Commission or a presiding officer, the Commission may impose such penalties provided by law that it deems appropriate.
- G. **Former employees.** No former employee of the Commission shall appear at any time after severing his employment with the Commission as a witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation or preparation as a representative of the Commission, except with the written permission of the Commission.

Historical Note

Former Section R14-3-104 repealed, new Section R14-3-104 adopted effective December 17, 1975 (Supp. 75-2). Amended effective May 8, 1981 (Supp. 81-3).

R14-3-105. Intervention as party and other appearances

- A. **Intervention.** Persons, other than the original parties to the proceedings, who are directly and substantially affected by the proceedings, shall secure an order from the Commission or presiding officer granting leave to intervene before being allowed to participate.
- B. **Application.** An application for leave to intervene shall be in writing and must state the basis for the application. Such application shall be served and filed by an applicant at least five days before the proceeding is called for hearing. No application for leave to intervene shall be granted where by so doing the issues theretofore presented will be unduly broadened, except upon leave of the Commission first had and received. Upon the granting of an application to intervene by the Commission or the presiding officer, the intervening person shall thereafter be designated an "Intervenor".

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- C. Other appearances. Notwithstanding the provisions of subsections R14-3-105(A) and R14-3-105(B), any consumer or prospective consumer may appear at any proceeding and make a statement on his own behalf, at a time designated by the Commission or presiding officer. A person so appearing shall not be deemed a party to the proceedings.
- When two or more interested persons under this rule have substantially like interests and positions, the presiding officer may declare them a class of interested persons for purposes of the hearing. The members of the class shall designate to be spokesman for the class one of their number, or his attorney, or such greater of their number, or attorneys, as the presiding officer shall determine. More than one class may be established for a hearing.
- J. Response to application when required by Commission. After the filing of an Application, the Commission in its discretion may make any public service corporation or other person subject to its jurisdiction, a party to the proceedings and may require such person or corporation to respond to the allegations of the Application.
- K. Motions. Motions shall conform insofar as practicable with the Rules of Civil Procedure for the Superior Court of the state of Arizona.
- L. Formal complaints. Complaints shall be in writing and shall contain the name and address of the complainant, the name of the person or company against whom complaint is made, a complete statement of the grounds for said complaint, indicating the date or dates of the commission or omission of the acts or things complained of, and the nature of the relief sought by the complainant. The complaint shall be signed by the complainant, or by one of the complainants if there be more than one, or by an officer of the complainant if the complainant be a corporation, association or other organization, or for the complainant by an agent or attorney. If the complainant has an attorney, his name and address shall appear in the complaint and he shall sign the complaint.

Historical Note

Former Section R14-3-105 repealed, new Section R14-3-105 adopted effective December 17, 1975 (Supp. 75-2).

R14-3-106. Formal documents, requirement and timeliness, motions, informal complaints and protests

- A. Formal documents. Formal documents include applications, complaints, answers, motions, replies and protests.
- B. Verification. Applications, complaints and answers need not be verified unless required by law.
- C. Form. Formal documents shall be typewritten, reproduced or printed, properly captioned and signed by an appropriate authorized individual, officer or attorney. Formal documents shall state the name and address of each party thereto and shall clearly identify the proceedings by docket number and title.
- D. Defective filing. No case need be set for hearing wherein any data required by statute or by General Order of this Commission has not been furnished by applicant.
- E. Amendments to formal documents. The Commission or presiding officer, in his discretion, may allow any formal document to be amended or corrected. Formal documents will be liberally construed and defects which do not affect substantial rights of the parties will be disregarded. The Commission or presiding officer shall cause parties or formal documents to be redesignated whenever necessary in accordance with these rules.
- F. Applications. A request for a right, authority or other affirmative relief (other than by complaint or counterclaim) or a request for leave to intervene shall be designated an "Application". The application shall set forth the name and post office address of the applicant and shall contain the facts upon which the application is based, with such exhibits as may be required or deemed appropriate by the applicant.
- G. Application for rehearing. A request for rehearing, filed either under R14-3-111 or R14-3-112, shall be designated as an "Application for Rehearing". Applications filed under R14-3-111 shall be governed by the provisions of that rule and A.R.S. § 40-253. Applications filed under R14-3-112 shall be governed by that rule.
- H. Answers. Answers to complaints are required and must be filed within 20 days after the date on which the complaint is served by the Commission, unless otherwise ordered by the Commission. All answers shall be full and complete and shall admit or deny specifically and in detail each allegation of the complaint to which such answer is directed. The answer shall include a motion to dismiss if a party desires to challenge the sufficiency of the complaint.
- I. Protests. Unless otherwise provided by special order of the Commission, a person who may be adversely affected by an application shall have the right to file a written protest with the Commission or be heard orally as a protestant at a public hearing.

M. Informal complaints

1. Informal complaints may be made by letter or other writing. No particular form is required; however, the writing must clearly state the matters complained of and must satisfactorily identify the party complained against. It need not be verified but must be signed by the complainant or attorney and show the address of the complainant and his attorney if he has one.
2. Informal complaints may be handled by the Commission or staff, by correspondence or otherwise, with the parties affected in an endeavor to bring about a speedy adjustment of the complaint without formal hearing. Informal procedure is recommended in all cases except those which clearly cannot be adjusted informally. Proceedings on informal complaints will be conducted without prejudice to the complainant's right to file and prosecute a formal complaint if the matter cannot be properly adjusted informally, in which event the proceeding on the informal docket will be discontinued. A formal complaint must thereafter be filed if a hearing is desired.

Historical Note

Former Section R14-3-106 repealed, new Section R14-3-106 adopted effective December 17, 1975 (Supp. 75-2). Amended effective March 13, 1979 (Supp. 79-2).

R14-3-107. Filing and service of formal documents

- A. Formal documents. An original and three legible copies of all formal documents shall be filed with the Commission. One copy shall be served on any person who is already a party to the proceeding. In addition, the Commission may direct that a copy of any such documents shall be made available by the party filing same to any person whom the Commission may specify.
- B. Manner of service. Except as provided in R14-3-103(B) or unless otherwise ordered by the Commission or otherwise provided by law, all notices, orders to show cause, opinions and orders required to be served by the Commission and all documents filed by any party may be served by mail, and service thereof shall be deemed complete when a true copy of such paper or document, properly addressed and stamped, is deposited in the United States mail with first class postage prepaid.
- C. Proof of service. There shall appear on all documents required to be served by a party an acknowledgement of service or the following certificate:

I hereby certify that I have this day served the foregoing documents on all parties of record in this proceeding (by delivering a copy thereof in person to _____.)

(By mailing a copy thereof, properly addressed with first class postage prepaid to _____.)

Dated at _____, Arizona,
this ____ day of _____, 19__

(Signature)

Historical Note

Former Section R14-3-107 repealed, new Section R14-3-107 adopted effective December 17, 1975 (Supp. 75-2).

R14-3-108. Prehearing conference

- A. Procedure. The Commission or presiding officer upon its own motion or upon motion of any party and upon written notice to all parties of record, may direct that a prehearing conference shall be held for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limitation of number of witnesses and consolidation of the examination of witnesses, procedure at the hearing and such other matters which may expedite orderly conduct and disposition of the proceedings or settlements thereof.
- B. Action taken. The action taken at such conference and the agreements made by the parties concerned shall be made a part of the record and, if approved by the parties, such action will control the course of subsequent proceedings, unless modified at the hearing by the presiding officer.
- C. Recessing hearing for conference. In any proceeding the presiding officer, in his discretion, may call all parties together for a conference prior to the taking of testimony, or may recess the hearing for such conference, with the view of carrying out the purpose of this rule. The presiding officer shall state on the record the results of such conference.

Historical Note

Former Section R14-3-108 repealed, new Section R14-3-108 adopted effective December 17, 1975 (Supp. 75-2).

R14-3-109. Hearings, prehearings, conduct of hearings, procedure, evidence, subpoenas, briefs, arguments, official notice and rulings

- A. Procedure. Hearings will be held before one or more Commissioners, one or more Hearing Officers, or any combination thereof. Notice of the place, date and hour of the hearing will be served by the Commission at least ten days before the time set therefor, unless otherwise provided by law or as ordered by the Commission.
- B. Publication of notice of hearings. Publication of notice of hearings shall be as required by law or as ordered by the Commission in a particular proceeding. If publication is required, affidavit of publication shall be filed with the Arizona Corporation Commission at or prior to the time of initial hearing.
- C. Dismissal of proceeding. The Commission may dismiss the application or complaint with or without prejudice or may recess said hearing for a further period to be set by the Commission. A single Commissioner or a Hearing Officer may adjourn or recess a hearing at any time to submit a recommendation to the Commission to dismiss the proceeding,

or may recess said hearing for a further period to be set by the Commission.

- D. Preliminary procedure. The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motions or applications. The parties may then make opening statements if they desire.
- E. Conduct at hearings. All parties to hearings, their counsel and spectators will conduct themselves in a respectful manner. Smoking shall not be permitted at formal hearings of the Commission.
- F. Testimony under oath. All testimony to be considered by the Commission in formal hearings shall be under oath, except matters of which judicial notice is taken or entered by stipulation.
- G. Order of procedure. Applicants or complainants (each of whom must carry the burden of proof) shall present their evidence and then such parties as may be opposing the application or complaint shall submit their evidence. The presiding officer shall determine the order in which parties shall introduce their evidence. Intervenors shall, insofar as possible, follow the party with respect to whom their interests are most closely identified. If the intervention is not in support of either original party, the presiding officer shall designate at which stage such intervenors shall be heard. Evidence will ordinarily be received in the following order unless otherwise directed by the presiding officer:

Upon applications

Applicant
Intervenors or protestants
Commission staff

Upon formal complaints

Complainant
Respondent
Commission staff
Intervenors

Upon complaints by Commission

Commission staff
Respondent
Intervenors

Examination of witnesses shall proceed as follows:

Direct examination by applicant
Cross-examination by each protestant or intervenor
Cross-examination by staff
Examination by presiding officer of Commissioners
Re-direct examination by applicant
Re-cross examination as permitted by the presiding officer
Examination by presiding officer or Commissioners
Opening and closing statements may be allowed

Once a party has rested his case he shall not be allowed to introduce further evidence without consent of the presiding officer.

- H. Consolidation. The Commission or the presiding officer may consolidate two or more proceedings in one hearing when it appears that the issues are substantially the same and that the rights of the parties will not be prejudiced by such procedure. At such consolidated hearing the presiding officer shall determine the order in which all the parties shall introduce their evidence and which party or parties shall open and close.
- I. Limiting number of witnesses. To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue.
- J. Stipulations. With the approval of the presiding officer, the parties may stipulate as to any fact at issue, either by written stipulation introduced in evidence as an exhibit or by oral statement shown upon the record and such stipulation shall be

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binding upon all parties thereto. The Commission or presiding officer, may, however, require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

- K.** Rules of evidence. In conducting any investigation, inquiry or hearing, neither the Commission nor any officer or employee thereof shall be bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking of testimony shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission. Rules of evidence before the Superior Court of the state of Arizona will be generally followed but may be relaxed in the discretion of the Commission or presiding officer when deviation from the technical rules of evidence will aid in ascertaining the facts.
- L.** Documentary evidence. Unless otherwise ordered by the Commission or presiding officer and if practicable, exhibits should be limited in size when folded to 8 1/2 x 11 inches. A copy of each documentary exhibit shall be furnished to each party of record present, and three additional copies shall be furnished for the use of the Commission unless the Commission or presiding officer otherwise directs. Where relevant and material matter offered in evidence is embraced in a written or printed statement, book or document of any kind containing other matter not material or relevant and not intended to be put in evidence, such statement, book or document in whole shall not be received or allowed to be filed, but counsel and other parties offering the same shall present in convenient and proper form for filing a copy of such material and relevant matter, or at the discretion of the presiding officer, read the same into the record, and that only shall be received and allowed to be filed as evidence and made a part of the record. Whenever practicable, or when ordered by the Commission or presiding officer, the parties shall interchange copies of exhibits before or at the hearing. Any documentary evidence offered, whether in the form of exhibit or introduced by reference, shall be subject to appropriate and timely objection.
- M.** Prepared testimony. The Commission may order the prefilming and service of testimony and exhibits. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer, the court reporter, and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, he may direct prepared testimony be copied into the record without reading.
- N.** Resolutions. Resolutions properly authenticated by the governing bodies of a governmental entity will be received in evidence if offered at the hearing by the president, secretary, or other proper person. Such resolutions shall be received subject to rebuttal by adversely affected parties as to either the authenticity of the resolution or the circumstances surrounding its procurement. Recitals of fact contained in resolutions shall not be deemed proof of those facts, and such resolutions shall only be received for the limited purpose of showing the expression of the official action of the resolving body with respect to the matter under consideration in the proceeding.
- O.** Subpoenas. Subpoenas requiring the attendance of a witness from any place in the state of Arizona to any designated place of hearing for the purpose of taking testimony of such witnesses orally before the Commission may be issued upon application in writing. A subpoena may also command the person to whom it is directed to produce books, papers, documents or tangible things designated therein. The application for such subpoenas must specify, as clearly as possible, the books, waybills, papers, accounts or other documents desired. The Commission or presiding officer, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance therewith may:
1. Quash the subpoena if it is unreasonable or oppressive, or
 2. Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued, of the reasonable cost of producing the books, waybills, papers, accounts or other documents desired.
- Witnesses who are summoned are entitled to the same fees as are paid for like service in the courts of the state of Arizona, such fees to be paid by the party at whose instance the witness is subpoenaed.
- If service of subpoena is made by an officer of the state or his deputy, such service shall be evidenced by his return thereon. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service the original subpoena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be left with him. The original subpoena, bearing or accompanied by the required return, shall be returned forthwith to the Commission.
- P.** Depositions. The Commission, a Commissioner, or any party to any proceeding before it may cause the depositions of witnesses to be taken in the manner prescribed by law and of the civil procedure for the Superior Court of the state of Arizona.
- Q.** Continuance. Either prior to hearing or during a hearing, and on a showing of good cause, a matter may be continued by the Commission or the presiding officer for submission of further or additional evidence or for any other proper purpose.
- R.** Briefs. In any hearing, briefs may be ordered by the Commission or presiding officer to be filed within such time as may be allowed. Four copies of briefs shall be filed with the Commission and shall be accompanied by a proof of service showing service on other parties of record.
- S.** Oral argument. Following the filing of briefs or upon contested motions, the presiding officer may set the matter for oral argument.
- T.** Official notice. The presiding officer may take official notice of the following matters:
1. Rules, regulations, official reports, decisions and orders of the Commission and any regulatory agency of the state of Arizona.
 2. Contents of decisions, orders, certificates and permits issued by the Commission.
 3. Matters of common knowledge and technical or scientific facts of established character.
 4. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference; provided, however, that proper and definite reference to such document shall be made by the party offering the same and that the same is published and generally circulated so that an opportunity shall be given to all of the parties of interest at the hearing to examine the same and present rebuttal evidence.
 5. Such other matters as may be judicially noticed by the Courts of the state of Arizona.
- U.** Reliance on other records in Commission's files. When a party desires to offer in evidence any portion of the testimony, exhibits, order, decision or record in any other proceeding before the Commission, such portion shall be plainly designated in the stenographic record and, if admitted, shall be deemed to be a part of the testimony in the immediate proceeding without physical production and marking for identification.
- V.** Open hearings. All hearings conducted pursuant to these rules shall be open to the public.
- W.** Transcripts. The Commission will cause a stenographic record to be made of all public hearings. Parties desiring copies of such transcript may purchase same from the court reporter.

- X. Objections and rulings. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. The presiding officer shall rule on the admissibility of all evidence.
- Y. Offer of proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.
- Z. Documents in the docket file as evidence for the record. The docket file is a public record and, as such, is available and open to inspection to all. Any document in such file shall not be considered unless same is offered and accepted in evidence. Such document need not be produced as an exhibit but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and are competent, relative and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy thereof shall be presented as an exhibit, unless otherwise ordered by the presiding officer.

Historical Note

Former Section R14-3-109 repealed, new Section R14-3-109 adopted effective December 17, 1975 (Supp. 75-2). Amended subsection (L) effective July 8, 1980 (Supp. 80-4).

R14-3-110. Hearing officer recommendations, service of recommendations, decision and orders

- A. Decisions. A proceeding is submitted for decision by the Commission after taking of evidence, the filing of briefs or the presentation of oral argument as may have been prescribed by the presiding officer.
- B. Recommendations of Hearing Officers. In a proceeding heard by a Hearing Officer, the Hearing Officer shall prepare his recommendation which may be in the form of an opinion and order, unless otherwise directed by the Commissioners. Such recommendation by the Hearing Officer shall become part of the Docket. Upon prior written request by a party to the Executive Secretary, a copy of such recommendation shall be sent to such party by the Executive Secretary. Such proposed order shall include recommended findings, conclusions, and order, which may be narrative form at the discretion of the Hearing Officer.
Any party to the proceeding may serve and file five copies of exceptions to the proposed order within ten days after service thereof. There shall be no reply to exceptions and the proposed order and any exceptions filed shall be submitted to the Commission for its consideration.
Any party to a proceeding may offer at the conclusion of the hearing, a proposed order, with Findings of Fact and Conclusions of Law for consideration by the Commission, or Hearing Officer.
- C. Service of orders. Except as otherwise provided by law, conformed copies of orders of the Commission shall be served by mailing copies thereof to the parties of record or their representatives or by personal service thereof.

Historical Note

Former Section R14-3-110 repealed, new Section R14-3-110 adopted effective December 17, 1975 (Supp. 75-2).

R14-3-111. Rehearings in cases relating to the regulation of public service corporations

All applications filed under A.R.S. § 40-253 for further hearings, rehearings, re-arguments, reconsideration or modification of orders issued in proceedings arising out of Article XV of the Constitution or Title 40 of Arizona Revised Statutes with respect to the Commission's regulation of public service corporations shall be filed within 20 days from the date of the order of the Commission.

Historical Note

Former Section R14-3-111 repealed, new Section R14-3-111 adopted effective December 17, 1975 (Supp. 75-2). Amended effective March 13, 1979 (Supp. 79-2).

R14-3-112. Rehearings in cases relating to the regulation of securities and corporations

- A. Except as provided in subsection (G), any party in a contested case before the Commission arising out of Title 10 or 44 of Arizona Revised Statutes, who is aggrieved by a decision rendered in such case may file with the Commission, not later than ten days after service of the decision, a written application for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.
- B. An application for rehearing under this rule may be amended at any time before it is ruled upon by the Commission. A response may be filed within ten days after service of such application or amended application by any other party or the staff. The Commission may require the filing of written briefs upon the issues raised in the application and may provide for oral argument.
- C. A rehearing of the decision may be granted for any of the following causes materially affecting the moving party's rights:
 1. Irregularity in the proceedings before the Commission or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the Commission, its staff or its hearing officer or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing;
 7. That the decision is not justified by the evidence or is contrary to law.
- D. The Commission may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- E. The Commission, within the time for filing an application for rehearing under this rule, may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on application of a party. After giving the parties notice and an opportunity to be heard on the matter, the Commission may grant an application for rehearing, timely served, for a reason not stated in the application. In either case, the order granting such a rehearing shall specify the ground therefor.
- F. When an application for rehearing is based upon affidavits, they shall be served with the application. An opposing party or the staff may within ten days after such service serve opposing affidavits.
- G. If in a particular decision the Commission makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any

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application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Commission's final decision.

Historical Note

Former Section R14-3-112 repealed effective December 17, 1975 (Supp. 75-2). New Section R14-3-112 adopted effective March 13, 1979 (Supp. 79-2).

R14-3-113. Unauthorized communications

- A. Purpose.** It is the purpose of this rule to assist the members of the Arizona Corporation Commission and its employees in avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings before the Commission.
- B. Application.** The provisions of this rule apply from the time a contested matter is set for public hearing. The provisions of this rule do not apply to rule making proceedings.
- C. Prohibitions.**
1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding to a commissioner or commission employee involved in the decision-making process for that proceeding.
 2. No commissioner or commission employee involved in the decision-making process of a contested proceeding shall request, entertain, or consider an unauthorized communication concerning the merits of the proceeding.
 3. The provisions of this rule shall not prohibit:
 - a. Communications regarding procedural matters;
 - b. Communications regarding any other proceedings;
 - c. Intra-agency or non-party communications regarding purely technical and legal matters;
 - d. Comments from the general public;
 - e. Communications among hearing officers, non-party staff and commissioners.
- D. Remedy.**
1. A commissioner or commission employee who receives an oral or written offer of any communication prohibited by this rule must decline to receive such communication and will explain that the matter is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient will advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made, will be prepared, and the statement will be filed in the public record of the case or proceeding.
 2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.
 3. If a party to a contested proceeding makes an unauthorized communication, the party may be required to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

Historical Note

Adopted effective January 3, 1986 (Supp. 86-1).

ARTICLE 2. RULES OF PRACTICE AND PROCEDURE BEFORE POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE**R14-3-201. Sessions of the committee**

- A.** Sessions of the Committee shall be held at such times and places as the business of the Committee shall require and after notice as provided in these Rules of Practice and Procedure.
- B.** Hearings on applications for certificates of environmental compatibility, in the discretion of the chairman but subject to overruling by a majority of the Committee within five days of notice of his decision, shall be conducted by the Full Committee or by a hearing officer qualified under A.R.S. § 40-360.04(B). There shall be no quorum requirement in the event a hearing is conducted by the full Committee.
- C.** Hearings shall be presided over by a Presiding Officer who shall be either:
1. The chairman or his designee, in the event of a hearing conducted by the full Committee, or
 2. The hearing officer.
- D.** For purposes of these rules, the chairman or his designee shall act as Presiding Officer with respect to each application unless and until a hearing officer is designated in accordance with subsection (B) hereof.
- E.** The powers and duties of the Presiding Officer, in addition to those set forth in these Rules of Practice and Procedure, shall include the authority to:
1. Administer oaths and affirmations.
 2. Rule upon offers of proof and receive relevant evidence.
 3. Take or cause depositions to be taken.
 4. Regulate the course of a hearing.
 5. Hold conferences, prior to the hearings at which time each party shall set forth the issues it wishes to present at the hearing, and during the hearing for the settlement of the issues, and for such other purposes as the Presiding Officer deems appropriate.
 6. Dispose of procedural requests or similar matters.
 7. Examine witnesses.
 8. Set the dates for the submission of transcript corrections.
 9. Mail to each member of the Committee, within five days after the transcript is prepared and delivered, a certified copy of the record of the hearings, including the transcript and reproducible exhibits.

Effective 2-70.

Historical Note

Former General Order U-51, Article I.

R14-3-202. Parties

- A.** Parties to the proceedings before the Committee shall be designated "applicants" or "intervenor".
1. Any person seeking a certificate shall be designated "applicant".
 2. Any other person having an interest in a proceeding before the Committee shall be designated "intervenor".
- B.** The Presiding Officer by notice prior to or during the hearing may require the consolidation of the representation of nongovernmental parties having similar interests.

Effective 2-70.

Historical Note

Former General Order U-51, Article II.

R14-3-203. Applications

- A.** Twenty-five copies of each application for a certificate of environmental compatibility and supporting exhibits and