**PUC PROJECT NO. 52059**

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| **REVIEW OF COMMISSION FILING REQUIREMENTS** | **§****§****§****§** | **PUBLIC UTILITY COMMISSION****OF TEXAS** |

TCPA’s reply COMMENTS to the proposal for publication of repeals of 16 tac §22.71 and §22.72 and new §22.71 and §22.72

Texas Competitive Power Advocates (“TCPA”) appreciates the opportunity to provide reply comments to the proposal for publication of repeals of 16 TAC §22.71 and §22.72 and new §22.71 and §22.72.

TCPA agrees with several important recommendations raised by the initial comments filed with the Public Utility Commission (“PUC” or “Commission”). First, TCPA agrees with initial comments expressing concern with the proposed new confidentiality requirements. As raised in the initial comments, those proposed requirements seem geared to mirror protective order requirements in contested cases but will be significantly burdensome when applied outside the contested case context (e.g., to filings of emergency operations plans, other regulatory filings like the annual generating capacity report, and potentially responses to Staff requests for information outside a contested case).

Second, and similarly, TCPA believes the suggestion of the State Office of Administrative Hearings (“SOAH”) to incorporate SOAH’s electronic filing requirements into the PUC’s rules would be onerous, especially when applied to filings outside the contested case context.

Finally, TCPA agrees with suggestions relating to exceptions from the 7-day requirement for filings preceding an open meeting and the 5:00 pm deadline for filings with the Commission, as well as excusing late filings due to technical issues with the PUC’s filing system.

**CONFIDENTIALITY REQUIREMENTS**

TCPA supports the comments from the Lower Colorado River Authority and the Texas Energy Association for Marketers (“TEAM”) suggesting that the proposed new confidentiality requirements be eased, particularly outside the contested case context.

Specifically, TCPA agrees with TEAM’s comments that the proposed requirements regarding confidentiality should not be applied to projects and docketed proceedings where the applicant and Commission Staff are the only parties. While TEAM’s comments highlighted regulatory filings made by retail electric providers, generators similarly would be impacted by filings such as emergency operations plans and annual generating capacity reports, as well as any RFIs issued by Staff in an investigation proceeding or outside of a contested case.

Several commentors (e.g., Texas Electric Cooperatives, Oncor, and the Texas Association of Water Companies) raised concerns about the applicability of the confidential submission requirements in the context of contested cases, where there is already a protective order that requires much of the same process as the proposed rule would require. Given the existing protective order requirements, TCPA agrees that it is unclear if adding requirements to the rule is necessary. Should the Commission expand its rules regarding confidential filings, TCPA agrees with the comments of the Texas Public Power Association that the rule could allow that either a memo or redacted copy of the confidential information be filed, but not require both, as that would be unnecessarily burdensome. TCPA believes filing a redacted copy of the information without a memo is sufficient in most cases to provide the public with the information needed.

Outside the contested case process, entities routinely are required to file competitively sensitive information to comply with regulatory filing requirements or Staff requests for information. In those instances, it is unnecessary to impose burdensome requirements to file a document confidentially – for example, writing a memo to support confidentiality claims or requiring the public filing of heavily redacted documents.

To the extent that one of the PUC’s goals with the proposed requirement is providing the public greater access to documents filed with the PUC, there is already a well-established process for the public to request information in the form of the Public Information Act. As a part of this process, the Office of the Attorney General (“OAG”) is empowered to decide whether documents are public or must be maintained as confidential, and third parties are provided an opportunity to argue why their information is exempt from public disclosure and should be withheld. This appropriately balances the interests of the public in transparency and open government with the interests of privately-owned, regulated entities in protecting their competitively sensitive information that is in the agency’s records solely due to compliance with regulatory filing requirements. Determining whether a document is confidential or open to the public is already within the purview of the OAG and should remain there given their long-standing expertise in making those determinations.

TCPA notes that it does not agree that any specific reference to the Public Information Act (“PIA”) is necessary in the Commission’s rules. The PIA is binding on the Commission and applies beyond confidential filings, so a reference here to the PIA or Open Meetings Act could create confusion around other instances when these acts apply.

**Electronic Filing Requirements**

The Commission has always had its own procedural rules for filing. These rules are well understood by stakeholders and while revisions may be appropriate to modernize those requirements, incorporating the electronic filing requirements of SOAH instead would be confusing and unnecessarily burdensome considering that a substantial share of the total filings made with the Commission are not involved in contested cases, and that some contested cases are retained by the Commission. The eFile system filing process requires a login, and opening a new docket requires more information. This system could be difficult for parties to manage, particularly *pro se* parties and the public. If the Commission’s filing requirements are too arduous, it may discourage valuable participation by stakeholders.

Additionally, TCPA notes that SOAH is not required to hear Commission cases, and the Commission can decide, in the first instance, if it wishes to retain its primary jurisdiction over the contested cases filed with it. Thus, it would not make sense to adopt SOAH’s electronic filing requirements solely based on an argument (made by SOAH in initial comments) that it has primary jurisdiction over PUC contested cases.[[1]](#footnote-2)

In short, TCPA opposes SOAH’s suggestion for the PUC to incorporate SOAH’s electronic filing standards into its procedural rules.

 **other proposed changes**

TCPA supports comments made by TCPA-member Vistra that the existing good cause exception under 16 TAC § 22.71(i)(2)(C) should be retained or incorporated in the new rule to allow for limited additional filings after the seven-day filing deadline prior to open meetings.

 Additionally, TCPA supports Vistra’s comments regarding the exceptions to the proposed 5:00 pm deadline. Maintaining a more flexible filing deadline for projects will help avoid potentially valuable feedback from stakeholders less familiar with the Commission’s filing requirements from being disallowed due to technicalities.

Lastly, TCPA supports TEAM’s suggested changes to 16 TAC § 22.71(e) to address situations that are beyond the control of the filer, such as when the Commission’s filing system is unavailable or experiencing technical difficulties in accepting filings.

**CONCLUSION**

 TCPA supports the Commission’s efforts to modernize the filing processes and procedures for matters before the Commission but urges the Commission to consider the burden potential changes may place on filers.

 Dated: July 2, 2025

 Respectfully submitted,

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**EXECUTIVE SUMMARY OF TCPA COMMENTS**

* The proposed confidentiality requirements appear geared to mirror protective order requirements in contested cases but will be significantly burdensome when applied outside the contested case context.
	+ TCPA supports Texas Energy Association for Marketers’ comments that the proposed requirements regarding confidentiality should not be applied to projects and docketed proceedings where the applicant and Commission Staff are the only parties.
	+ TCPA agrees with the comments of several commentors that adding confidential submission requirements to the rule may be unnecessary given the existing protective order requirements in contested cases. Should the Commission choose to amend the rule, TCPA agrees with the comments of the Texas Public Power Association that the rule could allow either a memo or a redacted copy of the confidential information be filed but not require both.
	+ The Commission should continue to utilize the well-established Public Information Act process for the public to request information, with the Office of the Attorney General continuing to decide whether documents are public or must be maintained as confidential.
* The suggestion of the State Office of Administrative Hearings (“SOAH”) to incorporate SOAH’s electronic filing requirements into the PUC’s rules would be onerous, especially when applied to filings outside the contested case context.
* TCPA agrees with suggestions relating to exceptions from the 7-day requirement for filings preceding an open meeting and the 5:00 pm deadline for filings with the Commission, as well as excusing late filings due to technical issues with the PUC’s filing system.
1. Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.066 (PURA), § 14.053 states that SOAH “may” hear a contested case originating at the Commission “if” the Commission does not hear the case, which makes clear that the Commission has primary jurisdiction over the cases filed with it. (“The State Office of Administrative Hearings shall conduct each hearing in a contested case that is not conducted by one or more commissioners.”). This fact is acknowledged in SOAH’s rules as well. *See* 1 Tex. Admin Code (TAC) § 155.51(a) (“SOAH acquires jurisdiction over a case when a referring agency completes and files a Request to Docket Case form. A separate Request to Docket Case form shall be completed and filed for each case referred to SOAH”). [↑](#footnote-ref-2)