

Title 23. Public Utilities and Regulated Industries
Chapter XVI. Arkansas Public Service Commission
Subchapter A. Generally
Part 462. Rules of Practice and Procedure

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Last Revised: April 10, 2015

Order No. 3

Docket No. 14-111-R

Effective: 6-12-2015"

Subpart 1. Purpose, Applicability, and General Matters

23 CAR § 462-101. Purpose.

The purpose of this part is to establish practices and procedures before the Arkansas Public Service Commission.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 1.02 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-102. Applicability.

(a) This part shall apply to all practices and procedures before the Arkansas Public Service Commission unless otherwise specifically stated.

(b) For any additional matters of practice or procedure having general applicability to regulated entities and parties appearing before the Arkansas Public Service Commission, please refer to Docket No. 14-001-A.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 1.03 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-103. Definitions.

The following definitions shall apply throughout this part except as otherwise required by the context, and any references to this part shall include these definitions:

- (1) "Applicant" or "petitioner" means a person who files a formal application;
- (2) "Ark. R. Civ. P." means the Arkansas Rules of Civil Procedure;
- (3) "Class A telecommunications provider" means any LEC providing more than twenty-five thousand (25,000) access lines in Arkansas;
- (4) "Commission" means:
 - (A) Commissioners of the Arkansas Public Service Commission as defined in Arkansas Code § 23-2-101; or
 - (B) A presiding officer designated to act on behalf of the Arkansas Public Service Commission;
- (5) "Commission business hours" means the Arkansas Public Service Commission's normal business hours as posted on its website;
- (6) "Commissioner" means a member of the Arkansas Public Service Commission as defined in Arkansas Code § 23-2-101;
- (7)(A) "Commissioners' staff" means employees of the Arkansas Public Service Commission who provide technical and legal support to the commissioners.
 - (B) The commissioners' staff is not a party in any docket;
- (8) "Complainant" means a person who files a formal complaint;
- (9) "Competing local exchange carrier" or "CLEC" means as defined in Arkansas Code § 23-17-403(14);
- (10)(A) "Cost of service" means the total cost of providing service to each customer class that considers:

- (i) All reasonable expenses, including taxes and depreciation; and
- (ii) A fair rate of return on assets devoted to utility service.

(B) The assignment of costs among the customer classes should be made using the criterion that each customer class will bear those costs the utility incurs in providing utility service to customers;

(11) "Day" means, when used to establish a deadline, a calendar day, unless a specific rule explicitly uses the term "business day";

(12) "Docket" means a formal proceeding in which the secretary has assigned a docket number;

(13) "Electronic filing system" or "EFS" means the Arkansas Public Service Commission's online filing system used to make filings in docketed Arkansas Public Service Commission proceedings;

(14)(A) "Ex parte communication" means written or oral communication by a person to a commissioner or presiding officer outside of a public hearing.

(B) A written document filed with the secretary or sent to the Arkansas Public Service Commission and served on other parties shall not be considered an ex parte communication;

(15) "Formal application" means a written pleading that is filed and seeks to invoke the authority of the Arkansas Public Service Commission to:

(A) Perform an act; or

(B) Approve an act to be performed by the applicant;

(16) "Formal complaint" means a formal application in the form of a complaint initiated by the Arkansas Public Service Commission, staff, or a person authorized to complain pursuant to Arkansas Code § 23-3-119;

(17) "General Rate Change Application" means a formal application for a rate change pursuant to Arkansas Code § 23-4-401 et seq.;

(18) "Incumbent local exchange carrier" or "ILEC" means as defined in Arkansas Code § 23-17-403(29);

(19) "Informal complaint" means a complaint in oral or letter form that is not part of a docket, received by the Arkansas Public Service Commission or staff from persons having a complaint about a utility's service, rates, or actions;

(20) "Interexchange carrier" or "IXC" means any person not a local exchange carrier that provides interexchange communications services to the public for compensation in Arkansas;

(21) "Intervenor" means a person who has been granted permission to intervene in a docket pursuant to 23 CAR § 462-402;

(22) "Legal holiday" means a day designated as a holiday by Arkansas laws or executive proclamation;

(23) "Local exchange carrier" or "LEC" means as defined in Arkansas Code § 23-17-403(33);

(24) "Major electric utilities" means as defined in the Federal Energy Regulatory Commission Electric Uniform System of Accounts;

(25) "Major natural gas utilities" means as defined in the Federal Energy Regulatory Commission Gas Uniform System of Accounts;

(26) "Nonelecting ILEC" means an ILEC that is not regulated pursuant to:

(A) Arkansas Code §§ 23-17-406 – 23-17-408; or

(B) Arkansas Code § 23-17-412;

(27) "Official service list" means a list maintained by the secretary in each docket of the names, addresses, and other information listed in 23 CAR § 462-304 for the individual or individuals designated by each party to whom pleadings, notices, and correspondence are to be addressed;

(28) "Party" means:

(A) Any person who:

(i) Initiates a docket before the Arkansas Public Service Commission by filing a formal application consistent with this part;

(ii) Is named as a respondent in a formal complaint filed pursuant to 23 CAR § 462-902;

(iii) Is an intervenor; or

(iv) Is otherwise specifically designated by Arkansas Public Service Commission order as an official party to any docket;

(B) The Attorney General acting pursuant to the Consumer Utilities Rate Advocacy Division Act, Arkansas Code § 23-4-301 et seq., upon filing a "notice of intent" to participate as a party in any docket; and

(C) The staff, where staff is participating as a party in any docket pursuant to 23 CAR § 462-104;

(29) "Person" means as defined in Arkansas Code § 23-1-101;

(30) "Presiding officer" means:

(A) The Chair of the Arkansas Public Service Commission;

(B) In the absence of the chair, another commissioner; or

(C) A representative the Arkansas Public Service Commission designated to preside over a proceeding;

(31) "Pro forma adjustments" means, consistent with Arkansas Code § 23-4-406, adjustments to any test year so utilized to reflect the effects on an annualized basis of any and all changes in circumstances that may occur within twelve (12) months after the end of the test year, where such changes are both reasonably known and measurable;

(32) "Pro forma year" means, consistent with Arkansas Code § 23-4-406, the twelve-month period immediately following the test year;

(33) "Rate schedule" means a schedule of rates and conditions of service for:

(A) A specific classification of customer; or

(B) Other specific services;

(34) "RPPs" means this part, the Arkansas Public Service Commission's Rules of Practice and Procedure that include all appendices;

(35) "Rule" means any Arkansas Public Service Commission statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of the Arkansas Public Service Commission, issued following notice and hearing as required by statute;

(36) "Rulemaking" means the Arkansas Public Service Commission process for the formulation, amendment, or repeal of a rule pursuant to statute;

(37) "Rural telephone company" means as defined in Arkansas Code § 23-17-403(38);

(38) "Secretary" means:

(A) The secretary of the Arkansas Public Service Commission;

(B) An assistant secretary; or

(C) Such other person the Arkansas Public Service Commission may assign;

(39) "Section 6 electing company" means an ILEC regulated pursuant to Arkansas Code §§ 23-17-406 – 23-17-408;

(40) "Section 12 electing company" means an ILEC regulated pursuant to Arkansas Code § 23-17-412;

(41)(A) "Staff" means Arkansas Public Service Commission employees who may collectively participate in and appear as a party in investigations at and dockets before the Arkansas Public Service Commission.

(B) "Staff" includes:

(i) The Executive Director of the Arkansas Public Service Commission and the Director of the Tax Division of the Arkansas Public Service Commission; and

(ii) Employees who report to those directors;

(C) "Staff" does not include commissioners' staff;

(42) "Telecommunications provider" means any person that offers telecommunications services to the public for compensation;

(43)(A) "Telecommunications services" means the offering to the public for compensation the transmission of voice, data, or other electronic information at any frequency over any part of the electromagnetic spectrum, notwithstanding any other use of the associated facilities.

(B) Such term does not include:

(i) Radio and television broadcast or distribution services, or providing or publishing yellow pages, regardless of the entity providing such services; or

(ii) Services to the extent that such services are used in connection with operating a government-owned electric utility system;

(44) "Test year" means, as defined in Arkansas Code § 23-4-406, a:

(A) Historical test period of twelve (12) consecutive calendar months; or

(B) Forward-looking test period of twelve (12) consecutive calendar months consisting of:

(i) Six (6) months of actual historical data derived from the books and records of the utility; and

(ii) Six (6) months of projected data;

(45) "Tier one company" means any ILEC that, together with its Arkansas affiliates that are also ILECs, provided basic local exchange services to greater than one hundred fifty thousand (150,000) access lines in Arkansas on February 4, 1997;

(46)(A) "Uniform system of accounts" or "USOA" means the basic account descriptions, instructions, and accounting definitions to which jurisdictional utilities are required to adhere in maintaining their books and records.

(B) The required USOA for each utility:

(i) Is listed as follows; and

(ii) Shall include any future updates, revisions, or interpretations made to the referenced USOA:

(a)(1) **Electric investor-owned utilities.** The Federal Energy Regulatory Commission's USOA prescribed by 18 C.F.R. § 101.

(2) In addition, 18 C.F.R. § 125 prescribes the rules regarding the preservation of records;

(b)(1) **Gas investor-owned utilities.** The Federal Energy Regulatory Commission's USOA prescribed by 18 C.F.R. § 201.

(2) In addition, 18 C.F.R. § 225 prescribes the rules regarding the preservation of records;

(c) **Electric cooperatives.** The Rural Utilities Service's USOA prescribed by 7 C.F.R. § 1767;

(d)(1) **Water and sewer utilities.** The National Association of Regulatory Utility Commissioners' USOA.

(2) In addition, the National Association of Regulatory Utility Commissioners' rules and regulations govern the preservation of records; and

(e) **Telecommunications utilities.** The Federal Communications Commission's USOA prescribed by 47 C.F.R. § 32.

(C) Where the otherwise applicable USOA has been modified by Arkansas statute or Arkansas Public Service Commission order, the modification shall control for ratemaking purposes; and

(47) "Workpapers" shall include information sufficient to verify all inputs and replicate all calculations and analyses specifically relied upon to support all recommendations made, positions taken, or conclusions reached in:

- (A) Testimony;
- (B) Exhibits;
- (C) Appendix schedules; or
- (D) Any other document that is filed or provided.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 1.01 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-104. Secretary.

- (a) The secretary is the custodian of the Arkansas Public Service Commission's:
- (1) Docket records;
 - (2) Reports;
 - (3) Forms;
 - (4) Rules; and
 - (5) All other documents filed with or received by the secretary.

(b)(1) All Arkansas Public Service Commission orders and other actions shall be authenticated or signed by the secretary.

(2) Unless otherwise provided by statute, rule, or Arkansas Public Service Commission order or unless waived by a party, the secretary shall serve a copy of each order on persons on the official service list for the docket in which the order was entered.

(c) The secretary shall assign to each docket a docket number and title descriptive of the subject matter, which number and title shall be placed on all notices issued, orders made, and documents filed in such docket.

(d) Documents to be filed with the Arkansas Public Service Commission shall be filed in the office of the secretary, who shall:

(1) Mark the date and time of the filing; and

(2) File the document into the record of the appropriate docket.

(e) Requests for official information, copies of Arkansas Public Service Commission orders, or opportunities to inspect public records maintained by the Arkansas Public Service Commission shall be made to the office of the secretary.

(f)(1) The secretary shall compile and maintain an official service list in every docket.

(2) The official service list shall be:

(A) Available on the Arkansas Public Service Commission's website; and

(B) Furnished by the secretary upon request.

(g)(1) The Arkansas Public Service Commission may by administrative order from time to time delegate additional authority to the secretary.

(2) Copies of said order or orders shall be served on:

(A) Jurisdictional utilities; and

(B) Any person giving notice to the secretary to receive notice of these orders.

(h)(1) The secretary of the Arkansas Public Service Commission shall maintain a list of each jurisdictional public utility or other jurisdictional person in Arkansas.

(2) With the name of each jurisdictional public utility, the list shall contain the name and business address, telephone number, facsimile number, if any, electronic mail address, if any, and other contact information of the person or persons the utility designates to receive all process and official correspondence from the Arkansas Public Service Commission.

(3) All jurisdictional public utilities and other jurisdictional persons shall ensure that the information maintained on this list is current and accurate.

(4) Other jurisdictional persons include entities such as:

(A) Pipeline operators;

(B) Master meter operators; or

(C) Other providers that otherwise do not meet the definition of a public utility but are jurisdictional to the Arkansas Public Service Commission for some purpose.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 1.04 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-105. Staff participation.

(a) Staff is:

(1) A party to any docket in which it participates; and

(2) Bound by and shall conform to this part in any docket in which it participates.

(b) When participating in and appearing as a party in investigations at and dockets before the Arkansas Public Service Commission, staff's duties include but are not limited to ensuring that:

(1) Its recommendations are consistent with the public interest;

(2) Its recommendations are consistent with the applicable statutes and court decisions;

(3) Its recommendations are consistent with the provision of safe, reliable, and reasonably priced utility service;

(4) Natural gas operators are in compliance with the:

(A) Arkansas Gas Pipeline Code, 23 CAR pt. 451; and

(B) Federal Pipeline Safety Code; and

(5) It efficiently and effectively renders ad valorem assessments for utilities and carriers.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 1.05 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-106. Ex parte communication.

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

(1)(A) No person shall submit ex parte communications to any commissioner or presiding officer in such proceeding reasonably designed to influence a decision on any issue of law or fact in any such proceeding.

(B) Independent advice and counsel rendered by the commissioners' staff to the Arkansas Public Service Commission or presiding officer is not ex parte communication, nor is attendance by the commissioners or a presiding officer at public conferences and other educational events.

(C) No commissioner or presiding officer shall request or entertain any ex parte communication herein prohibited;

(2)(A) A commissioner or presiding officer in such proceeding who receives an offer of any ex parte communication concerning any issue of law or fact in any such proceeding shall:

(i) Decline to listen to such communication; and

(ii) Explain that the matter is pending for determination.

(B) If unsuccessful in preventing such communication, the recipient thereof shall:

(i) Advise the communicator that he or she will not consider the communication; and

(ii) Promptly and fully inform the Arkansas Public Service Commission and all other parties to the proceeding of the:

(a) Substance of the communication; and

(b) Circumstances thereof; and

(3)(A) A party may request an opportunity to rebut, on the record, any facts or contentions contained in any prohibited ex parte communication.

(B) The Arkansas Public Service Commission or presiding officer shall grant such requests only where fairness so requires.

(C) If the Arkansas Public Service Commission or presiding officer declines to grant such request, the requesting party may proffer its rebuttal for the record.

(D) Where the ex parte communication contains assertions of fact not a part of the record of which the Arkansas Public Service Commission or presiding officer cannot take official notice, the Arkansas Public Service Commission or presiding officer in lieu of receiving rebuttal material normally will direct that the alleged factual assertion in the ex parte communication and any proposed rebuttal be disregarded in arriving at a decision.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 1.06 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-107. Show cause orders.

(a) The Arkansas Public Service Commission may issue a show cause order:

(1) Stating matters to be addressed; and

(2) Requiring the respondent or respondents to appear and show cause why a particular order should not be issued.

(b) The secretary shall immediately serve a copy thereof upon each respondent.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 1.07 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-108. Fees.

A list of fees authorized by statute or Arkansas Public Service Commission order shall be:

- (1) Posted on the Arkansas Public Service Commission's website; and
- (2) Available in the secretary's office.

Authority. Arkansas Code §§ 23-2-305, 23-2-403, 23-3-110.

Codification Notes. This section was promulgated as Rule 1.08 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

Subpart 2. Rules

23 CAR § 462-201. Rules available for public inspection.

The secretary shall maintain, display, and make available for public inspection all rules and other written statements of policy or interpretations formulated, adopted, or used by the Arkansas Public Service Commission.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 2.01 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-202. Adoption of rule changes — Generally.

(a) As provided in this part, the Arkansas Public Service Commission may adopt, amend, or repeal any of its rules either:

- (1) On its own motion; or
- (2) Upon a formal application for rulemaking filed by any person.

(b) Changes to Arkansas Public Service Commission rules shall be made only following notice and a hearing pursuant to:

- (1) This part; and
- (2) Arkansas Code § 23-2-305.

(c) The secretary of the Arkansas Public Service Commission shall assign an "R" docket number to each rulemaking proceeding.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 2.02 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-203. Order and notice of rulemaking.

(a) Before adopting, amending, or repealing any rule, the Arkansas Public Service Commission shall:

(1)(A) Issue an order and notice of rulemaking that shall give at least thirty (30) days' notice of its intended action.

(B) The order shall include:

(i) A statement of the terms or substance of the intended action or a description of the subject and issues involved; and

(ii) The time, place, and manner in which interested persons may present their views;

(C) The notice shall be served on:

(i) Any person specified by law; and

(ii) All persons who have requested advance notice of all rulemaking proceedings;

(2) Afford all interested persons reasonable opportunity to submit written or oral public comments; and

(3) Afford parties reasonable opportunity to submit written comments or argument on the specific proposed rule changes in accordance with the applicable procedural schedule.

(b) Upon issuance of the order giving notice of any hearing on a proposed rule, the secretary shall:

(1) At least thirty (30) days before the period for public comment expires, transmit copies of the order, proposed rule changes, financial impact statement or statements, and other information required by law or rule to the Legislative Council and to the Joint Interim Committee on Insurance and Commerce of the General Assembly (see Arkansas Code §§ 10-3-309 and 25-15-204); and

(2)(A) Publish newspaper notice to the public once a week for two (2) consecutive weeks in a newspaper or newspapers having substantial circulation in Arkansas.

(B) The notice shall contain the following information:

(i) A general description of the proposed rule changes;

(ii) The Arkansas Public Service Commission docket number;

(iii) A statement that interested persons may submit public comments in writing or orally at the hearing;

(iv) The date, place, and time of the hearing;

(v) That further information may be obtained by:

(a) Writing or calling the secretary; or

(b) Viewing the Arkansas Public Service Commission's website;

and

(vi) The name, address, and telephone number of the secretary and the URL address of the Arkansas Public Service Commission's website shall be set forth.

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

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 2.03 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-204. Transmission of final rule.

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

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 2.04 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-205. Exemptions from this part.

(a) The Arkansas Public Service Commission may grant an exemption from any of its rules:

- (1) If the exemption is found to be in the public interest; and
- (2) For good cause shown.

(b) No exemption from the Arkansas Public Service Commission's Special Rules — Gas, 23 CAR pt. 464, shall be granted if the exemption would conflict with the Arkansas Gas Pipeline Code, 23 CAR pt. 451.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 2.05 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

Subpart 3. Pleadings and Other Documents

23 CAR § 462-301. Filing procedures.

(a) **Generally.**

(1)(A) All documents submitted to the Arkansas Public Service Commission for filing in a docket or to be received by the secretary shall fully conform to this part.

(B) Any filing not conforming to the requirements of this part or applicable order may be rejected by the secretary or stricken by the Arkansas Public Service Commission either sua sponte or upon motion.

(C) The filing of a document is not a determination or waiver of compliance with this part or applicable order.

(2) For purposes of this part, use of the term “filing”, “filings”, “filed”, or similar usage shall include where appropriate those documents that are “received” by the secretary.

(3) Users of the Arkansas Public Service Commission’s electronic filing system shall comply with all applicable instructions for electronic filing that are presented on the Arkansas Public Service Commission’s website.

(b) **Filing methods.** All filings shall be made with the secretary and shall be by one (1) of the following means:

(1) Electronic filings through the Arkansas Public Service Commission’s electronic filing system on its website;

(2) In person at the secretary’s office at 1000 Center Street, Little Rock, Arkansas; or

(3) By mail to P.O. Box 400, Little Rock, Arkansas 72203.

(4)(A) Electronic filing is the Arkansas Public Service Commission's preferred filing method.

(B) All persons filing documents with the Arkansas Public Service Commission are encouraged to file electronically to the greatest extent possible.

(c) **Copies.**

(1) Filings in person or by mail shall include the original and one (1) copy.

(2) Only one (1) copy of protected material in unredacted form shall be filed.

(d) **Protected documents filing exception.** Unredacted documents that contain materials subject to a protective order shall not be filed electronically but rather submitted in person or by mail with the secretary until such time as the user agreement maintained on the Arkansas Public Service Commission's website expressly allows the electronic filing of protected documents.

(e) **Time of filing.**

(1) Electronic filings may be downloaded to the Arkansas Public Service Commission's electronic filing system at any time.

(2) All other filings in person or by mail shall be made during Arkansas Public Service Commission business hours.

(3) Any electronic filing received after Arkansas Public Service Commission business hours but before midnight or received on a nonbusiness day shall be deemed filed and served on persons on the official service list with electronic mail on the next business day.

(4) Any electronic filing received between midnight and the beginning of Arkansas Public Service Commission business hours on a business day shall be deemed filed and served on persons on the official service list with electronic mail on that business day.

(5) If the Arkansas Public Service Commission offices are closed at the time of a filing deadline, the time for complying with the filing deadline shall be extended to the same filing deadline time on the next business day.

(f) **Acceptance of filing.**

(1) A document shall not be considered filed electronically until:

(A) Submitted via the Arkansas Public Service Commission's electronic filing system; and

(B) The Arkansas Public Service Commission's electronic filing system generates a receipt of electronic filing.

(2)(A) Risk of loss of transmission, of nonreceipt, or of illegibility is upon the person transmitting and filing electronically.

(B) If a filing is made electronically, the filer must receive a notice of filing from the secretary to be assured that the filing was received and accepted for filing.

(C) Otherwise, a filing is confirmed by the file stamp on the document.

(g) Technical failures.

(1) The standards for declaring a technical failure of the electronic filing system shall be posted on the Arkansas Public Service Commission's website.

(2) A filing party whose filing is made untimely as the result of a technical failure of the Arkansas Public Service Commission's electronic filing system may seek appropriate relief from the Arkansas Public Service Commission.

(h) Correction of electronic filings.

(1) Once a document is filed electronically, corrections to the filing may only be made by the secretary.

(2) The Arkansas Public Service Commission's electronic filing system shall not permit the filing party to make changes to the document or documents or filing information once the transaction has been submitted.

(3) If a filing error is made, the filing party shall contact the secretary as soon as possible with the correct document or documents or filing information, as appropriate.

(i) Discovery documents.

(1)(A) Except as referenced in subdivision (i)(2) of this section, formal discovery documents and responses thereto shall not be filed in the docket unless directed by the Arkansas Public Service Commission but must be served on all parties in accordance with 23 CAR § 462-307(b).

(B) Whenever relevant to a filing, such discovery documents or portions thereof may be attached as an exhibit.

(2) Requests for admissions and responses to requests for admissions shall:

(A) Be filed;

(B) Be a separate document so titled; and

(C) Not be combined with data requests or any other material.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.01 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-302. Form and size requirements.

(a) All documents submitted for filing shall be:

(1) Double-spaced and a normal margin, no less than one inch (1") on all four (4) sides; and

(2)(A) Numbered on each page of all filings.

(B) Each page of any document filed shall be sequentially numbered at the bottom right-hand corner of each page, including the title page or cover sheet.

(C) This numbering is in addition to any numbering of the document as it was originally prepared.

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

(1) Legibly printed or typewritten and on one (1) side of the paper only;

(2) Securely bound (stapled, clipped, cone binding, etc.) except for the original, which shall be unbound; and

(3) On white eight and one-half inches by eleven inches (8 1/2" x 11") paper unless protected material is included, and then the instructions regarding paper color for protected material in subsection (g) of this section are to be followed.

(c) **Exceptions.**

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

(2) Financial, numerical, or other exhibits may be on paper larger than eight and one-half inches by eleven inches (8 1/2" x 11") if necessary, but:

(A) Said exhibits shall be folded to eight and one-half inches by eleven inches (8 1/2" x 11") dimension when filed or made an exhibit for the record at a hearing; and

(B) This type of document shall be presented to the secretary in electronic format when available.

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

(d) **Notification of color documents.** A person making a filing that contains graphs, pictures, or other material in color shall, contemporaneous with the filing, notify the secretary of this fact.

(e) **Docket summary cover sheet.**

(1) A properly completed docket summary cover sheet in the form required by the Arkansas Public Service Commission shall be filed with:

(A) Every original action that opens a new docket; and

(B) Any new or revised tariff for any jurisdictional public utility, excluding telecommunications utilities, filed in an existing docket.

(2) The cover sheet form is available:

(A) On the Arkansas Public Service Commission's website; and

(B) From the secretary's office.

(f) **Testimony and exhibits.**

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

(2)(A) Each witness's exhibits shall:

(i) Reference the round of testimony; and

(ii) Be numbered sequentially:

(a) Beginning with the witness's initials; and

(b) Followed by the number of the exhibit.

(B) For example, the exhibits to the direct testimony of John Q. Public would be identified as "Direct Exhibit JQP-1", "Direct Exhibit JQP-2", etc., with the numbering continuing sequentially within each set of testimony (i.e., direct, rebuttal, etc.).

(C) The exhibits to the surrebuttal testimony of John Q. Public would be identified as "Surrebuttal Exhibit JQP-1", "Surrebuttal Exhibit JQP-2", etc.

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

(g) Additional requirements for protected material.

(1) Redacted and unredacted form.

(A) Filed documents containing protected material shall be filed in both redacted and unredacted form.

(B) The unredacted form shall include the entire document, including protected material.

(2) Form for protected material.

(A) The person filing protected material shall identify such material by conspicuously marking it "CONFIDENTIAL PURSUANT TO COMMISSION PROTECTIVE ORDER NO. ___ IN DOCKET NO. ____" or substantially similar language on each page containing protected information.

(B) Protected material shall be submitted in a sealed envelope with a copy of the protective order attached to the front of the envelope along with a cover letter stating what is being filed.

(C) The protected material cover sheet shall also be attached to the outside of the envelope containing the protected material.

(D) In order to file a document under seal, there must be a protective order granted by the Arkansas Public Service Commission.

(E) The protected material filed under seal shall not be submitted to the secretary for filing until the protective order has been entered by the Arkansas Public Service Commission.

(3) Use of pink paper and highlighting.

(A) On unredacted version.

(i)(a) For any filed document that contains protected information, the entire document shall be filed as the unredacted version of the protected material, but the pages of that unredacted version that contain protected information shall be submitted on pale pink paper.

(b) Only the pages of a document that contain protected material shall be pink in color.

(c) All other pages shall be on white paper.

(ii)(a) The pages containing protected material shall also contain distinctive highlighting on the protected words, numbers, sentences, or other portions of the page such as: **confidential information**.

(b) Only those words, numbers, sentences, or other portions of the page that are subject to an Arkansas Public Service Commission protective order shall be highlighted on the page.

(c) The highlighting of the protected material in the unredacted version of the document shall be done with no more than a twenty-five percent (25%) gradient to ensure that the text is readable.

(d) This allows, with absolute certainty, the identification of material that is subject to a protective order.

(B) On redacted version.

(i) The redacted version of a document shall clearly identify the words, numbers, sentences, or other portions of the page that are redacted by blacking out the protected portion such as: **[REDACTED]**.

(ii) If the entire page is protected material, it may be submitted as an otherwise blank page with the notation that the page is protected in its entirety.

(iii) If two (2) or more sequential pages are entirely protected, they may be submitted as one (1) otherwise blank page with:

(a) The notation that the pages are protected in their entirety;

and

(b) An identification of the corresponding page numbers (e.g., "pages 4 – 8 of this document are protected in their entirety").

(4) Numbering of redacted and unredacted documents.

(A) The protected material must be removed in the redacted version with blank spaces remaining so that the lines and pages of the redacted version remain the same as the unredacted version.

(B) The redacted document shall also be sequentially numbered pursuant to subsection (a) of this section.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.02 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-303. Title and docket number.

(a) All filings shall show:

(1) The venue as "Arkansas Public Service Commission";

(2) The title of the proceedings;

(3) The docket number assigned; and

(4) An appropriate designation (e.g., petition, motion, brief, application, complaint).

(b) It shall be sufficient that a cover sheet contains the required information.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.03 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-304. Official service list.

(a)(1) Each party's initial pleading or other document filed in any docket shall clearly state the name, title, address, telephone number, facsimile transmission number if any, and electronic mail address if any of the individual or individuals to whom pleadings, notices, and correspondence are to be addressed and to be shown on the official service list, in accordance with subsection (b) of this section.

(2) The electronic mail address, if any, shall be the official address for the official service list.

(b) Unless otherwise ordered by the Arkansas Public Service Commission, each party shall be allowed to designate no more than two (2) individuals to be included on the official service list for a docket.

(c)(1) A party may change the individual or individuals to be shown on the official service list by filing a notice of addition, deletion, or substitution.

(2) Each party is responsible for ensuring its contact information is current and accurate.

(d) In all appeals of Arkansas Public Service Commission orders, each party to the appeal shall simultaneously serve the secretary with all of that party's appellate filings in addition to the parties required to be served by the respective court.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.04 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-305. Incorporation by reference.

(a) Whenever any rule requires a document to be filed with any pleading or other document, or in all other cases when a document filed by a party refers or cites to

another document previously filed with the secretary, whether for incorporation by reference into such document or to otherwise support an assertion made in such document, such document may be incorporated by reference if it is already on file with the Arkansas Public Service Commission.

(b) Such reference or citation shall include the:

- (1) Name of the previously filed document;
- (2) Docket number in which it was filed; and
- (3) Filing date.

(c) Incorporation by reference is permitted only if the previously filed document is:

- (1) Identical to the referenced document; and
- (2) Is not under seal.

(d) Any document incorporated by reference shall not be attached to the referencing document.

(e) The secretary shall include in a record on appeal any document incorporated by reference in a docket if a party requests in writing its inclusion in the record.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.05 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-306. Signature and verification.

(a) Pleadings, excluding testimony and exhibits, shall be signed by one (1) of the following methods:

(1)(A) If the party is an individual, by the individual.

(B) For all parties other than individuals, pleadings, with the exception noted in subsection (b) of this section, shall be signed by an attorney;

(2) Customer releases pursuant to 23 CAR § 462-607(b), exchanges and releases of allocated territory pursuant to 23 CAR § 462-607(c), and tariff filings

pursuant to 23 CAR § 462-702 that are assigned to a "TF" docket may be signed by an authorized representative of the party;

(3)(A) The attorney for any party may sign for that party provided, however, that any attorney who signs for a party thereby represents that he or she:

(i) Is authorized to do so;

(ii) Is a licensed attorney-at-law in this state or another United States jurisdiction;

(iii) Agrees to conform to the standards of conduct required by attorneys before the courts of Arkansas; and

(iv) Agrees to comply with the Arkansas Public Service Commission's rules.

(B) The attorney shall indicate his or her bar number and jurisdiction of licensure on all pleadings; and

(4)(A) All pleadings shall be verified by the party filing the same unless signed by the party's attorney, in which event such signature shall constitute a verification.

(B) A verification shall include a certificate by the party that:

(i) He or she has read the pleading;

(ii) To the best of his or her knowledge, information, and belief there are good grounds to support it; and

(iii) It is not interposed for delay.

(b) Signatures on electronically filed documents.

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

(2)(A) If the filed document bears an original nonelectronic signature, the person filing the document shall maintain the original document.

(B) This includes all notarized documents.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.06 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-307. Service.

(a) By the Arkansas Public Service Commission.

(1) Process issued by the Arkansas Public Service Commission as well as notices, complaints, rules, orders, and rules of the Arkansas Public Service Commission may be served by any person authorized to serve process issued out of courts of law by:

- (A) Mail;
- (B) Facsimile;
- (C) Commercial delivery service;
- (D) Electronic mail; or
- (E) Other method as directed by the Arkansas Public Service Commission.

(2) Where service is by mail, a duplicate of the instrument served shall be enclosed upon which duplicate the person served shall:

- (A) Endorse the date of his or her receipt of the original; and
- (B) Promptly return the duplicate to the Arkansas Public Service

Commission.

(3) Where service is by electronic mail, the secretary shall:

- (A) Request a read receipt or similar process to indicate reception of the electronic mail; and
- (B) Preserve the receipt until the docket is closed.

(4) The recipient shall have the duty to acknowledge receipt of the electronic mail.

(b) By parties.

(1) Except for a pleading that initiates a docket and unless otherwise provided in this part or by Arkansas Public Service Commission order, all documents a party files shall include a certificate:

(A) Showing simultaneous service of the document upon all persons on the official service list; and

(B) Noting the:

(i) Name of each; and

(ii) Method and date of service.

(2) Service shall be made by:

(A) Electronic mail via EFS;

(B) Electronic mail;

(C) Personal delivery;

(D) Properly addressed first-class mail or commercial delivery service with charges prepaid;

(E) Facsimile transmission; or

(F) Other method approved by the Arkansas Public Service Commission.

(3)(A) Service of formal discovery documents shall be made by electronic mail for persons on the official service list with electronic mail unless such service is impractical because of technical limitations, in which case service shall be made by the next most prompt means reasonably available.

(B) Service of formal discovery documents shall be made pursuant to subdivision (b)(2) of this section for persons on the official service list without electronic mail.

(c) Service is presumptively complete as follows:

(1) When the document is filed and sent to the persons on the official service list with an electronic mail address by the secretary via the EFS;

(2) By electronic mail upon sending to the electronic mail address on the official service list;

(3) By facsimile upon sending to the facsimile number on the official service list;

(4) By personal delivery upon delivery to the address on the official service list;

(5) By mail upon mailing to the address on the official service list; or

(6) By commercial delivery service upon depositing the papers with the commercial delivery company properly addressed to the address on the official service list.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.07 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-308. Computation of time for performance or response.

(a) In computing the time within which an act must be performed or a response made, the:

(1) Day of the act from which the designated period of time begins to run shall not be included; and

(2) Last day shall be included unless it is a Saturday, Sunday, legal holiday, or other day in which the Arkansas Public Service Commission's office is closed, in which event the period shall extend to the next business day.

(b) If service to a party is by mail or commercial delivery service, three (3) business days shall be added to the time allowed for that party for response to or compliance with any pleading or order.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.08 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-309. Formal applications.

(a) Except as otherwise provided in this part or in any other rule or order of the Arkansas Public Service Commission, a formal application shall be used to request Arkansas Public Service Commission action pursuant to:

(1) This part; and

(2) Any other rule or statute giving the Arkansas Public Service Commission power and authority to act.

(b)(1) A declaratory order to terminate a controversy or remove an uncertainty about the applicability of a statute, rule, or order shall be sought by formal application.

(2) However, the decision whether to consider any such requested relief is discretionary.

(c)(1) All formal applications shall state the:

(A) Full name and address of the applicant;

(B) Facts and applicable law upon which the application is based; and

(C) The particular relief requested.

(2) If the rule or statute under which the formal application is made requires any additional documentation to be included therewith, such as a permit, license, or authority, a copy shall be attached or incorporated by reference pursuant to 23 CAR § 462-305.

(d) If the applicant is a legal entity, a certified copy of its articles of organization as amended shall be attached or incorporated by reference pursuant to 23 CAR § 462-305.

(e) If the applicant is an unincorporated association, a list of its members shall be attached.

(f) If the applicant is an entity representing ratepayers, it shall provide a list of the ratepayers it represents regardless of the form of its organization.

(g) Except as otherwise provided in 23 CAR § 462-408(c)(2), an applicant who initiates a docket shall file written testimony and/or exhibits with its formal application in conformance with 23 CAR § 462-408(c)(2).

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.09 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-310. Motions.

(a) A party may seek relief by motion, including motions available under the Arkansas Rules of Civil Procedure.

(b) All motions shall be in writing and filed, except such oral motions as may be entertained by the Arkansas Public Service Commission during any hearing.

(c) Unless a different time is ordered by the Arkansas Public Service Commission, any party desiring to file a:

(1) Response shall file the response within ten (10) days after the filing of the motion; and

(2) Reply to a response to a written motion shall file such reply within seven (7) days after the filing of the response.

(d) No additional responses or replies shall be permitted unless specifically authorized by the Arkansas Public Service Commission.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.10 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-311. Extensions of time.

(a) For good cause shown, the Arkansas Public Service Commission may grant an extension of any deadline set by rule or order.

(b) Such request shall be made on or before such deadline.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 3.11 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

Subpart 4. Proceedings

23 CAR § 462-401. Representation of parties.

(a) Any individual may enter an appearance on his or her own behalf in any docket before the Arkansas Public Service Commission.

(b)(1) Except as provided in subsection (a) of this section, no one but a licensed attorney may represent any person other than himself or herself in any docket.

(2) The attorney need not be licensed in Arkansas but must be licensed by and in good standing with the highest court of another United States jurisdiction.

(3) Any attorney not licensed in Arkansas may appear before the Arkansas Public Service Commission without formally moving to be admitted pro hac vice so long as the attorney:

(A) Verifies his or her compliance with this licensure standard in the first filing made in each docket;

(B) Complies with all Arkansas Public Service Commission rules; and

(C) Agrees to conform to the standards of conduct required by all attorneys before the courts of Arkansas.

(4) Any appearance before the Arkansas Public Service Commission by an attorney constitutes verification of and compliance with this standard.

(c)(1) Representation includes, but is not limited to, the following activities when performed on behalf of another in a formal Arkansas Public Service Commission proceeding:

(A) Instruction or advice regarding the law applicable to the proceeding;

(B) Preparation of documents requiring a familiarity with legal principles not ordinarily found among nonlawyers; or

(C) Advocacy in contested or uncontested proceedings, whether or not a hearing is held.

(2) Advocacy includes, for example:

(A) Opening and closing statements;

(B) Oral argument;

(C) Submission of briefs;

- (D) Examination or cross-examination of witnesses; and
- (E) Petitions for rehearing.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.01 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-402. Intervention and limited appearance.

(a) Petitions to intervene.

(1) Any person whose interest may be directly affected by Arkansas Public Service Commission action and whose interest is not adequately represented by other parties may petition the Arkansas Public Service Commission for leave to intervene as a party in any docket.

(2) **Contents of petition to intervene.** Every petition to intervene shall be in writing and contain:

(A) A clear and concise statement of the nature of the right or interest of the petitioner in the proceeding that:

(i) Entitles it to participate; and

(ii) Will be directly affected by the Arkansas Public Service Commission's action;

(B) A demonstration that the petitioner's interests are not adequately represented by any other party to the proceeding;

(C) The specific objections, if any, of the petitioner to the applicant's proposal or proposals;

(D) The grounds and issues of fact and law upon which petitioner wishes to be heard; and

(E) Any other reasonable information that may be required by rule or order.

(3) Deadlines generally.

(A) Except as provided in 23 CAR § 462-604 (CCNs and CECPNs) and 23 CAR § 462-704 (tariff filings) and unless otherwise specified in a procedural schedule issued before a petition for intervention is filed, the deadline to file a petition to intervene in all dockets shall be no later than sixty (60) days from the filing of the formal application requesting the ultimate relief sought by the applicant.

(B)(i) The time when such petition is filed shall not extend any time limit set by procedural schedule, rule, or law applicable to an intervenor in a docket.

(ii) The filing of a petition to intervene after these deadlines and after any deadline for filing, discovery, etc. shall constitute a waiver of any right or opportunity to submit such filing, discovery, etc. and shall constitute acceptance of any established procedural schedule.

(C) Any intervention deadline set by this part does not prevent or delay the Arkansas Public Service Commission from acting in a docket before such deadline has passed.

(4) **Time to respond.** The time to respond to a petition to intervene shall be governed by 23 CAR § 462-310.

(5) **Arkansas Public Service Commission ruling on intervention.**

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

(B) If the Arkansas Public Service Commission does not rule within that time, the petition to intervene shall be deemed denied.

(b) **Limited appearances.**

(1) Any person may make a limited appearance in a docket by filing and serving upon all parties a verified statement of position.

(2)(A) No person making a limited appearance shall be a party or have the right to receive further notice or present oral testimony or argument or cross-examine witnesses, but is subject to being called for cross-examination at the hearing on the subject of such statement of position.

(B) If such person is called and fails to appear for cross-examination, such statement of position may be stricken from the record:

- (i) Upon motion of any party; or
- (ii) By the Arkansas Public Service Commission sua sponte.

(3) **Deadlines generally.** Except as provided in 23 CAR § 462-604 (CCNs and CECPNs), a limited appearance shall be filed at least twenty (20) days prior to the date set for the hearing, but not afterward except for good cause shown.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.02 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

"CECPN" means a certificate of environmental compatibility and public need.

23 CAR § 462-403. Notice generally.

(a) Except as otherwise provided by rule or statute:

(1) The Arkansas Public Service Commission shall fix the time and place of all hearings; and

(2) Notice of the place, day, and hour of a hearing shall be served on all parties to the proceeding at least forty-five (45) days before the hearing unless the Arkansas Public Service Commission finds that public interest requires:

- (A) Shorter notice; or
- (B) The hearing to be held earlier.

(b)(1) The Arkansas Public Service Commission may order that notice of the initiation of a docket be given to all persons who may be affected thereby.

(2) Unless otherwise provided herein (see 23 CAR § 462-203 (rulemaking), 23 CAR § 462-603 (CCNs and CECPNs), and 23 CAR § 462-807 (general rate change application)), notice may be given by:

- (A) Service of a copy of the formal application; or

(B) Publication of the substance thereof with notice of the place, day, and time of the hearing on the formal application, if known, for such length of time and in a newspaper or newspapers or other public media as the Arkansas Public Service Commission may designate.

(3) In such cases in which the Arkansas Public Service Commission orders notice be given, the Arkansas Public Service Commission may:

- (A) Prescribe the form of notice;
- (B) Designate the persons to whom notice shall be sent; and
- (C) Order that the notice be at the applicant's or other party's expense.

(c)(1) Proof of notice given by publication or other means as may be required shall be made by the applicant or other party as ordered at least two (2) weeks before the hearing unless a later time is ordered.

(2) Proof of notice by publication may be made by filing a copy of the notice accompanied by:

- (A) A declaration of which newspaper or publication published it; and
- (B) The dates of publication.

(3)(A) Proof of personal notice by mail, facsimile, electronic mail, or other means may be made by filing a copy of the notice sent to each person.

(B) If a form notice was sent to each person, then the applicant shall file a:

- (i) Copy of the text of the form notice; and
- (ii) List of the names and addresses or other contact information of

the persons to whom the notices were sent.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.03 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

"CECPN" means a certificate of environmental compatibility and public need.

23 CAR § 462-404. Protective order of nondisclosure.

(a) An applicant may file a written motion requesting that the Arkansas Public Service Commission enter a protective order of nondisclosure ("protective order") (see also Arkansas Code § 23-2-316).

(b) Timing generally.

(1)(A) If the information sought to be protected is required to be or will be a part of any filed document other than discovery, including but not limited to an initial application or petition, applicant shall apply for a protective order:

(i) As soon as reasonably practicable; and

(ii) To the greatest extent practicable not less than thirty (30) days before the required or desired filing date to allow a reasonable time for entry of the protective order before the filing date.

(B) For purposes of a General Rate Change Application filed pursuant to Subchapter 8 of this part, applicant shall apply for a protective order no later than thirty (30) days after filing the notice of intention to file pursuant to 23 CAR § 462-806 and Arkansas Code § 23-4-401.

(2) If the information sought to be protected is requested by discovery, applicant shall apply for a protective order:

(A) As soon as reasonably practicable after receipt of the discovery request so as to avoid any delays in responding to discovery; and

(B) To the greatest extent practicable, no later than ten (10) days after receipt of the discovery request.

(c) Grounds for entering a protective order.

(1) Applicant may request an interim protective order by an assertion supported by testimony or affidavit that the information meets the following criteria:

(A) The information sought has not been publicly disclosed;

(B) The information has been maintained as confidential while in applicant's possession; and

(C) Disclosure of the information would have one (1) or more of the following consequences:

(i) Applicant could suffer material damage to its competitive or financial position;

(ii) A proprietary fact or trade secret of applicant or a third party would be revealed; and/or

(iii) The public interest would be impaired.

(2) Upon challenge of an interim protective order by any party at any time, applicant has the burden of establishing by a preponderance of the evidence that the information meets the above criteria.

(3) An interim protective order shall become a final protective order by operation of law upon the issuance by the Arkansas Public Service Commission of a formal order closing the docket in which the interim protective order was issued.

(d) **Arkansas Public Service Commission interim order on information.** The Arkansas Public Service Commission may decide the motion by:

(1) Declining to enter an interim protective order based on the following findings and/or conclusions: The applicant has not established adequate grounds to refuse to disclose the information and therefore the information shall be made available to the other parties and to the public without restriction; or

(2) Entering an appropriate interim protective order that includes but is not limited to the following findings and/or conclusions:

(A) The applicant has shown grounds for nondisclosure under subdivision (b)(1) of this section but the information appears to the Arkansas Public Service Commission to be relevant to the case at hand;

(B) The applicant's information should therefore be made available only to the commissioners, commissioners' staff, and representative or representatives of the parties directly involved in the case;

(C) No one else, including representatives of the parties who are not directly involved in the case at hand, the press, and the public shall have access to the information;

(D) The Arkansas Public Service Commission may, for good cause shown, further limit the availability of the applicant's information; and

(E) Of necessity, those portions of the hearings that may involve the sensitive information that is the subject of the protective order shall be closed to all except those persons to whom the information was made available under this subpart (see Arkansas Code § 23-2-316).

(e) For each specific item of information subject to a protective order that is filed or submitted in a docket, the applicant shall affix a written confidential information transmittal cover document in the form prescribed by the Arkansas Public Service Commission that is accessible on its website.

(f)(1) Any party may contest at a future date, upon reasonable notice, applicant's continuing entitlement to protection from public disclosure of all or any portions of any information subject to a protective order.

(2) The party shall promptly file an objection if such party determines that any portion of the information should be removed from the scope of the protective order.

(3) Upon challenge of an interim protective order by any party, the Arkansas Public Service Commission may:

(A) Modify its interim protective order; or

(B) Enter any further orders as appropriate.

(4) After notice to the parties and after any hearing that may be necessary, the Arkansas Public Service Commission may issue any appropriate final protective order as may be needed.

(g) Affidavit of nondisclosure.

(1)(A) If the Arkansas Public Service Commission orders limited disclosure pursuant to this section, the Arkansas Public Service Commission or applicant may require that every individual granted access to the information, subject to the order,

sign an affidavit of nondisclosure in the form prescribed by the Arkansas Public Service Commission.

(B) The affidavit may bind those persons having access to the information to the following provisions:

(i) The individual shall not disclose the information to any person not immediately involved in the docket or matter;

(ii) The information may be used only for pursuing the docket or matter and for no other purpose at all, but specifically not for competitive business purposes;

(iii) Improper disclosure by an individual may result in civil liabilities or sanctions; and

(iv) If the interim protective order is subsequently amended and/or further interim or final protective orders are entered in the docket, the individual shall be bound by the same terms as they relate to any additional protected information that may be protected by subsequent protective orders without the need for the execution of further affidavits of nondisclosure in the docket.

(2) In the event the Arkansas Public Service Commission further limits the availability of the applicant's information, the Arkansas Public Service Commission may further require additional affidavits, certifications, or other actions of individuals granted access other than individuals for staff or the Attorney General.

(h) Affidavits of nondisclosure shall be filed in the docket in which the protective order was granted but need not be served on the parties to the docket.

(i) Information protected by a protective order that is filed or provided to parties shall comply with this part concerning form requirements for protected information.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.04 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-405. Subpoenas.

(a) Any commissioner, presiding officer, or the secretary may issue subpoenas requiring the attendance of a witness or the production of documentary evidence from any place in the state at any designated place for the purpose of taking the testimony of such witness or producing the documentary evidence.

(b) Except as provided herein, subpoenas and related proceedings shall be governed by the applicable statutes and the Arkansas Rules of Civil Procedure, including Arkansas Code §§ 23-2-313, 23-2-407, 23-2-408, and 23-2-409 and Ark. R. Civ. P. 45.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.05 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-406. Presiding officer.

(a)(1) The presiding officer shall:

- (A) Control the course of the hearing;
- (B) Administer oaths;
- (C) Receive evidence;
- (D) Rule upon all objections and motions;
- (E) Receive offers of proof;
- (F) Hear arguments; and
- (G) Fix the time for filing of briefs, if briefs are ordered.

(2) The presiding officer also may take any action consistent with the Arkansas Public Service Commission's:

- (A) Statutory authority; and
- (B) Rules and policies.

(b) In any proceeding not assigned to a presiding officer, the Arkansas Public Service Commission may designate a presiding officer for any limited purpose or purposes.

(c) At any time, the Arkansas Public Service Commission may terminate or substitute the designation of a presiding officer.

(d) The final order entered by the presiding officer shall represent the findings and conclusions of the Arkansas Public Service Commission, subject to the following provisions:

(1) If the Arkansas Public Service Commission does not stay or otherwise act to modify the presiding officer's final order within thirty (30) days of the date said final order was entered by the presiding officer, the presiding officer's final order then shall become the final order of the Arkansas Public Service Commission;

(2) Thereafter, any party may file an application for rehearing pursuant to 23 CAR § 462-414 of any final order of the Arkansas Public Service Commission; and

(3)(A) If the Arkansas Public Service Commission grants an application for rehearing, it may redesignate the matter for further consideration and action.

(B) Absent such redesignation, the Arkansas Public Service Commission shall conduct such rehearing proceedings as it may deem appropriate.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.06 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-407. Hearings.

(a)(1) The Arkansas Public Service Commission may call a hearing to assist it in deciding any matter.

(2) Any matter may be decided without a hearing based on the filed materials unless a hearing is required by law or any rule.

(b) The conduct of the hearing is at the Arkansas Public Service Commission's discretion unless required by:

(1) Due process of law;

(2) Statute; or

(3) Any rule.

(c) Unless otherwise ordered, the Arkansas Public Service Commission shall provide an opportunity for relevant public comment at the hearing.

(d)(1) Unless otherwise ordered or agreed by the parties, the order of presenting evidence at the hearing shall be:

- (A) The applicant, complainant, or other moving party;
- (B) Other parties in interest and intervenors;
- (C) The Attorney General if a party; and
- (D) Staff.

(2) If the Attorney General or staff is the applicant or moving party, it shall present its evidence first.

(e) The burden of proof in any case shall be on the applicant, complainant, or other moving party.

(f) At its discretion, the Arkansas Public Service Commission may allow opening statements or closing arguments and, if allowed, may impose reasonable limitations thereon.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.07 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-408. Evidence.

(a) The rules of evidence shall not strictly apply in Arkansas Public Service Commission proceedings.

(b)(1) The Arkansas Public Service Commission may take official notice of any document, fact, or circumstance that may be officially noticed in an administrative proceeding.

(2) Any such document that the Arkansas Public Service Commission or any party desires to use in evidence or rely upon must be specifically identified in a filing or during the hearing and all parties shall be accorded an opportunity to:

- (A) Examine the document; and
- (B) Interrogate witnesses on the document.

(c) Testimony and exhibits.

(1)(A) Unless the Arkansas Public Service Commission shall otherwise order, with the exception of cross-examinations and redirect examinations at a hearing all parties desiring to offer evidence in a docket shall do so in the form of written prefiled testimony in question and answer form, with or without exhibits.

(B) Normally, live direct testimony in addition to the written prefiled testimony, other than the correction of minor typographical or wording errors that do not alter the substance of the written prefiled testimony, shall not be accepted into evidence unless the sponsoring party shows good cause why the additional testimony:

- (i) Could not have been a part of the written prepared testimony; or
- (ii) Should otherwise be admitted.

(C) This section shall not apply to an individual filing a formal complaint who is participating on his or her own behalf.

(2)(A) Unless the Arkansas Public Service Commission shall otherwise order, an applicant or complainant who initiates a docket shall file supporting written testimony with or without exhibits concurrently with its:

- (i) Application;
- (ii) Tariff;
- (iii) Petition;
- (iv) Request; or
- (v) Complaint.

(B) This shall not apply to:

(i) An individual filing a formal complaint who is appearing on his or her own behalf;

(ii) A formal application filed pursuant to 23 CAR § 462-607(b) or (c);

or

(iii) A pleading that initiates a docket, such as a notice, that is not a formal application and that does not seek to invoke the authority of the Arkansas Public Service Commission to perform an act or to approve an act to be performed by the applicant; in such a case, testimony with or without exhibits shall be filed when the formal application is filed.

(C) A request for protective order that initiates a docket shall also comply with 23 CAR § 462-404(c).

(D) Subdivision (c)(2) of this section shall also apply when a formal application is filed in an existing docket except for pleadings such as motions that do not require the development of facts in testimony and/or exhibits.

(3)(A) In any case in which a procedural schedule is entered, testimony with or without exhibits shall be filed in accordance with the applicable procedural schedule.

(B) The party bearing the burden of proof shall have the right to file the final prepared testimony in any proceeding.

(4) An applicant may supplement the testimony or exhibits filed with its application to correct material errors or take into account unforeseeable material changes in circumstances since the preparation of the testimony if:

(A) Such supplemental testimony or exhibits are filed and served on all parties:

(i) As soon as the errors are discovered; and

(ii) To the greatest extent practicable at least fifteen (15) days before the day for filing of testimony by staff and intervenors; and

(B) If the corrections:

(i) Will not unduly burden other parties or delay proceedings; and

(ii) Are in the interest of a fair hearing.

(5)(A) All parties shall file material corrections to testimony or exhibits as soon as:

(i) Errors are discovered; or

(ii) Changed circumstances occur.

(B) Corrections to the testimony and exhibits of any party caused by inadvertence or unforeseeable changes in circumstances may be allowed by the Arkansas Public Service Commission at any time if the corrections:

(i) Will not:

(a) Unduly burden other parties; or

(b) Delay proceedings; and

(ii) Are in the interest of a fair hearing.

(6)(A) A party's workpapers shall:

(i) Comply with each of the requirements of this part; and

(ii) Be provided to the other parties during Arkansas Public Service Commission business hours on the same day that party files its testimony and exhibits.

(B) For any recommendation made, position taken, or conclusion reached that is based on a statistical analysis or other study, the workpapers shall additionally include a complete description of the:

(i) Statistical model utilized;

(ii) Data utilized; and

(iii) Results of the analysis.

(C)(i) A party shall provide to staff any computer model including the software necessary for staff to independently run any analysis relied on by the party.

(ii) Alternatively, the applicant may provide staff reasonable access to the computer model at:

(a) The Arkansas Public Service Commission's offices; or

(b) Another mutually agreeable location.

(iii) Such access:

(a) Shall be adequate to enable staff to replicate the results; and

(b) May include the utility manipulating the computer model according to instructions or inputs from staff.

(D)(i) If the party relies on proprietary programs or applications for computations to support any part of its filing, copies of those programs must be provided to staff with explanations and instructions adequate to replicate the results.

(ii) Alternatively, the applicant may provide staff reasonable access to the programs at:

(a) The Arkansas Public Service Commission's offices; or

(b) Another mutually agreeable location.

(iii) Such access:

(a) Shall be adequate to enable staff to replicate the results; and

(b) May include the utility manipulating the programs according to instructions or inputs from staff.

(iv) When the party seeks to limit access to the program or application to other parties, the Arkansas Public Service Commission will determine the appropriate access to the program or its output.

(E)(i) Workpapers that are available in electronic form shall be provided electronically in native format.

(ii) Electronic copies shall be clearly legible and complete.

(F) All formulae and viable links shall be left intact for all electronic files.

(G)(i) Any source documents not publicly available or readily accessible that are referenced in the testimony, exhibits, or workpapers shall also be provided.

(ii) If a source document is publicly available on the internet, a specific link (URL address) to the source document may be provided.

(iii) If a source document is a study, report, book, periodical, or other publication not publicly available or readily accessible to the parties, the party may provide copies of the relevant pages from such source document rather than copies of the entire study, report, book, periodical, or other publication, but all pages necessary to understand the relevant pages in context shall be provided.

(iv) Upon request, the party shall make available the entirety of such source document for inspection at the Arkansas Public Service Commission's offices.

(7)(A) Exhibits that are available in electronic format shall be provided electronically in native format.

(B) Electronic copies shall be clearly legible and complete.

(C) All formulae and viable links shall be left intact for all electronic files.

(8) A witness's testimony at hearing shall be under oath or affirmation.

(9) Unless the Arkansas Public Service Commission otherwise orders, written testimony admitted into evidence at hearing shall, upon the witness's adoption of the testimony, be entered into the record as testimony without having the witness read it aloud.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.08 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-409. Post-hearing evidence.

(a) The evidentiary record shall normally be closed at the conclusion of the hearing on the merits.

(b) However, the Arkansas Public Service Commission may require:

(1) The production of further evidence upon any issue; and

(2) That the evidentiary record be kept open after adjournment to receive additional evidence.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.09 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-410. Stipulations and settlements.

(a) **Procedure.**

(1) Parties may stipulate to the resolution of any issue of law or fact or settle upon an acceptable disposition of a proceeding or some portion thereof with or without resolving material issues.

(2)(A) Parties shall propose by written motion that the Arkansas Public Service Commission adopt stipulations or settlements.

(B) Such motion shall be filed along with supporting testimony no later than ten (10) days prior to the scheduled date of the evidentiary hearing in that docket.

(C) If the tenth day falls on a weekend or a state holiday, such settlement agreement and supporting testimony shall be filed on the last business day prior to the tenth day.

(D) The motion shall:

(i) Set forth the factual, legal, policy, and other considerations that form the basis for the parties' recommendation that the stipulation or settlement be adopted; and

(ii) Be supported by written testimony.

(3)(A) Whenever a party does not join a proposed stipulation or settlement, such party may respond to the motion as permitted under 23 CAR § 462-310 or applicable order.

(B) Such response shall set forth the factual, legal, policy, and other considerations that form the basis for that party's opposition to the proposed stipulation or settlement or portions thereof.

(b) **Arkansas Public Service Commission action regarding stipulation or settlement.** After consideration of a proposed stipulation or settlement, the Arkansas Public Service Commission may, consistent with the public interest and without limitation:

(1) Approve the proposed stipulation or settlement;

(2) Reject the proposed stipulation or settlement and set the case for a full hearing;

(3) Reject the proposed stipulation or settlement and grant the parties additional time to:

- (A) Renegotiate the stipulation or settlement; and
- (B) Propose alternative terms acceptable to the Arkansas Public Service

Commission;

(4) Modify the terms of the stipulation or settlement and allow the parties a reasonable time to accept the Arkansas Public Service Commission's proposed modifications or request other relief; or

(5) Take any other action it deems appropriate.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.10 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-411. Adjournment and closing.

(a)(1) The Arkansas Public Service Commission may adjourn a hearing to any future date or place.

(2) Such adjournment shall be noted in the record and further notice shall not be required.

(b) A hearing shall be deemed concluded when the Arkansas Public Service Commission so determines.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.11 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-412. Briefs and oral argument.

(a) At its discretion, the Arkansas Public Service Commission may allow the filing of briefs or oral arguments, and if allowed:

(1) Shall fix the time for the:

- (A) Filing of briefs; or
- (B) Hearing of such argument; and
- (2) May impose reasonable limitations thereon.
- (b) Briefs shall not be filed:
 - (1) Absent an Arkansas Public Service Commission request for a brief; or
 - (2) Without the Arkansas Public Service Commission's prior approval.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.12 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-413. Reciprocity of final orders between states.

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

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.13 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-414. Rehearing.

(a) Rehearing of any Arkansas Public Service Commission order shall be pursuant to Arkansas Code § 23-2-422.

(b)(1) If any party applies for a rehearing based in whole or in part on additional evidence that was not a part of the original record, the party shall:

- (A) Provide good cause for omitting the evidence from the original record;
- (B) Show that such evidence will not be merely cumulative; and
- (C) State in detail in the application:

(i) The name and identification of the witness and the subject matter of the proposed testimony if the additional evidence is proposed as testimony; and

(ii) A description of any proposed exhibits if the additional evidence is proposed as exhibits.

(2)(A) This proposed additional evidence shall not be filed with the application.

(B) The proposed additional evidence shall not be filed or considered unless ordered by the Arkansas Public Service Commission.

(c)(1) Any party may file a response to an application for rehearing within ten (10) days after the filing of the application.

(2) However, the Arkansas Public Service Commission may rule upon an application at any time, regardless of the timing of a response by other parties.

(d) In response to an application for rehearing, the Arkansas Public Service Commission may:

- (1) Uphold the order without modification;
- (2) Modify or clarify the order without further hearing based upon the existing record;
- (3) Upon notice to the parties, reopen the docket for the receipt of further evidence on particular issues;
- (4) Reverse the order in whole or in part;
- (5) Issue an order granting rehearing solely for the purpose of further consideration; or
- (6) Take any other action it deems appropriate.

(e)(1) If the Arkansas Public Service Commission issues an order granting rehearing "solely for the purpose of further consideration" (limited rehearing order)

prior to the thirty-day period established by Arkansas Code § 23-2-422, the application for rehearing shall not be deemed denied.

(2) However, if the Arkansas Public Service Commission does not within sixty (60) days of the limited rehearing order issue an order granting or denying the requested rehearing or setting a hearing on the request, the application for rehearing shall be deemed denied for purposes of Arkansas Code §§ 23-2-422 and 23-2-423.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 4.14 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

Subpart 5. Discovery

23 CAR § 462-501. Purpose.

(a) This subpart is intended to:

- (1) Promote just, economical, and expeditious discovery; and
- (2) Facilitate the disposition of dockets and investigations by providing an orderly means by which the parties may obtain relevant information in an efficient and timely manner to assist in the resolution of such matters.

(b) All parties shall fairly adhere to its provisions and shall participate in discovery fully within this subpart, and to that end this subpart should be liberally construed.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.01 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-502. Scope of discovery.

(a)(1) Unless otherwise limited or expanded by order, parties may obtain discovery regarding any matter, not privileged, relevant to the issues in the docket.

(2) Control of the scope, frequency of use, and extent of discovery rests in the Arkansas Public Service Commission's sound discretion.

(b) Discovery shall not be used to circumvent:

(1) An established procedural schedule; or

(2) The time limits for the filing of testimony and exhibits.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.02 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-503. Discovery methods.

(a) Any party to the extent relevant and material to the issues as to which intervention has been granted may obtain discovery by one (1) or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or things or permission to enter upon land or other property for inspection and other purposes;

(4) Requests for admission; or

(5) Upon motion to the Arkansas Public Service Commission, by any means otherwise authorized by the Arkansas Public Service Commission.

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

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.03 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-504. Supplementation of responses.

(a) All discovery pursuant to this subpart shall be considered continuing, and a party is under a duty to timely amend a prior response to a data request if the:

(1) Party learns that the response is in some material respect incomplete or incorrect; and

(2) If the additional or corrective information has not otherwise been made known to the other parties:

(A) During the discovery process; or

(B) In writing.

(b) The duty to supplement shall continue until the hearing on the merits in the docket.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.04 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-505. Sequence, timing, and format of discovery.

(a) **Discovery sequence.**

(1) Any party may conduct discovery in any sequence by any method permitted under this subpart.

(2) The fact that a party is conducting discovery shall not operate to delay discovery by another party unless the Arkansas Public Service Commission orders otherwise.

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

(c) **Time within which to respond or object.**

(1) The party upon whom discovery is sought shall serve a written response or objection within fifteen (15) days after service of the discovery.

(2) Responses or objections to requests for admission shall be filed within the fifteen-day period.

(3) The Arkansas Public Service Commission may prescribe a shorter or longer time.

(4) Any objections shall state the specific reasons for such objection.

(d) **Service and format.**

(1) Discovery documents shall, to the greatest extent possible, be served electronically pursuant to 23 CAR § 462-307.

(2) Attachments to documents shall be provided in native electronic format with formulae and viable links intact.

(3)(A) Any discovery document served electronically or by facsimile after Arkansas Public Service Commission business hours but before midnight or received on a nonbusiness day shall be deemed served on persons on the official service list with electronic mail on the next business day.

(B) Any discovery document served electronically or by facsimile between midnight and the beginning of Arkansas Public Service Commission business hours on a business day shall be deemed filed and served on persons on the official service list with electronic mail on that business day.

(C) Any discovery document served by other means of service (personal delivery, mail, commercial delivery service) shall be deemed served pursuant to 23 CAR § 462-307.

(e) **Filing discovery.** Except as provided in 23 CAR §§ 462-301(i) and 462-511, discovery documents shall not be filed.

(f) **Protected information.** Any information submitted pursuant to discovery that is subject to a protective order shall comply with this part concerning form requirements for protected information.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.05 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-506. Depositions.

(a) A deposition upon oral examination or on written questions pursuant to this part may be taken as provided in Rules 27, 28, 30, and 31 of the Arkansas Rules of Civil Procedure.

(b) Depositions shall not be taken before the time set for the filing of the deponent's party's initial written testimony in proceedings where written testimony is required or scheduled.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.06 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-507. Stipulating as to discovery procedures.

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

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.07 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-508. Arkansas Public Service Commission or staff requests for information in undocketed matters.

In the discharge of its investigative duties in undocketed matters, the Arkansas Public Service Commission or staff may obtain discovery regarding any matter subject

to the Arkansas Public Service Commission's jurisdiction by any of the methods described in this subpart or statute.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.08 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-509. Interrogatories.

(a) Procedures for use.

(1) Any party may serve on any other party written interrogatories to be answered by the party served.

(2) Each interrogatory shall be answered separately and fully in writing unless it is objected to, in which case the reasons for the objection must be stated in lieu of the answers.

(3) The party answering the interrogatories shall repeat each interrogatory immediately before the answer or objection.

(4) The answers and/or objections are to be signed by:

(A) The person making them; or

(B) A person authorized under 23 CAR § 462-306.

(5) Any party in so signing certifies that the information therein is true and correct to the best of that party's information and belief.

(b) Option to produce business records. Where the answers to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served; from an examination, audit, or inspection of such business records; or from a compilation, abstract, or summary based thereon and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to:

(1) Specify the records from which the answer may be derived or ascertained;
and

(2) Afford to the party serving the interrogatory reasonable opportunity to:

(A) Examine, audit, or inspect such records; and

(B) Make copies, compilations, abstracts, or summaries.

(c) A data request that contains written interrogatories shall be governed by this section.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.09 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-510. Production of documents and things and entry upon land for inspection and other purposes.

(a) **Scope.** Any party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy any designated documents including writings, drawings, graphs, charts, photographs, records in any form, and other data compilations from which information can be obtained or to inspect and copy, test, or sample any tangible things that constitute or contain matters:

(A) Within the scope of this subpart; and

(B) That are in the possession, custody, or control of the party upon whom the request is served;

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon within the scope of this subpart; or

(3) To preserve any designated documents or other information identified in subdivision (a)(1) of this section for discovery during the course of a docket or staff investigation.

(b) **Procedure.**

(1) The request shall:

(A) Set forth the items to be inspected either by individual item or by category; and

(B) Describe each item and category with reasonable particularity.

(C) Specify a reasonable time, place, and manner of:

(i) Making the inspection; and

(ii) Performing the related acts.

(2) The response shall state with respect to each item or category that inspection and related activities will be permitted as requested unless the request is objected to, in which event the reasons for objection shall be stated.

(3) If objection is made to part of an item or category, the part shall be specified.

(c) A data request that contains requests for production shall be governed by this section.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.10 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-511. Requests for admissions.

(a) **Scope and form.**

(1) A party may serve upon any other party a written request for admission of the truth of any matters within the scope of 23 CAR § 462-502 or set forth in the request that relate to statements, representations, or opinions of fact, or the application of law to fact, including the genuineness of any documents described in the request.

(2) Copies of documents referred to in the request shall be served with the request unless they have been or are otherwise:

(A) Furnished; or

(B) Made available for inspection and copying.

(3) Each matter of which an admission is requested shall be separately set forth.

(4) If objection is made, the reasons therefore shall be stated.

(5) The party answering the requests for admission shall repeat each request immediately before the answer or objection.

(6) The answer shall:

(A) Specifically admit or deny the matter; or

(B) Set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter.

(7) A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only a part of the matter of which an admission is requested, the party shall:

(A) Specify so much of it as is true; and

(B) Qualify or deny the remainder.

(8) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he or she states:

(A) He or she has made reasonable inquiry; and

(B) That the information known or readily available to him or her is insufficient to enable him or her to admit or deny.

(9) Requests for admission and responses to requests for admission shall be filed.

(b) **Failure to respond.** A matter is admitted unless the party to whom the request is directed timely files and serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's attorney.

(c) **Sufficiency of answer or objection.**

(1) The party who has requested the admissions may file a motion requesting that the Arkansas Public Service Commission determine the sufficiency of the answers or objections.

(2) In response to such a motion, the Arkansas Public Service Commission may, consistent with the public interest and without limitation:

(A) Determine that the answer is sufficient;

(B) Determine that the answer does not comply with the requirements of this section and either that:

(i) The matter is admitted; or

(ii) An amended answer be served;

(C) Determine that the objection is justified;

(D) Determine that the objection is not justified and order that an answer be served; or

(E) Take any other action it deems appropriate.

(d) **Effect of admission.** Any matter admitted under this section is deemed conclusively established.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.11 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-512. Failure to make discovery — Sanctions.

(a) **Motion for order compelling discovery.** After a good faith effort to seek resolution of a discovery dispute, a party upon reasonable notice to all parties and all persons affected thereby may apply for an order compelling discovery as follows:

(1) An application for an order to a party may be made to the Arkansas Public Service Commission; and

(2)(A) If a deponent fails to answer a question propounded or submitted, a corporation or other entity fails to make a designation under 23 CAR § 462-509(b) or 23

CAR § 462-510 or a party fails to answer an interrogatory or request for admission submitted under 23 CAR § 462-509 or 23 CAR § 462-511, or if a party, in response to a request for inspection submitted under 23 CAR § 462-510 fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.

(B) When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before the proponent applies for an order.

(b) If the Arkansas Public Service Commission denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion pursuant to 23 CAR § 462-404.

(c) Any party to a proceeding who is unable to receive a timely response to discovery requests made in conformity with this subsection and other applicable provisions of this part may petition the Arkansas Public Service Commission for an appropriate order directing the nonresponsive party to comply with such discovery request to the extent and in the manner that the Arkansas Public Service Commission deems appropriate under the circumstances.

(d)(1) In connection with any order directing discovery, the Arkansas Public Service Commission may take appropriate actions designed to ensure prompt and orderly responses thereto.

(2) In the event of any failure of any party to comply with any Arkansas Public Service Commission order of discovery, the Arkansas Public Service Commission may enter an appropriate order providing for the imposition of just and reasonable sanctions, including without limitation the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order;

(B) An order:

- (i) Refusing to allow the disobedient party to support or oppose designated claims; or
 - (ii) Prohibiting such parties from introducing designated matters in evidence;
- (C) An order:
- (i) Striking out filings or parts thereof;
 - (ii) Staying further proceedings until the order is obeyed;
 - (iii) Dismissing the proceeding or any party thereof; or
 - (iv) Rendering an order by default against the disobedient party; and
- (D) An order directing the disobedient party to reimburse the party obtaining the order appropriate costs and expenses, including where applicable reasonable legal and/or expert fees incurred as a result of the failure to comply with the Arkansas Public Service Commission's order, except to the extent permitted by statute, and fees may not be awarded against the State of Arkansas under this part.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 5.12 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

Subpart 6. Certificates of Public Convenience and Necessity, Certificates of Environmental Compatibility and Public Need, and Related Fees and Filings

23 CAR § 462-601. Subject matter.

If a certificate of public convenience and necessity (CCN) is required by Arkansas Code § 23-3-201 et seq. or a certificate of environmental compatibility and public need (CECPN) is required by the Utility Facility Environmental and Economic Protection Act, Arkansas Code § 23-18-501 et seq., for the construction or operation of any new equipment or facilities for supplying a public service, such certificate shall be sought by formal application unless otherwise provided in this subpart.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.01 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-602. Allocated area.

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

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.02 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

23 CAR § 462-603. Notice of filing.

(a) **Certificate of public convenience and necessity — New construction for electric and natural gas utilities.**

(1) The applicant shall, no less than ten (10) days before filing the application, notify each owner of record or the person to whom property tax statements have been mailed in the most recent tax year of lands that the applicant proposes in its application to traverse.

(2) A utility facility traverses property when the facility is located on or crosses the property.

(3) Such notice shall:

(A) Be given by first-class mail, properly addressed with charges prepaid;

and

(B) Include the following information:

(i) The date on or about which the application is to be filed;

(ii) The application's docket number, if known;

(iii) The name, address, email address, and phone number of the secretary and the URL address of the Arkansas Public Service Commission's website where information on the deadline for intervention and the place and date of the hearing may be obtained;

(iv) A brief description of the:

(a) Facilities to be constructed; and

(b) Owner's land or lands to be traversed; and

(v) A notice that interventions or limited appearances must be filed with the Arkansas Public Service Commission within thirty (30) days after the date set forth as the date of filing, unless good cause is shown or unless otherwise ordered by the Arkansas Public Service Commission.

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

(b) **Certificate of environmental capability and public need.** Notice of filing an application for a CECPN under 23 CAR § 462-606 shall be given by the applicant in the following manner unless the Arkansas Public Service Commission otherwise provides:

(1) The applicant shall give:

(A) Notice as required by Arkansas Code §§ 23-18-513 and 23-18-515 and subsection (b) of this section; and

(B) Such other notice as the Arkansas Public Service Commission may require in each case;

(2) The newspaper notice required by Arkansas Code § 23-18-513 shall, in addition to the statutory requirements:

(A) Be published at least twice in the newspaper the applicant chooses;

(B) Contain a:

(i) Map at least five inches (5”) on a side depicting the preferred and alternate locations of the proposed major utility facility; or

(ii) Reference to a website address that contains a viewable map; and

(C) Contain statements substantially similar to the following:

(i) The Arkansas Public Service Commission will hear evidence of the general economic and environmental impact of the proposed facility as opposed to individual objections to the presence of the facility;

(ii)(a) The Arkansas Public Service Commission does not award compensation for damages to a landowner.

(b) Compensation is awarded by circuit court in an eminent domain proceeding if the applicant and the landowner cannot settle privately; and

(iii) One (1) of the purposes of the hearing is to choose the location with the least generally adverse economic and environmental consequences, and in the course of selecting a location the Arkansas Public Service Commission may modify one (1) of the proposed locations if it is in the public interest; and

(D) The copies of applications served pursuant to Arkansas Code § 23-18-513(a) and (b) must be accompanied by the same map and statements required by subdivision (b)(2) of this section.

(c) **Certificate of public convenience and necessity — Customer releases and exchanges and releases of allocated territory for electric utilities.** Before filing an application under 23 CAR § 462-607(b) or (c) the applicant shall notify the affected customer or customers in writing of its intent to request a customer release or request an exchange or release of allocated territory, as applicable.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.03 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CECPN" means a certificate of environmental compatibility and public need.

23 CAR § 462-604. Deadlines for intervention and limited appearance.

(a) This section applies to dockets pertaining to:

(1) CECPN applications (23 CAR § 462-606);

(2) CCN applications by an electric utility for new construction (23 CAR § 462-607); and

(3) CCN applications by a natural gas utility for new construction (23 CAR § 462-608).

(b) Petitions for leave to intervene must be filed within thirty (30) days after the date given in the notice as the date of filing the application.

(c) Any person may make a limited appearance by filing a verified statement of position within thirty (30) days after the date given in the notice as the date of filing the application.

(d) For good cause shown, the Arkansas Public Service Commission may grant a petition for leave to intervene or to make a limited appearance after the deadlines set in subsections (b) and (c) of this section.

(e)(1) The Arkansas Public Service Commission must find that:

(A) The potential intervenor's interests are not otherwise adequately represented by another party; and

(B) Participation will not delay the proceedings.

(2) The time when such petition is filed shall not extend any time limit set by procedural schedule, rule, or law applicable to an intervenor in a docket.

(3) The filing of a petition to intervene after these deadlines and after any deadline for filing, discovery, etc. shall constitute:

(A) A waiver of any right or opportunity to submit such filing, discovery, etc.; and

(B) Acceptance of any established procedural schedule.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.04 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

"CECPN" means a certificate of environmental compatibility and public need.

23 CAR § 462-605. Action on nonconstruction or completion.

(a) If any construction authorized by a CCN or a CECPN is not started within four (4) months from the date of the certificate, the utility shall file a statement stating:

- (1) Why the construction was not started; and
- (2) When it will be started.

(b)(1) Within thirty (30) days after booking of the final expenses of the construction authorized by any CCN or CECPN or by such other time that may be fixed by Arkansas Public Service Commission order, the utility shall file a report showing the date the requested construction was completed.

(2) The report shall include a:

(A) Map showing changes, if any, from the application for the certificate;
and

(B) Detailed statement of the estimated costs of the construction and the final costs of the construction by major cost category.

(3) The report shall reference the docket number in which the certificate was granted.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.05 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

"CECPN" means a certificate of environmental compatibility and public need.

23 CAR § 462-606. Certificates of environmental compatibility and public need.

(a) An application for a CECPN shall, in addition to the exhibits, documents, or other information required by statute, include:

(1) A statement of the facts and circumstances upon which applicant relies to establish that present or future public convenience and necessity require the new construction, acquisition, or operation of such facilities;

(2) Financial data related to the project as of the latest practical date;

(3) A statement of life estimates, value of salvage, cost of removal, and reuse potential of the proposed facility or facilities;

(4) For applications filed by natural gas utilities, the technical information required by 23 CAR § 462-608(a)(4);

(5) A statement that notice of the filing has been given in accordance with 23 CAR § 462-603(b); and

(6) Supporting written prepared testimony and exhibits.

(b) An application for an amendment to a CECPN shall, in addition to the exhibits, documents, or other information required by statute, include:

(1) A description of any changes to the information submitted in the original CECPN application;

(2) A description of any material increase in any environmental or economic impact of the facility;

(3) A description of any substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application;

(4) A statement that notice of the filing has been given in accordance with 23 CAR § 462-603(b); and

(5) Supporting written prepared testimony and exhibits.

(c) An application shall not be considered complete and the applicable statutory timeframes do not begin until all information required by the statutes and rules is filed.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.06 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CECPN" means a certificate of environmental compatibility and public need.

**23 CAR § 462-607. Certificates of public convenience and necessity —
Electric utilities.**

(a) **New construction or operation.** An application for a CCN for new construction or operation by any electric utility shall include:

(1) Facts showing that the proposed new construction is or will be required by public convenience and necessity;

(2) A description of the:

(A) Proposed location or route of the new construction or operation; and

(B) Manner in which it will be constructed;

(3) A map or maps to suitable scale showing the:

(A) Location or route of the proposed new construction or operation;

(B) Locations of nearby airports; and

(C) Reference to all allocation boundaries;

(4) All data, including an estimate of cost, as necessary for a complete understanding of the application;

(5) The manner proposed to finance the new construction or operation or extension; and

(6) A statement that notice of the filing has been given in accordance with 23 CAR § 462-603(a).

(b) **Customer releases.**

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

(B) The successor utility may continue to serve the location and all future customers at that location even after service to the original customer has been discontinued for any reason.

(C) This agreement between the releasing and successor utilities is a "customer release".

(2)(A) To request a customer release, either the releasing utility or the successor utility shall file a letter reciting the reasons for the customer release.

(B) The letter shall state that the filing is an application for customer release under subsection (b) of this section.

(C) Attached to the letter shall be:

(i) Written evidence from the other utility indicating its agreement to the customer release; and

(ii) A copy of the written notice to the affected customer or customers of the utility's intent to request a customer release.

(D) The filing shall include a map and legal description identifying the approximate location of the customer.

(3) The secretary shall assign an "A" docket number to the filing.

(4)(A) A customer release shall not be final until it has been approved by a written order.

(B) However, an emergency ruling on the written application may be granted orally by:

(i) Two (2) commissioners; or

(ii) A designated presiding officer.

(C) A written order shall follow within thirty (30) days from the date of the oral approval.

(5) The order granting the customer release shall not constitute a change in allocated territory.

(c) Exchanges and releases of allocated territory.

(1)(A) Two (2) or more electric utilities may seek Arkansas Public Service Commission authorization to exchange service territory previously allocated to them.

(B) In the alternative, one (1) utility may seek to release previously allocated territory to another utility.

(2)(A) To request an exchange or release of allocated territory, one (1) or more of the affected utilities shall file a letter reciting the reasons for the exchange or release of allocated territory.

(B) The letter shall state that the filing is an application for exchange or release of allocated territory under subsection (c) of this section.

(C) Attached to the letter shall be:

(i) Written evidence indicating the other utility's agreement to the exchange of allocated territory; and

(ii) A copy of the notice to the affected customer or customers of the utilities' intent to request an exchange or release of allocated territory.

(D) The filing shall include a map or maps to suitable scale and a legal description showing the geographical area being exchanged or released.

(3) The secretary shall assign an "A" docket number to the filing.

(d) Application for a CCN to commence operation as an electric utility in Arkansas. An application for a CCN by an electric utility to provide electric services shall include:

(1) Its name and address and:

(A) The full name of its owner if a sole proprietorship and of each partner if a partnership; or

(B) A full list of the officers and directors if a corporation;

(2)(A) A copy of the articles of a partnership or a certified copy of the:

- (i) Articles of incorporation; or
 - (ii) Other articles of organization; and
- (B) A copy of the certificate of authority of a foreign corporation unless incorporated under Arkansas law;
- (3) The designated geographic area proposed to be served, including a:
 - (A) Map or maps to suitable scale; and
 - (B) Legal description;
 - (4) A description of the services the applicant intends to provide;
 - (5) Information demonstrating the applicant's financial, managerial, and technical capacity to provide the services;
 - (6) An initial tariff or price list for the services to be offered; and
 - (7) Such other information as the Arkansas Public Service Commission may require.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.07 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

23 CAR § 462-608. Certificate of public convenience and necessity — Natural gas utilities.

(a) An application for a CCN for new construction or operation by a natural gas utility shall include:

- (1) A statement of the facts showing the:
 - (A) Proposed operation or construction is or will be required by public convenience and necessity;
 - (B) Proposed dates for beginning and completing construction; and
 - (C) Commencement of operations;

(2) A statement as to whether any other application to supplement or effectuate such application must or will be filed by applicant, any of applicant's customers, or any other person with any other federal, state, or other regulatory body and if so, the nature and status of each such application;

(3) A table of contents listing all exhibits and documents filed with the application identifying them by their:

(A) Appropriate titles; and

(B) Alphabetical letter designations;

(4)(A) A general description of the facilities proposed to be constructed, acquired, or operated giving such pertinent information including:

(i) The size, capacity, length, and location of facilities;

(ii) The extent of distribution systems;

(iii) The location, rating, and capacity of all compressor or central stations;

(iv) The location and description of other important property units;

(v) Estimates of maximum and minimum day demands; and

(vi) Other pertinent facts showing that such facilities will be capable of performing adequately the service that applicant proposes to render.

(B) In connection herewith the applicant shall furnish:

(i) A map delineating the:

(a) Size and location of applicant's proposed lines or distribution system;

(b) Communities to be served; and

(c) Points of connection with existing facilities;

(ii) A statement:

(a) Setting forth all contracts for the construction, purchase, or lease of the proposed facilities; and

(b) Giving the affiliation, if any, between:

(1) Applicant; and

(2) Any other party to said contracts; and

(iii) A statement that the specifications conform to the Arkansas Gas Pipeline Code as promulgated as of the filing of the application;

(5) A statement of the source of supply for the market that is proposed to be served;

(6) A statement setting forth all facts bearing upon economic feasibility including:

(A) The estimated total overall capital cost of the proposed facility or acquisition, including:

(i) All expenditures involved in the constructing or acquiring of the proposed facilities;

(ii) Proposed cost of:

(a) Financing;

(b) Working capital; and

(c) Other incidental costs;

(iii) Amount of engineering and contracting fees to be paid; and

(iv) A brief statement of applicant's proposed plan of financing;

(B) A statement of the extent to which such plan is supported by firm or contingent commitment from all financial sources, including commitments from:

(i) Banks;

(ii) Trust companies;

(iii) Insurance companies;

(iv) Investment bankers;

(v) Suppliers; and

(vi) Other sources;

(C) A statement showing:

(i) Estimates of total revenues expected from the proposed new facilities to be:

(a) Constructed;

(b) Acquired; or

(c) Operated;

- (ii) Total fixed charges; and
- (iii) Total operating expenses; and

(D) A general statement covering the:

(i) Rates the applicant proposes to charge for each kind of service to be rendered; and

(ii) Expected sales, revenues, and average revenue per unit of measurement to be derived therefrom;

(7) A general description of the proposed method of supervising the operations of the proposed project, including reference to any relevant service or management contracts, existing or contemplated; and

(8) A statement that notice of the filing has been given in accordance with 23 CAR § 462-603(a).

(b) Except as provided in Arkansas Code § 23-3-201(b)(1), any installation of a new compressor shall require a CCN.

(c) Application for a CCN to commence operation as a natural gas utility in Arkansas. An application for a CCN by a natural gas utility to provide natural gas services shall include:

(1) Its name and address and:

(A) The full name of its owner if a sole proprietorship and of each partner if a partnership; or

(B) A full list of the officers and directors if a corporation;

(2)(A) A copy of the articles of a partnership or a certified copy of the:

(i) Articles of incorporation; or

(ii) Other articles of organization; and

(B) A copy of the certificate of authority of a foreign corporation unless incorporated under Arkansas law;

(3) The designated geographic area proposed to be served, including a:

(A) Map or maps to suitable scale; and

(B) Legal description;

(4) A description of the services the applicant intends to provide;

- (5) Information demonstrating the applicant's financial, managerial, and technical capacity to provide the services;
- (6) An initial tariff or price list for the services to be offered; and
- (7) Such other information as the Arkansas Public Service Commission may require.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.08 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

**23 CAR § 462-609. Certificates of public convenience and necessity —
Local exchange carriers.**

(a) Request for unallocated area or areas.

(1)(A) An LEC may request that the Arkansas Public Service Commission allocate a geographic area or areas not previously allocated to that utility.

(B) The application may be in the form of a letter stating that the filing is in accordance with subsection (a) of this section.

(C) The application shall state that it is to provide service to territory not previously allocated to that utility.

(2) The application shall include the following:

(A) A map or maps to suitable scale and a legal description:

(i) Showing the geographic area proposed to be served; and

(ii) Depicting the change in territory and exchange boundary or

boundaries affected by the change; and

(B)(i) A letter or letters from other telephone utilities whose allocated service territories are adjacent to the proposed new service area indicating whether the adjacent utilities desire to serve that area.

(ii) In the event more than one (1) utility files an application to serve the same unallocated territory, the Arkansas Public Service Commission may award part or all of the territory to one (1) or more utilities as may be in the public interest after notice and hearing.

(iii) If an unallocated territory is totally surrounded by the applicant's allocated territory or does not border another utility's territory, the application shall state this and that the letter required by this subpart is not applicable.

(3) The secretary shall assign an "A" docket number to the application.

(b) Long distance telephone service.

(1) When application is made to provide long distance telephone service to or between geographic areas, such application shall include:

(A) The information required in subsection (a) of this section to the degree pertinent; and

(B) A schematic map of:

(i) The proposed long distance route; and

(ii) Its point or points of connection with other telephone utilities.

(2) This subsection shall apply to nonelecting ILECs only.

(c) Exchanges of allocated territory.

(1)(A) Two (2) or more LECs may request that the Arkansas Public Service Commission exchange service territory previously allocated to them.

(B) The application may be in the form of a letter stating that the filing is in accordance with this subsection.

(C) The application shall state that the filing is an application for exchange or release of allocated territory.

(2) The application shall include the following:

(A) A map or maps to suitable scale and a legal description:

(i) Showing the geographic area proposed to be served; and

(ii) Depicting the change in territory and exchange boundary or boundaries affected by the change; and

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

(3) The secretary shall assign an "A" docket number to the application.

(d) Changes to base rate areas.

(1)(A) An LEC may apply to alter an existing base rate area.

(B) An application under this subsection shall state the reasons for the application.

(C)(i) The application may be in the form of a letter to the Arkansas Public Service Commission.

(ii) The letter shall state that the filing is an application to change one (1) or more base rate areas pursuant to this subsection.

(2) Applications under this subsection shall contain a map to suitable scale:

(A) Indicating the proposed change or changes; and

(B) Depicting the change in base rate boundary or boundaries affected by the change.

(3) The secretary shall assign a "TF" docket number to the application.

(e) Changes to local exchange boundaries.

(1) An LEC may apply to alter existing local exchange areas by changing the boundaries between two (2) or more of the LECs' exchanges.

(2)(A) An application under this subsection shall be in the form of a letter:

(i) Stating the purpose of the modifications; and

(ii) Explaining in detail any changes in rates or in the calling scopes of existing customers.

(B) The letter shall state that the filing is an application to change two (2) or more exchange areas pursuant to this subsection.

(3) The application shall include:

(A) The letter;

(B) The proposed final version of a tariff map and legal description for each exchange;

(C) Each currently approved tariff map with proposed changes marked in red; and

(D) Each currently approved legal description with changes highlighted.

(4) The secretary shall assign an "A" docket number to the application.

(f) Certificates of public convenience and necessity — Competing local exchange carriers. An application for a CCN by a CLEC to provide telecommunications services including basic local exchange service and/or switched access service to an ILEC's local exchange area shall include:

(1) Its name and address and:

(A) The full name of its owner if a sole proprietorship and of each partner if a partnership; or

(B) A full list of the officers and directors if a corporation;

(2)(A) A copy of the articles of a partnership or a certified copy of the:

(i) Articles of incorporation; or

(ii) Other articles of organization; and

(B) A copy of the certificate of authority of a foreign corporation unless incorporated under Arkansas law;

(3) The designated geographic area proposed to be served, including a:

(A) Map or maps to suitable scale; and

(B) A legal description;

(4) A description of the services the applicant intends to provide in addition to basic local exchange and switched access services;

(5) Information demonstrating the applicant's financial, managerial, and technical capacity to provide the services;

(6) An initial tariff or price list for the services to be offered; and

(7) Such other information as the Arkansas Public Service Commission may require.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.09 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

23 CAR § 462-610. Certificate of public convenience and necessity — Telecommunications providers excluding local exchange carriers.

An application for a CCN by a telecommunications provider other than an LEC shall include:

- (1) The name and address of the telecommunications provider and:
 - (A) The full name of its owner if a sole proprietorship and of each partner if a partnership; or
 - (B) A full list of the officers and directors if a corporation;
- (2) A copy of the:
 - (A) Articles of a partnership or a certified copy of the articles of incorporation or other articles of organization; and
 - (B) Certificate of authority of a foreign corporation unless incorporated under Arkansas law;
- (3) A description of the telecommunications provider and the telecommunications service or services it proposes to provide;
- (4) A description of the telecommunications provider's technical means to provide the proposed service;
- (5) Information setting forth the financial condition of the telecommunications provider;
- (6) An initial tariff or price list proposed for the services to be offered;
- (7)(A) A detailed description of the transmission facilities whether owned or leased, switching equipment, and the points at which the transmission facilities or switching equipment connect to the local exchange network through switched, special, or private access service, together with a description of the type of access service used to connect to the local exchange network.

(B) This same information shall be provided with regard to direct access to any customer; and

(8) Such other information as the Arkansas Public Service Commission may require.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.10 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

23 CAR § 462-611. Petition process for Class B or lower water and sewer companies.

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

(b) **Petition process.** A Class B or lower water or sewer company otherwise exempt from regulation as a public utility shall become subject to the Arkansas Public Service Commission's jurisdiction upon the Arkansas Public Service Commission's order approving either of the following petitions:

(1) **By the company.** The petition shall include, but not be limited to, the following information:

(A) A request that the Arkansas Public Service Commission:

- (i) Declare the company to be a public utility; and
- (ii) Issue a CCN to the company;

(B)(i) A description of the facilities being operated, under construction, or proposed to be constructed for the purpose of providing water or sewer services.

(ii) Such description shall include information pertaining to the:

(a) Size, capacity, and location of the facilities including a map of the service area; and

(b) Customers served or to be served by those facilities;

(C) A description of the current business organization, ownership, and management of the company including an identification (i.e., name, address, telephone number, and electronic mail address) of:

(i) The company's officers; and

(ii) Those persons responsible for supervising the provision of water or sewer services;

(D)(i) A description of any contracts or agreements for the construction, purchase, lease, or operation of any facilities providing water or sewer service.

(ii) Such description shall identify any affiliation, if any, between the parties to such contracts or agreements;

(E) A schedule of the company's rates and charges for its water or sewer service as of the date of the filing of the petition and an explanation of those rates and charges;

(F) An income and expense statement for the previous fiscal year's water or sewer operations and a statement of the revenues, fixed charges, and operating expenses estimated for the current fiscal year's water or sewer operations; and

(G) A statement that, as of the filing of the petition hereunder, the company has notified each of its water or sewer customers of the company's filing hereunder by first-class mail properly addressed with charges prepaid; and

(2) By a majority of the metered customers.

(A) The petition shall include but not be limited to the following information:

(i) A general description of the company, including:

(a) The location of its business office;

(b) An identification of its management; and

(c) A description of its service area and customer base;

(ii) A request that the company be made subject to the Arkansas Public Service Commission's jurisdiction supported by the attachment of completed petitions that include the names, addresses, and signatures of all petitioning customers; and

(iii) If the company is a water company, a statement setting forth the basis for the customers' belief that the water company's combined annual operating revenues exceed the threshold set by Arkansas Code § 23-1-101 for such companies.

(B) The company shall, upon request of the Arkansas Public Service Commission or the staff, provide a list of metered customers.

(c) **Subsequent requirements.** After hearing and upon finding that a Class B or lower water or sewer company is subject to jurisdiction under this subpart, the Arkansas Public Service Commission shall, as appropriate:

(1) If the petition was filed by customers, order the company to file the information required under subdivisions (b)(1)(B) – (F) of this section;

(2) Prescribe any other terms and conditions that must be satisfied before the issuance of a permanent CCN;

(3) Issue an interim or permanent CCN to the company, as appropriate;

(4) Establish interim rates and charges, subject to refund, for the company's services;

(5) Order the company to give notice of its intention to file a General Rate Change Application; and

(6) Order the company to file an application for a General Rate Change Application pursuant to Subpart 8 of this part.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.11 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

23 CAR § 462-612. Notification of utility name change.

(a)(1) A public utility shall file a notice of name change at least fifteen (15) days before the effective date of a name change.

(2) Name changes shall include changes to the name of the business organization as well as the use of or change to a fictitious or assumed name.

(b) The notice shall be filed in the docket designated by the Arkansas Public Service Commission for this purpose.

(c) If the name change is incidental to another pending docket, such notice shall also be filed in that docket.

(d) The notice shall contain the following information:

(1) The old name of the utility;

(2) The new name for the utility along with the effective date for the new name; and

(3) Copies of all documents to establish that the proposed change in name has been purposefully and legally accomplished, including but not limited to all filings with:

(A) The Secretary of State; or

(B) Other appropriate state agencies.

(e) The public utility shall file revised tariffs properly reflecting the new name of the public utility as follows:

(1) For all jurisdictional telecommunications providers except nonelecting ILECs, the tariffs shall be filed in Docket No. 95-530-A;

(2) For all other jurisdictional utilities, the tariffs shall be filed in a new "TF" docket; and

(3) If the name change is incidental to another pending docket such as approval of a merger or acquisition and the notice was filed in that docket, the tariffs shall also be filed in that docket.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 6.12 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-613. Annual reporting requirements.

(a) Each jurisdictional utility shall submit an annual report on the form required by the Arkansas Public Service Commission by March 31 for the preceding calendar year ending December 31 in accordance with Arkansas Code §§ 23-2-308, 23-3-109, and 23-3-112.

(b) Each natural gas transporter, owner, or operator shall report to the Arkansas Public Service Commission annually in accordance with Arkansas Code § 23-15-214.

Authority. Arkansas Code §§ 23-15-214, 23-2-305, 23-2-403, 23-3-110.

Codification Notes. This section was promulgated as Rule 6.13 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-614. Annual fee requirements.

(a)(1) In accordance with Arkansas Code § 23-3-110, on or before August 15 annually the Arkansas Public Service Commission shall prepare and transmit to each jurisdictional utility a statement of the fees due for utilities costs during the preceding fiscal year.

(2) On or before August 31 annually, each jurisdictional utility shall pay to the secretary of the Arkansas Public Service Commission all fees shown to be due by the statement.

(b)(1) In accordance with Arkansas Code § 23-15-214, on or before June 1 annually the Arkansas Public Service Commission shall prepare and transmit to each natural gas pipeline transporter, owner, or operator a statement of the assessment due for the cost of operating the pipeline safety program of the Arkansas Public Service Commission during the preceding fiscal year.

(2) On or before June 30 annually each natural gas pipeline transporter, owner, or operator shall pay to the secretary of the Arkansas Public Service Commission any annual assessment fee due.

Authority. Arkansas Code §§ 23-15-214, 23-2-305, 23-2-403, 23-3-110.

Codification Notes. This section was promulgated as Rule 6.14 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-615. Revocation of CCN and other penalties.

(a) The Arkansas Public Service Commission may assess a civil sanction in accordance with Arkansas Code § 23-1-103 and/or revoke the CCN of a utility for failure of the utility to timely file its annual report pursuant to Arkansas Code §§ 23-2-308, 23-3-109, 23-3-112, and 23-15-214 and 23 CAR § 462-613.

(b) The Arkansas Public Service Commission may assess a penalty of twenty-five percent (25%) in accordance with Arkansas Code §§ 23-3-110 and 23-15-214 and/or revoke the CCN of a utility for failure to pay the annual fees assessed by the Arkansas Public Service Commission pursuant to Arkansas Code §§ 23-3-110 and 23-15-214.

(c) Any telecommunications provider that without just cause fails to pay the Arkansas High Cost Fund charge that is due and payable pursuant to Arkansas Code § 23-17-404 after notice and opportunity for hearing shall have its authority to do business as a telecommunications provider in the State of Arkansas revoked by the Arkansas Public Service Commission.

(d) The Arkansas Public Service Commission may terminate a telecommunications provider's CCN if the telecommunications provider fails to:

(1) Comply with the Arkansas Intrastate Carrier Common Line Pool procedures; or

(2) Make a payment due under Arkansas Code § 23-17-416.

Authority. Arkansas Code §§ 23-15-214, 23-2-305, 23-2-403, 23-3-110.

Codification Notes. This section was promulgated as Rule 6.15 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

23 CAR § 462-616. Cancellation of CCN — Telecommunications providers.

(a)(1) A telecommunications provider requesting cancellation of its CCN to operate shall file written notice in the docket originally approving the CCN.

(2) The notice shall certify that the telecommunications provider is currently in compliance with:

(A) Filing of its annual reports pursuant to Arkansas Code §§ 23-2-308, 23-3-109, 23-3-112, and 23-15-214 and 23 CAR § 462-613;

(B) Payment of the annual fees assessed by the Arkansas Public Service Commission pursuant to Arkansas Code §§ 23-3-110 and 23-15-214;

(C) Payment of the Arkansas High Cost Fund charge that is due and payable pursuant to Arkansas Code § 23-17-404; and

(D) The Arkansas Intrastate Carrier Common Line Pool procedures and payments due under Arkansas Code § 23-17-416.

(b) The cancellation shall not be effective until an order is entered in the docket.

Authority. Arkansas Code §§ 23-15-214, 23-2-305, 23-2-403, 23-3-110.

Codification Notes. This section was promulgated as Rule 6.16 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

"CCN" means a certificate of public convenience and necessity.

Subpart 7. Tariffs

23 CAR § 462-701. Applicability.

(a) 23 CAR § 462-709 applies to telecommunications providers except for nonelecting ILECs.

(b) The remaining rules in this subpart apply to nonelecting ILECs and the other regulated public utilities except as otherwise noted.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 7.01 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-702. Procedure for filing tariffs.

(a) The tariff shall:

(1)(A) Be accompanied by a letter of transmittal describing the:

- (i) Purpose of the tariff; and
- (ii) Docket number, if known;

(B) Tariffs intended to revise or supplement rates or schedules that constitute a part of an ongoing General Rate Change Application shall be filed only in the docket containing that application.

(C) The transmittal letter accompanying the tariffs shall inform the secretary of the proper General Rate Change Application docket in which the tariffs should be filed.

(D) Improper filing of said tariffs in a "TF" docket may be grounds for disapproval;

(2)(A) Be accompanied by supporting testimony that describes, at a minimum:

- (i) The reason for and justification of the requested change;
- (ii) The approximate number of customers expected to be affected by class;
- (iii) The utility's current authorized retail revenue requirement;

(iv) The estimated monthly impact on an average residential customer in both dollars and percentage increase;

(v) The estimated annual retail revenue impact of the proposal, if approved, in both dollars and as a percentage of current retail revenue requirement; and

(vi) Any change in rate design that will result in any change in revenue allocation within a class or between classes.

(B) Workpapers shall also be provided in conformance with 23 CAR § 462-408;

(3) In the case of a revision to a filed tariff, be accompanied by a marked-up copy showing:

(A) Deletions by overstriking; and

(B) Additions by underlining;

(4)(A) Be on Arkansas Public Service Commission-approved forms (see Appendix 7-1).

(B) The forms shall not show any stamp or mark indicating previous Arkansas Public Service Commission approval;

(5) Consist of sheets that are identified by a section title, section number, page number, and whether that page is original or, if applicable, a revision number; and

(6)(A) Be provided electronically in native format.

(B) Electronic copies shall be clearly legible and complete.

(C) All formulae and viable links shall be left intact for all electronic files.

(b) Upon accepting a tariff for filing:

(1)(A) If the tariff is not a part of a General Rate Change Application or existing docket, the secretary shall assign a docket number to include the letters "TF."

(B) New tariff filings containing substitutions, withdrawals, additions, corrections, or other changes to previously approved tariffs shall be assigned to a new "TF" docket.

(2) The secretary shall stamp the filing date on each page of the tariff that will become a permanent, official Arkansas Public Service Commission record.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 7.02 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-703. Form and content of tariffs.

(a) Each utility shall have tariffs containing the following information on file with the Arkansas Public Service Commission and available for inspection by customers in each utility business office open to the public (see also 23 CAR § 455-201(d) of the General Service Rules, 23 CAR pt. 455, or 23 CAR § 466-201(d) of the Telecommunications Providers Rules, 23 CAR pt. 466.

(b) Table or tables of contents or index or indexes.

(1)(A) The table or tables of contents or index or indexes shall describe each section contained in the tariff.

(B) Tables of contents or indexes shall have sufficient detail so that a particular type of equipment, policy, etc. can be located.

(2) A revised table of contents and/or index shall be filed with any revised tariff that makes the current table or tables of contents and/or index or indexes obsolete.

(3) Tariff sections consisting of more than ten (10) pages shall include a separate table of contents listing each major subsection and subpart.

(c) Rate schedules.

(1)(A) Rate schedules shall incorporate:

(i) The amounts charged for services rendered; and

(ii) Any other information required to identify or quantify a utility's services or rates.

(B) The rates, conditions of service, character of service, etc. associated with special contracts shall be included as a separate tariff schedule along with a copy of the contract or redacted contract if subject to a protective order.

(C) The term "special contracts" does not include:

- (i) Special assembly requests; or
- (ii) One-time construction orders.

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

(A) **The service area of LECs.**

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

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

(B) **Customer class.**

(i) Customer classes may include, for example, residential, commercial, or large power classes.

(ii) The description of customer classes shall include additional appropriate descriptions such as:

- (a) Interruptible;
- (b) Time of use; and
- (c) Off-peak;

(C) **Availability of service.** Classification of premises or customers to which the schedule applies;

(D) **Character of service.**

(i) **Electric utilities.** Where applicable, the tariff shall state the service voltage, phase, and frequency of electricity for electrical service.

(ii) **Natural gas utilities.**

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

(b) The tariff shall state the minimum average heating value of natural gas delivered to its distribution plant or plants;

(E) **Rates.** Rates shall be shown in schedule form;

(F) **Minimum charges.** Where applicable, the tariff shall state all minimum charges with their terms and conditions;

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

(H) **Special conditions.** Where applicable, the tariff shall state any special conditions applied to the customers by rate schedule; and

(I) **Term of contract.** The tariff shall state the minimum period for which service will be rendered under the schedule.

(d) **Separate, additional schedules required.**

(1)(A) Riders to the rate schedules shall:

(i) Be filed as separate tariff schedules; and

(ii) Not be incorporated on the same tariff sheet or sheets with the rate schedules of the customer classes.

(B) The rider shall describe the terms of payment including a list of the rate schedules to which the terms apply.

(2) **Adjustment riders.**

(A) Adjustment riders shall be filed for all adjustments such as the:

(i) Cost of fuel adjustment; and

(ii) Cost of debt adjustment.

(B) These riders shall set forth:

(i) The adjustment; and

(ii) Any special conditions contained therein.

(3) **Charges related to customer activity.**

(A) Charges associated with deposits, membership fees, returned check fees, reconnect fees, meter test fees, and other charges related to customer activity shall be listed on a separate sheet entitled "Charges Related to Customer Activity."

(B) Information required by the General Service Rules, 23 CAR pt. 455, and the Telecommunications Providers Rules, 23 CAR pt. 466, is contained in Appendix 7-2 to this subpart.

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

(e) **Rules and policies.**

(1)(A) Utilities are not required to file customer service regulations already addressed in any Arkansas Public Service Commission rules.

(B) Rules adopted by a utility that supplement the requirements of Arkansas Public Service Commission rules shall be filed as tariffs with the Arkansas Public Service Commission.

(2) Policies required by 23 CAR §§ 466-508(b) and 466-509(b) of the Telecommunications Providers Rules, 23 CAR pt. 466, or by 23 CAR §§ 455-509(b), 455-510(c), 455-511(b), and 455-619(a) of the General Service Rules shall be filed as tariffs with the Arkansas Public Service Commission.

(f) **Extension of facilities.**

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

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

(g) **Natural gas utility requirements.**

(1) **Minimum heating value for natural gas.**

(A) Each natural gas utility shall file as a tariff the minimum heating value for natural gas.

(B) See 23 CAR § 464-602(b) of Special Rules — Gas, 23 CAR pt. 464.

(2) Base or absolute natural gas pressure.

(A) Each natural gas utility shall file as a tariff the value of its base or absolute pressure.

(B) See 23 CAR § 464-603 of Special Rules — Gas, 23 CAR pt. 464.

(3) Normal gauge pressure for natural gas.

(A) Each natural gas utility shall file as a tariff the normal gauge pressure at which natural gas will be supplied through the meter to a customer's piping.

(B) See 23 CAR § 464-604(d) of Special Rules — Gas, 23 CAR pt. 464.

(4) Natural gas curtailment policy.

(A) Each natural gas utility shall file as a tariff its policy governing the curtailment of natural gas service to customers.

(B) See 23 CAR § 464-306 of Special Rules — Gas, 23 CAR pt. 464.

(h) Electric utility requirements.

(1) Nominal electric voltage.

(A) Each electric utility shall file as a tariff the nominal voltage to be supplied to a customer.

(B) See 23 CAR § 463-601(a)(2) of Special Rules — Electric, 23 CAR pt. 463.

(2) Test method for in-service electric meters.

(A) Each electric utility shall file as a tariff the test method to be used for in-service meters.

(B) See 23 CAR § 463-708(b) of Special Rules — Electric, 23 CAR pt. 463.

(3) Electric voltage verification plan.

(A) Each electric utility shall file as a tariff its plan for verifying voltage standards at each distribution substation.

(B) See 23 CAR § 463-601(c)(2)(C) of Special Rules — Electric, 23 CAR pt. 463.

(4) Electric utility emergency curtailment plan. Each electric utility shall:

(A) File as a tariff its emergency curtailment plan;

(B) Maintain and update its plan as necessary; and

(C) Provide a report to the Arkansas Public Service Commission subsequent to any emergency curtailment.

(i) **Service area maps.** Each jurisdictional utility that provides service in an allocated area shall:

(1) Provide an electronic file or files showing a current map or maps of its service territory boundaries; and

(2) Also provide an electronic file or files containing a legal description or descriptions of its allocated area.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 7.03 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-704. Intervention deadline for tariff dockets.

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

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 7.04 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-705. Time for filing of testimony.

(a) Unless otherwise provided in an Arkansas Public Service Commission order or pursuant to the terms of an approved tariff, within twenty (20) days of the date upon which a new TF docket has been initiated, staff shall file and other parties may file appropriate responsive testimony or request suspension of the proposed tariff pursuant to Arkansas Code § 23-4-407.

(b)(1) If staff believes the supporting discussion and analysis is inadequate, staff may request additional data and justification.

(2) If additional data and justification is not furnished within a reasonable time or if staff needs additional time to review the filing, staff may ask the Arkansas Public Service Commission to:

(A) Suspend the tariff; and

(B) Require the filing of such additional financial or cost of service data as the Arkansas Public Service Commission may deem to be reasonably necessary.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 7.05 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-706. Effective date of tariffs.

(a)(1) Unless otherwise provided in an Arkansas Public Service Commission order or pursuant to the terms of an approved tariff, tariffs become effective thirty (30) days after filing.

(2) See Arkansas Code § 23-4-402.

(b) The date of any Arkansas Public Service Commission order approving a tariff becomes the effective date of that tariff unless otherwise provided:

(1) In an Arkansas Public Service Commission order; or

(2) Pursuant to the terms of an approved tariff.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 7.06 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-707. Failure to comply.

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

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 7.07 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-708. Tariffs to comply with rules, statutes, and orders.

The Arkansas Public Service Commission may require a utility to revise its existing tariffs to comply with any rule, statute, or order.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 7.08 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-709. Telecommunications rates not yet subject to Arkansas Public Service Commission approval.

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

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 7.09 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

Subpart 8. Accounting Standards and General Rate Change Application Filing Requirements

23 CAR § 462-801. Purpose.

(a) Purpose.

(1) This subpart:

(A) Sets forth certain ongoing standards and requirements regarding accounting information and recordkeeping; and

(B) Defines the specific financial and statistical information that must be filed by a jurisdictional public utility with a General Rate Change Application.

(2) This subpart is not intended to:

(A) Establish any ratemaking principles; or

(B) Modify the provisions of Arkansas statutes.

(3) This subpart does not preclude filing any additional data, information, or calculations not herein specified.

(b) **Exclusion.** This subpart does not apply to telecommunications providers other than:

(1) Nonelecting ILECs; and

(2) Section 12 electing companies.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.01 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-802. Uniform system of accounts.

All jurisdictional public utilities shall adhere to the applicable uniform system of accounts in maintaining their books and records.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.02 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-803. Production of out-of-state books and records.

(a) A jurisdictional public utility shall produce or deliver in this state or in another mutually agreeable location all or any of its formal accounting records and related documents the Arkansas Public Service Commission or staff may request.

(b) With Arkansas Public Service Commission approval, the utility may provide verified copies of original records and documents.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.03 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-804. Separation of nonjurisdictional properties, revenues, and expenses.

(a) Utility properties, operating revenues, and operating expenses associated with providing a utility's service not subject to the Arkansas Public Service Commission's jurisdiction must be specifically identified and properly separated.

(b) In addition, all nonutility properties, revenues, and expenses shall likewise be segregated.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.04 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-805. Staff assistance in preparing a filing.

(a) The staff, consistent with other workload requirements, may provide general guidance when needed to an applicant in preparing a filing.

(b) Applicants desiring guidance are encouraged to inform the staff of their intention to make a filing pursuant to this subpart at the earliest practicable date.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.05 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-806. Notice of intention to file a General Rate Change Application.

(a) Pursuant to Arkansas Code § 23-4-401, every applicant shall notify the secretary in writing of its intention to file a General Rate Change Application at least sixty (60) days but no earlier than ninety (90) days before the application is filed.

(b) Following the receipt of the written notification of an applicant's intention to file a General Rate Change Application, the Executive Director of the Arkansas Public Service Commission shall provide to the applicant a schedule of the approximate dates on which staff will conduct its field investigation and audit of the intended rate request.

(c) Pursuant to the written petition by the applicant and for reasonable cause shown therein, the Arkansas Public Service Commission may grant a waiver of compliance to this section.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.06 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-807. Public notice of filing.

(a)(1) An applicant shall give public notice of the filing of a General Rate Change Application in the following manner within thirty (30) days of the filing unless the Arkansas Public Service Commission otherwise provides.

(2)(A) The applicant shall publish the notice once each week for two (2) consecutive weeks in a newspaper or newspapers having substantial circulation in the area served by the applicant.

(B) The notice shall be at least one-eighth (1/8) page with print in at least 6-point type.

(3) The applicant shall also display the notice prominently on its website.

(b) Said notice shall contain the following information:

(1) Name of applicant;

(2) A general description of the purpose of the application, the total amount of the requested rate increase, the classes of customers affected, and the approximate amount of the dollar change and percentage change proposed for each rate schedule under test period conditions together with a brief statement that rates of other rate schedules or services may be affected by the final Arkansas Public Service Commission order;

(3) The present and proposed unit price, telephone basic service charge, and customer charges, if any, based on the respective per-unit prices such as per kW, per kWh, per gallon, per ccf, and per Mcf contained in the:

(A) Present rate schedule; and

(B) Proposed rate schedule;

(4)(A) A statement that the applicant will, upon request, provide to the consumer an estimate of the calculated average monthly dollar amount by which the proposed rates will change the customer's utility bill.

(B) If applicable, the estimate shall be based on the consumer's average consumption level unless such consumption data is not reasonably ascertainable by the applicant.

(C) The applicant may advise those customers requesting the calculated average monthly dollar amount that the information is subject to the following qualifications:

(i) The calculated average is an estimate that may change depending upon the:

(a) Rates the Arkansas Public Service Commission approves; and

(b) Customer's actual usage; and

(ii) The calculated average will be provided in only those cases where a customer's proposed rate schedule is the same rate schedule under which the customer presently takes service;

(5) The application's filing date, the Arkansas Public Service Commission docket number, and the proposed effective date of the new rates;

(6) If an applicant also files a petition for immediate and impelling relief pursuant to Arkansas Code § 23-4-408, the notice shall include:

(A) The date the applicant is requesting the rates go into effect under bond;

(B) A statement that the amount requested is subject to refund with interest; and

(C) The information required by subdivisions (b)(2), (b)(3), and (b)(4) of this section to the extent that the information differs from that provided for the General Rate Change Application;

(7) A statement that:

(A) This part provides procedures for interested persons to:

(i) Intervene as a party;

(ii) Make limited appearances; or

(iii) Submit public comments in writing or orally at the hearing; and

(B) Further information may be obtained by:

(i) Contacting the secretary; or

(ii) Viewing the Arkansas Public Service Commission's website; and

(8) The name, address, phone number, and email address of the secretary and the URL address of the Arkansas Public Service Commission's website.

(c) The applicant shall file proof of notice of publication by filing a copy of the notice in accordance with 23 CAR § 462-403(c) except that the proof shall be filed at least sixty (60) days before the date of the hearing.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.07 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-808. Information required at filing of a General Rate Change Application.

(a) Testimony and exhibits shall be filed simultaneously with the General Rate Change Application in conformance with 23 CAR § 462-408.

(b) Workpapers shall be provided to staff simultaneously with the General Rate Change Application in conformance with 23 CAR § 462-408.

(c)(1) The applicant shall prepare and file all applicable schedules contained in Appendices 8-1 and 8-1A of this subpart.

(2) Appendix 8-1A applies only to electric utilities.

(d) Substitute schedule option.

(1) If the requirements in subdivisions (d)(2) through (d)(6) of this section are met, an applicant may provide a substitute schedule in lieu of one (1) or more of the following Appendix 8-1 schedules: B-5, B-6, B-7, B-8, B-9, C-6, C-7, D-6.2, D-6.3, D-7, E-3, E-4, E-5, E-6, E-9, E-10, E-13, E-17, G-4, G-5.1, G-5.2, H-4, and H-5, and for any utility that is a wholly-owned subsidiary of another company, D-1.1, D-1.2, D-1.3, D-2.1, D-2.2, D-2.3, D-3.1, D-3.2, D-3.3, D-4, D-5.1, D-5.2, D-5.3, D-6.1, D-6.2, D-6.3, and E-1 for the parent corporation on a stand-alone basis.

(2) The substitute schedule provided is in a comparable format to the Appendix 8-1 schedule that the substitute schedule replaces.

(3) The substitute schedule provided includes all of the data or information required on the Appendix 8-1 schedule that the substitute schedule replaces including following any:

- (A) Instructions;
- (B) Explanations;
- (C) Notes; and
- (D) Supporting workpaper requirements.

(4) All references to account or subaccount in the substitute schedule conform to the applicable uniform system of accounts.

(5) The substitute schedule complies with the requirements of 23 CAR § 462-809(3) – (9).

(6) The substitute schedule is filed as part of the application in the place of the required Appendix 8-1 schedule.

(e) For a recommendation made, position taken, or conclusion reached that is based on a statistical analysis or other study including but not limited to the cost of equity, depreciation rate studies, billing determinant analysis, or the cost of service study, the workpapers shall additionally include a complete description of the statistical model utilized, the data utilized, and the results of the analysis if not addressed in testimony or exhibits.

(f) If changes to existing depreciation rates are requested, the applicant must provide:

- (1) A comprehensive depreciation study; or
- (2) For electric cooperatives, the Rural Utilities Service guideline that addresses life and salvage estimates in support of such new rates.

(g) The applicant, except telecommunications providers, shall submit a cost of service study to support a General Rate Change Application.

(h)(1) The applicant shall provide to staff the computer model including the software necessary for staff to independently run the applicant's cost of service.

(2) Alternatively, the applicant may provide staff reasonable access to the computer model at:

- (A) The Arkansas Public Service Commission's offices; or
- (B) At another mutually agreeable location.

(3) Such access:

(A) Shall be adequate to enable staff to replicate the results; and

(B) May include the applicant manipulating the computer model according to instructions or inputs from staff.

(i)(1) If the applicant relies on proprietary programs or applications for computations to support its General Rate Change Application, copies of those programs must be provided to staff with explanations and instructions adequate to replicate the results.

(2) Alternatively, the applicant may provide staff reasonable access to the programs at the Arkansas Public Service Commission's offices or at another mutually agreeable location.

(3) Such access:

(A) Shall be adequate to enable staff to replicate the results; and

(B) May include the applicant manipulating the programs according to instructions or inputs from staff.

(4) When the applicant seeks to limit access to the program or application to other parties, the Arkansas Public Service Commission will determine the appropriate access to the program or its output.

(j) The applicant shall file only those tariff schedule pages that are:

(1) New or proposed to be revised; and

(2) In conformance with the applicable provisions of 23 CAR §§ 462-702 and 462-703.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.08 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-809. Filing instructions.

In preparing the information specified in this subpart, the applicant shall follow these instructions:

(1)(A) The appendix schedule formats, instructions, explanations, notes, and supporting workpapers are a part of the requirements of this subpart.

(B) Schedule forms are available on the Arkansas Public Service Commission's website;

(2)(A) All appendix schedules shall conform to the schedule format as closely as practicable and all instructions, explanations, and notes shall be followed.

(B) All references to account or subaccount in the appendix schedules shall conform to the applicable uniform system of accounts;

(3)(A) In addition to workpapers, exhibits, appendix schedules, and tariff schedule pages shall be provided to staff electronically in native format.

(B) Electronic copies shall be clearly legible and complete;

(4) All appendix schedules shall be:

(A) Mathematically correct; and

(B) Properly cross-referenced;

(5)(A) Amounts may be rounded where appropriate to the nearest thousand dollars for major electric and gas utilities and Class A telecommunications providers.

(B) Amounts may be rounded to the nearest hundred dollars for all other utilities;

(6)(A) All appendix schedules shall be numbered as provided in Appendices 8-1 and 8-1A where applicable.

(B) Appendix schedules prepared by all classes of utilities shall contain a reference to the filing date;

(7)(A) Appendix schedules, titles, and row and column headings shall clearly indicate the:

(i) Nature and intent of the schedule; and

(ii) Dates or time periods covered.

(B) Row and column headings shall be clearly indicated;

(8) All formulae and viable links shall be left intact for all electronic files and all electronic files shall be provided in the native format including, but not limited to, the:

- (A) Application appendix schedules;
- (B) Workpapers; and
- (C) Cost of service study;

(9)(A) Any workpaper that is a document not publicly available or readily accessible that is referenced in the application and supporting appendix schedules, testimony, exhibits, or workpapers shall also be provided.

(B) If a workpaper is a document that is publicly available on the internet, a specific link (URL address) to the workpaper may be provided.

(C) If a workpaper is a document that is a study, report, book, periodical, or other publication not publicly available or readily accessible to the parties, the applicant may provide copies of the relevant pages from such workpaper rather than copies of the entire study, report, book, periodical, or other publication, but all pages necessary to understand the relevant pages in context shall be provided.

(D) Upon request, the applicant shall make available the entirety of such workpaper for inspection at:

- (i) The Arkansas Public Service Commission's offices; or
- (ii) Another mutually agreeable location; and

(10) Supporting testimony and/or exhibits shall address, at a minimum:

- (A) A description of the:
 - (i) Adjustments proposed;
 - (ii) Projections made;
 - (iii) Recommendations made;
 - (iv) Positions taken; and
 - (v) Conclusions reached;

(B) Any material tariff modification proposed; and

(C) Any other proposed change for which the applicant requests Arkansas Public Service Commission approval.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.09 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-810. Waiver of requirements.

The applicant may omit specific items of information from the filing only with prior Arkansas Public Service Commission approval.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.10 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-811. Failure to comply with filing requirements.

(a) Determination of deficiencies.

(1) Staff shall review each filing to ascertain whether it complies with the provisions of this part.

(2) If staff determines that any deficiencies exist, staff shall file a notice detailing the deficiencies within ten (10) days after the applicant's application and required exhibits and schedules are filed.

(3) The applicant shall correct the deficiencies in writing within fourteen (14) days of filing of the notification of deficiency or upon objection by the applicant within such longer period as the Arkansas Public Service Commission shall find appropriate.

(b)(1) Staff shall review the filing as revised by the applicant to determine compliance with all information required by this part.

(2) No more than seven (7) days from the filing as revised, staff shall file:

(A) A statement of compliance; or

(B) A second notice of deficiencies listing:

(i) Each requirement not met; and

(ii) A brief explanation in support.

(3) This second notice of deficiencies shall not include any deficiencies that were not equally:

(A) Present in the initial application; and

(B) Identified by staff pursuant to subsection (a) of this section.

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

(d) **Sanctions.** If the Arkansas Public Service Commission determines that the nature and extent of the deficiencies in the applicant's filing are of such nature and scope whereby the orderly review and analysis of the filing may be materially impaired or delayed, the Arkansas Public Service Commission, provided it deems such action appropriate and in the public interest, shall issue an order directing the applicant to show cause why the filing should not be dismissed for want of sufficient compliance to constitute a "filing" within the intent and meaning of the applicable law.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.11 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-812. Appendix schedules and cost of service information required subsequent to initial filing.

(a) Staff may request updates of one (1) or more of the schedules specified in subsections (b) and (c) of this section and the applicant shall be required to provide such updated schedules in accordance with the time frames indicated.

(b)(1) If a General Rate Change Application uses a test year derived from any projected data, the applicant at staff's request shall as soon as practicable after such data becomes available provide updated Appendix 8-1 Schedules B-1, B-2, B-4, B-5, C-1, C-2, C-9, C-10, C-11, C-12, D-6.2, and E-11.1 to reflect actual data and updated

Appendix 8-1 Schedules D-1.3, D-2.3, D-3.3, D-5.3, D-6.1, and E-1, with each schedule beginning with actual per-book information as of the end of the test year.

(2) An applicant that is a wholly-owned subsidiary of another company at staff's request shall also provide the information for its parent corporation on a stand-alone basis for Schedules D-1.3, D-2.3, D-3.3, D-5.3, D-6.1, and E-1 as required in Appendix 8-1, with each schedule beginning with actual per-book information as of the end of the test year.

(c)(1) The applicant at staff's request shall provide updated schedules reflecting the most current information available, whether for the test year or pro forma year period, ninety (90) days in advance of the filing deadline for staff's direct testimony and forty-five (45) days in advance of the filing deadline for staff's surrebuttal testimony for Appendix 8-1 Schedules B-1, B-2, B-4, B-5, B-8, B-9, C-9, C-10, D-6.2, and E-11.2 to reflect the most current information available and for Appendix 8-1 Schedules D-1.3, D-2.3, D-3.3, D-5.3, D-6.1, and E-1, with each schedule beginning with actual per-book information as of the most current information available.

(2) An applicant that is a wholly-owned subsidiary of another company at staff's request shall also provide the information for its parent corporation on a stand-alone basis for Schedules D-1.3, D-2.3, D-3.3, D-5.3, D-6.1, and E-1 as required in Appendix 8-1, with each schedule beginning with actual per-book information as of the most current information available.

(d) To the extent that the revenue requirement of any class is effectively revised by written testimony or exhibits by the applicant within the course of the proceeding, a revised cost of service study including Appendix 8-1 Schedules A-1, B-1, B-2, C-1, C-2, D-1.3, G-1, G-2, G-3, and G-4 and Appendix 8-1A schedules if applicable shall be filed with the applicant's testimony or exhibits.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.12 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-813. Immediate and impelling relief.

(a) **Separate petition required in general rate case.** Whenever a petition for immediate and impelling relief is filed pursuant to Arkansas Code § 23-4-408 contemporaneously with a General Rate Change Application, the petition shall not be incorporated within the General Rate Change Application but shall be:

(1) A separate petition designated "Petition for Immediate and Impelling Relief"; and

(2) Filed in the same docket as the General Rate Change Application.

(b) **Content of petition and supporting testimony.** The petition shall:

(1) Explain the circumstances justifying such relief; and

(2) Be accompanied by supporting testimony that shall include a discussion of the following information:

(A) The applicant's ability to meet:

(i) Current payroll;

(ii) Debt service costs;

(iii) Accounts payable; and

(iv) Other fixed costs and expenses that:

(a) Represent actual cash outlays; and

(b) Are or will be currently due and owing;

(B) An analysis of the applicant's rate base, with short-term and long-term construction work in progress (CWIP) stated separately;

(C)(i) The overall rate of return and return on equity on an unadjusted book basis currently being earned, and the return on equity granted to the applicant in its most recent rate application.

(ii) The docket number, order number, and date of order shall be stated;

(D) A description of the duration of time the applicant has experienced one (1) or more of the circumstances requiring immediate relief (i.e., how long has the applicant been unable to meet payroll or debt service); and

(E) Any other information deemed by the applicant to be relevant to its petition.

(c) **Exhibits.**

(1)(A) A petition for immediate and impelling relief shall contain exhibits showing actual unadjusted data with no year-end level adjustments or projections.

(B) The exhibits shall reflect the period representing twelve (12) consecutive historical months inclusive of all historical months in the test year in the General Rate Change Application (the I & I Period).

(C) The applicant may provide additional exhibits showing its projected revenue and expenses.

(2) Exhibits in support of the petition shall be attached to the petition and shall be labeled as exhibits in support of the petition.

(3) The exhibits shall include, at a minimum, the following:

(A) Income statement for the I & I Period absent any adjustments;

(B) **Rate base items — Thirteen-month average.**

(i) Net plant in service shall be measured as an average of the balances at the beginning and end of the I & I Period.

(ii) Both the income statement and rate base components as contemplated in subdivisions (c)(3)(A) and (c)(3)(B) of this section shall be jurisdictionally allocated using the same factors approved or stipulated in the applicant's most recent Arkansas rate case;

(C)(i) Calculation of an interim jurisdictional revenue requirement using the:

(a) Weighted sum of the embedded cost of debt, equity, and other funding sources as of the end of the I & I Period; and

(b) Allocated rate base and expenses determined in subdivision (c)(3)(B) of this section.

(ii) This exhibit shall also include a calculation of the revenue deficiency that shall be the difference between the above described revenue

requirement and unadjusted I & I Period rate schedule revenue for Arkansas retail customers.

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

(D) Cash flow statement for the twelve-month I & I Period.

(i) A cash flow statement is a statement of cash receipts and disbursements.

(ii) The statement should:

(a) Include the beginning cash balance and cash receipts and cash disbursements for each month of the I & I Period; and

(b) Indicate the nature and amount of obligations unpaid each month due to lack of funds.

(d) **Award of immediate and impelling relief.** In the event that the Arkansas Public Service Commission finds that the applicant qualifies for immediate and impelling relief, the Arkansas Public Service Commission shall calculate the revenue requirement and require a rate structure for the interim rates as follows:

(1) Calculation of revenue requirement.

(A) The Arkansas Public Service Commission shall determine a revenue requirement to be calculated on the Arkansas Public Service Commission's ordered:

(i) Rate of return;

(ii) Rate base; and

(iii) Expenses.

(B) Under a showing of extraordinary circumstances, the Arkansas Public Service Commission may allow interim recovery of a return on part or all of the applicant's CWIP.

(2) Rate structure and design.

(A) The Arkansas Public Service Commission upon proper finding shall approve interim rates to recover the approved Arkansas retail revenue requirement.

(B) Such rates shall be designed to produce uniform increases above currently effective rates while maintaining the general structure and design of the currently effective rates.

(C) If such procedure is deemed to result in a gross inequity for any customer or class of customers, the Arkansas Public Service Commission may order such other rates as it may deem more appropriate.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 8.13 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

Subpart 9. Complaints

23 CAR § 462-901. Informal complaints.

Informal complaints:

- (1) Will be investigated and handled by the staff in the normal course of its activities; and
- (2) Shall not be formally docketed.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 9.01 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-902. Formal complaints.

(a)(1) Each formal complaint shall fully and clearly set out:

(A) Any act or thing done or not done by any public utility in violation or claimed violation of any:

(i) Law that the Arkansas Public Service Commission has jurisdiction to administer; or

(ii) Arkansas Public Service Commission order or rule; and

(B) The exact relief desired.

(2) The complaint shall contain facts and information sufficient to:

(A) Fully apprise the Arkansas Public Service Commission and the respondent of the facts and issues involved; and

(B) Enable the respondent to prepare its answer to the complaint.

(b)(1) Formal complaints shall be docketed and shall comply with the pleading and service requirements set forth in Subpart 3 of this part except as specified by this subpart.

(2) If the complaint is made by a municipality challenging the reasonableness of any rate or charge or act or proposed act by any public utility, a certified copy of the resolution of the governing body of said municipality directing the filing of the complaint shall be attached.

(c) If the Arkansas Public Service Commission finds that a formal complaint was brought in bad faith and that there was no genuine basis for a dispute, the Arkansas Public Service Commission may award the prevailing party interest on the disputed amount from the date it was due.

(d) **Procedures.**

(1)(A) Upon the filing of a formal complaint, the secretary shall immediately:

(i) Serve a copy thereof upon each respondent along with the summons in Appendix 9-1; and

(ii) Notify each respondent that:

(a) The complaint must be answered in writing within twenty (20) days after the date of service; and

(b) In case of failure to answer, an order may be entered against the respondent for the relief demanded in the complaint.

(B) The Arkansas Public Service Commission may, for good cause shown:

- (i) Require the answer to be filed within a shorter time; or
- (ii) Extend the time in which an answer may be filed.

(2)(A) Respondent's answer shall contain a:

(i) Specific denial of such material allegations of the complaint as are controverted; and

(ii) Statement of any new matter constituting a defense.

(B) If respondent has insufficient information to specifically admit or deny an allegation, respondent may:

(i) So state; and

(ii) Deny the allegation upon that ground.

(3) Any respondent failing to answer within the period prescribed shall be deemed in default and all relevant basic facts stated in said complaint shall be deemed admitted unless the Arkansas Public Service Commission waives the default for good cause shown.

(4)(A) If a respondent shall make satisfaction before answering, the respondent may in its answer state, without more, the fact and manner of satisfaction.

(B) If satisfaction is made after the filing and service of any answer, a supplemental answer setting forth only the fact and manner of satisfaction shall be filed immediately upon such satisfaction.

(C) The answer or supplemental answer alleging satisfaction shall contain a prominent notice that the complaint shall be deemed fully resolved unless the complainant files a response disputing the alleged satisfaction within twenty (20) days after the answer or supplemental answer is filed.

(D) Whenever satisfaction is alleged by the respondent in accordance with this subpart and the complainant does not file a timely response, the complaint shall be dismissed.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 9.02 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

Subpart 10. Financing and Corporate Structure Transactions

23 CAR § 462-1001. Stocks, stock certificates, bonds, notes, and other evidences of indebtedness and creation of liens.

(a) Subject matter.

(1) Public utilities incorporated under the laws of this state must file a formal application for authority to issue stocks, stock certificates, bonds, notes, or other evidences of indebtedness payable at periods of more than thirty-six (36) months after the date of issuance thereof.

(2)(A) Public utilities incorporated under the laws of any state or foreign country must file a formal application for authority to create liens upon properties in this state (Arkansas Code §§ 23-3-103 – 23-3-107).

(B) **Exception.** This section does not apply to telecommunications providers unless such provider is a nonelecting ILEC.

(b) Content.

(1) When application is made by any utility for an order authorizing the issue of stocks, stock certificates, bonds, notes, or other evidences of indebtedness payable at periods of more than thirty-six (36) months after the date thereof under the provisions of Arkansas Code §§ 23-3-103 – 23-3-107, or to create a lien on property in this state, the application shall include in addition to any other requirements of any statute, order, or rule:

(A) A general description of the utility's property with:

(i) A statement of the original cost of the same; or

(ii) The book value thereof if the original cost cannot be reasonably

determined;

(B) The amount and kind of stock, if any, that the utility desires to issue, and, if preferred, the nature and extent of the preference and the amount of bonds,

notes, or other evidences of indebtedness, if any, that the public utility desires to issue, with:

- (i) Terms;
- (ii) Anticipated rate of interest; and
- (iii) Whether and how to be secured;

(C) A list of any liens or other evidence of indebtedness upon property of the utility, giving the:

- (i) Name of the lienholder or other debtholder; and
- (ii) Amount of indebtedness actually secured;

(D) The use to which the capital to be secured by the issue of such stock, stock certificates, bonds, notes, or other evidences of indebtedness is to be put;

(E) The anticipated interest rate or dividend rate for any debt financing or preferred stock with a description of the basis for the estimation;

(F) The estimated costs of the issue and sale of each proposed financing with a description of the basis for the estimation;

(G) A representation that the aggregate amount of stocks, stock certificates, notes, bonds, or other evidences of indebtedness including the proposed financings will not exceed the fair value of properties of the issuer and the estimated cost of the issuance and sale of the issues, with a description of the basis for such representation;

(H) Identification by docket number and order number of:

- (i) Any current authorizations to issue securities;
- (ii) The amount of any such authorization that has not been issued;

and

(iii) The expiration date of such authorization;

(I) Such other facts and information that may be:

(i) Material or pertinent for consideration by the Arkansas Public Service Commission; or

(ii) Required by order of the Arkansas Public Service Commission;

(J) The beginning and end time frame for which such authorization is sought; and

(K) The date by which an order is required, and if filed less than ninety (90) days prior to such requested date, an explanation of the basis for the need for an expedited order.

(2)(A) When application is made by any public utility pursuant to this part that concurrently therewith seeks an appropriate order from the United States Securities and Exchange Commission or other federal agency, said utility should identify by proceeding or other appropriate reference the approval sought or received.

(B) Said utility may file its petition, reciting the foregoing and submitting therewith copies of all such documents and exhibits on file or to be filed with the United States Securities and Exchange Commission or other federal agency in satisfaction of one (1) or more of the respective requirements of subdivision (b)(1) of this section.

(C) Said documents and exhibits may be filed either:

(i) At the time the petition is filed with the Arkansas Public Service Commission; or

(ii) Simultaneously with its filing with the:

(a) United States Securities and Exchange Commission; or

(b) Other federal agency.

(D) However, the Arkansas Public Service Commission upon its own motion may require the applicant utility to also submit any or all of the information required by subdivision (b)(1) of this section in addition to such other information as the Arkansas Public Service Commission deems pertinent.

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

(A) Copy of deeds of trust, mortgages, or other security instruments if any, unless the same have already been filed with the Arkansas Public Service Commission in which case they may be made an exhibit by reference; and

(B) Financial statements (balance sheet and income statement) per books and pro forma showing separately the effect of each proposed financing, including:

(i) Any anticipated retirements, refunding, or refinancing of current issues; and

(ii) The cost of issuance.

(c) **Reports.** The Arkansas Public Service Commission may require public utilities to account for the disposition of the proceeds or to report the details of financings authorized under this section.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 10.01 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-1002. Organization, reorganization, consolidation, merger, acquisition, or stock purchase of a public utility or sale, acquisition, lease, or rent of utility plant or properties.

(a) **Subject matter.**

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

(2) **Exception.** This section does not apply to telecommunications providers unless such provider is a nonelecting ILEC.

(b) **Content.** In addition to other requirements of any statute, order, or rule, the application shall contain:

(1) The reasons on the part of each applicant for entering into the proposed organization, reorganization, consolidation, merger, acquisition, or stock purchase of a public utility or the sale, lease, or rental of any utility plant or property constituting an operating unit or system and a showing that it is consistent with the public interest;

(2) An accurate detailed description of the plant or property affected together with the:

(A) Original cost to applicant; and

(B) Applicant's statement as to the present value thereof;

(3) If required by the Arkansas Public Service Commission, financial statements (balance sheet and income statement) per books and pro forma showing separately the effect of the proposed transaction;

(4) A detailed description of the instrument or proposed instrument used in the transaction and a copy, in draft form if necessary, as soon as available;

(5) Documentation of approval of the proposed transaction by the public utility board of directors;

(6) Identification of the anticipated impacts on Arkansas ratepayers, including the quality of service and potential rate impacts with an explanation of how such impacts were determined;

(7) Identification of all other regulatory approvals required or being sought; and

(8) All information necessary for valuation of any property pursuant to Arkansas Code § 23-4-111, if applicable.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 10.02 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

23 CAR § 462-1003. Merger or acquisition of control of public utilities without board.

(a) The proposed merger or acquisition or attempted acquisition of control of a public utility that has not been approved by the public utility's board of directors shall require the filing of a formal application under each of the provisions of Arkansas Code § 23-3-301 et seq.

(b) **Exception.** This section does not apply to telecommunications providers unless such provider is a nonelecting ILEC.

Authority. Arkansas Code §§ 23-2-305, 23-2-403.

Codification Notes. This section was promulgated as Rule 10.03 of the Rules of Practice and Procedure prior to codification in the Code of Arkansas Rules.

Appendix G. Tariff Forms and Charges Related to Customer Activity

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/212/23CARpt.462Appendix7.pdf>

Appendix H. Minimum Filing Requirements - Index of Schedules

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/213/23CARpt.462Appendix8.pdf>

Appendix I. Summons for Complaint

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/214/23CARpt.462Appendix9.pdf>