BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 1, Rules of Commission Procedure, to update the chapter in its entirety.	)	RULE AND REGULATION NO. 192
	)	ORDER RELEASING SECOND SET OF PROPOSED RULES AND SEEKING COMMENT
	)	ENTERED: February 3, 2015

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On September 30, 2014, the Nebraska Public Service Commission (Commission), on its own motion, opened this proceeding to amend Title 291, Chapter 1, Rules of Commission Procedure, to rewrite rules to comport with the Nebraska Model Rules of Agency Procedure (Model Rules) issued July 25, 1994 and to incorporate statutory changes.

The Commission released the First Set of Proposed Rules for comment. Comments were received from the Public Advocate; NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern); Checker Cab Company, d/b/a Checker Cab Company, Happy Cab Company, and Yellow Cab Company; DonMark, Inc., d/b/a Cornhusker Cab; Valor Transportation Company d/b/a Safeway Cab Company; Airport Transportation Co.; Camelot Transportation, Inc.; and Triumph Transportation, Inc. (Collectively, Happy Cab and Camelot); Rural Telecommunications Coalition of Nebraska (RTCN); SourceGas Distribution LLC (SourceGas) and Nebraska Rural Independent Companies (RIC).

Commenters suggested non-substantive changes including replacing all references to "agency" with "Commission" and ensuring the consistent use of headings. The second set of proposed rules reflects those changes. Also, Proposed Rule 003.07 was deleted and the remaining sections renumbered.

Several commenters expressed concern regarding Proposed Rule 004.02 which would allow the filing of a petition for intervention up to five (5) days prior to a hearing. The Commission agrees that a filing at such a late date could be problematic in many of the contested cases before the Commission. However, the requirement is statutory and cannot be changed through a rule and regulation.[1] The Commission has attempted to address the difficulties presented by such late filed interventions by maintaining its existing classifications for formal and informal interventions. Based upon comments received, we have modified the proposed rules regarding formal and informal interventions to provide additional clarity and process.

Multiple commenters also stated that the use of a protest should be available for all proceedings and not limited to motor carrier actions. The proposed rules have been modified consistent with the comments.

Comments also stated that the model rule regarding ex parte communications should be adopted in its entirety. The proposed rules and regulations reflect the ex parte prohibition specific to the Commission in

[1] Neb. Rev. Stat. § 84-912.02 states, in relevant part, "(1) A hearing officer or designee shall grant a petition for intervention if: (a) The petition is submitted in writing to the hearing officer or designee, with copies mailed to all parties named in the hearing officer's notice of the hearing, **at least five days before the hearing….**" (emphasis added)

printed with soy ink on recycled paper

Neb. Rev. Stat. § 75-130.01 and § 66-1835. Proposed Rule 004.01A defining the effective date of the prohibition against ex parte communications as the date a petition is filed, provides an appropriate and easily determinable date for all interested parties. Additionally, utilizing the filing date is consistent with § 75-130.01 which refers to the prohibition existing during "the pendency" of a contested case. However, the proposed rules have been modified to provide a process for addressing an ex parte communication consistent with the model rules.

SourceGas proposed that section 004.03F be modified to reflect the model rule requirement that service be made by the Commission and not the petitioner. Rule 004.03F has been modified.

SourceGas suggested that Rule 007.02D of the model rules regarding the preparation of the transcript be used. However, the Commission is required to prepare a transcript in all contested matters prior to the entry of an order.[2] Additionally, SourceGas proposed elimination of surrebuttal evidence and re-cross examination or in the alternative the addition of surrebuttal evidence and re-redirect examination of witnesses. The proposed rules have been modified to render the presentation of surrebuttal evidence and the conduct of re-cross examination subject to the discretion of the hearing officer.

SourceGas stated that proposed Rule 004.14 should be modified to include the full text of the model rule regarding content of orders. The proposed rule reflects the requirements of § 75-134 which is specific to the Commission's orders.

RIC commented that the definition of necessary party should apply to all proceedings and not solely declaratory rulings. However, the definition included in the proposed rules is consistent with the model rules. RIC further suggested that Rule 004.13 be modified to allow the Commission the discretion to assess costs against a party. The rules have been modified. Finally, at RIC's suggestion, the existing rule regarding security issuances has been added.

Based upon a review of the comments provided to date, the Commission finds that the modifications set forth above should be made and a second set of proposed rules should be released for comment. The second set of proposed rules is posted on the Commission website at www.psc.nebraska.gov. Additionally, a redline copy is provided showing all the changes made. A hard copy of the proposed rules will be made available upon request from the Commission. The Commission intends to schedule a public hearing on the proposed rules after further public comments are received.

Comments on the proposed rules shall be filed by interested parties on or before **March 13, 2015**. Parties filing comments should file one (1) original and one (1) paper copy and one (1) electronic copy in Word format emailed to **kathy.lahman@nebraska.gov** and **angela.melton@nebraska.gov**.

---

[2] Neb. Rev. Stat. § 75-128(2) "In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared prior to a commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121."

printed with soy ink on recycled paper

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that this rulemaking amending Title 291, Chapter 1 be, and it is hereby, open for public comment.

IT IS FURTHER ORDERED that interested parties file comments on or before March 13, 2015. Parties filing comments should file one (1) original and one (1) paper copy and one (1) electronic copy in Word format emailed to kathy.lahman@nebraska.gov and angela.melton@nebraska.gov.

MADE AND ENTERED at Lincoln, Nebraska, this 3rd day of February, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

Rod Johnson

Crystal Rhoades

Chairman Gerald L. Vap

ATTEST:

Steve Meredith

Executive Director

printed with soy ink on recycled paper

APPENDIX

001 DEFINITIONS: The following definitions shall apply:

001.01 Applicant shall mean a party or parties who have filed an application with the Commission.

001.02 Application shall mean an initial pleading seeking Commission action.

001.03 Argument shall mean the oral statement of the petitioner or any other party which explains his or her view of the facts and issue to be decided, the law applicable to the question presented, and the reasoning that connects the facts and law.

001.04 Commission shall mean the Nebraska Public Service Commission.

001.05 Common Carrier shall mean a person transporting passengers or goods or providing telecommunications services for hire to the general public at large in Nebraska intrastate commerce.

001.06 Contested Case shall mean a proceeding before the Commission in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the Commission.

001.07 Contract Carrier shall mean a person transporting passengers or goods or providing telecommunications services for hire, other than as a common carrier, in Nebraska intrastate commerce.

001.08 Declaratory Order Proceeding shall mean a proceeding initiated by a petitioner seeking issuance of a binding order by the Commission as to the applicability of specified circumstances to a statute, rule, regulation, or order within the primary jurisdiction of the Commission.

001.09 Departmental Complaint shall mean a complaint filed by a director of a department alleging a violation of a statute, rule or Commission order and seeking relief.

001.10 Executive Director shall mean the designated person in charge of the day-to-day operations of the Commission.

001.11 Ex parte Communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

001.11A Communications which do not pertain to the merits of a contested case;

001.11B Communications required for the disposition of ex parte matters as authorized by law;

printed with soy ink on recycled paper

001.11C Communications in a ratemaking or rulemaking proceeding except with respect to any proceedings in which the public advocate is a party as set forth in 004.01B; and

001.11D Communications to which all parties have given consent.

001.12 Formal Complaint shall mean a written complaint filed with the Commission alleging a violation of a statute, rule or Commission order and seeking relief.

001.13 Formal Intervenor(s) shall mean an intervenor who files a Petition for Formal Intervention seeking to become a party to a Commission proceeding.

001.14 Hearing Officer shall mean the Commissioner or Commissioners conducting a proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title.

001.15 Intervenor(s) shall mean persons, political subdivisions, corporations, organizations, or other entities who have or claim to have any interest, legal right, duty, privilege, or immunity, which would be directly affected by the Commission's issuance of a binding order.

001.16 Informal Intervenor(s) shall mean an intervenor who does not satisfy the requirements of formal intervention or files a satisfactory petition requesting informal intervention status. Informal intervenors are not made parties to the proceeding and their participation is limited.

001.17 Jurisdictional Utility shall mean a natural gas public utility subject to the jurisdiction of the Commission under the State Natural Gas Regulation Act as defined in section 66-1802(10).

001.18 Motion shall mean an oral or written request addressed to a Hearing Officer or the Commission by any party to a proceedings.

001.19 Necessary Party for Purposes of Petitions for Declaratory Rulings shall mean a person who or an entity which has a specific interest in the applicability of the statute, rule, regulation, or order, as distinguished from a general interest such as may be the concern of the public at large. A necessary party is one which is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.

001.20 Order to Show Cause shall mean an order issued by the Commission directing a person subject to its jurisdiction to appear before the Commission and present evidence as to why the Commission should not take a particular action.

001.21 Parties shall mean persons, political subdivisions, corporations, organizations, or other entities subject to the jurisdiction of the Commission who are involved in a proceeding before the Commission according to the procedures set forth in this chapter. In a contested case, party means the person by or against whom a

printed with soy ink on recycled paper

contested case is brought or a person allowed to formally intervene in a contested case.

001.22 Person shall mean an individual, firm, organization, corporation, company, association, partnership, joint stock association, body politic, common carrier, society, legal representative, trustee, receiver, assignee, guardian, executor or administrator.

001.23 Petition means an initial document filed by or with the Commission that sets forth a claim and request for Commission action or initiates a proceeding.

001.24 Petitioner(s) shall mean a party or parties who have filed a petition with the Commission seeking issuance of a Commission order.

001.25 Pleading shall mean any written application, petition, formal complaint, answer, intervention, protest, or motion used in any proceeding before the Commission as set forth in this chapter.

001.26 Protest shall mean any pleading filed in opposition to an application.

001.27 Protestant shall mean a person filing a protest to the granting of an application.

001.28 Public Advocate shall mean the person appointed by the Executive Director to represent the interests of Nebraska citizens and all classes of jurisdictional utility ratepayers, other than high-volume ratepayers, in matters involving jurisdictional utilities and as trial staff before the Commission.

002 RULE MAKING PETITIONS:

002.01 Petition: Any person may petition the Commission requesting the promulgation, amendment, or repeal of a rule or regulation.

002.02 Form: The petition shall:

002.02A Be clearly designated as a petition for a rule change;

002.02B In the case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety;

002.02C In the case of a petition for the repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by the Commission rule number;

002.02D Describe the reason for the rule change;

002.02E Include an address and telephone at which the petitioner can be reached during regular work hours; and

printed with soy ink on recycled paper

002.02F Be signed by:

002.02F1 The petitioner or his or her attorney in which case the attorney shall also state his or her address and telephone number and bar number; or

002.02F2 A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

002.03 Within sixty (60) days after submission of a petition, the Commission shall:

002.03A Deny the petition in writing, stating its reasons therefor;

002.03B Initiate rulemaking or regulation making proceedings in accordance with the Administrative Procedure Act; or

002.03C If otherwise lawful, adopt a rule or regulation.

003 PETITIONS FOR DECLARATORY ORDER:

003.01 Generally: A request for a declaratory order must be made by a petition that meets the requirements of section 003.

003.02 Who May File: Any person may petition the Commission for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order which is within the primary jurisdiction of the Commission.

003.03 When Orders Appropriate: A declaratory order may be requested on the applicability of a statute, rule, regulation, or order enforced by the Commission. "Applicability" refers to the appropriateness of the relation of the law to the person, property, or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies, or which law applies. Considerations as to whether issuance of a declaratory order is appropriate include:

003.03A A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.

003.03B A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.

003.03C A declaratory order is not a mechanism for review or appeal of a decision made by the Commission in a contested case.

003.03D A declaratory order may not be requested to obtain a declaration by the Commission that a statute or regulation is

printed with soy ink on recycled paper

unconstitutional or that a regulation of the Commission is invalid.

003.03E A declaratory order may not be issued by the Commission that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

003.04 Form of Petition: A petition for declaratory order shall be in the form of either a pleading or letter which shall contain each of the following:

003.04A A caption, which shall include:

003.04A1 The venue "BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION";

003.04A2 A heading specifying the subject matter and the name of the petitioner; and

003.04A3: The name of the pleading as "PETITION FOR DECLARATORY ORDER".

003.04B The statements required in subsection 003.05 of this chapter.

003.04C The signature of the petitioner, or when represented by an attorney, the signature of the attorney.

003.04D The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

003.04E The petition shall be made on white, letter-sized (8-1/2" x 11") paper.

003.04F The petition shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the petition must be written in ink. Only one side of a page shall contain any writing.

003.04G Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 003.04E and 003.04F and, when possible, be reproduced on 8-1/2" x 11" paper or placed in an 8-1/2" x 11" envelope and clearly marked as an attachment to the petition.

003.05 Contents of Petition: To be considered, the petition shall include the following:

003.05A The name and address of the petitioner;

003.05B The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the

printed with soy ink on recycled paper

applicability of the statute, rule, regulation, or order or who may be adversely affected by the issue sought to be resolved by the petitioner.

003.05C The statute, rule, regulation, or order upon which the petitioner seeks issuance of a declaratory order;

003.05D A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

003.05E All propositions of law or contentions asserted by the petitioner;

003.05F A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the Commission should rule and why the Commission should rule in the manner requested; and

003.05G Any documents pertinent to the petition that the petitioner wishes to be considered by the Commission.

003.06 Verification: The Petition shall be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other entity, then the petition shall be subscribed and verified by a duly authorized agent of the petitioning entity.

003.07 Written Consents: The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

003.08 Submission and Service of Declaratory Order Petition:

003.08A The original petition for declaratory order shall be filed with the Commission by mail or in person during the Commission' s normal business hours.

003.08B The petition shall be deemed as filed when it is actually received by the Commission. The Commission shall date stamp all petitions upon receipt.

003.08C At the same time the petition is filed with the Commission, the petitioner shall serve a copy of the petition, by certified mail, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations, or other entities who are known to have or claim any interest, legal right, duty, privilege, or immunity which would be directly affected by issuance of a declaratory order in this matter by the Commission.

003.09 Disposition of the Petition:

003.09A Upon the filing of a petition, the Commission may, in its discretion, do one or more of the following:

printed with soy ink on recycled paper

003.09A1 Require that additional information be submitted before the petition will be further considered;

003.09A2 Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the Commission;

003.09A3 Schedule a date, time, and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition; or

003.09A4 Consider the petition and any attachments without oral presentation.

003.09B Within thirty (30) days after the petition is filed, the Commission shall, in writing:

003.09B1 Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

003.09B2 Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

003.09B3 Set the matter for specified proceedings as set forth in subsection 003.010 of this Chapter; or

003.09B4 Decline to issue a declaratory ruling, stating the reasons for the Commission's decision.

003.09C Notwithstanding section 003.010B of this rule, the Commission may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would be contrary to any provisions of section 003.014 of this Chapter. The Commission shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the Commission determines not to issue a declaratory order.

003.10 Intervention in Declaratory Order Proceeding: Intervention by any person or entity in a declaratory order proceeding shall be allowed when the following requirements are met:

003.10A A petition for intervention must be submitted in writing to the Commission. Copies must be mailed to all parties to the proceeding.

003.10B The petition for intervention shall be submitted to the Commission, in writing, on 8 1/2" x 11" white paper, and shall include each of the following:

printed with soy ink on recycled paper

003.10B1 The statute, regulation, rule, or order that may apply to or effect the person, property, entity, or facts at issue in the matter;

003.10B2 A statement of facts sufficient to show the intervenor's interest;

003.10B3 A statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law;

003.10B4 All propositions of law or contentions asserted by the intervenor; and

003.10B5 A statement of the specific relief requested by the intervenor.

003.10C The Commission must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

003.10D The Commission may, at its discretion, invite any person or entity to file a petition for intervention.

003.10E The Commission shall grant a petition for intervention if the requirements of § 003.011 are satisfied.

003.10F The Commission shall deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

003.10G The Commission's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

003.11 Declaratory Order Proceedings:

003.11A Oral argument shall be had only on specific order of the Commission. A petitioner, intervenor, necessary party, or the Commission may submit a motion for oral argument to the Executive Director. If opportunity for oral argument is granted, then argument shall be scheduled to be conducted not more than forty-five (45) days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, shall be served by the Commission with a notice of the date, time, and location for oral argument. The Commission shall provide each of the parties with notice of the proceeding not less than seven (7) days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.

printed with soy ink on recycled paper

003.11B Oral argument will be made before the Commission. The Hearing Officer shall be in control of the proceeding and shall:

003.11B1 Identify the proceeding and introduce himself or herself and identify each party for the record;

003.11B2 Hear the oral argument of the petitioner, intervenor, or necessary parties; and

003.11B3 Close the proceedings.

003.11C At the declaratory order proceeding, Commission staff shall have the right to present oral argument.

003.11D The Hearing Officer may impose reasonable time limits on the amount of time allocated to each party for oral argument.

003.11E The parties and Commission staff may file briefs in support of their respective positions. The Hearing Officer may fix the time and order of filing briefs and may direct that briefs be submitted prior to the date of oral argument.

003.11F The oral argument may be conducted either in person or by telephone conference call.

003.12 Issuance of Declaratory Order:

003.12A The Commission shall issue its declaratory order within sixty (60) days of the date on which the petition was filed.

003.12B The declaratory order shall be in writing and shall include the following:

003.12B1 The names of all parties to the proceeding upon which the order is based;

003.12B2 The facts upon which the order is based;

003.12B3 The statute, regulation, rule, or order at issue in the matter;

003.12B4 The Commission's conclusion as to the applicability of the statute, regulation, rule, or order to the facts;

003.12B5 The Commission's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and

003.12B6 The reasons relied upon by the Commission to support its conclusions.

printed with soy ink on recycled paper

003.12C A copy of the declaratory order shall be served upon each party by certified mail, return receipt requested.

003.12D A declaratory order shall have the same status and binding effect as any other order issued in a contested case.

003.12E If the Commission has not issued a declaratory order within sixty (60) days after the petition has been filed, then the petition shall be deemed to have been denied by the Commission.

003.13 Circumstances Under Which Commission Will Not Issue Declaratory Orders:

003.13A Grounds upon which the Commission shall refuse to issue a declaratory order include, but are not limited to, the following:

003.13A1 The petition requests a declaratory order on a matter that is outside the scope of authority of the Commission;

003.13A2 The petition requests review or appeal of a decision made by the Commission in a contested case;

003.13A3 The petition requests a declaratory order on the effect of past conduct;

003.13A4 An investigation for purposes of a formal adjudication, a contested case, or a petition to issue, amend, or repeal regulations is pending before the Commission involving the petitioner on substantially the same or similar facts or issues raised in the petition;

003.13A5 The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

003.13A6 The issue raised in the petition has been settled by a change in circumstances or other means so as to render moot the need for a declaratory order;

003.13A7 An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding;

003.13A8 An order would not resolve the controversy or uncertainty; or

003.13A9 The question posed or facts presented are insufficiently specific, overly broad, or are

printed with soy ink on recycled paper

otherwise inappropriate as a basis upon which to decide the matter.

003.13B Grounds upon which the Commission may determine to refuse to issue a declaratory order include, but are not limited to, the following:

003.13B1 Refusal is necessary to assure adequate allocation of Commission resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

003.13B2 The question presented is of such complexity that the Commission has had insufficient opportunity or resources to develop a fully matured ruling; or

003.13B3 The petitioner fails to submit any additional information requested by the Commission or submits such information after the date established by the Commission.

003.14 Appeal: A declaratory order is subject to review in the manner provided for review of contested cases by § 75-136.

004 RULES OF PRACTICE AND PROCEDURE FOR HEARINGS IN CONTESTED CASES:

004.01 Prohibitions Against Ex Parte Communications:

004.01A The prohibitions found in this section shall apply beginning at the time a petition is filed.

004.01B With respect to any matter of fact or law at issue in a contested case and notwithstanding any other provision of law, a member, staff, or agent of the Commission shall not during the pendency of any contested case heard before the Commission have any ex parte communication with any party having an interest in the outcome of the contested case. In any proceeding before the Commission in which the public advocate is a party or is appearing for a party, the public advocate shall be considered a party for purposes of the restrictions on ex parte communications.

004.01C Any Commissioner or member of commission staff who is or may reasonably be expected to be involved in the decision-making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication shall file in the record of the contested case all such written communications, memoranda stating the substance of all such oral communications, and all written responses and memoranda stating the substance of all oral responses to all the ex parte communications. The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

printed with soy ink on recycled paper

004.02 Commencement of a Contested Case:

004.02A The contested case begins with the filing of a petition, application, or formal complaint and request for hearing, if applicable, with the Commission, upon the filing of a departmental complaint, or upon the Commission's own motion. The petition, application, or complaint is the initial document filed by or with an Commission that sets forth a claim and request for Commission action.

004.02B The parties to a contested case shall be the petitioner, applicant, complainant, or person by whom a contested case is brought and the respondent or person against whom a contested case is brought and includes any formal intervenors.

004.02C A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.

004.02D The pleadings in a contested case may include a petition, application, formal complaint, intervention, protest, answer, reply, notice, motion, stipulation, objection or order or other formal written document filed in a proceeding before the Commission. Any pleading filed in a contested case shall meet the following requirements:

004.02D1 The pleading shall contain a caption specifying the title or nature of the pleading, shall state material factual allegations and state concisely the action the Commission is being requested to take, shall contain the name and address of the petitioner, applicant, or complainant, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney.

004.02D1a Attorneys shall also include their address, telephone number and bar number.

004.02D1b The initial petition or formal complaint shall also contain the name and address of the respondent.

004.02D2 All pleadings shall be made on white, letter-sized (8½ x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

004.02E All pleadings shall be filed with the Commission at its official office. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Commission.

printed with soy ink on recycled paper

004.02F The Commission shall serve a copy of the petition or formal complaint on each respondent listed in the petition personally or by first class or certified mail. Written proof of such service shall be filed with the Commission. Each respondent who chooses to file a responsive pleading must do so within 20 days from the date of personal service or the date of Commission mailing of the petition or formal complaint.

004.02G All pleadings subsequent to the initial petition, application, or formal complaint shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first class or certified mail. Written proof of such service shall be filed with the Commission.

004.02H Unless state law provides that a hearing is not required, a hearing date shall be set by the Commission in accordance with statutory requirements. A written notice of the time and place of hearing and the name of the Hearing Officer, if known, shall be served by the Commission upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include a proof of such service and will be filed with the Commission.

004.02I In computing time prescribed or allowed by these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

004.02J Pleadings filed with the Commission will not be withdrawn without approval of the Commission.

004.02K Any petitioner, applicant, or complainant failing to prosecute his or her application within ninety (90) days may be subject to an order to show cause as to why the application should not be dismissed.

004.03 Intervention and Protest in a Contested Case:

004.03A The following applies to Formal Intervention in a contested case:

004.03A1 A petition for formal intervention must be submitted in writing to the Hearing Officer or designee at least five (5) days before the hearing. Copies must be mailed by the petitioner for formal intervention to all parties named in the Hearing Officer's notice of the hearing;

004.03A2 The petition must state the petitioner's name and address; facts demonstrating that the petitioner's

printed with soy ink on recycled paper

legal rights, duties, privleges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as a formal intervenor under any provision of law; and

004.03A3 The Hearing Officer or designee must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the formal intervention.

004.03A4 The Hearing Officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

004.03A5 If a petitioner qualifies for intervention, the Hearing Officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Those conditions may include:

004.03A5a Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

004.03A5b Limiting the intervenor's use of discovery, cross examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

004.03A5c Requiring two or more intervenors to combine their presentation of evidence and argument, cross examination, discovery, and other participation in the proceedings.

004.03A6 The Hearing Officer or designee, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

004.03A6a The Hearing Officer or designee may modify the order at any time, stating the reasons for the modification.

004.03A6b The Hearing Officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

printed with soy ink on recycled paper

004.03B The following applies to Informal Intervention in a contested case:

004.03B1 A petition for informal intervention shall state the petitioner's name and address and shall identify the witness to be offered at the hearing and be accompanied by the statement the witness for the petitioner intends to make at the hearing.

004.03B2 A petition for informal intervention must be filed with the Commission at least five (5) days before the hearing. Copies must be mailed by the petitioner to all parties named in the Hearing Officer's notice of the hearing.

004.03B3 Leave to intervene informally will granted only if the petitioner addresses issues reasonably pertinent to the issues already presented and does not unduly broaden the scope of the proceeding.

004.03B4 Participation by an informal intervenor is limited to the presentation of a pre-filed statement of a single witness together with exhibits by such witness, and participation in oral argument and submission of briefs. Informal intervenors are not parties and as such are not entitled to cross examine or otherwise interrogate witnesses in the proceeding presented by any party.

004.03C The following applies to Protests:

004.03C1 Except as provided in Sections 004.03C2, 004.03C3, and 004.03C4 and unless otherwise provided in statute, a protest against the granting of any application shall be filed with the Commission within thirty (30) days from the date of publication of notice of the application. A copy of the protest must be served upon all parties.

004.03C2 Except as otherwise provided in the statutes, a protest against the granting of an application for a certificate authorizing inter-LATA interexchange telecommunications service shall be filed with the Commission within ten (10) days from the date of publication of said notice. A copy of the protest should be served upon all adverse parties, or upon their attorneys of record.

004.03C3 A protest to the granting of an application for temporary motor carrier authority, which the Commission is empowered to grant after not less than five (5) days-notice and without hearing, shall be filed with the Commission within five (5) days after the date such notice is published.

004.03C4 In certain emergency situations, the Commission has the statutory authority to temporarily alter, amend, or suspend any existing rates in force, or to fix any such rates where none exist by issuing an order which prescribes an emergency rate. A protest to the granting of such emergency rate must be

printed with soy ink on recycled paper

filed within fifteen (15) days after notice of the emergency rate.

004.03C5 A protest shall set forth the name and address of the protestant, a statement concerning the interest of the protestant in the application, and a request for the relief sought by the protestant. Additionally, the protest shall set forth specifically the grounds upon which it is made and the facts and circumstances relied upon.

004.04 Hearing Officer; Criteria:

004.04A The Commission may delegate to a Hearing Officer the functions of conducting a prehearing conference, planning conference, and/or hearing and addressing discovery and evidentiary matters and other non-dispositive matters.

004.04B A Commissioner who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding without the consent of all parties.

004.04C A Commissioner who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as Hearing Officer or assist or advise a hearing officer in the same proceeding.

004.04D A Commissioner may serve as Hearing Officer at successive stages of the same contested case.

004.05 Prehearing Procedures:

004.05A A Hearing Officer designated to conduct a hearing may determine, subject to the Commission's rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a Hearing Officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

004.05A1 If a prehearing conference is conducted:

004.05A1a The Hearing Officer shall promptly notify the Commission of the determination that a prehearing conference will be conducted. The Commission may assign another Hearing Officer for the prehearing conference; and

004.05A1b The Hearing Officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The Commission

printed with soy ink on recycled paper

shall give notice to other persons entitled to notice.

004.05A1c The notice referred to in subsection 004.05A1b shall include the following:

004.05A1c(i) The names and mailing addresses of all parties and other persons to whom notice is being given by the Hearing Officer;

004.05A1c(ii) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Commission;

004.05A1c(iii) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

004.05A1c(iv) A statement of the time, place, and nature of the prehearing conference;

004.05A1c(v) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

004.05A1c(vi) The name, official title, mailing address, and telephone number of the Hearing Officer for the prehearing conference;

004.05A1c(vii) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

printed with soy ink on recycled paper

004.05A1c(viii) Any other matters that the Hearing Officer considers desirable to expedite the proceedings.

004.05A2 The Hearing Officer shall conduct a prehearing conference, as may be appropriate, to deal with such matter as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The Hearing Officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

004.05A3 The Hearing Officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

004.05B The Hearing Officer or staff designated by the Hearing Officer may conduct informal planning conferences during the pendency of an action to discuss scheduling, discovery, and other procedural issues.

004.06 Discovery in Contested Cases:

004.06A The use of depositions and discovery in proceedings before the Commission is governed by the rules and regulations of the Nebraska Supreme Court unless otherwise ordered by the Hearing Officer.

004.06B The Hearing Officer or a designee, at the request of any party or upon the Hearing Officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

004.06C Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

printed with soy ink on recycled paper

004.06C1 Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

004.06C2 State the reasons supporting the motion;

004.06C3 Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

004.06C4 Be filed with the Commission. The moving party must serve copies of all such motions to all parties to the contested case.

004.06D Other than as provided in subsection 004.06C4 above, discovery materials need not be filed with the Commission.

004.07 Continuances: The Hearing Officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the Hearing Officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

004.07A Good cause for an extension of time or continuance may include, but is not limited to, the following:

004.07A1 Illness of the party, legal counsel or witness;

004.07A2 A change in legal representation; or

004.07A3 Settlement negotiations are underway.

004.08 Amendments:

004.08A A petition may be amended at any time before an answer is filed or is due if notice is given to the respondent or his or her attorney. In all other cases, a petitioner must request permission to amend from the hearing officer.

004.08B A Hearing Officer may also allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. A Hearing Officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.

004.09 Disposition Without Hearing:

004.09A Unless otherwise precluded by law, disposition of any contested case may be made by stipulation, agreed settlement, consent order, or default.

printed with soy ink on recycled paper

004.09B Any application which is not opposed through a protest or formal intervention within thirty (30) days of the date notice is published may be processed by use of affidavits and will be processed administratively without a hearing.

004.10 Conducting a Contested Case Hearing:

004.10A At the discretion of the Hearing Officer, the hearing may be conducted in the following order:

004.10A1 The hearing is called to order by the Hearing Officer. Any preliminary motions, stipulations or agreed orders are entertained.

004.10A2 Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

004.10B Evidence will be received in the following order. Presentation of evidence by Commission staff may be offered during the hearing at the discretion of the Hearing Officer:

004.10B1 Evidence is presented by the applicant, petitioner, or complainant;

004.10B2 Evidence is presented by the intervenor, protestant, or respondent;

004.10B3 Rebuttal evidence is presented by the applicant, petitioner, or complainant; and

004.10B4 Surrebuttal evidence is presented by the intervenor, protestant, or respondent, if permitted by the Hearing Officer.

004.10C With regard to each witness who testifies, the following examination may be conducted:

004.10C1 Direct examination conducted by the party who calls the witness;

004.10C2 Cross examination by the opposing party;

004.10C3 Redirect examination by the party who called the witness; and

004.10C4 Recross examination by the opposing party, if permitted by the Hearing Officer.

004.10D After the evidence is presented, each party may have opportunity to make a closing argument, if permitted by the Hearing Officer. Closing arguments shall be made in the same order as the presentation of evidence. The Hearing Officer may request that the parties submit briefs.

printed with soy ink on recycled paper

004.11 Evidence:

004.11A In contested cases the Commission or Hearing Officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

004.11B Any party to a formal hearing before the Commission, from which a decision may be appealed to the courts of this state, may request that the Commission be bound by the rules of evidence applicable in district court by delivering to the Commission, at least three (3) days prior to the holding of the hearing, a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

004.11C Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

004.11D All evidence including records and documents in the possession of the Commission of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

004.11E A Hearing Officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

004.11F The Commission shall give effect to the rules of privilege recognized by law.

004.11G The Commission may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by the Commission.

004.11G1 Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

004.11G2 Parties shall be afforded an opportunity to contest facts so noticed.

004.11G3 The record shall contain a written record of everything officially noticed.

printed with soy ink on recycled paper

004.11H The Commission may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

004.11I The Hearing Officer may conduct all or part of the hearing by television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, if technically feasible, to see the entire proceeding while it is taking place, and oaths can be properly administered to witnesses.

004.11J Testimony of a witness may be adduced by use of a prepared statement, if the witness is present for cross examination.

004.11K The Hearing Officer may authorize any party to furnish and serve designated late filed exhibits within a specified time after the close of the hearing.

004.12 Official Record:

004.12A The Commission shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the Commission upon request and tender of the cost of preparation.

004.12B The Commission shall maintain an official record of each contested case under the Administrative Procedure Act for at least four (4) years following the date of the final order.

004.12C The Commission record shall consist only of the following:

004.12C1 Notices of all proceedings;

004.12C2 Any pleadings, motions, requests, prelimnary or intermediate rulings and orders, and similar correspondence to or from the Commission pertaining to the contested case;

004.12C3 The record of the hearing before the Commission, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Commission during the proceeding, and all proffers of proof and objections and rulings thereon;

004.12C4 Any notices of any ex parte communications and responses thereto filed pursuant to section 004.01C; and

004.12C5 The final order.

printed with soy ink on recycled paper

004.12D Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the Commission record shall constitute the exclusive basis for Commission action in contested cases under the act and for judicial review thereof.

004.13 Costs: All costs of a formal hearing shall be paid by the party or parties as may be ordered by the Commission.

004.14 Decision and Order in a Contested Case:

004.14A A Commission order entered after a hearing shall be written and shall recite the following:

004.14A1 A discussion of the facts of a basic or underlying nature;

004.14A2 The ultimate facts; and

004.14A3 The Commission's reasoning or other authority relied upon by the Commission.

004.14B Every decision and order rendered by the Commission after a civil penalty hearing is held pursuant to section 75-156 shall be in writing and accompanied by findings of facts and conclusions of law. The decision or order shall be sent to the parties by certified or registered mail.

004.14C Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

004.14D Every order of the Commission shall become effective ten (10) days after the date of the mailing of a copy of the order to the parties of record except:

004.14D1 When the Commission prescribes an alternate effective date;

004.14D2 As otherwise provided with respect to emergency rate orders entered pursuant to section 75-121 and rate orders entered pursuant to section 75-139;

004.14D3 For cease and desist orders issued pursuant to section 75-133 which shall become effective on the date of entry; or

004.14D4 For orders granting temporary approval of a lease of a regulated motor carrier property and certificates or permits sought to be acquired entered pursuant to section 75-319 which shall become effective on the date of entry.

printed with soy ink on recycled paper

004.14E When any application has been denied, in whole or in part, a subsequent application covering substantially the same subject matter will not be considered by the Commission within ninety (90) days from the date of the final denial, in whole or in part, of the previous application, except for good cause shown.

004.15 Motions for Reconsideration and Appeals:

004.15A Except with respect to rate orders under the State Natural Gas Regulation Act, any party may file a motion for reconsideration with the Commission within ten (10) days after the effective date of the order.

004.15A1 The filing of a motion for reconsideration shall suspend the time for filing a notice of intention to appeal pending resolution of the motion.

004.15A2 If the Commission does not dispose of a motion for reconsideration within sixty (60) days after the filing of the motion, the motion shall be deemed denied.

004.15B Any party to a general rate proceeding under the State Natural Gas Regulation Act may file a motion for reconsideration within thirty (30) days after the day an order setting natural gas rates is entered by the Commission.

004.15B1 The filing of a motion for reconsideration shall stay the order until the earlier of the date the Commission enters an order resolving the motion or one hundred twenty (120) days from the date of the order setting rates.

004.15B2 Either party shall have thirty (30) days after the date the Commission enters an order resolving the motion or the expiration of the one hundred twenty (120) day period for considering the motion, whichever is earlier, in which to file an appeal.

004.15C Appeal of a Commission order shall be taken in the same manner and time as appeals from the district court, except that the appellate court shall conduct a review of the matter de novo on the record. Appeal of a Commission order shall be perfected by filing a notice of intention to appeal with the Executive Director of the Commission within thirty (30) days after the effective date of the order.

005 FORMAL AND DEPARTMENTAL COMPLAINTS:

005.01 Applicability: The following apply to formal complaints and departmental complaints in addition to the requirements set forth in section 004. To the extent a conflict exists between section 004 and 005 with respect to a formal complaint or departmental complaint, section 005 controls.

printed with soy ink on recycled paper

005.02 Departmental Complaint:

005.02A A departmental complaint shall contain the name of the complainant, the name of the respondent, a clear and concise allegation of each offense in terms of each applicable statute, rule or Commission order, the requested relief, and be signed by the complainant.

005.02B An answer to a departmental complaint shall be filed and shall admit or deny each material allegation of the departmental complaint. The answer shall set forth any affirmative defense which respondent may assert.

005.02B1 The answer shall be filed with the Commission within twenty (20) days after service of the complaint.

005.02B2 Except for good cause shown, failure to answer will be construed as an admission of the allegations in the complaint. The fact that a failure to answer will be construed as an admission to the allegations in the complaint shall be included in the complaint served upon respondent.

005.03 Formal Complaints:

005.03A A formal complaint shall contain the name of the complainant, the name of the respondent, a clear and concise allegation of each offense, the requested relief, and be signed by the complainant.

005.03B An answer to a formal complaint shall be filed and shall admit or deny each material allegation of the complaint. The answer shall set forth any affirmative defense which the defense may assert. The Commission shall have the discretion, upon proper showing, to dismiss the formal complaint or require further action.

005.03B1 The answer shall be filed with the Commission within twenty (20) days after service of the complaint.

005.03B2 Except for good cause shown and except where a Statement of Satisfaction has been filed and accepted, failure to answer will be construed as an admission of the allegations in the complaint.

005.03C A respondent to a formal complaint may file with the Commission a Statement of Satisfaction of the formal complaint.

005.03C1 Such Statement of Satisfaction shall be filed with the Commission within ten (10) days after service of the complaint upon respondent.

005.03C2 Respondent shall serve a copy of the Statement of Satisfaction upon the complainant.

printed with soy ink on recycled paper

005.03C3 Within five (5) days after receipt of the Statement of Satisfaction by complainant, complainant may file a Statement of Acceptance, a copy of which shall be served upon respondent. The respondent may then move for dismissal at any time prior to the time set for hearing on the complaint.

005.03C4 If a Statement of Satisfaction is filed by the respondent but is not accepted by the complainant, the respondent shall file an answer with the Commission within twenty (20) days from the date of service of the Statement of Satisfaction with a copy thereof being served on complainant.

006 ORDERS TO SHOW CAUSE:

006.01 The Commission may, by order, compel any person to whom it has granted authority to show good cause as to why the authority should not be suspended, changed, revoked in whole or in part, or why the holder of the certificate for such authority should not be subject to an administrative fine as provided for in Commission rules.

006.02 Content: An order to show cause shall contain the name of the respondent, a clear and concise allegation of each cause for which the Commission requires a showing, and be signed by the Executive Director. The show cause order shall specifically advise the respondent of the alleged violation or violations and the time and place of the hearing on such order.

006.03 Cease and Desist Order: The Commission may, after proper notice and hearing, enter a cease and desist order or any order the Commission deems just and reasonable.

007 COMMISSION INVESTIGATIONS:

007.01 General: The Commission may, at any time on its own motion, conduct an investigation or order any hearing which the Commission is authorized by law or inherent power to conduct.

007.02 Order to Appear: The Commission may, by order, compel any person to appear in an investigative proceeding. The order will state the purpose or scope of the investigation and the time and place of the hearing.

007.03 Investigations/Penalty: If it shall appear, as the result of an investigative hearing by the Commission, that any person who has been personally served has violated the provisions of any statute over which the Commission has jurisdiction or the rules of the Commission, the Commission may order such person to cease and desist or enter any order justified in the premises.

printed with soy ink on recycled paper

008 APPEARANCES:

008.01 Individual: An individual may appear on his or her own behalf before the Commission.

008.02 On Behalf of Another: An individual may appear on behalf of another person and elicit testimony from witnesses if such individual is admitted to practice law before the Nebraska Supreme Court or is admitted to practice law before the Supreme Court of any other state and has been admitted to practice before the Commission in a proceeding upon a motion by a person admitted to practice before the Nebraska Supreme Court.

008.03 On Behalf of Another by Limited Appearance: An individual who is neither admitted to practice law before the Nebraska Supreme Court nor the Supreme Court of any other state may appear for a governmental subdivision, corporation, association or partnership for the sole purpose of making a statement on behalf of such person, but shall not elicit testimony from any other person.

008.04 Special Appearance: Objections to the jurisdiction of the Commission will be made by filing a special appearance. A party appearing specially for such purpose shall designate the specific defects upon which he or she relies. If no objection to the jurisdiction of the Commission is made prior to the hearing or at the time appearances are made, jurisdictional defects, except subject matter, are waived. If a special appearance is overruled, the objection to the jurisdiction of the Commission will be preserved in a further pleading if any is required.

009 SUBPOENAS:

009.01 Witnesses and Documents: The Commission may compel the attendance of witnesses or production of documents through the issuance of a subpoena upon written request of any party, or on order of the Commission or Hearing Officer.

009.01A Requests for subpoenas must be filed with the Commission at least ten (10) days prior to the date the witness is expected to attend or the date the production of documents is expected to occur.

009.01B Witness fees shall be paid as provided by law in attendance at any district court in this state. The sheriff or constable executing any process of the Commission shall receive such compensation as is provided by law for performing similar services. Any such fee shall be paid by the party requesting the subpoena.

009.01C Any Motion to Quash a subpoena shall be filed in writing with the Commission and served on all parties to a proceeding by the movant in compliance with Rule 004.06C. The hearing officer may grant or deny the motion in whole or in part or may schedule oral argument on the motion.

printed with soy ink on recycled paper

009.02 Failure to Comply with Subpoena:

009.02A Any witness failing or refusing to obey any subpoena issued by the Commission, or to produce before the Commission such books, papers, documents or records as shall have been enumerated and required in any subpoena, or failing or refusing, when before the Commission, to give testimony lawfully required by it, or failing or refusing to answer such questions as may be propounded by it which such witness would be required to answer if in court, the witness shall be guilty of a misdemeanor, and upon conviction thereof, for each offense, shall be fined in any sum not exceeding five thousand dollars ($5,000.00).

009.02B The claim that any such testimony may tend to incriminate the witness shall not excuse the witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

010 SERVICE AND NOTICE:

010.01 Service and Notice: For the purpose of service, each person subject to the Commission's jurisdiction shall at all times keep on file with the Executive Director his, her or its business address or, in lieu thereof, notify the Executive Director of an agent (name and address) designated to receive documents and notices. Until the Executive Director is notified to the contrary, the address on file with the Commission's various departments will be deemed to be the address to which documents and notices will be mailed or personally delivered. Proof of service that any person subject to Commission jurisdiction was served, or was attempted to be served, at the address on file with the Commission shall be adequate to satisfy any notice requirement imposed by these rules. Any person who does not hold a certificate, permit, or license from the Commission, and yet may be subject to the Commission's jurisdiction, may be served wherever such person is found within the state.

010.02 Manner of Service: Service of any pleading or subpoena may be accomplished through any means permitted by law related to civil cases.

010.03 Date of Service if by First Class Mail: If a document is served via first class mail, the date of service of a document is the date of the mailing plus three (3) days.

010.04 Notice of Application: Notice of the filing of all applications will be given to all interested persons by publishing a summary of the authority or relief sought.

010.05 Notice of Hearing: Notice of a hearing shall be mailed to all parties via first class mail, except that notice of a hearing on a complaint shall be mailed to the respondent via certified mail or made by personal service.

printed with soy ink on recycled paper

010.06 Official Publication: The legal newspaper is known as The Daily Record and is the official newspaper in which notices will be published by the Commission.

011 CIVIL PENALTY PROCEDURES:

011.01 Purpose and Scope:

011.01A The purpose of this section is to establish procedures which the Commission will follow when civil penalties are sought against any person as defined in Neb. Rev. Stat. § 75-139.01 pursuant to § 75-156.

011.01B For purposes of these rules, civil penalty shall have the same meaning as administrative fine and these terms may be used interchangeably.

011.02 Assessing Civil Penalties:

011.02A In addition to other penalties and relief provided by law, the Commission may, upon a finding that a violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars ($10,000) per day against any person for each violation.

011.02B The civil penalty assessed under these rules shall not exceed two million dollars ($2,000,000) per year for each violation. For purposes of this rule, year shall mean calendar year which is the period from January 1 to December 31 inclusive.

011.02C The Commission shall have discretion in determining the appropriate amount of the civil penalty assessed for each violation. In determining the amount of the penalty, the Commission shall consider:

011.02C1 The appropriateness of the penalty in light of the gravity of the violation; and,

011.02C2 The good faith of the violator in attempting to achieve compliance after notification of the violation.

011.03 Initiation of Civil Penalty Proceedings Before the Commission:

011.03A A civil penalty proceeding may be initiated by any person by the filing of a formal complaint or departmental complaint with the Executive Director or the issuance of an order to show cause. The complaint initiating a civil penalty proceeding shall (1) consist of a written pleading signed by the complainant or his or her legal representative containing the names of the complainant and the alleged violator or violators; (2) set forth the date, facts, and nature of each act or Commission upon which each charge of a violation is based; (3)

printed with soy ink on recycled paper

specifically identify the particular statute, certificate, permit, rule, regulation, or order allegedly violated; (4) contain a prayer stating the type of relief, action, or order desired by the complainant; (5) inform the respondent that pursuant to Commission rules, failure to answer will be construed as an admission of the allegations in the complaint; and, (6) that upon failure to pay any civil penalty determined by the Commission, such civil penalty may be collected by civil action in the District Court of Lancaster County.

011.03A1 In the case of a formal complaint, a hearing fee may be assessed against the complainant in the amount established by the Commission and as provided by law for hearing fees. If the respondent is found to have committed the violation or violations named in the formal complaint, the hearing costs assessed, if any, shall be refunded to the complainant. If the respondent is found to have committed the violation or violations named in the formal complaint, the respondent may be assessed the cost(s) of the hearing.

011.03B Before a formal complaint filed pursuant to an alleged violation of sections 75-301 to 75-390 by anyone other than the Commission can proceed to a hearing, a copy of said complaint shall be delivered to the Executive Director of the Commission. The Director shall have thirty (30) days to intervene in support of said complaint, intervene in opposition to said complaint, or issue a letter advising the complainant that the Commission has taken no position in the proceeding. In the event the Director takes no action after the thirty (30) day period has expired, the complainant may proceed to a hearing on the complaint no earlier than thirty (30) days after notice is served upon the respondent named in the complaint. Nothing contained herein shall preclude the Commission from intervening as otherwise allowed under the rules of the Commission.

011.03C When a complaint is filed with the Commission, wherein the respondent may be subject to a civil penalty under state law and these rules, the Commission shall notify such respondent in writing (1) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based; (2) specifically identifying the particular statute, certificate, permit, rule, regulation, or order allegedly violated; (3) that a hearing will be held and give notification of the time, date, and place of such hearing; (4) that, in addition to a civil penalty, the Commission may enforce additional penalties and relief as provided by law; (5) that pursuant to Commission rules, failure to answer will be construed as an admission of the allegations in the complaint. Failure to file an answer or to appear at the hearing allows the Commission to enter an order assessing a civil penalty as provided by law for the violation or violations alleged in the complaint, or the Commission may proceed with a hearing to receive evidence of the alleged violation or violations and may assess civil penalties as provided by law; and, (6) that upon

printed with soy ink on recycled paper

failure to pay any civil penalty determined by the Commission, such civil penalty may be collected by civil action in the District Court of Lancaster County.

011.03D A copy of the complaint described in 011.03A and the notice information specified by 011.03C shall be sent by the Commission to the respondent pursuant to the Service and Notice provisions as contained in Commission rules.

011.03E Supplemental pleadings filed by a party shall be in writing and be filed with the Commission and distributed by him or her to all interested parties under a certificate of service at any time until five (5) days before the hearing date. Supplemental pleadings filed five (5) days or less prior to the hearing date may be allowed by the Hearing Officer upon a showing of good cause and undue surprise does not disadvantage other parties of record. A civil penalty proceeding shall not be cumulative of all other remedies available under state law and the rules of the Commission. Nothing herein shall be construed so as to preclude the Commission or any other party, person, or entity from seeking any remedy in law or equity not specifically provided for in this section.

011.03F A complaint may be withdrawn by the party who filed the complaint without prejudice to refiling upon the same facts if the Commission approves the withdrawal as provided by these rules.

011.04 Answer:

011.04A The respondent shall submit to the Commission a written answer in the manner required by these rules no later than twenty (20) days after the date on which notice is given.

011.04B If the respondent fails to timely file an answer as required by this subsection, or fails to appear at the hearing, the Commission may enter an order which assesses a civil penalty as provided by law for the violation or violations alleged in the complaint, or the Commission may proceed with a hearing to receive evidence on the alleged violation or violations and the Commission may assess civil penalties or an administrative fine as provided by law.

011.05 Settlement Orders:

011.05A A respondent may enter into a compromise settlement agreement and proposed final order prior to a hearing pursuant to section 75-157 which does not constitute an admission by the respondent of any alleged violation or violations contained in the civil penalty complaint. Such agreement and proposed final order shall be signed by the respondent and all parties to the proceeding and shall reflect that the respondent consents to the assessment of a specific civil penalty or administrative fine. Settlement of the matters raised by the complaint in a proposed

printed with soy ink on recycled paper

final order containing a recommended penalty are subject to the approval of the Commission.

011.05B If the respondent and all parties to the proceeding enter into a compromise settlement agreement and proposed final order, the settlement of the complaint may include a recommended penalty to the Commission. If a recommended penalty is included as part of the compromise settlement agreement and proposed final order, simultaneous with the filing of a compromise settlement agreement and proposed final order, the respondent shall remit to the Commission a cashier's check or money order in the amount of the recommended penalty payable to the Treasurer of the State of Nebraska. These funds shall be held in a contingent liability account until appropriately allocated upon final order. The compromise settlement agreement and proposed final order shall be submitted to the Commission by the Commission's counsel. If the Commission approves the agreement and proposed order, the civil penalty proceeding shall cease. If the Commission does not approve the proposed order, a hearing on the civil penalty complaint shall be held.

011.06 Post Order Requirements:

011.06A On the issuance of a final order finding that the violation or violations have occurred, the Commission shall inform the respondent or the respondent's legal representative no later than five (5) business days of the rendition of the order and of the amount of the penalty, if any.

011.06B Within the thirty (30) day period immediately following the day on which the Commission's final order is mailed, the respondent who has not previously paid all the civil penalty ordered to be paid shall pay the penalty in full by remitting a cashier's check, electronic transfer or money order to the Commission payable to the Treasurer of the State of Nebraska. The Commission shall then promptly forward the cashier's check or the money order to the State Treasurer as provided by law.

011.07 Collection of Penalty in Lieu of Payment: A civil penalty assessed pursuant to these rules and unpaid shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of Lancaster County. Any civil penalty collected by the Commission pursuant to such judicial proceedings shall be transmitted within thirty (30) days from receipt to the Treasurer of the State of Nebraska for deposit in the permanent school fund pursuant to section 75-158.

012 SECURITY ISSUANCES:

012.01 Applications: Applications for approval of a security issuance will set forth the details surrounding the proposed indebtedness or issuance and will be accompanied by the following:

printed with soy ink on recycled paper

012.01A a certified copy of the Articles of Incorporation with amendments to date;

012.01B a certified copy of the minutes from the board of directors' or stockholders' meeting, or other proper corporate authority authorizing the action;

012.01C a certified copy of the by-laws with amendments to date;

012.01D current balance sheet and supporting profit and loss statement; and

012.01E sample of proposed stock certificate.

012.02 Notice: In cases of stock increase and consolidation of stock, a hearing will be held only after proof of publication in a legal newspaper published in the city wherein the common carrier has its principal place of business in the State of Nebraska, or, if no legal newspaper is published in such county, then in some legal newspaper published within the state and having general circulation within such county once each week for two consecutive weeks. The first publication shall be at least sixty (60) days prior to the hearing upon the application for the increase or for the consolidation.

013 GENERAL:

013.01 Office Hours: Commission office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for holidays as defined by state statute.

013.02 Computation of Time: In computing any period of time prescribed or allowed by the rules, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. Then the period of time prescribed or allowed is less than five (5) days, intermediate Saturdays, Sundays and holidays will be excluded in the computation.

013.03 Copies: Unless otherwise specified, persons filing a pleading, comments or other filings, shall furnish to the Commission an original, a paper copy and an electronic copy either via e-mail or other electronic media.

printed with soy ink on recycled paper