

## PART F

## HEARING PROCEDURES

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## PART F

### HEARING PROCEDURES UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT

#### 1.0 DEFINITIONS

##### 1.1 As used in this Manual:

- 1.1.1 “Act means the Public Utility Regulatory Policies Act of 1978 enacted November 9, 1978.
- 1.1.2 “Act Definitions”: Definitions set forth in the Act are expressly incorporated herein.
- 1.1.3 “Board means the governing body of the Greenville Utilities Commission.
- 1.1.4 “Commission” means the Greenville Utilities Commission of the City of Greenville, North Carolina.
- 1.1.5 “Electric Consumer” means any person, entity, municipal, state or federal agency to which electric energy is sold at retail by the Commission.
- 1.1.6 “Hearing” means a proceeding under the Act of which notice to the public is given, is open to the public, and is conducted pursuant to these rules.
- 1.1.7 “Intervenor” means the Secretary of any Electric Consumer of the Commission or such person’s authorized representative who: desires to be a full party to the proceedings and present evidence; where appropriate, cross-examines and will be cross-examined; and complies with the Commission’s procedural requirements for designation as such.
- 1.1.8 “Limited Appearance” means an appearance at which a person may present a written statement or make an oral statement of position within limits and conditions fixed by the Presiding Officer; not subject to the right to cross-examine or be cross-examined.
- 1.1.9 “Meeting” means any convening of the Board under its customary rules and procedures.

- 1.1.10 “Order” means any formal determination by the Board under the Act.
- 1.1.11 “Party” means the Commission staff and any Intervenor.
- 1.1.12 “Person” means an individual, partnership, corporation, limited liability company, governmental agency, association, or any other legal or business or commercial entity.
- 1.1.13 “Presiding Officer (Hearing Officer)” means the Chair of the Board or a member of the Board, or any other person designated by the Board to preside over the hearings.
- 1.1.14 “Public Record” includes any writing related to the conduct by the public’s business prepared, owned, used, or retained by a public body regardless of physical form or characteristics.
- 1.1.15 “Records Custodian” means the officer or employee of the Commission designated by the Board to maintain records pertinent to the Board’s actions taken pursuant to the Act.
- 1.1.16 “Secretary” means the Secretary of Energy, Department of Energy, the United States of America.
- 1.1.17 “Writing” means handwriting, typewriting, printing, photostat, photograph, and every means of recording, including letters, words, pictures, sounds, or symbols, or any combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punch cards, discs, drums, or other forms of recorded communications.

## 2.0 COVERAGE

- 2.1 These procedures apply only to proceedings under the Act and do not apply to other hearings, procedures, or actions of the Board or the Commission.

## 3.0 NOTICES

- 3.1 Notices to Public. Notice of proceedings pursuant to the Act when given for the purpose of informing the public generally shall:
  - 3.1.1 To be substantially the form of the sample below;
  - 3.1.2 Be given for hearings under the Act; and

3.1.3 Be given not more than thirty (30) days nor less than twenty (20) days prior to commencement of proceedings under the Act by a single publication in a newspaper of general circulation in the Commission's service area and such additional means as may be required by law or adopted by the Board to notify the public of the proceedings.

(SAMPLE)  
NOTICE OF HEARING  
before Greenville Utilities Commission under the Act

"In the Matter of Consideration )  
of Adoption of Standards and )  
Policies Under the Public )  
Utility Regulatory Policies Act )

NOTICE OF HEARING PURSUANT  
TO PUBLIC UTILITY REGULATORY  
POLICY ACT

"1. On \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ .M., a public hearing will commence in the Board of Commissioners Board Room on the second floor of the main office of Greenville Utilities Commission at 401 South Greene Street, Greenville, Pitt County, NC 27858, to consider standards and policies under the Public Utility Regulatory Policies Act as follows: (Describe standards and policies) and to provide public comment pertinent thereto.

"2. Information concerning such standards and policies is being prepared by the Commission Staff and is on file at the offices of the Commission staff for review during the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.

"3. During the hearing, the Commission staff will give its report and testimony will be taken concerning the standards and policies.

"4. Any person desiring to intervene in this hearing must give notice to the Presiding Officer, as designated below, no later than \_\_\_\_\_, 20\_\_ (a date at least ten (10) days before the hearing commences) by filing a petition prepared for this hearing. Such petition shall be filed in accordance with Chapter V, paragraph A of the Procedures Manual governing this hearing on file in the offices of the Commission staff. The petition shall be personally delivered or sent by regular mail to the Presiding Officer.

"5. Persons desiring to make limited appearances for the purpose of presenting oral or written statements may do so at the start of the hearing.

"6. \_\_\_\_\_ (whose address is \_\_\_\_\_) has been designated to preside over and conduct the hearing.

“7. Copies of the Procedures Manual governing this hearing are available at the offices of the Commission staff.

“8. The hearing may be continued from time to time without further notice or advertisement by announcement at the hearing.

DATED \_\_\_\_\_, \_\_\_\_\_

“

\_\_\_\_\_  
“Chair  
“Greenville Utilities Commission

3.2 Computation of Time. Time for notices and service shall be computed by excluding the first day and including the last day unless the last day falls upon any legal holiday, or on Saturday or Sunday, in which case the last day is also excluded.

3.3 Notice, Delivery, and Filing. Except for the public notice provided for in paragraph 3.1, any requirement in these rules for the giving of notice or the delivery, filing, or service of any paper or document shall be met by personal delivery to the person entitled to its receipt or by a mailing thereof, with regular mail postage pre-paid, properly addressed to the person entitled to its receipt at the regular office address or the last address given in the proceedings for that person. Any notice required or permitted to be given shall be deemed to have been received by the addressee upon the earlier of (1) actual receipt by the addressee, or (2) ninety-six (96) hours after the time notice was deposited in the mail properly addressed, with postage pre-paid, as provided above. Notice given in the manner hereinabove provided upon the attorney of a person, shall be deemed to be notice upon such person.

#### 4.0 CONDUCT OF HEARINGS

4.1 Presiding Officer. Public hearings shall be conducted by the Presiding Officer designated in the Notice of Hearing and pursuant to these rules. The Presiding Officer shall: control the course of hearings; administer oaths (if required by law); receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions; receive offers of proof; hear arguments; and take such other action as may be necessary and appropriate to the discharge of his duties. The Presiding Officer shall be authorized to hold a pre-hearing conference for the purpose of scheduling the hearing, discussing the issues to be involved, the evidence to be presented, and may schedule the exchange of documents.

- 4.2 Limited Appearances. For hearings under the Act, a limited appearance may be entered by an electric consumer or his representative at the hearing without filing a Petition to Intervene. Persons or groups other than electric consumers may make a limited appearance if there is full disclosure of the persons or entities in whose behalf the appearance is to be entered, if the interest of such persons or entities in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented. A person or entity in whose behalf an appearance is entered in this manner may participate in the proceeding to the degree indicated by the Presiding Officer. Such person or entity may make a statement of position. At the commencement of the hearing, any person wishing to make a limited appearance shall so inform the Presiding Officer, whereupon the Presiding Officer shall provide an appropriate form to be filled out and filed which shall indicate the name of the witness, address, affiliation, if any, and such other information as the Presiding Officer may deem appropriate or reasonably require.
- 4.3 Opening. At the opening of the hearing, the Presiding Officer shall have introduced as an exhibit in the record the public notice of hearing and proof of its publication. The Presiding Officer shall also name for the record the intervenors and persons making limited appearances.
- 4.4 Hearings Under the Act
- 4.4.1 Subject to the discretion of the Presiding Officer, the order of presentation of evidence shall be as follows:
- (1) Staff report
  - (2) Limited appearances
  - (3) Intervenors
  - (4) Rebuttal testimony
- 4.5 Evidence for Hearings
- 4.5.1 Physical and Documentary Evidence. Exhibits shall be marked, and the marking shall identify the witness offering the exhibit. The exhibits shall be preserved for one (1) year or, in the discretion of the Presiding Officer, returned to the witness who offered the exhibit. A procedure for the marking of exhibits shall be established by the Presiding Officer.
- 4.5.2 Oral Testimony
- (a) Although technical rules of evidence ordinarily need not be applied in hearings before the Board, substantial rights of the parties shall be preserved. The Presiding Officer shall rule

on the admissibility of all evidence. Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

- (b) Cumulative, repetitious, or immaterial evidence may be excluded.
- (c) When objections are made to the admission or exclusion of evidence, the ground relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken. Evidence objected to may be received by the Presiding Officer with a ruling on its admissibility or exclusion to be made at any time prior to or at the time the Final Order is issued.

#### 4.5.3 Admission of Documents

- (a) With the approval of the Presiding Officer, prepared written testimony may be copied into the record as the testimony of a witness. Before any prepared testimony is copied into the record, unless excused by the Presiding Officer, the witness shall deliver copies thereof to the Presiding Officer, each member of the Board, the reporter and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony.
- (b) If relevant and material matter offered in evidence is embraced in a document containing other matter, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence, but at the discretion of the Presiding Officer, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be offered opportunity to examine the document and to offer in evidence other portions thereof believed material and relevant.
- (c) Exhibits shall be legible and either prepared on paper not exceeding 8-1/2 x 11 inches in size, bound or folded to that approximate size.

Whenever practical, the sheets of each exhibit should be

numbered, and rate comparisons and other figures shall be set forth in tabular form. Copies of exhibits must be clear and permanently legible.

Official notice may be taken of such matters as may be judicially noticed by the courts of the State of North Carolina.

- 4.6 Record of Proceedings. The proceedings shall be kept by a reporter or by a reliable recording device and a typewritten transcript of such proceedings shall be made available as provided in these rules as and when it reasonably becomes available following the timely transcription of the proceedings. All proceedings before the Board shall be recorded so that a complete and accurate transcript of the proceedings can be prepared. Copies of such transcript will be made available to the Board. If a party desires a copy of the transcript, such party shall request in writing a copy of the transcript. Such requests may be filed with the reporter, if the proceedings are being recorded by a reporter, and if not, with the Presiding Officer. The Presiding Officer will file a copy of the transcript with the office of the Commission Staff as soon as practicable under the circumstances. A copy of the transcript may be obtained from the Commission Staff at such cost as shall be established for copies of other documents which can be obtained from the Commission Staff.

## 5.0 INTERVENTION AND LIMITED APPEARANCES UNDER THE ACT

### 5.1 Intervention

- 5.1.1 Under the Act, a potential Intervenor requesting status as a party shall file with the Presiding Officer at least ten (10) days prior to the date set for the first hearing under the Act, a petition together with proof of service upon all other parties. Petitions not timely filed shall not be considered unless the Presiding Officer determines that good cause has been shown for failure to file timely.
- 5.1.2 The petition requesting status as a party shall set forth the following:
- (a) Name and address of petitioner, and if an individual, of any organization which the petitioner represents.
  - (b) Name and address of petitioner's attorney, if any.
  - (c) A brief statement of petitioner's contentions.
  - (d) A statement of the reasons why existing parties to the

proceeding cannot adequately represent petitioner's interest.

5.1.3 In a ruling on petitions for party status, the Presiding Officer shall consider:

- (a) Whether the petitioner is the Secretary, or an Electric Consumer, or such person's authorized representation.
- (b) The extent to which petitioner's alleged interest will be represented by existing parties.

5.1.4 A ruling by the Presiding Officer on a petition for party status shall be in writing and served promptly on the petitioner and all parties.

5.1.5 Permission shall not be granted to any one, other than the Secretary of Energy, or an Electric Consumer, or such person's authorized representative.

5.1.6 An Intervenor may file pleadings, present evidence and witnesses (whose testimony shall be given under oath), cross-examine the witnesses of other parties, file briefs, and participate in the proceeding, all as indicated by the Presiding Officer.

5.2 Attorneys, Attorneys' Fees, Expert Witness Fees, and Other Reasonable Costs Under the Act.

5.2.1 If no alternative means of assuring representation of electric consumers is adopted in accordance with Section 122(b) of the Act, then ten (10) days prior to the hearing, the Presiding Officer may, or at the request of an Intervenor, shall conduct a preliminary proceeding to consider the appointment of counsel, at the Commission's expense, for Intervenors who demonstrate that they are unable to intervene effectively in the hearings because they cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of intervening in such hearing (including fees and costs of obtaining judicial review of such hearing); or for an inquiry regarding the items contained in subparagraphs 3(a)(1) and (2) below.

5.2.2 If the Presiding Officer decides that appointment of counsel for Intervenors is appropriate, the Presiding Officer shall recommend to the Board that it adopt a preliminary order, appointing counsel for Intervenors with the same or similar interests. The preliminary order adopted by the Board granting or denying the request shall be served upon the requesting Intervenors.

5.3.3 If counsel is not appointed for requesting Intervenors, and award of reasonable attorneys' fees, expert witness fees, then other reasonable costs shall be made to those Intervenors who:

- (a) Demonstrated in the preliminary proceeding that:
  - (1) But for the receipt of such award, intervention in the hearing would be a significant financial hardship for such Intervenors;
  - (2) The interests of such Intervenors were not the same or similar to the interests of other Intervenors for whom counsel was appointed.
- (b) Have substantially contributed to the approval in the Suggested Final Order, in whole or in part, of a position advocated by such Intervenors on the standards set forth in the Act.

5.2.4 The determination in subparagraph 5.2.3(b) shall be made at a hearing to be conducted by the Presiding Officer no later than five (5) days after the service of the Suggested Final Order by the Board. At the conclusion of such hearing, the Presiding Officer shall present a recommendation to the Board as to whether such an award should be included in the Final Order, and if so, the amount thereof.

5.3 Transcripts. The Presiding Officer, upon a showing of need, shall make complete or partial transcripts of the proceedings available to Intervenors at the cost of reproduction.

## 6.0 DISCOVERY UNDER THE ACT

6.1 Records and Information. Records or other information maintained by parties which are not otherwise exempt from disclosure shall be made available for inspection to other parties or persons making limited appearances, if the party or person requesting such material gives timely and reasonable notice to the other party of the material requested. Parties requesting copying of documents shall reimburse the other party for actual costs in making such records or other information available or for the copying thereof. Copying shall be done only if adequate time is allowed from the time of request and the documents involved are of a nature practically permitting of copying. All inspection and copying shall be accomplished during normal business hours at the office where the relevant records or other information is maintained. The records Custodian or custodian of the records of a party may consolidate requests

for records or other information so as to avoid unnecessary duplication of effort. In cases where the Records Custodian or other custodian denies a party's request to inspect or copy material, the aggrieved party may request the Presiding Officer to conduct a hearing to determine the timeliness and reasonableness of the notice for purposes of proceedings under these rules.

- 6.2 Time of Request. Unless otherwise authorized by the Presiding Officer upon good cause shown, all notices of requests for discovery must be given to the Records Custodial or the custodian of the records of a party at least ten (10) days prior to the commencement of the hearing.

## 7.0 CONTINUANCES UNDER THE ACT

- 7.1 A hearing may be continued with recesses determined by the Presiding Officer until all parties and persons making appearances have had an opportunity to make their relevant presentations.

## 8.0 REOPENING OF HEARINGS UNDER THE ACT

- 8.1 Prior to the adoption of the Final Order and upon adequate notice, the Presiding Officer or Board may call for additional evidence. If such additional evidence is called for under the Act, the Presiding Officer shall reopen the hearing. In the event that the hearing is reopened, the schedule for adoption of a Final Act following completion of the reopened hearing shall be as contained in Section 9.0 below.

## 9.0 ORDERS UNDER THE ACT

- 9.1 Interim Order. At any time prior to the adoption of the Final Order, the Board may adopt an Interim Order if required by the circumstances. Provisions in the Interim Order shall not interrupt the proceedings hereunder and may be modified by the Final Order.
- 9.2 Proposed Order. Each party may prepare a Proposed Order. Such Order shall be filed with the Presiding Officer within thirty (30) days following the last day of the hearing with proof of service upon every other party. All other parties shall have the right to object to part or all of the Proposed Order by filing their written objections with the Presiding Officer within ten (10) days from the filing of the Proposed Order.
- 9.3 Adoption of Final Order. The Board shall consider adoption of a Final Order at a regular or special meeting of the Board. The considerations of the Board shall include the record of the proceedings, Proposed Order and objections thereto, and comments, if any, of the Presiding Officer. Proceedings of the Board in consideration of adoption of a Final Order

shall be open to the public, but statements and comments shall be limited to the Presiding Officer and the Board members. At the conclusion of such considerations, the Board shall prepare or shall order the preparation of a Suggested Final Order (which shall include all items contained in Section 9.4 below except 9.4.10). The Suggested Final Order shall be served upon all of the formal parties to the hearing. The parties to the hearing shall submit their written comments on the Suggested Final Order to the Board within ten (10) days from the date of service. At the next regular meeting of the Board which occurs after the period set for comment, the Board shall adopt a Final Order.

- 9.4 Content of Final Order. The Final Order shall be in writing, available to the public and shall include the following:
- 9.4.1 A determination pertinent to each standard specified in Section 111 of the Act (i.e., cost of service, declining block rates, time-of-day rates, seasonal rates, interruptible rates, and load management techniques) as to whether or not it is appropriate to implement such standard to carry out the purposes of the Act as set forth in Section 101 thereof.
  - 9.4.2 A determination to implement or not implement each Section 111 standard found to be appropriate to carry out the purposes set forth in Section 101.
  - 9.4.3 A statement of the reason or reasons for any determination not to implement any Section 111 standard found to be appropriate to carry out the purposes set forth in Section 101.
  - 9.4.4 A determination to adopt or not adopt each Section 113 standard of the Act, in whole or in part.
  - 9.4.5 If a determination is made to not adopt the Section 113(b)(1) (master metering), (2) (automatic adjustment clauses), (3) (information to consumers), or (4) (advertising) standards, the reason or reasons that such standard is not appropriate to carry out the Section 101 purposes, or is otherwise not appropriate, or is not consistent with otherwise applicable state law.
  - 9.4.6 If a determination is made to not adopt the Section 113(b)(4) (procedures for termination of service) standard, the reason or reasons that adoption is not appropriate or is not consistent with applicable state law.
  - 9.4.7 As to the determination under Sections 111, 113, and 114, the

findings upon which such determinations are based.

9.4.8 Specific finding pertinent to compliance during the proceedings with Section 115 (special rules for standards) criteria for consideration of Section 111 and 113 standards.

9.4.9 An award of reasonable attorneys' fees, expert witness fees, and other reasonable costs if deemed appropriate by the Board based upon the hearings held pursuant to Section 5.2 above.

9.5 Service. The formal parties shall be served with a copy of the Final Order, together with a notification of their right to judicial review of the Final Order by the Presiding Officer.

## 10.0 PETITION FOR RECONSIDERATION

10.1 Filing. A party may file a petition for reconsideration of a Final Order with the Board within thirty (30) days after the Final Order is served.

10.2 Grounds. The petition shall set forth the specific ground or grounds for requesting the reconsideration. The petition may be supported by a written argument.

10.3 Denial. If the Board does not act on the petition within twenty (20) days following the date the petition was filed, the petition shall be deemed denied.

10.4 Reconsideration. If the petition is allowed, the Board shall, upon adequate notice to the parties, reconsider at a regular or special meeting of the Board.

## 11.0 APPEALS

11.1 Appeals under the Act shall be as provided in Section 123 of the Act.

## 12.0 REPORTS

12.1 Not later than one (1) year after enactment of the Act, and annually thereafter for ten (10) years, the Commission, through its Director of Utilities, shall report to the Secretary, in the manner provided in the Code of Federal Regulations, respecting its consideration of the standards established by Sections 111(d) and 113(b) of the Act. Such report shall include a summary of the determinations made and actions taken with respect to each standard.