

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 14. ARIZONA POWER AUTHORITY

Editor's Note: The following Notice of Proposed Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2622.)

[R14-143]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R12-14-602 | Repeal |
| R12-14-603 | New Section |
| R12-14-604 | New Section |
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| R12-14-616 | New Section |
| R12-14-617 | New Section |
| R12-14-618 | New Section |
| R12-14-619 | New Section |
| R12-14-620 | New Section |
| R12-14-621 | New Section |
| R12-14-622 | New Section |
| R12-14-623 | New Section |
| R12-14-624 | New Section |
| R12-14-625 | New Section |
| R12-14-626 | New Section |
| R12-14-627 | New Section |
| R12-14-628 | New Section |
| R12-14-629 | New Section |
| R12-14-630 | New Section |
| R12-14-631 | New Section |
| R12-14-632 | New Section |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. §§ 41-1003 and 41-1092.01(F)
Implementing statute: A.R.S. §§ 41-1001 through 41-1037; and A.R.S. § 41-1092 through 41-1092.12
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the**

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proposed rule:

Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014

4. The agency's contact person who can answer questions about the rulemaking:

Name: Douglas V. Fant
Address: Arizona Power Authority
1810 Adams St.
Phoenix, AZ. 85007
Telephone: (602) 368-4265
Fax: (602) 253-7970
E-mail: doug@powerauthority.org
Web site: www.powerauthority.org

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

This rulemaking establishes a set of procedural rules to govern hearings of appealable agency actions when the Arizona Power Authority decides to handle an appeal. An agency may directly conduct its own administrative hearings under A.R.S. § 41-1092.01(F) when the agency head, board, or commission serves as the administrative law judge. Section 10.4.2 of the Arizona Agency Handbook recommends that an agency which chooses to conduct its own hearing establish rules for the hearing process based upon the procedural rules created by the Office of Administrative Hearings (OAH). AAC R2-19-101 et seq. The Authority's proposed rules are based upon those OAH procedural rules.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The Arizona Power Authority anticipates minimal to no economic impact as a result of any of these proposed rules.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Douglas V. Fant
Address: Arizona Power Authority
1810 W. Adams St.
Phoenix, AZ. 85007
Telephone: (602) 368-4265
Fax: (602) 253-7970
E-mail: doug@powerauthority.org
Web site: www.powerauthority.org

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Comments may be written or presented orally. Written comments concerning the proposed rules may be submitted to the agency contact person noted in Item No. 9 above, and must be received by no later than 5:00 p.m., Wednesday, October 29, 2014. An oral proceeding is also scheduled for:

Date: October 29, 2014
Time: 11:00 a.m.
Location: Arizona Power Authority
1810 W. Adams St.
Phoenix, AZ. 85007

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond

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to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

None

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 14. ARIZONA POWER AUTHORITY

ARTICLE 6. CONFERENCES; APPEAL OF AGENCY ACTION

Section

- R12-14-602. ~~Appeal of Agency Action~~ Repeal
- R12-14-603. ~~Repealed~~ General
- R12-14-604. ~~Repealed~~ Definitions
- R12-14-605. ~~Repealed~~ Applicability; Authority
- R12-14-606. ~~Repealed~~ Notice of Appealable Agency Action
- R12-14-607. ~~Renumbered~~ Request for Hearing; Setting for Hearing
- R12-14-608. ~~Repealed~~ Summary Dismissal
- R12-14-609. ~~Repealed~~ Waiver Rights
- R12-14-610. ~~Repealed~~ Intervention; Amicus Curiae
- R12-14-611. ~~Repealed~~ Informal Settlement Conference
- R12-14-612. ~~Repealed~~ Ex Parte Communications
- R12-14-613. ~~Repealed~~ Motions
- R12-14-614. Computing Time
- R12-14-615. Filing and Service of Documents
- R12-14-616. Consolidation or Severance of Appeals
- R12-14-617. Continuing or Expediting a Hearing; Reconvening a Hearing
- R12-14-618. Vacating a Hearing
- R12-14-619. Prehearing Conference
- R12-14-620. Subpoenas
- R12-14-621. Telephonic Testimony
- R12-14-622. Rights and Responsibilities of Parties
- R12-14-623. Hearings; Depositions
- R12-14-624. Conduct of Hearing
- R12-14-625. Failure of Party to Appear for Hearing
- R12-14-626. Witnesses; Exclusion from Hearing
- R12-14-627. Proof
- R12-14-628. Disruptions
- R12-14-629. Hearing Record
- R12-14-630. Final Administrative Decisions; Review
- R12-14-631. Rehearing or Review
- R12-14-632. Notice of Judicial Appeal; Transmitting the Transcript

ARTICLE 6. CONFERENCES; APPEAL OF AGENCY ACTION

R12-14-602. ~~Appeal of Agency Action~~ Repeal

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Any decision or action by the Commission that determines the legal rights, duties, or privileges of an Entity with regard to any matter under the jurisdiction of the Commission is an “appealable agency action” as defined in, or limited by A.R.S. §41-1092.

R12-14-603. ~~Repealed~~ General

- A.** This article applies to any Appealable Agency Action (“Matter”) arising from a decision or action of the Commission.
- B.** The Commission shall conduct any administrative hearing, pursuant to the requirements of this article, acting as the Administrative Law Judge pursuant to A.R.S. §41-1092.01.
- C.** Because state statutes provide many of the procedural requirements for the conduct of administrative hearings, these rules will cross reference such statutes where appropriate. Copies of the statutes and these rules may be obtained from the Commission at its office at 1810 W. Adams Street, Phoenix, Arizona, during normal business hours.

R12-14-604. ~~Repealed~~ Definitions

For purposes of this Article, the following definitions apply unless otherwise stated:

1. As used herein, the terms “Commission” and “Administrative Law Judge” have the same meaning as in the relevant statutes and are used interchangeably.
2. “Agency” means the Arizona Power Authority.
3. “Appealable Agency Action” means any decision or action by the Commission that determines the legal rights, duties, or privileges of an Entity with regard to any matter under the jurisdiction of the Commission as defined in, or limited by, A.R.S. § 41-1092.
4. “Arizona Power Authority” means the Agency established pursuant to title 30, chapter 1, article 1, Arizona Revised Statutes (A.R.S.).
5. “Commission” means the Arizona Power Authority Commission as established and organized pursuant to title 30, chapter 1, article 1, Arizona Revised Statutes.
6. “Matter” means an Appealable Agency Action.
7. “Party” means an individual, partnership, corporation, cooperative, association and public or private organization participating in an administrative proceeding before the Commission which results in an Appealable Agency Action and who files an appeal or requests a hearing or otherwise intervenes in an appeal.

R12-14-605. ~~Repealed~~ Applicability; Authority

- A.** These rules apply to any Appealable Agency Action heard by the Commission. Unless otherwise required by law or waived pursuant to subsection (B), all hearings shall be scheduled at the convenience of the Commission and shall be held at the Arizona Power Authority’s business office in Phoenix, Arizona. The rules in this article were drafted, proposed, and adopted pursuant to the Commission’s authority and obligation pursuant to A.R.S. § 41-1003 and A.R.S. § 41-1092.01(F).
- B.** The Commission may waive the application of any of these rules to further administrative convenience, expedition, and economy:
 1. With the consent of the Parties to the appeal, or
 2. If the waiver does not conflict with law, and does not cause undue prejudice to any Party.
- C.** If a procedure is not provided by statute or these rules, the Commission may issue an order using the Arizona Rules of Civil Procedure or related local court rules for guidance.

R12-14-606. ~~Repealed~~ Notice of Appealable Agency Action

- A.** The Commission shall serve notice of an Appealable Agency Action pursuant to section 41-1092.04. Pursuant to section 41-1092.3, the notice shall:
 1. Identify the statute or rule on which the action is based.
 2. Include a description of any Party’s right to file a notice of appeal or to request a hearing on the Appealable Agency Action.
 3. Include a description of any Party’s right to request an informal settlement conference pursuant to section 41-1092.06.
- B.** Each Appealable Agency Action or final administrative decision shall be posted to the Arizona Power Authority website within forty eight hours after such action is taken. Such posting shall constitute official notice thereof. The Commission additionally may elect to provide any Party, and such other interested persons as have officially requested to be included, electronic notice of the posting which may be accompanied by the referenced document. In addition, each person or entity that has entered an appeal as a Party and/or a person or entity that has officially notified the Commission that it wishes to be excluded from electronic notice shall be provided with written notice within three days of the notice being published on the Arizona Power Authority website.

R12-14-607. ~~Renumbered~~ Request for Hearing; Setting the Hearing

- A.** A Party may initiate an appeal by filing a notice of appeal or request for a hearing with the Commission within thirty days after receiving the notice prescribed in R12-14-606(A). The notice of appeal or request for a hearing may be filed by a Party whose legal rights, duties or privileges were determined by the Appealable Agency Action. A notice of appeal or request for a hearing also may be filed by a Party who will be adversely affected by the Appealable Agency Action and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds

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for the notice of appeal or request for a hearing are limited to issues raised in that Party's comments. The notice of appeal or request for a hearing shall identify the Party, the Party's address, and the action being appealed and shall contain a concise statement of the reasons for the appeal or request for a hearing. The Party shall notify the Commission of the appeal or request for a hearing. If requested, the Commission shall schedule an appeal hearing pursuant to this rule.

- B.** If good cause is shown, the Commission may accept an appeal or request for a hearing that is not filed in a timely manner.
- C.** A Party filing a notice of appeal or requesting the Commission schedule an administrative hearing shall provide the following information:
 - 1. Caption of the Matter, including the names of the Party or Parties and address(es);
 - 2. The date the Party appealed the agency action;
 - 3. A concise statement of the reasons for the appeal;
 - 4. Any request to expedite or consolidate the appeal; and
 - 5. If a hearing is requested:
 - a. the estimated time for the hearing;
 - b. the proposed hearing dates; and
 - c. any agreement of the Parties to waive applicable time limits to set the hearing.
- D.** The date scheduled for the hearing may be advanced or delayed on the agreement of the Parties or on a showing of good cause, pursuant to A.R.S. § 41-1092.05.
- E.** Within 10 days of the Commission's receipt of a request for hearing, the Commission shall provide notice of the date, time, and location of the hearing in the same manner as provided in R12-14-606(B).

R12-14-608. ~~Repealed Summary Dismissal~~

An appeal to the Commission may be subject to summary dismissal by the Commission for any of the following causes:

- 1. If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;
- 2. If the notice of appeal or request for hearing is not filed within the time required.

R12-14-609. ~~Repealed Waiver of Rights~~

Except to the extent precluded by another provision of law, a person may waive any right conferred on that person by this article.

R12-14-610. ~~Repealed Intervention; Amicus Curiae~~

- A.** A person who wishes to intervene in an appeal must file a motion to intervene. Except for good cause shown, a person must file the motion within 10 days after the Commission issues its notice pursuant to R12-14-607(E).
- B.** A motion to intervene must set forth the basis for the proposed intervention, including whether the person had a right to appeal the Appealable Agency Action or would be adversely affected if the Commission reversed, vacated, set aside, or modified the decision.
- C.** The Commission may:
 - 1. Grant the motion to intervene;
 - 2. Deny the motion to intervene for good cause, e.g., where granting it would disadvantage the rights of the existing Parties or unduly delay adjudication of the appeal; or
 - 3. Grant the motion to intervene but limit the person's participation in the appeal.
- D.** A person may file a motion to file a brief as an amicus curiae.
 - 1. The motion must state the person's interest in the appeal and how its brief will be relevant to the Appealable Agency Action.
 - 2. The motion must contain a certification that the movant or movant's counsel has read any relevant filed briefs of the Parties and that the movant's arguments are not duplicative of those presented by the Parties.
 - 3. The Commission may grant or deny the motion in its discretion. The Commission may also allow a person to file a brief as amicus curiae if it denies the person's motion to intervene.
- E.** A person granted full or limited intervenor status is a Party to the appeal, while an amicus curiae is not. A person granted amicus curiae status must serve its brief on the Parties to the appeal.

R12-14-611. ~~Repealed Informal Settlement Conference~~

- A.** If requested by any Party to an appeal of an Appealable Agency Action, the Commission shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the Commission no later than twenty days before the hearing. If an informal settlement conference is requested, the Party shall notify the Commission of the request and the outcome of the conference, except as provided in section 41-1092.01(F). The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.
- B.** If an informal settlement conference is held, a person designated by the Commission must represent the Commission at the conference. The Commission representative shall notify the appellant in writing that statements, either written or oral,

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made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. By participating in the settlement conference, the Party or Parties waive their right to object to the participation of the Commission representative in the final administrative decision.

R12-14-612. ~~Repealed~~ Ex Parte Communications

A Party shall not communicate, either directly or indirectly, with the Commission or individual Commissioners about any substantive issue in a pending appeal unless:

1. All Parties are present;
2. It is during a scheduled proceeding, provided that a Party that fails to appear after proper notice waives its right to object to the subjects discussed or any rebuttal thereof; or
3. It is in writing including facsimile or other electronic means with copies to all Parties.

R12-14-613. ~~Repealed~~ Motions

A. Purpose. A Party requesting a ruling from the Commission shall file a motion. Motions may be made for rulings such as:

1. Consolidation or severance of issues pursuant to R12-14-616;
2. Continuing or expediting a hearing pursuant to R12-14-617;
3. Vacating a hearing pursuant to R12-14-618;
4. Prehearing conference pursuant to R12-14-619;
5. Quashing a subpoena pursuant to R12-14-620;
6. Telephonic testimony pursuant to R12-14-621; and
7. Reconsideration of a previous order pursuant to R12-14-630 and R12-14-631.

B. Form. Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to any Commission requirements. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.

C. Time Limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Commission at least 10 days before any scheduled hearing. A Party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:

1. A ruling on the motion will further administrative convenience, expedition or economy; or
2. A ruling on the motion will avoid undue prejudice to any Party.

D. Response to Motion. A Party may file a written response stating any objection to the motion within five days of service, or as directed by the Commission.

E. Oral Argument. A Party may request oral argument when filing a motion or response. The Commission may grant oral argument if it is necessary to develop a complete record.

F. Rulings. Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all Parties.

R12-14-614. Computing Time

In computing any time period, the Commission shall exclude the day from which the designated time period begins to run. The Commission shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Commission shall exclude Saturdays, Sundays, and legal holidays.

R12-14-615. Filing and Service of Documents

A. Docket. The Commission shall open a docket for each Matter upon receipt of a notice of appeal or request for hearing. All documents filed in a Matter with the Commission other than by electronic means shall be date stamped on the day received by the Commission and entered in the docket.

B. Definition. "Documents" include papers such as notices of appeal, requests for hearing, motions, responses, notices, and briefs.

C. Form. A Party shall state on the document the name and address of each Party served and how service was made pursuant to subsection (E). A document shall contain the Commission's caption and docket number.

D. Signature. A document filed with the Commission shall be signed by the Party or the Party's attorney. A signature constitutes a certification that the signer has read the document and has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment. Signatures can be either hand-written or electronic.

E. Filing and service. A copy of a document filed with the Commission shall be served on all Parties. Filing with the Commission and service shall be completed by personal delivery; 1st-class, certified or express mail; or facsimile or other electronic means.

F. Date of filing and service. A document is filed with the Commission on the date it is received by the Commission, as established by the Commission's date stamp on the face of the document, the facsimile date or the electronic receipt date. A copy of a document is served on a Party as follows:

1. On the date it is personally served;

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2. Five days after it is mailed by express or 1st class mail;
3. On the date of the return receipt if it is mailed by certified mail; or
4. On the date indicated on the facsimile transmission or the electronic receipt date.

G. Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the Commission and every other Party to the action to the Party's last address of record with the Commission. Each Party shall inform the Commission of any change of address within five days of the change. See A.R.S. § 41-1092.04. Such service can include delivering the document by electronic means, such as email or facsimile, unless a Party has specifically requested not to receive notice or service through electronic means, such as email or facsimile.

R12-14-616. Consolidation or Severance of Appeals

A. Standards for consolidation. The Commission may order consolidation of pending appeals, if:

1. There are substantially similar factual or legal issues, or
2. All Parties are the same, or
3. If there are different Parties, all Parties consent to the consolidation.

B. Order. The Commission shall send a written ruling granting or denying consolidation to all Parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conference or consolidated hearing. The Commission shall designate the controlling docket number and caption to be used on all future documents.

C. Severance. The Commission may sever consolidated Matters to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the Commission's own review, or a Party's motion.

R12-14-617. Continuing or Expediting a Hearing; Reconvening a Hearing

A. Continuing or expediting a hearing. When ruling on a motion to continue or expedite, the Commission shall consider such factors as:

1. The time remaining between the filing of the motion and the hearing date;
2. The position of other Parties;
3. The reasons for expediting the hearing or for the unavailability of the Party, representative, or counsel on the date of the scheduled hearing;
4. Whether testimony of an unavailable witness is authorized by law, and, if so, whether it can be taken telephonically or by deposition; and
5. The status of settlement negotiations.

B. Reconvening a hearing. The Commission may recess a hearing and reconvene at a future date by a verbal ruling during the initially noticed hearing or thereafter during any continuation of the hearing.

R12-14-618. Vacating a Hearing

The Commission may vacate a calendared hearing if:

1. The Parties agree to vacate the hearing;
2. The Party dismisses the matter;
3. The Party withdraws the appeal;
4. The Party fails to comply with any order of the Commission; or
5. Facts demonstrate to the Commission that it is appropriate to vacate the hearing for the purpose of informal disposition, or if the action will further administrative convenience, expedition and economy and does not conflict with law or cause undue prejudice to any Party.

R12-14-619. Prehearing Conference

A. Procedure. The Commission may hold a prehearing conference. The conference may be held telephonically. The Commission may issue a prehearing order outlining the issues to be discussed. As outlined by A.R.S. § 41-1092.05, prehearing conferences may be held for any of the following reasons:

1. Clarify or limit procedural, legal or factual issues;
2. Consider amendments to any pleadings;
3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing;
4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law;
5. Schedule deadlines, hearing dates and locations if not previously set;
6. Allow the Parties opportunity to discuss settlement; or
7. Any other reason determined by the Commission to further administrative convenience, expedition, and economy, or to avoid undue prejudice.

B. Record. The Commission may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

R12-14-620. Subpoenas

A. Form. As provided by A.R.S. § 41-1092.07 and A.R.S. § 41-1092.10, a Party may request a subpoena in writing from the

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Commission and shall include in the request:

1. The caption of the Matter;
2. A list or description of any documents sought;
3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
5. The name, address, and telephone number of the Party, or the Party's attorney, requesting the subpoena.

B. The Commission may require a brief statement of the relevance of testimony or documents.

C. Service of subpoena. Any person who is not a Party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the office a certified statement of the date and manner of service and the name of the person served.

D. Objection to subpoena. A Party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the Commission. The objection shall be filed within five days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than five days before the hearing.

E. Quashing, modifying subpoenas. The Commission shall quash or modify the subpoena if:

1. It is unreasonable or oppressive, or
2. The desired testimony or evidence may be obtained by an alternative method, or
3. The existing administrative record contains the information and evidence that would otherwise be proffered pursuant to the subpoena.

R12-14-621. Telephonic Testimony

The Commission may grant a motion for telephonic testimony if:

1. Personal attendance by a Party or witness at the hearing will present an undue hardship for the Party or witness;
2. Telephonic testimony will not cause undue prejudice to any Party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

R12-14-622. Rights and Responsibilities of Parties

A. Generally. A Party may present testimony and documentary evidence and argue with respect to the issues and may examine and cross-examine witnesses.

B. Preparation. A Party shall have all witnesses, documents and exhibits available on the date of the hearing.

C. Exhibits. A Party shall provide a copy of each exhibit to all other Parties at the time the exhibit is offered to the Commission, unless it was previously provided through discovery.

D. Responding to Orders. A Party shall comply with an order issued by the Commission concerning the conduct of a hearing. Unless objection is made orally during a pre-hearing conference or hearing, a Party shall file a motion requesting the Commission to reconsider the order.

R12-14-623. Hearings; Depositions

A. Pursuant to A.R.S. § 30-107, all members of the Commission shall attend all hearings, unless excused from attendance for a justifiable excuse which shall be made part of the record. Three members shall constitute a quorum for conducting a hearing.

B. The Parties to an Appealable Agency Action have the right to be represented by counsel, or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The Commission may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served pursuant to R12-14-620(C) and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil proceedings. The Commission may administer oaths and affirmations to witnesses.

D. All Parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the Commission may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The Commission shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The Commission shall secure either a court reporter or an electronic means of producing or preserving a clear and accurate record of the proceeding at the Commission's expense. Any Party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence support-

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- ing the decision or order is substantial, reliable and probative.
2. Copies of documentary evidence may be received in the discretion of the Commission. On request, Parties shall be given an opportunity to compare the copy with the original.
 3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.
 4. On application of a Party and for use as evidence, the Commission may permit a deposition to be taken, in the manner and on the terms designated by the Commission, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the Commission if the Party seeking the discovery demonstrates that the Party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection (C) of this section.
 5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.
 6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
 7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

R12-14-624. Conduct of Hearing

- A. Public access.** Unless otherwise provided by law, all hearings are open to the public.
- B. Opening.** The Commission shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the Parties, counsel, and witnesses for the record.
- C. Stipulations.** The Commission shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the Parties before or during the hearing.
- D. Opening statements.** The appealing Party may make an opening statement at the beginning of a hearing. All other Parties may make statements in a sequence determined by the Commission.
- E. Order of presentation.** After opening statements, the appealing Party shall begin the presentation of evidence, unless the Parties agree otherwise or the Commission determines that requiring another Party to proceed first would be more expeditious or appropriate, and would not prejudice any other Party.
- F. Examination.** A Party shall conduct direct and cross examination of witnesses in the order and manner determined by the Commission to expedite and ensure a fair hearing. The Commission shall make rulings necessary to prevent argumentative, repetitive, or irrelevant presentation of evidence, including testimony, and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.
- G. Closing argument.** When all evidence has been received, Parties shall have the opportunity to present closing oral argument, in a sequence determined by the Commission. The Commission may permit or require closing oral argument to be supplemented by written memoranda. The Commission may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the Commission may prescribe.
- H. Conclusion of hearing.** Unless otherwise provided by the Commission, the hearing is concluded upon the submission of all evidence, the making of final argument, or the submission of all post hearing memoranda, whichever occurs last.

R12-14-625. Failure of Party to Appear for Hearing

If a Party fails to appear at a hearing, the Commission may proceed with the presentation of the evidence of the appearing Party, vacate the hearing and return the matter to the absent Party for any further action, or dismiss the appeal and conclude that there is a final action on the existing administrative record.

R12-14-626. Witnesses: Exclusion from Hearing

All witnesses at the hearing shall testify under oath or affirmation. At the request of a Party, or at the discretion of the Commission, the Commission may exclude witnesses who are not Parties from the hearing room so that they cannot hear the testimony of other witnesses.

R12-14-627. Proof

- A. Standard of proof.** Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
- B. Burden of proof.** Unless otherwise provided by law:
 1. The Party asserting a claim, right, or entitlement has the burden of proof;
 2. A Party asserting an affirmative defense has the burden of establishing the affirmative defense; and
 3. The proponent of a motion shall establish the grounds to support the motion.

Notices of Proposed Rulemaking

R12-14-628. Disruptions

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the Commission may order the disruptive person to leave or be removed.

R12-14-629. Hearing Record

A. Maintenance. The Commission shall maintain the official record of a hearing/appeal.

B. Transfer of record. Before the Commission takes final action, the Party may request that the record be available for its review or duplication. Any Party requesting a copy of the record or any portion of the record shall make a request to the Commission and shall pay the reasonable costs of duplication.

C. Release of exhibits. Exhibits shall be released:

1. Upon the order of a court of competent jurisdiction; or
2. Upon motion of the Party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

R12-14-630. Final Administrative Decisions; Review

A. For purposes of these rules, the decision of the Commission on appeal is the final administrative decision.

B. A Party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except that if a Party has not requested a hearing upon receipt of a notice of Appealable Agency Action pursuant to section 41-1092.03, the Appealable Agency Action is not subject to judicial review.

R12-14-631. Rehearing or Review

A. A Party may file a motion for rehearing within thirty days after service of the final administrative decision.

B. Any other Party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

C. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a Party is not required to file a motion for rehearing or review of the decision in order to exhaust the Party's administrative remedies.

D. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the Party's last known address.

E. Except as provided in this subsection, the Commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period.

R12-14-632. Notice of Judicial Appeal; Transmitting the Transcript

A. Notification to the office. Within 10 days of filing a complaint for judicial review of a final administrative decision, the Party shall file a copy of the complaint with the Commission. The Commission shall then transmit the record to the Superior Court.

B. Transcript. A Party requesting a transcript shall arrange for transcription at the Party's expense. The Commission shall make a copy of its audio taped record available to the transcriber. The Party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Commission, together with one unbound copy.