ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
ADMINISTRATIVE HEARINGS DIVISION REPORT
PUBLIC MEETING DATE: October 6, 2020

REGULAR ___ CONSENT ___ RULEMAKING _X_ EFFECTIVE DATE __N/A__

DATE: September 29, 2020

TO: Public Utility Commission

FROM: Nolan Moser SIGNED

THROUGH: Diane Davis

SUBJECT: ADMINISTRATIVE HEARINGS DIVISION: Request for approval to initiate a rulemaking to review and amend Division 001 procedural rules. (AR 641)

RECOMMENDATION:

Adopt the Administrative Hearings Division's recommendation to open a rulemaking to review and amend Division 001 rules governing legal practice before the Commission and other procedural and administrative rules.

DISCUSSION:

Issue

Whether the Commission should initiate a rulemaking to review and amend the Public Utility Commission's general rules in Division 001.

Applicable Law

ORS 756.060 states that, "The Public Utility Commission may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission".

The Commission's contested case process are governed by ORS 756.500 through 756.558, the Administrative Procedures Act (APA) set forth in ORS 183.310 *et seq*, as well as rules adopted in OAR 860-001-0300 *et seq*.

Analysis

Background
Division 001 of the Commission's rules includes a series of procedural rules that govern many Commission processes. These rules, many of which have not been updated in years, are relevant to the filing of documents with the Commission, filing requirements in contested cases, service upon parties to a contested docket, rulemakings, *ex parte* contacts, settlements, declaratory rulings, the submission of evidence in contested cases, discovery, and rehearing and reconsideration of Commission decisions. Some rules, such as those referring to protective orders, have been reviewed recently – while others (the majority of Division 001 rules) have not been updated recently.

Need for a review of Rules
In the years since these rules were reviewed, the Commission has undergone changes. Specifically, more processes at the Commission have become electronic, as the Commission moved away from paper filings. The COVID-19 pandemic changed Commission procedures in some important ways, as reflected in a series of rule waivers and changes to how the Commission processes confidential filings. Finally, the Commission is in the process of replacing its antiquated docket and discovery systems, and will in the future, have new tools for serving the public, particularly through the filing center, which may necessitate the revision of general procedural rules.

Proposed process for the Informal Rulemaking
We intend to commence this rulemaking with broad outreach to affected stakeholders. Since Division 001 encompasses a wide array of procedural rules, many, if not all of the Commission's regular stakeholders may be affected by potential changes to these rules.

Through a series of memos and workshops, AHD will describe its goals for the rulemaking, requesting feedback and suggestions for additional changes to the rules. AHD will actively solicit suggestions from stakeholders that would serve to make processes more efficient, fair, and transparent. Since not all stakeholders may choose to participate in the rulemaking but will still be affected by it, AHD will publish regular summaries of the status of the rulemaking in that AR 641 docket, so that stakeholders may follow the progress of the rulemaking and have a clear understanding of what has occurred in workshops, etc.

We note for stakeholders that this rulemaking will include two phases. The first informal phase, which we request the Commission authorize via the below recommendation, will be a workshop-focused effort where broad objectives for the rulemaking will be discussed, proposals will be submitted to stakeholders, stakeholders will propose their own direction for the rulemaking, and eventually draft rules will be produced and

reviewed. At the end of the informal phase, AHD will return to the Commission at a public meeting and request the opening of a formal rulemaking. Rule changes will not be adopted until after that second, formal phase – which will include a written comment period and public comment hearing.

Initial Areas of Focus
Though we are open to all suggestions regarding Division 001 rules and look forward to the input of stakeholders, we do have an initial list of broad topic areas we intend to review and update – these include:

- Rules related to the filing center
- Service rules for contested cases
- Rules for *ex parte* contact
- Discovery rules
- Rules regarding employment of former Commission employees
- Other sections as surfaced in review with Staff and stakeholders

Conclusion

AHD recommends opening a rulemaking to review and amend Division 001 rules, consistent with this memo.

PROPOSED COMMISSION MOTION:

Adopt AHD's recommendation to open a rulemaking and commence the informal phase to review and amend the Public Utility Commission's general rules in Division 001.