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Cc:	CONWAY Bryan * PUC; DOUGHERTY Michael * PUC; BATMALE JP * PUC
Subject:	AR 641 Next workshop and summary of rules to address
Date:	Thursday, May 20, 2021 3:08:03 PM
Attachments:	AR 641 Group 3 Rule Summaries.pdf

Hello, please see Chief ALJ Moser's email:

Good Afternoon everyone –

Thank you for participating in our doodle poll to identify the date of our next workshop.

Based on the results of the survey, we've identified June 8th at 1:00 PM as the date and time of our next workshop. My apologies to folks who cannot make that time; it had the highest participation availability. An agenda and Zoom information will follow tomorrow.

Also, attached you'll find a summary of the rules we will address at our next meeting. Please provide any comments on these rules by COB on June 1, to aide in preparation for the workshop. I may update the agenda based on these comments.

Also, a reminder that we will have a Commission workshop regarding the status of these rules on June 29th, at 1:30 P.M.

Finally, I'd like to propose a rough schedule for the remainder of the docket. We can review this at the next workshop as well:

Date	**Action**
6-8	Workshop on 3rd Group of Rules
Week of 6-21	Workshop on final group of rules
6-29	Commission Workshop
Week of 7-12	Final Workshop (if needed)
Week of 7-19	Commission decision to open Formal process
Week of 8-9	Formal Rulemaking Workshop (if needed)
Week of 8-23	Public Comment Hearing

Week of 9-20	Close of Comment Period
October	Public meeting to consider final rules

Please let me know if you have any questions, and thank you.

Nolan Moser | Chief Administrative Law Judge
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Workshop Rules Summary 5.10.21

Practice Before the Commission 860-001-0300

- Purpose
  - Establish who can become a party and how to become a party or interested person
- Key Elements
  - ALJs may rule on petition to intervene in pre-hearing conference
  - If a party seeking to intervene wants to see a sample petition they can contact the AHD for a copy of one
  - An interested person will receive docket posting information but not be able to file, cross examine, or become a signatory to a protective order

Representation and Ethical Conduct 860-001-0310

- Purpose
  - Outline who can present as a representative in commission proceedings
- Key Elements
  - Either an Attorney or Authorized representative may be representative in contested case
  - Authorized representatives cannot make legal arguments in contested case
  - Legal arguments are defined in this section
  - Staff cannot make legal arguments in a contested case, but the office of the AG can on their behalf (Discretion as to whether argument is legal argument is held by the ALJ who will afford staff the opportunity to consult with the office of the AG)

Appearance of Attorneys; Pro Hac Vice 860-001-0320

- Purpose
  - Outline the requirements for attorneys to act as representatives, making legal arguments and signing legal documents
- Key Elements
  - State Bar requirements are generally controlling, See UTCR 3.170(1) requirements

Ex-Parte Communications 860-001-0340

- Purpose
  - Outline rules around and remedies for ex-parte communications in commission proceedings
- Key Elements
  - The rules only apply to communications on the merit of the issue, not procedural issues
  - Ex-parte rules begin after first scheduling notice is sent out

Settlements 860-001-0350

- Purpose
    - Discusses settlement discussion procedures
    - Discusses stipulation procedures
- Key Elements
    - Staff may have discussions with parties
    - Notice must be filed in various situations
    - Party may file objection to stipulation or request a hearing within 15 days
    - A stipulation is not binding on the Commission

General 860-001-0390

- Purpose
    - Lays out the difference between pleadings and motions
- Key Elements
    - Pleadings are to initiate a proceeding or for requesting Commission authorization
    - Motions are seeking a ruling in a Commission proceeding

Default upon Failure to Answer Complaint 860-001-0410

- Purpose
    - Rules around default due to failure to respond during proceedings
- Key Elements
    - A defaulting party may file for reconsideration for good cause
    - The filing of a reconsideration does not excuse the defaulting party from complying with the order, enforcement is not stayed except upon Commission order.

Motions, Responses, and Replies 860-001-0420

- Purpose
    - Rules surrounding filing a motion
- Key Elements
    - Effort to seek agreement before motion is filed is required
    - A party may file a response
        - To a substantive motion within 15 days
        - To a procedural motion within 7 days
    - The moving party may file a reply to a response to a substantive motion within 7 days

Evidence 869-001-0450

- Purpose
    - Explains rules regarding admission of evidence during Commission Proceedings
- Key Elements
    - A party objecting must state the grounds

    - The Commission or an ALJ may have the evidence presented anyway
    - If a party takes exception to exclusion, it may still be admitted but designated as such

Official Notice 860-001-0460

- Purpose
    - Outline rules for Official notice by Commission or ALJ
- Key Elements
    - Commission or ALJ must notify parties when official notice is taken
    - A party may object to the notice within 15 days

Resolutions 860-001-0470

- Purpose
    - Properly authenticated resolutions of governing bodies may be received in evidence if offered by person authorize to offer resolution

Testimony and Exhibits 860-001-0480

- Purpose
    - Outlines formatting for written testimony and exhibits, including pagination and page formatting

Records in other Proceedings 860-001-0490

- Purpose
    - Allows parties to offer evidence from another Commission proceeding, party must provide a copy of said record to ALJ, as well as other parties if requested

Subpoenas 860-001-0510

- Purpose
    - Outlines rules for subpoenas in Commission proceeding
- Key Elements
    - Must be signed by attorney, if parties not represented by attorney they may request ALJ permission to issue, request must be in writing and identify relevance and scope of request
    - Subpoenas duces tecum (production of evidence) must reference specific document
    - Parties must follow the rules of serving subpoenas set by the Oregon circuit courts

Depositions 860-001-0520

- Purpose
    - Outlines rules for depositions
- Key Elements

- A party must notify of deposition proposal, providing 10 days' notice for in-state, 15 days' notice for deposition taken out-of-state
- Must include witness' name, address, subject matter of deposition, time and place of deposition, and the method by which it was recorded
- Must be taken under oath before a court reporter, recorded or transcribed
- "Reasonably calculated" to lead to discovery of relevant evidence standard
- May pay witness, court reporter, and may request ALJ attendance at deposition

Admissions 860-001-0530

- Purpose
  - May serve request for admission to any other party under OCRP 45, responses must be within 7 days, requests not denied within 7 days are deemed admitted

Postponements and Continuances of Hearings 860-001-0580

- Purpose
  - Procedure for parties requesting the postponement of a hearing
- Key Elements
  - Must provide reason, Commission or ALJ may require any oral requests to be in writing
  - Good cause standard, or Commission's/ALJ's own motion

Conferences 860-001-0590

- Purpose
  - Establishes accepted purposes of conferences ALJs are permitted to schedule
- Key Elements
  - Conference Purposes:
    - Establishing procedural schedule
    - Identifying/Clarifying issues
    - Eliminating irrelevant issues
    - Discovery and resolving issues about discovery
    - Regarding evidence (admitting documents/witness statements)
    - Matters regarding expediting proceedings
    - Settlements or other resolutions
  - Decisions made at conference are binding on all parties

Consolidation of Proceedings 860-001-0600

- Purpose
  - Proceedings may be consolidated at discretion of Commission or ALJ

Failure to Appear 860-001-0610

- Purpose
  - Outlines rules if party fails to appear, as party waives rights to participate in conference or hearing

- Key Elements
    - Commission or ALJ can provide permission to party who failed to appear, to reopen matter decided at conference or hearing, or recall for further witness examination
    - Commission may enter order dismissing any party which fails to appear, upon motion by any party or Commission's own motion.
    - If Commission finds "good cause" or parties/public would be prejudiced by party's failure to appear, party may be reinstated

Legal Argument 860-001-0650

- Purpose
    - Allows parties to request opportunity to file briefs in any proceeding, Commission or ALJ may require a brief, or oral arguments instead of or in addition to briefs

Major Proceedings 860-001-0660

- Purpose
    - Defines "major proceeding" and details procedure for requesting classification
- Key Elements
    - "Major proceeding" is a proceeding which
        - Has or expected to have full procedural schedule, written testimony or written comments and
        - Has substantial impact on utility rates or service quality for utilities with more than 50,000 customers or telecommunications utilities with more than 50,000 access lines
    - If party in the proceeding is not large enough, party may file petition with ALJ if
        - Proceeding will likely result in significant change in regulatory policy or raises novel questions of fact or law
    - Party may file motion when docket is open, requesting case classification
        - Motion must specify/argue how case qualifies, and all responses to motion are due within 7 days of fling
    - If case is classified as a major proceeding, Commission must allow opportunity for oral arguments to a quorum of Commission before any final order may be issued.
    - ALJ will determine the length of each party's oral argument, the right to any party to rebuttal of other's arguments, and the order of presentation.