

TITLE 12. NATURAL RESOURCES

CHAPTER 14. ARIZONA POWER AUTHORITY

(Authority: A.R.S. § 30-101 et seq.)

ARTICLE 1. GENERAL

Article 1, consisting of Section R12-14-101, adopted effective November 1, 1993 (Supp. 93-4).

Article 1, consisting of Sections R12-14-101 and R12-14-102, repealed effective November 1, 1993 (Supp. 93-4).

Section

R12-14-101. Definitions

R12-14-102. Repealed

ARTICLE 2. AVAILABILITY OF LONG-TERM POWER; APPLICATION FOR ELECTRIC SERVICE; POWER PURCHASE CERTIFICATES

Article 2, consisting of Sections R12-14-201 through R12-14-203, adopted effective November 1, 1993 (Supp. 93-4).

Article 2, consisting of Sections R12-14-201 and R12-14-202, repealed effective November 1, 1993 (Supp. 93-4).

Section

R12-14-201. Availability of Long-term Power; Contract Negotiations

R12-14-202. Application for Purchase of Electric Service

R12-14-203. Power Purchase Certificates; Application

ARTICLE 3. SERVICE TO PURCHASERS

Article 3, consisting of Sections R12-14-301 and R12-14-302, adopted effective November 1, 1993 (Supp. 93-4).

Article 3, consisting of Sections R12-14-301 thru R12-14-303, repealed effective November 1, 1993 (Supp. 93-4).

Section

R12-14-301. Authority's Service to Purchasers

R12-14-302. Systems and Operation Plans

R12-14-303. Repealed

ARTICLE 4. ADMINISTRATION OF POWER

Article 4, consisting of Sections R12-14-401 through R12-14-405, adopted effective November 1, 1993 (Supp. 93-4).

Article 4, consisting of Sections R12-14-401 thru R12-14-403, repealed effective November 1, 1993 (Supp. 93-4).

Section

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ARTICLE 5. RECORDS

Article 5, consisting of Section R12-14-501, adopted effective November 1, 1993 (Supp. 93-4).

Article 5, consisting of Sections R12-14-501 and R12-14-502, repealed effective November 1, 1993 (Supp. 93-4).

Section

R12-14-501. Purchaser's Records

R12-14-502. Repealed

ARTICLE 6. CONFERENCES; APPEAL OF AGENCY ACTION

Article 6, consisting of Sections R12-14-601 through R12-14-

607, adopted effective November 1, 1993 (Supp. 93-4).

Article 6, consisting of Sections R12-14-601 thru R12-14-613, repealed effective November 1, 1993 (Supp. 93-4).

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ARTICLE 1. GENERAL**R12-14-101. Definitions**

In this Chapter, the definitions in A.R.S. Title 30, Chapter 1 and in A.R.S. Title 45, Chapter 10 apply and, unless the context otherwise requires, the following definitions also apply:

1. "Banked energy" means the electric energy held under an agreement for later delivery.
2. "Banking" means an agreement under which an Entity agrees to retain a portion of the Purchaser's electric energy for later delivery.
3. "Capacity" means the electric capability of an Electric Power System.
4. "Conference" means an informal proceeding before the Commission at which formal action will not be taken by the Commission.
5. "District" means any Power or water organization governed by A.R.S. Title 30, Chapter 1 or A.R.S. Title 48.
6. "Electric Power System" means the electric facilities and equipment by which:
 - a. Power is made available to a Purchaser; and
 - b. Power is delivered to a Purchaser's customer.

7. "Energy" means electric energy made available to a Purchaser.
8. "Entity" means any District, governmental agency, Operating Unit, or Person.
9. "Exchange" means a transfer of electric Power by a Purchaser to another Purchaser that is obligated to return a similar amount of Power upon terms and conditions and at the time or times approved by the Authority under R12-14-401(K).
10. "Load" means the electric Power required to meet a Purchaser's demand for electric service.
11. "Long-term Power" means any supply of Power that is available to the Authority for a period more than 366 consecutive days and that is subject to the jurisdiction of, and disposition by, the Authority, including any Power recaptured by the Authority and any Power tendered or relinquished by a Purchaser.
12. "Point of Delivery" means the point or points on a transmission system where the Authority makes Power available for delivery to a Purchaser.
13. "Power pooling" means an agreement for aggregating or commingling the Long-term Power supplies of two or more Purchasers.
14. "Power Purchase Certificate" means the certificate required before a Purchaser enters into a Power Sales Contract under A.R.S. § 30-151 et seq.
15. "Power Sales Contract" means a contract under which the Authority sells Long-term Power to a Purchaser.
16. "Preference" means the priority of entitlement to Power according to A.R.S. § 30-125 or A.R.S. § 45-1708.
17. "Purchaser" means any Qualified Entity that contracts to purchase Power from the Authority under A.R.S. Title 30, Chapter 1 or under A.R.S. Title 45, Chapter 10.
18. "Qualified Entity" means any Entity that is eligible to purchase Power from the Authority under A.R.S. Title 30, Chapter 1 or A.R.S. Title 45, Chapter 10.
19. "Recapture" means the recovery or retaking by the Authority from a Purchaser of Long-term Power that exceeds the Purchaser's needs, for reallocation among other Qualified Entities.
20. "Relinquish" means a Purchaser's return of unneeded Power to the Authority.
21. "Secretary" means the person designated by the Commission to act as the official Secretary or as the Assistant Secretary of the Authority.
22. "Service Territory" means the geographic area in which Power is sold or used by a Purchaser and is described in a Power Purchase Certificate or an amendment to a Power Purchase Certificate.
23. "Short-term Power" means any supply of Power made available by or through the Authority for a period of no more than 366 consecutive days.
24. "Tender" means a Purchaser's offer to return unneeded Power to the Authority.
25. "Wheeling" means delivery of Power over the transmission system of another Entity.

Historical Note

Former Rule Article I. Not in original publication, correction, paragraph (5) (Supp. 75-1). Former Section R12-14-01 renumbered as Section R12-14-101 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-102. Repealed

Historical Note

Former Rule Article II. Former Section R12-14-02 renumbered as Section R12-14-102 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).

ARTICLE 2. AVAILABILITY OF LONG-TERM POWER; APPLICATION FOR ELECTRIC SERVICE; POWER PURCHASE CERTIFICATES

R12-14-201. Availability of Long-term Power; Contract Negotiations

- A. Except as provided in R12-14-401(B), if the Authority decides that a supply of Long-term Power is available, the Authority shall give public notice that it will receive applications for electric service from prospective Purchasers. The public notice shall include the date, time, and place for the public information Conference at which the Authority shall provide a preliminary proposal for the allocation and marketing of available Long-term Power.
 1. Existing Purchasers;
 2. Prospective Purchasers that notify the Authority of their interest in applying for Long-term Power; and
 3. Other Qualified Entities on the Authority's mailing list.
- B. The Authority shall give public notice of the date, time, and place for a public comment Conference to be held not more than 60 days after the date of the public information Conference held under subsection (A). An interested party may appear at the public comment Conference and present oral and written comments on the Authority's Long-term Power proposal provided at the public information Conference held under subsection (A).
- C. Public notice required by subsections (A) and (B) shall be mailed to:
 1. Existing Purchasers;
 2. Prospective Purchasers that notify the Authority of their interest in applying for Long-term Power; and
 3. Other Qualified Entities on the Authority's mailing list.
- D. Public notice required by subsections (A) and (B) shall be published in a newspaper of statewide circulation once each week for two consecutive weeks.
- E. A Qualified Entity wanting to enter into a Power Sales Contract shall file an application for electric service under R12-14-202. The application shall be filed on or before the due date specified in the Authority's notice of intent to receive applications for electric service.
- F. Not later than 60 days after the due date for filing an application for electric service, the Authority shall notify all interested parties of the names and addresses of the prospective Purchasers that are eligible to enter into a Power Sales Contract. The Authority shall include in the notice a proposed allocation of Long-term Power to the eligible prospective Purchasers.
- G. Not later than 90 days after notification of eligibility and of the proposed allocation, the Authority shall present a draft form of contract to each eligible prospective Purchaser and begin contract negotiations.
- H. After contract negotiations are completed, the Authority shall prepare Power Sales Contracts and fix a date for contract signing.
- I. In allocating Long-term Power, the Authority shall consider:
 1. The financial interest and obligation of the Authority; and
 2. The needs and interests of the Purchaser, customers of the Purchaser, and prospective Purchasers.
- J. Within each class of preference priorities established by A.R.S. § 30-125(A), the Authority shall allocate Long-term Power equitably among Qualified Entities in the same preference class based upon the needs of the Entities and the type of use of Long-term Power.

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- K.** In deciding whether to allocate or reallocate Long-term Power, the Authority shall consider other sources of Power available to the prospective Purchaser from the federal government.

Historical Note

Former Rule Article III. Not in original publication, correction, paragraph (5) (Supp. 75-1). Former Section R12-14-11 renumbered as Section R12-14-201 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-202. Application for Purchase of Electric Service

- A.** A Qualified Entity that desires to purchase Long-term Power shall file a written application for electric service with the Authority. The application shall include the following:
1. The Entity's proposed use of Long-term Power;
 2. The Point or Points of Delivery where the Entity will receive electric service;
 3. The annual energy requirement stated in kilowatt-hours, for each Point of Delivery;
 4. The maximum capacity requirement stated in kilowatts, for each Point of Delivery during a continuous 12-month period; and
 5. A statement of the Entity's kilowatt and kilowatt-hour sales or usage during each of the 24 months immediately preceding the date of the application, divided into reference classifications, such as residential, commercial, irrigation pumping, industrial, public use, or other classification used by the Entity or recognized in the electric utility industry.
- B.** An application form for electric service is available at the Authority's business office.
- C.** If the Authority determines that an applicant is eligible to enter into a Power Sales Contract for Long-term Power offered under A.R.S. Title 30, Chapter 1, the applicant, within 30 days after receipt of notice of eligibility, shall file an application for a Power Purchase Certificate under R12-14-203.
- D.** The holder of an existing Power Purchase Certificate is required to re-apply for a Power Purchase Certificate only if the holder wants to use the Long-term Power acquired under A.R.S. Title 30, Chapter 1, in a Service Territory that differs from the Service Territory described in the holder's existing Power Purchase Certificate.

Historical Note

Former Rule Article IV. Not in original publication, correction, Paragraph (6) (Supp. 75-1). Former Section R12-14-12 renumbered as Section R12-14-202 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-203. Power Purchase Certificates; Application

- A.** An application for a Power Purchase Certificate, or an application to amend an existing Power Purchase Certificate, shall be dated, signed, and verified by the applicant or the applicant's authorized representative. An original and five copies of the application and any documents, maps, or other written material to which reference is made in the application shall be filed with the Authority.
- B.** An application form for a Power Purchase Certificate is available at the Authority's business office.
- C.** The application shall include the information required by A.R.S. § 30-152 and the following:
1. A statement of the nature of the applicant's business, and applicant's legal status (for example, a corporation, a partnership, or other business type);

2. The applicant's mailing address;
 3. A detailed description of the proposed Service Territory;
 4. The name and mailing address of the principal executive officer or secretary of each Entity engaged in the distribution of Power within the proposed Service Territory or contiguous to the Proposed Service Territory;
 5. The estimated amount of Long-term Power for each use proposed by the applicant;
 6. Whether the applicant intends to sell Long-term Power on a profit or a non-profit basis;
 7. Whether the applicant intends to use Long-term Power for its own use, resell Long-term Power, or use and resell the Long-term Power;
 8. A detailed description of the applicant's Electric Power System for the use of Long-term Power;
 9. A copy of any agreement under which the applicant intends to use an Electric Power System owned by another Entity;
 10. The details of any plan under which the applicant proposes to construct, purchase, lease, or obtain the use of an Electric Power System for sale or distribution of Long-term Power; and
 11. An explanation of any arrangements with other Entities for the use of electrical equipment or facilities that the applicant needs in order to use Long-term Power. If any other Entity claims ownership of, or transmission rights on, any electric facilities to be used or if the applicant will duplicate another Entity's electric facilities, the applicant shall disclose that information. If the applicant's arrangements appear to conflict with the rights of another Entity, the applicant may file an affidavit signed by an authorized officer of the affected Entity, describing the affected Entity's agreement to the arrangements for the applicant's use.
- D.** When the application is filed, the Authority shall immediately set a date for a hearing under A.R.S. § 30-152.
- E.** A Power Purchase Certificate is in effect only during the time the holder of the Power Purchase Certificate has an existing Power Sales Contract with the Authority.
- F.** The holder of a Power Sales Contract shall use Power acquired under A.R.S. Title 30, Chapter 1 only in the Service Territory established by the legal description in the Power Purchase Certificate.
- G.** The holder of a Power Purchase Certificate shall not assign the Power Purchase Certificate without the prior written approval of the Authority.

Historical Note

Adopted effective November 1, 1993 (Supp. 93-4).
Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

ARTICLE 3. SERVICE TO PURCHASERS**R12-14-301. Authority's Service to Purchasers**

- A.** The Authority shall contract with a Purchaser to deliver Long-term Power only if transmission capability is available to ensure delivery of Long-term Power to the Purchaser at the Point or Points of Delivery to be designated in the Power Sales Contract. The Authority may also contract with a Purchaser to provide opportunities for connection between the Purchaser's Electric Power System and the Electric Power System of other Entities.
- B.** Before Long-term Power is made available to a Purchaser, the Purchaser shall provide evidence to the Authority that a transmission system is available to enable the Purchaser to take and receive Long-term Power at the locations and voltages designated by the Authority.

- C. Unless the Authority agrees to provide facilities or enter into agreements for the transmission of electric Power, the facilities or agreements must be provided by the Purchaser.
- D. The Authority may obtain an alternative or an additional source of transmission service to serve the needs of a Purchaser.
- E. The Purchaser shall pay any costs or expenses necessary to provide transmission service to the Purchaser.
- F. By agreement with one or more Purchasers, the Authority may construct electric lines and related facilities of the voltage and capacity needed to serve the Purchaser. The agreement must assure full payment by the users of the operating costs, depreciation and interest, and any other costs or expenses associated with the project, during a 40-year amortization period or other period established by law or contract. If the Authority constructs the facilities, the Authority shall determine the incremental costs to be paid by the Purchaser or other user benefitting from the facilities constructed by the Authority.
- G. With the aid of Purchasers, the Authority shall work to maintain a system of load scheduling and records so that the Authority may reasonably predict:
 1. A Purchaser's current and future Power needs;
 2. Whether a Purchaser should be allowed or required to relinquish Long-term Power that is surplus to the Purchaser's needs; and
 3. Whether a Purchaser will have Long-term Power that is temporarily or permanently surplus to the Purchaser's needs.
- H. The Authority shall periodically perform surveys to:
 1. Identify sources of Power or transmission service that may be temporarily or permanently available to the Authority;
 2. Identify possible markets for available Power resources; and
 3. Identify possible markets for recaptured, relinquished, tendered, or temporarily available surplus Long-term Power.

Historical Note

Former Rule Article V. Former Section R12-14-21 renumbered as Section R12-14-301 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-302. Systems and Operation Plans

For the Authority's information and assistance in the administration of its Power Sales Contracts, a Purchaser that does not manage and operate its own Electric Power System shall, at the Authority's request, submit a plan for the use and administration of Long-term Power. The Purchaser shall attach to the plan, maps, specifications, and agreements necessary to disclose the nature and extent of the plan.

Historical Note

Former Rule Article VI. Not in original publication, correction, subsections (C) and (D) (Supp. 75-1). Former Section R12-14-22 renumbered as Section R12-14-302 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-303. Repealed

Historical Note

Former Rule Article VII. Former Section R12-14-23 renumbered as Section R12-14-303 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).

ARTICLE 4. ADMINISTRATION OF POWER

R12-14-401. Sale, Use, Transfer, and Administration of Long-term Power

- A. A Purchaser shall not enter into an agreement for power pooling affecting Power under the Authority's jurisdiction without the prior written approval of the Authority. The Authority shall not unreasonably withhold approval.
- B. Subject to the terms of a Purchaser's Power Sales Contract, a Purchaser may tender or relinquish surplus Long-term Power to the Authority for resale by the Authority.
- C. The Authority shall use its best efforts to sell a Purchaser's tendered or relinquished Long-term Power and shall apply the net proceeds from the sale toward the Purchaser's payment obligations under the Purchaser's Power Sales Contract.
- D. Long-term Power tendered or relinquished to the Authority shall be returned to the Purchaser not more than 60 days after the Authority's receipt of the Purchaser's written notice that the Purchaser requires a return of the tendered or relinquished Long-term Power to meet the Purchaser's loads.
- E. The tender or relinquishment of Long-term Power shall not relieve the Purchaser of its obligations under its Power Sales Contract. The tender or relinquishment of Long-term Power shall not be deemed to be a recapture by the Authority unless:
 1. The tender or relinquishment is for the unexpired term of the Purchaser's Power Sales Contract; and
 2. The Authority has contracted to sell the tendered or relinquished Long-term Power to another Qualified Entity under the same terms and conditions as those contained in the Purchaser's Power Sales Contract.
- F. Subject to the terms of a Purchaser's Power Sales Contract, if the Long-term Power purchased from the Authority exceeds the Purchaser's electric load for three consecutive contract years, the Authority may recapture the excess Long-term Power as follows:
 1. The Authority shall give the Purchaser at least 30 days' written notice of a conference concerning the Authority's consideration of the possible recapture of Long-term Power;
 2. The Authority shall determine whether any portion of the Purchaser's Long-term Power allocation can reasonably be expected to exceed the Purchaser's future needs, and the Authority may recapture the excess portion;
 3. Subject to Article 6 of this Chapter, any recapture of Long-term Power is effective 60 days after the Purchaser receives a Notice of Recapture from the Authority, or at a later date specified in the Notice of Recapture; and
 4. Any recapture of Long-term Power reduces the Purchaser's allocation of Long-term Power by the amount of Long-term Power recaptured by the Authority.
- G. A Purchaser shall not transfer or assign a Power Sales Contract or any interest in a Power Sales Contract without prior written approval by the Authority. The transfer or assignment of a Power Sales Contract or any interest in a Power Sales Contract does not relieve the Purchaser from any obligation under the Purchaser's Power Sales Contract.
- H. The Authority shall not approve an assignment of a Power Sales Contract, or any interest in a Power Sales Contract that:
 1. Conflicts with any provision of law;
 2. Conflicts with the Authority's regulations;
 3. Conflicts with any provision of a Purchaser's Power Sales Contract;
 4. Disrupts established Power practices, an Electric Power System, or electric facilities;
 5. Results in an increased cost of service to other Purchasers; or
 6. Confers a preference upon an Entity not entitled to prefer-

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ence.

- I. The Authority shall not approve an assignment of a Power Sales Contract or an interest in a Power Sales Contract if the Authority determines that the assignment is discriminatory or that the Long-term Power or rights to Long-term Power should be recaptured by the Authority for reallocation, sale, or other disposition to other Qualified Entities.
- J. A Power Sales Contract may restrict or prohibit the wholesale sale or resale of Long-term Power by the Purchaser.
- K. The holder of a Power Purchase Certificate shall use Long-term Power only for the purposes and uses for which it is allocated and sold. Long-term Power allocated and sold under A.R.S. Title 30, Chapter 1 shall be used only within the Service Territory established in the Purchaser's Power Purchase Certificate, unless otherwise authorized in writing by the Authority. The Authority may authorize banking of electric energy and exchange of banked energy between Purchasers under terms and conditions approved by the Authority.

Historical Note

Former Rule Article VIII. Not in original publication, correction, subsection (G) (Supp. 75-1). Former Section R12-14-31 renumbered as Section R12-14-401 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-402. Changing Points of Delivery; Switching of Electric Service Among Points of Delivery

The Authority may allow a Purchaser to change its electric service from a Point of Delivery to another Point or Points of Delivery. Each Point of Delivery shall be a separate Point of Delivery for the Authority's billing purposes unless a new Point of Delivery replaces an existing Point of Delivery. A Purchaser cannot change or switch its electric service between the Purchaser's Points of Delivery and the Points of Delivery of other Purchasers without the prior written approval of the Authority.

Historical Note

Former Rule Article IX. Former Section R12-14-32 renumbered as Section R12-14-402 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-403. Wheeling and Operating Agreements

- A. A Purchaser who wants to enter into an agreement for power pooling or an agreement with another Entity with regard to power operations, transmission, or wheeling involving Long-term Power shall:
 1. Petition the Authority for permission to enter into an agreement;
 2. State in the petition all relevant facts and the reasons for the proposed agreement; and
 3. Give the Authority a copy of any proposed agreement and other information, data, and documents requested by the Authority.
- B. A Purchaser shall not enter into an agreement for the transmission or wheeling of Long-term Power over the facilities of another Entity without the prior written approval of the Authority.
- C. An operating agreement, transmission agreement, power pooling agreement, or wheeling agreement shall not be approved by the Authority if the agreement:
 1. Conflicts with the provisions of any Power Sales Contract;
 2. Results in disruption of established electric service, oper-

- ations, practices, systems, or facilities; or
- 3. Endangers electric service to other Purchasers, to third parties, or to the general public.

Historical Note

Former Rule Article X. Former Section R12-14-33 renumbered as Section R12-14-403 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-404. Disposition of Short-term Power

The Authority may negotiate and enter into contracts with Qualified Entities for the sale, purchase, exchange, or other disposition of Short-term Power.

Historical Note

Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-405. Petition For Information, Advice, or Assistance

- A. Under A.R.S. § 30-129 and A.R.S. Title 45, Chapter 10, any Entity may petition the Authority for information, advice, or assistance regarding any matter within the jurisdiction of the Authority. The petition shall be in writing and shall include:
 1. The names of all interested or affected Entities;
 2. The basis for the requested information, advice, or assistance;
 3. The location of any Project involved;
 4. The action requested of the Commission; and
 5. Other information or relevant matter that may assist the Commission in acting upon the petition.
- B. The Commission may direct the Authority staff or an Authority consultant to conduct preliminary studies, surveys, or investigations with respect to any requested action.
- C. If appropriate, the Commission shall schedule a Conference. The Authority shall notify all interested Entities that they may make an oral or written presentation and file documents, reports, or other material relevant to the requested action.

Historical Note

Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

ARTICLE 5. RECORDS**R12-14-501. Purchaser's Records**

At the request of the Authority, a Purchaser shall file copies of agreements for the purchase, sale, exchange, transmission, banking, power pooling, or wheeling of Long-term Power between the Purchaser and any Entity other than the Authority, together with all current rate schedules and amendments.

Historical Note

Former Rule Article XI. Former Section R12-14-41 renumbered as Section R12-14-501 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-502. Repealed**Historical Note**

Former Rule Article XII. Not in original publication, correction subsections (A) and (B) (Supp. 75-1). Former Section R12-14-42 renumbered as Section R12-14-502 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).

ARTICLE 6. CONFERENCES; APPEAL OF AGENCY ACTION**R12-14-601. Conferences**

- A. After first giving not less than 10 days' public notice and an opportunity to comment, the Commission may hold a Conference concerning any subject matter within the jurisdiction of the Authority. The Commission shall determine the Conference agenda. A Conference is intended to provide information and receive comments regarding any pending or proposed course of action by the Commission. A formal or binding action shall not be taken by the Commission at a Conference.
- B. Except as otherwise provided in these rules, the Commission shall establish the date, time, and place of any Conference and may continue, adjourn, or reschedule any Conference.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article I, adopted effective November 14, 1952, renumbered as Section R12-14-601 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Former Section R12-14-601 repealed; new Section R12-14-601 renumbered from R12-14-607 and amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-602. Repealed**Historical Note**

Correction, not in original publication; former Rules of Practice and Procedure, Article II, adopted effective November 14, 1952, renumbered as Section R12-14-602 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). Section repealed by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-603. General

- A. This article applies to any Appealable Agency Action 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 Arizona Power Authority at its office at 1810 W. Adams Street, Phoenix, Arizona, during normal business hours.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article III, adopted effective November 14, 1952, renumbered as Section R12-14-603 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-604. Definitions

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

- As used in this article, the terms "Commission" and "Administrative Law Judge" have the same meaning as in the relevant statutes and are used interchangeably.

- "Appealable Agency Action" means any decision or action by the Commission determining matters related to the allocation of and contracting for power resources and associated services marketed by the Commission.
- "Arizona Power Authority" or "Authority" means the agency established pursuant to title 30, chapter 1, article 1, Arizona Revised Statutes.
- "Commission" means the Arizona Power Authority Commission as established and organized pursuant to title 30, chapter 1, article 1, Arizona Revised Statutes.
- "Party" has the meaning described in A.R.S. § 41-1001(14).
- "Person" has the meaning described in A.R.S. § 41-1001(15).

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article IV, adopted effective November 14, 1952, renumbered as Section R12-14-604 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-605. 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 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:
- With the consent of the parties to the appeal, or
 - 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.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article V, adopted effective November 14, 1952, renumbered as Section R12-14-605 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-606. Notice of Appealable Agency Action

- A. The Authority shall serve notice of an Appealable Agency Action pursuant to A.R.S. § 41-1092.04. Pursuant to A.R.S. § 41-1092.03, the notice shall:
- Identify the statute or rule on which the action is based.
 - Include a description of any party's right to file a notice of appeal or to request a hearing on the Appealable Agency Action.
 - Include a description of any party's right to request an informal settlement conference pursuant to A.R.S. § 41-1092.06.

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- B.** Each Appealable Agency Action shall be posted to the Arizona Power Authority website within 48 hours after the action is taken. The posting shall constitute official notice of the action. The Authority 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. Otherwise, each person or entity which has participated in the process leading to the Appealable Agency Action shall be provided with written notice thereof, with notice at the Person's last address of record within five days of the notice being published on the Arizona Power Authority website.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article VI, adopted effective November 14, 1952, renumbered as Section R12-14-606 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-607. 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 Arizona Power Authority within 30 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 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. If requested, the Authority shall schedule an appeal hearing pursuant to this section.
- 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 Appealable Agency Action, including the name and address of each party;
 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).

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article VII, adopted effective

November 14, 1952, renumbered as Section R12-14-607 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section renumbered to R12-14-601 at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-608. 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.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article VIII, adopted effective November 14, 1952, renumbered as Section R12-14-608 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-609. 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.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article IX, adopted effective November 14, 1952, renumbered as Section R12-14-609 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-610. 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 claims an interest in the subject of the action and the person is so situated that disposition of the action may as a practical matter impair or impede the person's ability to protect that interest, unless the Person's interest is adequately represented by existing parties.
- 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 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 intervener status is a party to the appeal, while an amicus curiae is not. A person granted amicus curiae status shall serve its brief on the parties to the appeal.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article X, adopted effective November 14, 1952, renumbered as Section R12-14-610 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-611. 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 15 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. 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 A.R.S. § 41-1092.05.
- B. If an informal settlement conference is held, a person designated by the Commission shall represent the Commission at the conference. The Commission representative shall notify the appellant in writing that statements, either written or oral, 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.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article XI, adopted effective November 14, 1952, renumbered as Section R12-14-611 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-612. 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 of these subjects or
3. It is in writing, including facsimile or other electronic means, with copies to all Parties.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article XII, adopted effective November 14, 1952, renumbered as Section R12-14-612 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-613. 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 R12-14-615. 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 5 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.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article XIII, adopted effective November 14, 1952, renumbered as Section R12-14-613 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-615. Filing and Service of Documents

- A. Docket. The Authority shall open a docket for each Appealable Agency Action upon receipt of a notice of appeal or request for hearing. All documents filed in an Appealable Agency Action with the Authority other than by electronic means shall be date stamped on the day received by the Authority 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 Authority's caption and docket number.
- D.** Signature. A document filed with the Authority 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 Authority shall be served on all parties. Filing with the Authority and service shall be completed by personal delivery; first-class, certified or express mail; or facsimile or other electronic means.
- F.** Date of filing and service. A document is filed with the Authority on the date it is received by the Authority, as established by the Authority'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;
 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 Authority. Each party shall inform the Authority of any change of address within five days of the change. Such service may 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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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 Appealable Agency Actions 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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-618. Vacating a Hearing

The Commission may vacate a calendared hearing if:

1. The parties agree to vacate the hearing;
2. The Commission 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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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 similar 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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-620. Subpoenas

- A. Form. As provided by A.R.S. § 41-1092.07 and A.R.S. § 41-1092.10, any party may request a subpoena in writing from the Commission and shall include in the request:
1. The caption of the Appealable Agency Action;
 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 Arizona Power Authority 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 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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 Authority'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 supporting 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 Arizona Power Authority rule. Notwithstanding A.R.S. § 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this subsection or subsection (C).

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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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 party initiating the appeal 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 party initiating the appeal 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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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 Authority for any further action, or dismiss the appeal and conclude that there is a final action on the existing administrative record.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-629. Hearing Record

- A. Maintenance. The Commission shall maintain the official record of appeal and hearing.
- B. Transfer of record. Before the Commission makes a final administrative decision, 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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-630. Final Administrative Decisions; Review

- A. For purposes of this article, 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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-631. Rehearing or Review

- A.** A party may file a motion for rehearing within 30 days after service of the final administrative decision pursuant to A.R.S. § 41-1092.09.
- B.** Any other party may file a response to the motion for rehearing within 15 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 A.R.S. § 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 15 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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

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

- A.** Notification to the Arizona Power Authority. Within 10 days of filing a notice of appeal for judicial review of a final administrative decision, the party shall file a copy of the notice of appeal with the Arizona Power Authority. The Authority 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 Authority 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 Authority, together with one unbound copy.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).