

**SUBCHAPTER D: DISCOVERY**  
**§80.151 - 80.153, 80.155**  
**Effective May 3, 2012**

**§80.151. Discovery Generally**

(a) Discovery shall be conducted according to the Texas Rules of Civil Procedure, unless commission rules provide or the judge orders otherwise. The Rules of Civil Procedure shall be interpreted consistently with this chapter, the Texas Water Code, the Texas Health and Safety Code, and the APA. Drafts of prefiled testimony are not discoverable.

(b) Discovery in contested case hearings using prefiled testimony.

(1) This subsection is applicable to contested case hearings for applications which are subject to the jurisdiction of the State Office of Administrative Hearings (SOAH) under 1 TAC §155.151 (relating to Jurisdiction), except for

(A) contested case hearings using prefiled testimony where all discovery was completed before September 1, 2011;

(B) water ratemaking proceedings; and

(C) sewer ratemaking proceedings.

(2) All discovery on a party must be completed before the deadline for that party to submit its prefiled testimony.

(3) In cases where all parties share the same deadline for submission of prefiled testimony, a single deadline for completion of discovery shall apply to all parties.

(4) If parties have different deadlines for the submission of prefiled testimony, the deadline to complete discovery on a party shall be no later than the final deadline for that party to submit prefiled testimony. After a party's final deadline to submit its prefiled testimony in a contested case, that party is no longer subject to discovery from other parties in the case.

(5) The requirements of this subsection do not relieve a party's duty to supplement its discovery responses as required by Texas Rules of Civil Procedure §193.5 and §195.6.

(c) All other contested case hearings are governed by this section as it existed immediately before the effective date of this section and the rule is continued in effect for that purpose.

Adopted April 11, 2012

Effective May 3, 2012

**§80.152. Scope and Level of Discovery.**

(a) Any application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(b) The scope of permissible discovery in contested case hearings is limited to:

(1) any matter reasonably calculated to lead to the discovery of admissible evidence regarding any issue referred to the administrative law judge by the commission or that the administrative law judge has agreed to consider; and

(2) production of documents:

(A) reviewed or relied on in preparing application materials or selecting the site of the proposed facility; or

(B) relating to the ownership of the applicant or of the owner or operator of the facility or proposed facility.

(c) The level of discovery for all contested case hearings shall be Level 3 under Texas Rules of Civil Procedure (TRCP) 190.4. However, the administrative law judge shall set an appropriate limit on the time for depositions and the number of interrogatories, provided that the total time per side for oral depositions may not exceed 50 hours and the total number of written interrogatories that any party may serve on any other party may not exceed 25. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated.

Adopted September 2, 1999

Effective September 23, 1999

**§80.153. Issuance of Subpoena or Commission To Take Deposition.**

(a) Upon proper request by a party, the judge shall issue subpoenas and commissions to take depositions according to the APA. A request for issuance shall be filed with the chief clerk, and a copy shall be served on the judge and the parties.

(b) Before seeking issuance of either a subpoena or commission, the requestor shall attempt to secure voluntary appearance of the witness or production of materials. If this is not possible, the requestor shall indicate what circumstances prevent such voluntary appearance or production in the request.

(c) If the requestor and witness sign an Agreement to Waive Fee form, subpoenas and commissions may be issued without a witness fee deposit. Only a non-party witness or deponent is entitled to receive this fee to the extent provided in §80.21 of this title (relating to Witness Fees).

(d) If the witness fee is not waived, the requestor shall make the witness fee deposit in the appropriate amount as indicated on the forms requesting issuance. This amount is based on an estimate of the mileage to be traveled to and from the hearing or deposition, if over 25 miles, and days expected to be spent in the hearing or deposition. This deposit should be made payable to the commission and should be filed with chief clerk and must be made before issuance of the subpoena or commission.

(e) Upon deposit of all necessary monies and completion of all forms, the subpoena or commission shall be issued to the requestor to effect service.

(f) If a subpoena or commission to take deposition is served on an agency employee, the executive director's legal staff may participate in defending the deposition.

Adopted October 24, 2001

Effective November 15, 2001

**§80.155. Form of Subpoena.**

The heading of the subpoena shall be "The State Office of Administrative Hearings." It shall state the style of the hearing, that the hearing is pending before SOAH, the time and place at which the witness is required to appear, and the party at whose insistence the witness is summoned. It shall be signed by the judge, but need not be under the seal of SOAH and the date of issuance shall be noted thereon. It may be made returnable forthwith, or on any date for which hearing of the docketed matter may be set. It shall be addressed to any sheriff or constable of the State of Texas or other person authorized to serve subpoenas as provided in Rule 178, Texas Rules of Civil Procedure.

Adopted May 8, 1996

Effective June 6, 1996

**Derivation Table**  
**Rule Log No. 95123-263-AD**  
**Procedural Rules**  
**Adopted May 8, 1996**  
**Effective June 6, 1996**

**Chapter 80 - Contested Case Hearing**  
**Subchapter D: Discovery**

This table is to be used to track sections after rule revisions. The column on the left should list the sections after the revision. The column on the right should list where the section was prior to the revision.

<b>New Section</b>	<b>Old Section</b>
80.151	337.37
80.153	265.84
80.155	265.85