The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§55.201, 55.209, 55.253, and 55.254.

**Background and Summary of the Factual Basis for the Proposed Rules**

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency which have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A – E; Chapter 50, Subchapters A – C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28,
2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission is proposing, in a concurrent rulemaking, to repeal obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references. Additionally, on August 14, 2019, the commission determined that the rules regarding voluntary emission reduction permits in 30 TAC Chapter 116 are also obsolete and no longer needed because the expiration dates and application deadlines in those rules have passed (August 30, 2019, issue of the Texas Register (44 TexReg 4750)). The repeal of the obsolete rules in Chapter 116, in which Revisions to the State Implementation Plan (SIP) are not necessary, will be addresses in a separate rulemaking (Rule Project Number 2020-001-116-AI).

As part of this rulemaking, the commission is concurrently proposing amendments in 30 TAC Chapters 33, 35, 39, 50, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the proposed repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to proposed new Chapter 39, Subchapter P. Proposed amendments to §§55.201, 55.209, 55.253, and 55.254 would remove or update
The commission is also concurrently proposing amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the proposed repeals for which revisions to the SIP are also necessary (Rule Project Number 2019-120-039-LS).

The public’s opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes such as grammatical corrections. These changes are non-substantive and generally are not specifically discussed in this preamble.

Subchapter F: Requests for Reconsideration or Contested Case Hearing

§55.201, Requests for Reconsideration or Contested Case Hearing

The commission proposes to amend §55.201(i)(3)(A) to remove the reference to voluntary emission reduction permits because the commission no longer issues these permits.

§55.209, Processing Requests for Reconsideration and Contested Case Hearing
The commission proposes to amend §55.209(d) by updating the reference from the commission's Office of Public Assistance to the External Relations Division.

Subchapter G: Requests for Contested Case Hearing and Public Comment on Certain Applications

§55.253, Public Comment Processing

The commission proposes to amend §55.253(a) by removing the outdated reference to the commission’s Office of Public Assistance, which no longer exists. In addition, the commission proposes to remove obsolete text in subsection (b)(1), and re-designate subsection (b)(1)(A) and (B) as subsection (b)(1) and (2). Additionally, the commission proposes to re-designate current subsection (b)(2) as subsection (c).

The commission also proposes to amend re-lettered §55.253(c) by updating the references from the commission's Office of Public Assistance and designated office to the Office of Chief Clerk or the executive director.

§55.254, Hearing Request Processing

The commission proposes to amend §55.254(e) by updating the reference from the commission’s Office of Public Assistance to the External Relations Division.
Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

This rulemaking, concurrently proposed with amendments in various other chapters to address necessary rule updates, will remove the obsolete text as mentioned in this preamble.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be improved readability and minimized confusion with regard to applicable rules. The rulemaking does not remove or add any current requirements regarding public participation for certain types of permit applications. The proposed amendments are not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does
not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking applies state-wide to all applicants for certain types of permit applications and the public and communities interested in those applications. The change will minimize confusion with regard to applicable rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect. This rulemaking addresses the removal of obsolete text.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years
the proposed rules are in effect.

**Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state’s economy.

**Draft Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity,
competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments of §§55.201, 55.209, 55.253, and 55.254 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking removes obsolete text to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments of §§55.201, 55.209, 55.253, and 55.254 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas
Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

**Takings Impact Assessment**

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments of §§55.201, 55.209, 55.253, and 55.254 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

**Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or authorization
identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6).
Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

Written comments on the consistency of this rulemaking with the CMP goals and policies may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

**Effect on Sites Subject to the Federal Operating Permits Program**
Sections 55.201, 55.209, 55.253, and 55.254 are not applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission amends these rules.

**Announcement of Hearing**
The commission will hold a public hearing on this proposal in Austin on December 10, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission’s central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal.
30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

**Submittal of Comments**

Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: [https://www6.tceq.texas.gov/rules/ecomments/](https://www6.tceq.texas.gov/rules/ecomments/). File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-121-033-LS. The comment period closes on December 16, 2019. Copies of the proposed rulemaking can be obtained from the commission’s website at [https://www.tceq.texas.gov/rules/propose_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Amy Browning, Environmental Law Division, at (512) 239-0891.
SUBCHAPTER F: REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

§55.201, §55.209

Statutory Authority
The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to
control the quality of the state's air; and THSC, §382.059, which authorized certain permit applications to be filed prior to September 1, 2001. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;
(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment, and, for applications filed on or after September 1, 2015, must be based only on the requestor's timely comments.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime
telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) for applications filed:

(A) before September 1, 2015, list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; or
(B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the commission’s determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director’s responses to the requestor’s comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and

(5) provide any other information specified in the public notice of application.

(e) Any person, other than a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title (relating to Definitions), may file a request for reconsideration of the executive director’s decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. The request for reconsideration must expressly state that the person is
requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.
(h) Any person, except the applicant, the executive director, the public interest counsel, and a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);
(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

   (A) initial issuance of [a voluntary emission reduction permit or] an electric generating facility permit;

   (B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits Program);

   (C) a permit issued under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions); or

   (D) amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a
recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;
(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant’s compliance history for the previous five years raises no issues regarding the applicant’s ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine from Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.025, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;
(8) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-injection Units Registration);

(9) an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018;

(10) other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law; and

(11) an application for a production area authorization, except as provided in accordance with §331.108 of this title (relating to Opportunity for a Contested Case Hearing on a Production Area Authorization Application).

§55.209. Processing Requests for Reconsideration and Contested Case Hearing.

(a) This section and §55.211 of this title (relating to Commission Action on Requests for Reconsideration or Contested Case Hearing) apply only to requests for reconsideration and contested case hearing that are timely filed.
(b) After the final deadline to submit requests for reconsideration or contested case hearing, the chief clerk shall process any requests for reconsideration or hearing by both:

(1) referring the application and requests for reconsideration or contested case hearing to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the requestors; and

(2) scheduling the hearing request and request for reconsideration for a commission meeting. However, if only a request for reconsideration is submitted and the commission has delegated its authority to act on the request to the general counsel, the request for reconsideration shall be scheduled for a commission meeting only if the general counsel directs the chief clerk to do so. The chief clerk should try to schedule the requests for a commission meeting that will be held approximately 44 days after the final deadline for timely filed requests for reconsideration or contested case hearing.

(c) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and all timely commenters and requestors at least 35 days before the first meeting at which the commission considers the requests. The notice
shall explain how to participate in the commission decision, describe alternative
dispute resolution under commission rules, and explain the relevant requirements of
this chapter.

(d) The executive director, the public interest counsel, and the applicant may
submit written responses to the requests no later than 23 days before the commission
meeting at which the commission will evaluate the requests. Responses shall be filed
with the chief clerk[,] and served on the same day to the executive director, the public
interest counsel, the director of the External Relations Division [Office of Public
Assistance], the applicant, and any requestors.

(e) Responses to hearing requests must specifically address:

(1) whether the requestor is an affected person;

(2) which issues raised in the hearing request are disputed;

(3) whether the dispute involves questions of fact or of law;

(4) whether the issues were raised during the public comment period;
(5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director’s Response to Comment;

(6) whether the issues are relevant and material to the decision on the application; and

(7) a maximum expected duration for the contested case hearing.

(f) Responses to requests for reconsideration should address the issues raised in the request.

(g) The requestors may submit written replies to a response no later than nine days before the commission meeting at which the commission will evaluate the request for reconsideration and contested case hearing. A reply shall be filed with the chief clerk[,] and served on the same day to the executive director, the public interest counsel, and the applicant.
SUBCHAPTER G: REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT ON CERTAIN APPLICATIONS

§55.253, §55.254

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and
duties to control the quality of the state's air. In addition, the amendments are also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§55.253. Public Comment Processing.

(a) The chief clerk shall deliver or mail to the applicant, the executive director, the public interest counsel, [the Office of Public Assistance,] and the Alternative Dispute Resolution Office, copies of all documents filed with the chief clerk in response to public notice of an application.

(b) The commission may designate an agency office to process public comment under this subsection.

[(1) The Office of Public Assistance may evaluate and respond to public comment and hearing requests, when appropriate.]

[(1) [(A)] If the application and timely hearing requests are]
considered by the commission, the designated office will prepare any required
response to public comment, no later than ten days before the commission meeting at
which the commission will evaluate the hearing requests. The response shall be made
available to the public and filed with the chief clerk.

(2) [(B)] If the application is approved by the executive director
under Chapter 50, Subchapter G of this title (relating to Action by the Executive
Director), any required response to public comment should be made no later than the
time of the executive director's action on the application.

(c) [(2)] The Office of Chief Clerk or the executive director [Public
Assistance] shall hold a public meeting when there is a significant degree of public
interest or when otherwise appropriate to assure adequate public participation. A
public meeting is intended for the taking of public comment[,] and is not a contested
case under the APA. The applicant shall attend any such public meeting held by the
Office of the Chief Clerk or the executive director. The executive director [designated
office. When the designated office holds a public meeting it] shall respond to public
comment either by giving an immediate oral response at the public meeting or by
preparing a written response. The response shall be made available to the public.
§55.254. Hearing Request Processing.

(a) The requirements in this section and §55.255 of this title (relating to Commission Action on Hearing Request) apply only to hearing requests that are filed within the time period specified in §55.251(d) of this title (relating to Requests for Contested Case Hearing, Public Comment).

(b) The executive director shall file a statement with the chief clerk indicating that technical review of the application is complete. The executive director will file the statement with the chief clerk either before or after public notice of the application is issued.

(c) After a hearing request is filed and the executive director has filed a statement that technical review of the application is complete, the chief clerk shall process the hearing request by both:

(1) referring the application and hearing request to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the person making the request for hearing; and
(2) scheduling the hearing request for a commission meeting. The chief clerk shall attempt to schedule the request for a commission meeting that will be held approximately 44 days after the later of the following:

   (A) the deadline to request a hearing specified in the public notice of the application; or

   (B) the date the executive director filed the statement that technical review is complete.

   (d) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making a timely hearing request at least 35 days before the first meeting at which the commission considers the request. The chief clerk shall explain how the person may submit public comment to the executive director, describe alternative dispute resolution under commission rules, explain that the agency may hold a public meeting, and explain the requirements of this chapter.

   (e) The executive director, the public interest counsel, and the applicant may submit written responses to the hearing request no later than 23 days before the commission meeting at which the commission will evaluate the hearing request. Responses shall be filed with the chief clerk, and served on the same day to the
applicant, the executive director, the public interest counsel, the External Relations Division [Office of Public Assistance], and any persons filing hearing requests.

(f) The person who filed the hearing request may submit a written reply to a response no later than nine days before the scheduled commission meeting at which the commission will evaluate the hearing request. A reply may also contain additional information responding to the letter by the chief clerk required by subsection (d) of this section. A reply shall be filed with the chief clerk[,] and served on the same day to the executive director, the public interest counsel, and the applicant.

(g) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to the State Office of Administrative Hearings (SOAH) for a hearing on the application. If a request is filed under this subsection, the commission's scheduled consideration of the hearing request will be canceled. An application may only be sent to SOAH under this subsection if the executive director, the applicant, the public interest counsel and all timely hearing requestors agree on a list of issues and a maximum expected duration of the hearing.