

SUBCHAPTER A: GENERAL RULES

**§§80.1, 80.3 - 80.6, 80.9, 80.11, 80.13, 80.15, 80.17, 80.19, 80.21, 80.23,
80.25, 80.27, 80.29, 80.31, 80.33
Effective December 31, 2015**

§80.1. Applicability and Purpose.

Except as provided in this chapter, this chapter applies to and provides procedures for all contested case hearings and other hearings held by SOAH.

Adopted September 2, 1999

Effective September 23, 1999

§80.3. Judges.

(a) Applicability and delegation.

(1) Any application that is declared administratively complete before September 1, 1999 is subject to this section.

(2) The commission delegates to SOAH the authority to conduct hearings designated by the commission.

(b) The chief administrative law judge will assign judges to hearings. When more than one judge is assigned to a hearing, one of the judges will be designated as the presiding judge and shall resolve all procedural questions. Evidentiary questions will ordinarily be resolved by the judge sitting in that phase of the case, but may be referred by that judge to the presiding judge.

(c) Judges shall have authority to:

(1) set hearing dates;

(2) convene the hearing at the time and place specified in the notice for the hearing;

(3) establish the jurisdiction of the commission;

(4) rule on motions and on the admissibility of evidence and amendments to pleadings;

(5) designate and align parties and establish the order for presentation of evidence, except that the executive director and the public interest counsel shall not be aligned with any other party;

(6) examine and administer oaths to witnesses;

(7) issue subpoenas to compel the attendance of witnesses, or the production of papers and documents;

(8) authorize the taking of depositions and compel other forms of discovery;

(9) set prehearing conferences and issue prehearing orders;

(10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing any rights of parties to the proceeding;

(11) limit testimony to matters under the commission's jurisdiction;

(12) continue any hearing from time to time and from place to place;

(13) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to make the record more complete;

(14) impose appropriate sanctions;

(15) issue interim rate orders under Texas Water Code, Chapter 13;

(16) exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

Adopted September 2, 1999

Effective September 23, 1999

§80.4. Judges.

(a) Applicability and delegation is as follows:

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

(2) The commission delegates to the State Office of Administrative Hearings (SOAH) the authority to conduct hearings designated by the commission.

(b) The chief administrative law judge will assign judges to hearings. When more than one judge is assigned to a hearing, one of the judges will be designated as the presiding judge and shall resolve all procedural questions. Evidentiary questions will ordinarily be resolved by the judge sitting in that phase of the case, but may be referred by that judge to the presiding judge.

(c) Judges shall have authority to:

- (1) set hearing dates;
- (2) convene the hearing at the time and place specified in the notice for the hearing;
- (3) establish the jurisdiction of the commission;
- (4) rule on motions and on the admissibility of evidence and amendments to pleadings;
- (5) designate and align parties and establish the order for presentation of evidence, except that the executive director and the public interest counsel shall not be aligned with any other party;
- (6) examine and administer oaths to witnesses;
- (7) issue subpoenas to compel the attendance of witnesses, or the production of papers and documents;
- (8) authorize the taking of depositions and compel other forms of discovery;
- (9) set prehearing conferences and issue prehearing orders;
- (10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing any rights of parties to the proceeding;
- (11) limit testimony to matters under the commission's jurisdiction;
- (12) continue any hearing from time to time and from place to place;

(13) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to make the record more complete;

(14) impose appropriate sanctions;

(15) issue interim rate orders under Texas Water Code, Chapter 13;

(16) consider additional issues beyond the list referred by the commission when:

(A) the issues are material;

(B) the issues are supported by evidence; and

(C) there are good reasons for the failure to supply available information regarding the issues during the public comment period;

(17) for permit applications filed before September 1, 2015, or applications not referred under Texas Water Code, §5.556 or §5.557, extend the proceeding beyond the maximum expected completion date if:

(A) the judge determines that failure to grant an extension would deprive a party of due process or another constitutional right; or

(B) by agreement of the parties;

(18) for permit applications filed on or after September 1, 2015, and referred under Texas Water Code, §5.556 or §5.557, extend the proceeding beyond 180 days after the first day of the preliminary hearing or on an earlier date specified by the commission if:

(A) the judge determines that failure to grant an extension would unduly deprive a party of due process or another constitutional right; or

(B) by agreement of the parties with approval of the judge; and

(19) exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

(d) For the purposes of subsection (c)(17) and (18) of this section, a political subdivision has the same constitutional rights as an individual.

Adopted December 9, 2015

Effective December 31, 2015

§80.5. Referral to SOAH.

(a) Any application that is declared administratively complete before September 1, 1999 is subject to this section. When a case is referred to SOAH, the chief clerk shall:

- (1) file with SOAH a Request for Setting of Hearing form, or Request for Assignment of Administrative Law Judge form, whichever is appropriate;
- (2) coordinate with SOAH to determine a time and place for hearing;
- (3) issue public notice of the hearing as required by law and commission rules; and
- (4) send a copy of the chief clerk's case file to SOAH.

(b) The commission shall provide to the judge a list of issues or areas that must be addressed. In addition, the commission may identify and provide additional issues or areas that must be addressed to the judge, or may limit issues or areas to be addressed, at any time. In an enforcement case, the executive director's petition or EDPR shall serve as the list of issues or areas that must be addressed.

Adopted September 2, 1999

Effective September 23, 1999

§80.6. Referral to SOAH.

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

(b) When a case is referred to the State Office of Administrative Hearings (SOAH), the chief clerk shall:

- (1) file with SOAH a Request for Setting of Hearing form, or Request for Assignment of Administrative Law Judge form, whichever is appropriate;
- (2) coordinate with SOAH to determine a time and place for hearing;
- (3) issue public notice of the hearing as required by law and commission rules;
- (4) for applications filed before September 1, 2015, or applications not referred under Texas Water Code, §5.556 or §5.557, send a copy of the chief clerk's case

file to SOAH which, in permitting matters, shall include certified copies of the following documents:

(A) the documents described in §80.118 of this title (relating to Administrative Record); and

(B) for cases referred under §55.210 of this title (relating to Direct Referrals) any public comment and the executive director's response to comments to be included in the administrative record, except that these documents may be sent to SOAH after referral of the case, if they are filed subsequent to referral;

(5) for applications filed on or after September 1, 2015, and referred under Texas Water Code, §5.556 or §5.557, which are referred for hearing by the commission, file with SOAH the administrative record described in §80.118 of this title; and

(6) send the commission's list of disputed issues and maximum expected duration of the hearing to SOAH unless the case is referred under §55.210 of this title.

(c) In an enforcement case, the executive director's petition or Executive Director Preliminary Report shall serve as the list of issues or areas that must be addressed.

(d) When a case is referred to SOAH, only those issues referred by the commission or added by the judge under §80.4(c)(16) of this title (relating to Judges) may be considered in the hearing. The judge shall provide proposed findings of fact and conclusions of law only on those issues. This subsection does not apply to a case referred under §55.210 of this title.

Adopted December 9, 2015

Effective December 31, 2015

§80.9. Representation at Hearings.

(a) A representative of record is one who has appeared in a proceeding or whose name is subscribed to any application, petition, or other pleading or to some agreement of the parties filed in the proceedings. The representative shall be the representative of record until the end of the proceeding unless there is a statement to the contrary appearing in the record.

(b) Not more than one representative for each party or aligned group of parties shall be heard on any question or in the hearing except upon leave of the judge.

(c) Representatives shall:

(1) observe the letter and spirit of the Texas Lawyer's Creed, as adopted by the Texas Supreme Court, and the State Bar of Texas' Texas Disciplinary Rules of Professional Conduct, including those provisions concerning improper ex parte communications with the commissioners and judges;

(2) advise their clients and witnesses of applicable requirements of conduct and decorum;

(3) direct all objections, arguments, and other comments to the judge and not to other participants.

Adopted May 8, 1996

Effective June 6, 1996

§80.11. Conduct and Decorum.

(a) Those who attend or participate in hearings should conduct themselves in a manner respectful of the conduct of public business, and conducive to orderly and polite discourse. All those in attendance shall comply with the judge's directions concerning the offer of public comment, and conduct and decorum.

(b) In a hearing before a judge, the judge shall first warn a person violating this section to refrain from the specific conduct in violation. Upon further violation of this section by the same person, the judge may exclude that person from the proceeding for such time and under such conditions as necessary to correct the situation. Violation of this section shall also be sufficient cause for the judge to recess the hearing.

Adopted May 8, 1996

Effective June 6, 1996

§80.13. Consolidation and Severance of Issues and Parties.

(a) Consolidation. Consistent with notices required by law, the judge may consolidate related cases or claims if consolidation will not prejudice any party and may save time and expense or otherwise benefit the public interest and welfare. With the judge's permission, the executive director may consolidate cases or claims, including those involving different media or persons. The commission may, when referring matters to SOAH, direct that cases or claims be consolidated for hearing.

(b) Severance. The judge may sever issues in a proceeding or hold special hearings on separate issues if doing so will not prejudice any party and may save time and expense or benefit the public interest and welfare. The judge may sever contested enforcement cases or claims involving any number of parties, upon motion by any respondent, where the respondent can show that he would be unduly prejudiced if severance were not granted.

Adopted May 8, 1996

Effective June 6, 1996

§80.15. Ex Parte Communications.

(a) No ex parte communications. Unless required for the disposition of an ex parte matter authorized by law, during the pendency of a contested case either at SOAH or before the commission, no party, person, or their representatives shall communicate directly or indirectly with any commissioner or the judge concerning any issue of fact or law relative to the pending case, except on notice and opportunity for all parties to participate.

(b) Utilizing special skills of the commission. The judge may seek the special skills or knowledge of commission staff in evaluating the evidence in a contested case. The judge shall follow the following procedure.

(1) The judge shall issue an order, copied to all parties, asking the executive director to assign a staff person with expertise who has not participated in the proceeding or in the processing of the matter being considered for potential consultation.

(2) All communications between the designated staff expert and the judge shall be either recorded or in writing, and all such communications submitted to or considered by the judge shall be made available as public records when the proposal for decision is issued.

(3) During the pendency of the case either before the judge or at the commission, no party, person, or their representatives shall communicate directly or indirectly with the designated staff expert assigned to help the judge concerning any issue of fact or law relative to the pending case, except on notice and opportunity for all parties to participate.

Adopted May 8, 1996

Effective June 6, 1996

§80.17. Burden of Proof.

(a) The burden of proof is on the moving party by a preponderance of the evidence, except as provided in subsections (b) - (d) of this section.

(b) Section 291.136 of this title (relating to Burden of Proof) governs the burden of proof in a proceeding related to a petition to review rates charged pursuant to a written contract for the sale of water for resale filed under Texas Water Code, Chapter 11.

(c) In an enforcement case, the executive director has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed technical ordering provisions. The respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. Any party submitting facts relevant to the factors prescribed by the applicable statute to be considered by the commission in determining the amount of the penalty has the burden of proving those facts by a preponderance of the evidence.

(d) In contested cases regarding a permit application filed with the commission on or after September 1, 2015, and referred under Texas Water Code, §5.556 or §5.557:

(1) the filing of the administrative record as described in §80.118(c) of this title (relating to Administrative Record) establishes a prima facie demonstration that the executive director's draft permit meets all state and federal legal and technical requirements, and, if issued consistent with the executive director's draft permit, would protect human health and safety, the environment, and physical property;

(2) a party may rebut the presumption in paragraph (1) of this subsection by presenting evidence regarding the referred issues demonstrating that the draft permit violates a specifically applicable state or federal legal or technical requirement; and

(3) if a rebuttal case is presented by a party under paragraph (2) of this subsection, the applicant and executive director may present additional evidence to support the executive director's draft permit.

Adopted December 9, 2015

Effective December 31, 2015

§80.19. Audio Recording of Proceedings.

The judge shall record each proceeding on audio cassette tape. Any person may obtain a copy of the tape recording from the judge or, after conclusion of the hearing, may submit a request to the chief clerk accompanied by payment of all reproduction costs.

Adopted May 8, 1996

Effective June 6, 1996

§80.21. Witness Fees.

(a) A person who is not a party and is compelled to attend any hearing or proceeding or to produce books, records, papers, or other objects is entitled to receive mileage reimbursement if the location of the hearing or proceeding is more than 25

miles from the person's place of residence. Reimbursement shall be at the current rate for state employees. The person is also entitled to receive a minimum fee of \$70 or the amount equal to state employees' current maximum travel reimbursement for overnight lodging plus meals, whichever is greater, for each day or part of a day the person is necessarily present as a witness or deponent. This fee shall be paid to the witness or deponent even if overnight lodging is not used, and the fee shall not be prorated for parts of days. A witness or deponent who is an agency employee may only receive travel expenses, to the extent allowed by applicable law and commission policy.

(b) Mileage and fees to which a witness is entitled under this section shall be paid by the party at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the judge.

Adopted October 24, 2001

Effective November 15, 2001

§80.23. Transcriptions of Hearings.

(a) Official court reporter. Consistent with its court reporting services agreement, the commission will provide a certified court reporter to make a verbatim record and transcript of any commission meeting, hearing, or other proceeding upon the timely request of any person. The court reporter provided by the commission shall be the official reporter for commission proceedings. If the commission does not provide a court reporter a party may, at its own expense, furnish a certified court reporter whom the commission may designate as the official reporter for the proceeding.

(b) Requests for court reporter services.

(1) A request for a verbatim record or transcript of a proceeding may be submitted at any time, but shall be submitted in writing to the chief clerk or the judge and shall specify: the name, mailing address, and daytime telephone number of the requester; the name and date of the commission proceeding; and a statement of whether a transcript is requested. A request for a transcript of a proceeding already reported may be made directly to the court reporter.

(2) A person requesting a verbatim record without a transcript of a proceeding shall pay the applicable reporting fees in the commission's court reporting services agreement.

(3) A person requesting a transcript of a proceeding shall pay for at least an original and two copies of the transcript in addition to any applicable reporting fees in accordance with the commission's court reporting services agreement. The court reporter shall provide the commission the original and one copy of the transcript free of charge.

(4) Upon his or her own motion, the judge may request a verbatim record and an original and two copies of a transcript of a proceeding.

(5) The judge may require the applicant to pay for the transcript in advance subject to reimbursement from other parties upon assessment of costs.

(c) Cancellation of court reporter services. A person who causes the judge or commission to cancel a hearing or meeting for which a verbatim record or transcript has been requested is responsible for paying the court reporter, upon demand, the full daily reporting fee in the commission's court reporting services agreement unless the cancellation occurs more than 24 hours before the scheduled beginning of the hearing or meeting.

(d) Assessment of reporting and transcription costs.

(1) Upon the timely filed motion of a party or upon its own motion, the commission may assess reporting and transcription costs to one or more of the parties participating in the proceeding. The commission shall consider the following factors in assessing reporting and transcription costs:

(A) the party who requested the transcript;

(B) the financial ability of the party to pay the costs;

(C) the extent to which the party participated in the hearing;

(D) the relative benefits to the various parties of having a transcript;

(E) the budgetary constraints of a state or federal administrative agency participating in the proceeding;

(F) in rate proceedings, the extent to which the expense of the rate proceeding is included in the utility's allowable expenses; and

(G) any other factor which is relevant to a just and reasonable assessment of costs.

(2) The commission will not assess reporting or transcription costs to statutory parties who are precluded by law from appealing any ruling, decision, or other act of the commission.

(3) In any proceeding where the assessment of reporting or transcription costs is an issue, the judge shall provide the parties an opportunity to present evidence and argument on the issue. A judge shall include in the proposal for decision a recommendation for the assessment of costs.

(4) The parties may agree upon the division or assessment of reporting and transcription costs. The terms of such an agreement shall be made part of the record of the proceeding.

(e) Payment of reporting or transcription assessment.

(1) Each party assessed a reporting or transcription cost in a commission proceeding shall pay the assessment in full within ten days after the commission's order is final, as provided by the APA. The assessment shall be paid by check payable to the order of the court reporter firm that reports or transcribes the proceeding, or as otherwise ordered by the commission. Payment shall be remitted to the chief clerk of the commission or as otherwise ordered by the commission.

(2) If a party fails to pay the assessment under subsection (a) of this section, the commission may forward the matter to the attorney general of Texas for prosecution and collection.

(3) Upon a party's filing a sworn motion showing good cause for failure to pay its assessment under subsection (a) of this section, accompanied by tender of payment of the party's assessment in full, the commission may grant an exception to the time within which payment must have been made under subsection (a) of this section, accept the payment, and otherwise enforce its assessment.

(f) Sale of transcript copies. The court reporter may sell copies of a transcript of a commission proceeding in accordance with the commission's court reporting services agreement, but the commission shall not be precluded from complying with the Public Information Act.

Adopted May 8, 1996

Effective June 6, 1996

§80.25. Withdrawing the Application.

(a) An applicant may file a request to withdraw its application at any time before the proposal for decision is issued.

(b) If the request is to withdraw the application with prejudice, the judge shall remand the application and request to the executive director, who shall enter an order dismissing the application with prejudice.

(c) If the parties agree in writing to the withdrawal of the application without prejudice or if the request to withdraw is filed before parties are named, the judge shall remand the application and request to the executive director, who shall enter an order dismissing the application without prejudice, on the terms agreed to by the parties, or by the applicant, executive director, and public interest counsel if no parties have been named.

(d) If neither subsection (b) nor (c) of this section apply, the judge will forward the application, the request, and a recommendation on the request to the commission.

(e) An applicant is entitled to an order dismissing an application without prejudice if:

(1) the parties, or the applicant, executive director, and public interest counsel if no parties have been named, agree in writing;

(2) the applicant reimburses the other parties all expenses, not including attorney's fees, that the other parties have incurred in the permitting process for the subject application; or

(3) the commission authorizes the dismissal of the application without prejudice.

(f) An application filed before September 1, 2015, for which chief clerk has mailed the executive director's notice of preliminary decision and Notice of a Draft Permit under §39.419 of this title (relating to Notice of Application and Preliminary Decision) that is subsequently withdrawn by the applicant, are governed by the commission's rules as they existed immediately before September 1, 2015, and those rules are continued in effect for that purpose if the application is refiled with the commission and the executive director determines the refiled application is substantially similar to the withdrawn application. For purposes of making this determination, the executive director may consider the following information contained in the withdrawn application and the refiled application:

(1) the name of the applicant;

(2) the location or proposed location of the construction, activity, or discharge, to be authorized by the application;

(3) the air contaminants to be emitted;

(4) the area to be served by a wastewater treatment facility;

(5) the volume and nature of the wastewater to be treated by a wastewater treatment facility;

(6) the volume and type of waste to be disposed;

(7) changes in methods of treatment or disposal of waste; or

(8) any other factor the executive director determines is relevant to this determination.

Adopted December 9, 2015

Effective December 31, 2015

§80.27. Form of Pleadings.

(a) All pleadings filed under this chapter should contain:

(1) the name of the party;

(2) the names of all other known parties;

(3) a concise statement of the facts and the law relied upon;

(4) a prayer stating the type of relief, action, or order desired;

(5) any other matter required by statute;

(6) a certificate of service; and

(7) the signature of the party or the party's authorized representative.

(b) All pleadings shall include the docket number assigned the case by the chief clerk.

(c) Any pleading may adopt and incorporate, by reference, any part of any document or entry in the official files and records of the agency. Copies of the relevant portions of such documents must be attached to the pleadings.

Adopted May 8, 1996

Effective June 6, 1996

§80.29. Amended and Supplemental Pleadings in Enforcement Cases.

(a) Up to seven days before the hearing, parties to an enforcement action may file supplemental or amended pleadings, so long as those pleadings do not operate as an unfair surprise to the opposite party. Amendments after that time will be at the discretion of the judge and may constitute grounds for a continuance.

(b) The executive director may amend an enforcement petition to include changes in, but not limited to:

- (1) the amount of the penalty up to the maximum allowable by statute;
- (2) the violations alleged;
- (3) the number of days of occurrence of previously alleged violations; and
- (4) the injunctive relief (or remedial ordering provisions) sought.

(c) The right to change the violations alleged includes the right to add causes of action based on any statutes within the commission's jurisdiction other than the one or ones upon which the executive director's preliminary report in the case was based.

Adopted May 8, 1996

Effective June 6, 1996

§80.31. Motions.

(a) A motion, unless made during a hearing, shall be made in writing, shall set forth the relief or order sought, and shall be timely filed with the chief clerk. Any reply to the motion shall be timely filed with the chief clerk with copies served on the judge and other parties. Failure to furnish copies may be grounds for withholding consideration of the motion or reply. Motions based on matters which do not appear of record must be supported by affidavit.

(b) Motions made during a hearing shall be stated on record or filed with the judge.

(c) When necessary in the judgment of the judge or commission, a hearing will be held to consider any motion.

Adopted May 8, 1996

Effective June 6, 1996

§80.33. Lost Records and Papers.

When any papers or records in the custody and control of the commission are lost or destroyed, the parties, with the approval of the commission, may agree in writing on a

brief statement of the matters contained therein or any person may at any time supply such lost records or papers as follows.

(1) Any person may make a written sworn motion before the commission stating the loss or destruction of such record or papers, accompanied by certified copies of the originals, if obtainable, or by substantially correct copies.

(2) If, upon hearing, the commission is satisfied that they are substantially correct copies of the original, an order will be entered substituting such copies for the missing originals.

(3) Such substituted copies will be filed with and constitute a part of the record and have the force and effect of the originals.

Adopted May 8, 1996

Effective June 6, 1996

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

Subchapter A: General Rules

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.

New Section	Old Section
§80.1	New
§80.3	§265.21, §337.21
§80.5	§263.28, §337.31
§80.7	§265.22
§80.9	§265.23
§80.11	§265.24
§80.13	§265.25, §337.32
§80.15	§265.26
§80.17	§265.27, §337.46, new
§80.19	§265.28
§80.21	§265.29
§80.23	§265.30
§80.25	§265.42
§80.27	§337.24
§80.29	§337.24
§80.31	§265.66, §265.154
§80.33	§261.12

Derivation Table
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Hearings Requests/Procedural Rules
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Subchapter A: General Rules

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.

New Section	Old Section
§80.25	New