STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS

RULES OF PRACTICE AND PROCEDURE

Date of Public Notice:	**October 14, 1998**
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1. INTRODUCTION

It is the purpose of these rules to aid anyone who wishes to appear before the Rhode Island Division of Public Utilities and Carriers. It is the Division's intention to be accessible and to make these Rules of Practice and Procedure clear and understandable for counsel and the general public.

These rules and all issues not addressed in these rules are to be considered in light of R.I.G.L. §§ 42-35-1 *et seq.*. These rules govern only adjudicatory and rulemaking proceedings commenced after their effective date.

2. DEFINITIONS

As used in these rules, except as otherwise required by the context:

(a) "Administrator" means the Administrator of the Division of Public Utilities and Carriers.

(b) "Applicant" means, in proceedings involving filings for permission or authorization which the Division may give under statutory or other authority delegated to it, the party on whose behalf the filings are made.

(c) "Associate Administrator(s)" means the Associate Administrator for Motor Carriers for matters involving carriers, and the Associate Administrator for Cable Television for cable television matters.

(d) "Administration and Operations Officer" means the Administration and Operations Officer of the Division.

(e) "Clerk" means the Commission clerk, appointed by the Public Utilities Commission pursuant to R.I.G.L. § 39-1-9, who also serves as clerk to the Division. For cases involving cable television or carriers, the appropriate Associate Administrator may serve as Clerk.

(f) "Commission" means the Public Utilities Commission.

(g) "Contested Case" means a proceeding in which the legal rights, duties, or privileges of a specific party are required by law to be determined by the Division after an opportunity for hearing.

(i) "Division" means the Division of Public Utilities and Carriers described in R.I.G.L. §§ 39-1-2(4) and 39-1-3.

(j) "Division Counsel" means the representative of the Division, including but not limited to its legal counsel, participating in a proceeding before the Division.

(k) "Ex parte" means communication outside of a hearing, in a pending proceeding, directly or indirectly, in connection with any issue of law or fact, between any person or party and the Administrator, Administration and Operations Officer, Associate Administrator(s) or Hearing Officer.

(l) "Hearing Officer" means an individual designated by the Administrator or Administration and Operations Officer to conduct hearings, pursuant to R.I.G.L. § 39-1-15, whose recommended findings and decision, when approved by the Administrator or Administration and Operations Officer, have the same force and effect as findings and decision by the Administrator.

(m) "Informal Inquiry" or "Complaint" means an individual contact by a customer of a utility, applicant for service, or other person having business with a utility, asking for information, advice, or assistance from the Division concerning the individual's rights, responsibilities or options as regard the utility.

(n) "Interest" means, with respect to an issue or matter, persons or entities which have a similar point of view or who are likely to be affected by the proceeding.

(o) "Intervenor" means a party who intervenes in a pending matter or proceeding by statutory right or by order of the Division on petition to intervene granted pursuant to the requirements of Rule 17.

(p) "Matter" or "proceeding" means the docket initiated by a filing or submittal or a Division notice or order.

(q) "Participant" means any party or any person or entity admitted by the Division to limited participation in a proceeding.

(r) "Party" means each person named or admitted or entitled as of right to be admitted as a party to a proceeding before the Division.

(s) "Petitioners" means persons seeking relief, not otherwise designated in this section.

(t) "Respondents" means persons subject to any statute or other delegated authority administered by the Division to whom an order or notice is issued by the Division instituting a proceeding or investigation on its own initiative.

(u) "Rulemaking" means a proceeding for the purpose of promulgating rules and regulations.

3. THE DIVISION

(a) Description and Organization.

The Division of Public Utilities and Carries is a governmental body charged with the supervision and execution of all laws relating to public utilities and carriers and all regulations and orders of the Commission governing the conduct and charges of public utilities. These responsibilities include evaluating fitness and public convenience and necessity for motor, air, railway and water carrier services and competing providers of gas and electric service, fixing standards for utility service, witnessing the testing of measuring devices, ordering refunds to provide remedial relief, authorizing the issuance of securities, approving certain transactions between utilities, conducting investigations and holding hearings.

The Division is headed by an Administrator, appointed by the Governor to a six-year term with the advise and consent of the Senate. It is staffed by accountants, engineers, engineering technicians, legal counsel, investigators, consumer specialists and clerical personnel.

(b) Offices.

The principal office of the Division is at Warwick, Rhode Island. All communications to the Division shall be addressed to the Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, Rhode Island 02888, unless otherwise specifically directed.

(c) Hours.

The offices of the Division will be open Monday through Friday from 8:30 a.m. to 4:00 p.m. unless otherwise provided.

(d) Public Information.

(1) Access to public records shall be granted in accordance with the Access to Public Records Act, R.I.G.L. § 38-2-1 *et seq*. Except where the Administrator, Administration and Operations Officer, Associate Administrator(s) or Hearing Officer directs otherwise, all pleadings, orders, communications, exhibits and other documents shall become matters of public record as of the day and time of their filing. Any claim of privilege shall be governed by the policy underlying the Access to Public Records Act, with the burden of proof resting on the party claiming the privilege.

(2) Any party submitting documents to the Division may request a preliminary finding that some or all of the information is exempt form the mandatory public disclosure requirements of the Access to Public Records Act. A preliminary finding that some documents are privileged shall not preclude the Division from

releasing those documents pursuant to public request in accordance with R.I.G.L. § 32-2-1 *et seq,*

(3) Claims of privilege are made by filing a written request with the Division. One copy of the original document, boldly indicating on the front page, "Contains Privileged Information - Do Not Release", shall be filed with a specific indication of the information for which the privilege is sought, as well as a description of the grounds upon which the party claims privilege. Nine additional copies in which the privileged information is redacted shall be filed with the Clerk. If a document is filed electronically, it shall contain a statement that information has been redacted; however, the original document must be filed as delineated above.

(4) The Clerk shall place documents for which privilege is sought in a secure, non-public file until the Administrator, Administration and Operations Officer, Associate Administrator(s) or Hearing Officer determines whether to grant the request for privileged treatment.

(5) Any person, whether or not a party, may apply to the Division for release of the information, pursuant to the Access to Public Records Act.

(6) Public records may be examined and/or copied at the offices of the Division from 8:30 a.m. to 4:00 p.m. on regular business days. No officially filed document shall be taken out of the offices except by the direction of the Division Clerk. Requests for information may be addressed to the Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, Rhode Island 02888. A charge of $0.15 per page for copies and $15.00 per hour after the first half-hour (or whatever rate currently prevails pursuant to R.I.G.L. § 38-2-4), for research and retrieval of documents, shall be assessed.

(e) Ex Parte Communications.

(1) Except as permitted below, no person who is a party to or a participant in any proceeding pending before the Division, or the person's counsel, employee, agent, or any other individual action on the person's behalf, shall communicate *ex parte* with the Administrator, Administration and Operations Officer, Associate Administrator(s) or Hearing Officer about or in any way related to the proceeding, and the Administrator, Administration and Operations Officer, Associate Administrator(s) and Hearing Officer shall not request or entertain any such *ex parte* communications.

(2) The prohibitions contained above do not apply to a communication from a party or participant or counsel, agent or other individual acting on the person's behalf, if the communication relates solely to general matters of procedure or scheduling and is directed to the Clerk, the Division Counsel, representative or Hearing Officer.

4. THE CLERK

(a) Powers and Duties.

The Clerk shall have the powers and duties granted pursuant to R.I.G.L. § 39-1-10.

(b) Authentication of Division Action.

All orders of the Division shall be signed by the Administrator or the Administration and Operations Officer and may be authenticated either by the Clerk or by such other person as may be authorized by the Administrator, the Administration and Operations Officer or the Associate Administrator(s).

(c) Filings with the Division.

The filing of written applications, petitions, protests, motions, briefs, objections, complaints, notices, reports, utility contracts, agreements with affiliates, or amendments to such documents with the Division as required or allowed by these rules, by any rule, regulation, or order of the Division, or by any applicable statute, shall be made by delivering them to the Clerk within the time limit, if any, for such filing, by one of the following methods:

(1) by hand-delivery; or

(2) by United States mail or express delivery.

(3) by electronically filing in the format prescribed by the Clerk. Electronic filings must be supplemented by hard copies of the written materials, as directed by the Clerk, pursuant to Rule 1.5(g); however, signature pages will be accepted by facsimile and incorporated into the docket.

(d) Docket.

The Clerk shall maintain a docket of all proceedings, and each new proceeding shall be assigned an appropriate docket number after preliminary review. The docket shall be available for inspection and copying by the public during the office hours of the Division. If a portion of the docket has been judged proprietary by the Hearing Officer upon motion of any party in accordance with Rule 3(d), it shall not be available for public inspection.

(e) Hearing Calendar.

The Clerk shall maintain a hearing calendar of all proceedings set for hearing.

5. APPEARANCES AND PRACTICE BEFORE THE DIVISION

(a) Appearances.

(1) Each party to and participant in a proceeding, other than an individual who appears *pro se*, shall be represented by an attorney, who shall enter an appearance in writing with the Clerk.

(i) Members of the Bar of the State of Rhode Island are eligible to practice before the Division.

(ii) Members of the Bar of a Federal Court or of the highest court of any State or Territory of the United States are eligible to practice before the Division subject to the provisions of Rhode Island Supreme Court Rules Article II, Rule 9 or any successor rule.

(iii)The Division counsel must be an attorney, or otherwise exempt from the unauthorized practice of law pursuant to R.I.G.L. § 11-27-11(7).

(2) Any person compelled to appear or voluntarily testifying or making a statement before the Hearing Officer may be, but shall not be required to be accompanied, represented, and advised by an attorney.

(3) All attorneys appearing before the Division must conform to the standards of ethical conduct required of practitioners before the courts of Rhode Island. An attorney may not represent two or more parties unless the parties have substantially similar interests; provided, however, that in the event a conflict develops between the Division and the Attorney General in his or her capacity as counsel for the Division, the Division may engage independent counsel, or continue to utilize the service of the Department of Attorney General, in which case the Attorney General shall designate different Assistants or Special Assistants to represent the Division and the State or its citizens, respectively.

(b) Suspension.

(1) After hearing, the Division may disqualify and deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found:

(i) not to possess the requisite qualification to represent others, or

(ii) to have engaged in unethical or improper professional conduct, or

(iii) otherwise to be not qualified.

(2) Willful disobedience to an order of the Hearing Officer shall be grounds for exclusion of any person from such hearing and for summary suspension for the duration of the hearing(s) by the Hearing Officer.

(c) Appearance of Present and Former Employees.

(1) No person who is an employee or legal consultant of the Division or the Department of the Attorney General may appear personally or on behalf of or represent any other person or act as an expert witness before the Division except in the performance of official duties.

(2) No person having been so employed may, within one (1) year after employment has ceased, appear personally or on behalf of any other person or act as an expert witness before the Division.

(3) Rule 5(c)(2) shall not apply to any person whose employment has been solely as a technical consultant and/or expert witness, or to any employee or legal consultant to the Department of the Attorney General who has not engaged in the presentation or preparation of any matter before the Division.

6. INFORMAL INQUIRIES OR COMPLAINTS

(a) Form.

No particular form of informal inquiry or complaint is required. Informal inquires or complaints may be made by letter, telephone, or in person. Pursuant to R.I.G.L. § 38-2-2(D)(16) any final action taken will be deemed a public document, however, such final action does not thereby make the investigatory file leading up thereto public documents and such investigatory file is exempt from disclosure to non-parties.

(b) Determination of Treatment.

Unless otherwise directed by the Administrator, written inquiries or complaints not complying with Rule 9, even if they designate themselves formal complaints, are and will be treated informally.

(c) Process.

Informal inquiries or complaints do not initiate formal procedures and do not exhaust administrative remedies unless all affected persons agree in writing to be bound by the informal decision. The Division staff will consider and investigate informal inquiries or complaints without prejudice to the right of the interested person to present the matter formally to the Division, unless all affected persons agree in writing to be bound by the informal decision. Settlement offers made in the course of informal inquires or complaints are privileged. Informal procedure is recommended and preferred

for informal inquires or complaints. However, the Administrator may formally consider any informal inquiry or complaint presented to the Division.

7. FORMAL COMPLAINTS

(a) Form.

A written complaint may be made against any public utility pursuant to R.I.G.L. § 39-4-3, with regard to the subject matters designated in the statute by any city or town council, the Water Resources Board, any corporation, or by any twenty-five (25) qualified electors. A complaint filed by an individual or by less than twenty-five (25) qualified electors may, in the discretion of the Administrator, Administration and Operations Officer or Associate Administrator(s), be treated as a formal complaint.

(b) Process.

The Division shall determine whether or not the complaint states a cause of action within its jurisdiction. If so, the Division shall make whatever investigation it deems necessary or convenient to ascertain whether probable cause exists for the complaint. If the Division determines that a cause of action within its jurisdiction does not exist, or that probable cause is absent, it will so advise the complainant in writing. A public hearing on a formal complaint is not required unless an order affecting rates, tolls, charges, regulations, measurement, practices, acts or services complained of will be issued.

(c) Hearing.

If a public hearing is to be held, the Division will set a date and place for the hearing after having given ten (10) calendar days written notice of the complaint to all persons entitled to notice pursuant to Rule 12 and will inform the public pursuant to R.I.G.L. § 42-46-6. Upon request by the city or town council for matters involving water rates, charges, potablity, or accommodation of the public, the Division shall hold at least one session of the public hearing within the county where the city or town is located, pursuant to R.I.G.L. § 39-4-7.

(d) Satisfaction of Complaint.

If the respondent desires to satisfy the complaint, a written statement of the relief which the respondent is willing to provide shall be filed with the Division and contemporaneously served upon the complainant. Upon acceptance of this offer by the complainant and notice to the Division, the complaint shall be dismissed. If there is a partial settlement of the case with dismissal in part, the complainant may proceed with the remaining issues.

8. DIVISION INVESTIGATIONS

(a) Notice.

An investigation initiated by the Division *sua sponte* e.g., a summary investigation pursuant to R.I.G.L. § 39-4-13, or upon written complaint made against any public utility by any city or town council, the Water Resources Board, any corporation, or by any twenty-five (25) qualified electors pursuant to R.I.G.L. § 39-4-3, shall be commenced by written notice which, unless the circumstances of the investigation require otherwise, shall be served upon all public utilities, cable companies or person under investigation. The investigative notice shall be docketed in the same manner as other proceedings under these rules.

(b) Hearing.

The Division shall give the public utility or cable company and the complainant, if any, ten (10) calendar days notice of any hearing, pursuant to R.I.G.L. § 39-4-5. All public hearings held pursuant to a Division investigation shall be conducted in accordance with these rules.

(c) Payment of Investigation Expense by Utility.

The public utility or cable company shall pay the expenses incurred by the Division in the investigation and hearing, unless exemption is granted by the Administrator.

9. FORMAL REQUIREMENTS AS TO FILINGS

(a) Title.

All filings with the Division in any proceeding shall clearly show, in the title, the names of all persons in whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title of subsequent papers filed. All subsequent filings shall show the docket designation assigned by the Clerk.

(b) Form and Size.

All pleadings shall be typed or printed on paper 8.5" wide and 11" long. The impression may be on both sides of the paper and shall be double spaced. Footnotes and quotations may be single-spaced. Pleadings shall be fastened only on the left side; one copy shall be provided unbound. Reproductions may be made by any process provided that all copies are clear and permanently legible..

(c) Signature.

Except as may be otherwise required by the rules and regulations of the Division or ordered or requested by the Division, the original copy of each application, petition, protest, motion, objection, brief, notice, report, statement and other paper or amendment thereto, shall be signed by the party in interest, or by its attorney, as required by these rules, and shall show the office, address and telephone number of the same. In any filing, a copy may be substituted for the signed original as long as the signed original is

submitted within ten (10) days thereafter. All other copies filed shall be fully conformed thereto.

(d) Effect of Signature.

The signature of the person, officer or attorney on any paper filed with the Division constitutes a certification by such individual that he or she has read the paper being subscribed and filed, and knows the contents thereof; that to the best of the signatory's knowledge, information and belief formed after a reasonable inquiry, it is well grounded in fact and is warranted by existing law, and that it is not interposed for any improper purpose; that if executed in a representative capacity, the matter has been subscribed and executed in the capacity specified upon the pleading or matter filed with full power and authority to so do; that the contents are true as stated, except to matters and things, if any, stated on information and belief, and that those matters and things are believed to be true.

(e) Construction.

All pleadings shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of the parties involved shall be disregarded.

(f) Rejection of Pleadings and Documents.

Pleadings and documents which are not in substantial compliance with these or other Division rules, order of the Division, or applicable statutes may be rejected within thirty (30) calendar days after filing. If rejected, such papers will be returned with an indication of the deficiencies therein. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the Division and is not a waiver of such requirement.

(g) Electronic Filing

Rule 9(b) shall not apply to any pleadings which are filed electronically. The clerk shall establish requirements for the format and transmission of such documents. Parties will be obligated to provide hard copies as directed by the Clerk.

(h) Confidential Information

Claims of privilege may be made pursuant to Rule 3(d).

10. TIME.

(a) Computation.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by any rule, regulation, or order of the Division, or by any applicable statute, the date of the act, event, or default from or after which the designated period of time begins to run shall not be included, but the last date of the period so computed shall be

included, unless it is a Saturday, Sunday or legal holiday in Rhode Island, in which event the period shall run until the end of the next business day .

(b) Extensions of Time.

Except as otherwise provided, whenever an act is required or allowed to be done at or within a specified time, the time specified may, for good cause, be extended by the Hearing Officer. Such a request must be made before the expiration of the period originally specified. Upon a request made after the expiration of the specified periodthe Hearing Officer may extend the specified time upon good cause and upon a showing of excusable neglect for failure to act within the specified period.

(c) Continuances.

Except as otherwise provided by law, the Hearing Officer may, for good cause at any time, with or without request, continue or adjourn any hearing. Division hearings shall begin at the time and place fixed in an order or a notice, but thereafter may be adjourned from time to time or from place to place by the Hearing Officer.

11. SERVICE

(a) Service Upon Parties.

A copy of all pleadings and other documents filed in any proceeding governed by these rules shall be served upon all other parties. If a party appears after the original documents have been filed, a copy of all papers previously filed shall be furnished to such party on request. Service shall also be effected on any other person designated to receive service by the Administrator, the Administration and Operations Officer, the Hearing Officer or the Clerk.

(b) Manner of Service.

Unless otherwise ordered by the Administrator or the Hearing Officer, service under these rules shall be made upon a party or participant or upon his or her attorney, if an appearance has been entered, by first class mail, express delivery or hand-delivery to his or her place of business, or by electronic service if the parties agree that it is appropriate..

(c) Receipt to Govern.

In addition to the provision of Rule 10(a), the time for response shall commence on the date of receipt by mail, express delivery, or hand delivery. By agreement, parties may use the date of facsimile transmission to comply with this Rule.

(d) Certificate of Service.

There shall accompany and be attached to the original of each paper filed with the Division in a proceeding a certificate of service, showing service on all parties.

12. NOTICE.

(a) Notice Required.

The Division shall give, or shall require any designated party to give, notice of the commencement of scheduled hearings in any pending matter to all parties and to such other persons as the Division designates. After commencement, a hearing may be adjourned upon oral notice to those present at the time of adjournment.

(1) The Administrator may give, or may require any designated party to give, notice of an informational or record conference to all parties and to such other persons as the Administrator designates.

(i) Such notice is required for matters which have been docketed but not scheduled for hearing.

(ii) The Division will follow the requirements of R.I.G.L. § 42-46-6 for any informational or record conference which is not noticed under subsection (b).

(2) The Administrator may give notice of an informational or record conference, to the general public and other persons as the Administrator designates, for matters which have not been docketed. If such a conference is not noticed under subsection (b), the Division will follow the requirements of R.I.G.L. § 42-46-6.

(b) Form of Notice.

Notice shall be by first class mail or personal service unless otherwise specified by the Administrator and shall be published in The Providence Journal-Bulletin or other newspaper of general circulation serving the affected ratepayers. Nothing herein, however, shall limit the power of the Administrator to order notice by other means, including but not limited to notice by publication or notice in periodic bills sent to utility customers.

(c) Contents of Notice.

The notice shall include:

(1) A statement of the time, place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is held;

(3) A reference to the particular section of any statutes and rules involved;

(4)A short and plain statement of the matters involved. If at the time notice is given the Division or the party giving notice is unable to state the matters in detail which are to be the subject of the hearing, the initial notice may be limited to a statement of the issues involved and a detailed statement may be furnished at a later time; and

(5) A statement that the Division is accessible to the handicapped, and that individuals requesting interpreter services for the hearing impaired must contact the Clerk seventy-two hours in advance of the hearing.

(d) Period of Notice.

Unless otherwise provided by statute, or unless the Administrator, Administration and Operations Officer, Associate Administrator(s) or Hearing Officer finds that a shorter period of notice is reasonable and consistent with the public interest, notice of a hearing shall be given at least ten (10) calendar days prior thereto.

(e) Address.

Unless notice to the contrary has been received by the Division, notice shall be sufficient if mailed or delivered to the following:

(1) If the addressee is a holder of a certificate, permit or license, the address shown on the last application for the issuance or amendment thereof.

(2) If the addressee has tariffs on file, to the address shown on any tariff in effect at the time of notice.

(3) If an attorney has entered an appearance on behalf of the addressee, to the office of the attorney.

(f) Notice Regarding Adoption of Rules.

(1) Prior to the adoption, amendment, or repeal of any rule, the Division will:

(i) give at least thirty (30) calendar days notice of its intended action. The notice shall include a statement of either the terms or the substance of the intended action or a description of the subjects and issues involved, and of the manner in which interested persons may present their views thereon. The notice will be mailed to all persons who have made timely requests to the Division for advance notice of its rulemaking proceedings, and published in The Providence Journal-Bulletin, provided, however, that if said action is limited in its applicability to a particular area, then said publication may be in a newspaper having general circulation in said area.

(ii) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing.

(2) If the Division finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon less than thirty (30) calendar days notice, and states in writing the reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule so adopted may be effective for a period of not longer than one hundred twenty (120) calendar days. This procedure shall not preclude adoption of the identical rule once the notice requirements of subsection (1) of this rule are met.

13. PETITIONS

(a) General.

Petitions filed under any statute or other authority delegated to the Division shall be in writing, shall state clearly and concisely the petitioner's interest in the subject matter, the facts relied upon, and the object of the petition, and shall cite by appropriate reference the statutory provision or other authority relied upon in the filing. Four (4) legible copies shall be filed with the original.

(b) Petitions for Issuance, Amendment, Waiver or Repeal of Rules.

(1) A petition for the issuance, amendment, waiver or repeal of a rule by the Division shall, in addition to stating the specific rule, amendment, waiver, or repeal requested, state in detail with citations to appropriate references, the reasons for the requested action. Four (4) legible copies shall be filed with the original.

(2) Upon submission of such a petition, the Division will within thirty (30) calendar days, either deny the petition in writing or initiate rulemaking procedures in accordance with R.I.G.L. § 42-35-3.

(c) Petitions for Declaratory Judgment.

In addition to the requirements of subsection (a) above, a petition for declaratory judgment pursuant to R.I.G.L. § 42-35-8 shall set forth the rule or statutory provision in question and shall state in detail, with appropriate citations, whether the rule or provision should or should not apply.

14. APPLICATIONS RELATING TO SECURITIES

(a) Contents.

A public utility seeking to issue stocks, bonds, notes, or other evidences of indebtedness payable more than twelve (12) months from the date of issue, must obtain authorization from the Division pursuant to R.I.G.L. § 39-3-15. Applications shall be in writing and under oath, shall state clearly and concisely the authorization sought, and shall comport with R.I.G.L. § 39-3-17. In addition, the application shall include:

(1) Written direct testimony and supporting exhibits, which shall include:

(i) an explanation of the proposed transaction, specifically addressing in detail:

(A) any ratepayer impact; and

(B) any unusual features which may have significant impact on the Division's ability to regulate the utility;

(ii) investment memoranda, prospectuses, information or registration statements or other documents to describe the transactions or potential funding sources (in cases where it is not practical to provide final versions of such documents, drafts may be submitted);

(iii) a summary of the proposed contents of transaction documents, specifying:

(A) terms and conditions of the transaction that are firm;

(B) ranges for interest rates and dollar amounts involved in the transaction that are not firm.

(iv) a summary of alternative terms and conditions of the transactions being negotiated, including interest rates, maturities, terms of call and restriction, necessity for security, manner of sale, issuance costs, and proposed purchasers.

(v) a present and proforma capital structure presentation, showing the effect of the security issuance.

(2) Notice of the filing of the application relating to securities on the Department of the Attorney General.

(3) Four (4) legible copies in addition to the original.

(b) Rejection of Filings.

An application relating to securities may be rejected if the utility's annual reports to the Commission are not current and if the utility has not demonstrated good cause for its failure to make its annual filing when due.

(c) Procedure Upon Receipt of Application.

Upon docketing of an application relating to securities, the Administrator will assign a Hearing Officer to conduct a public hearing and render a recommended decision.

(d) Public Notice of Filing.

A utility filing an application relating to securities shall, at its expenses, publish notice of the filing in The Providence Journal-Bulletin or, with the approval of the Administrator, in a newspaper of general circulation in the county where the principal office of the utility is located, in the form prescribed by Rule 12(c). The notice must appear at least once. The applicant shall ensure that an affidavit of publication is promptly filed with the Clerk upon publication of the notice.

15. APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(a) Form.

Applications for certificates of public convenience and necessity shall be made in writing. Applications involving carriers must be submitted on forms which may be obtained from the Motor Carrier Section, Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888.

(b) Procedure Upon Receipt of Application.

Upon receipt of an application for a certificate of public convenience and necessity, the Administrator or Administration and Operations Officer shall assign a Hearing Officer to conduct the public hearing and render a recommended decision.

(c) Public Notice of Filing.

Upon the filing of an application for a certificate of public convenience and necessity the Division shall publish notice of the filing in The Providence Journal-Bulletin or in a newspaper of general circulation in the county where the principal office of the utility is located, in the form prescribed by Rule 12(c). The notice will appear at least once. The Administrator may, at his or her discretion, order that the utility publish the notice itself and/or that the utility bear the expense of the publication.

16. EMERGENCY RELIEF

The Division has the power to permit any public utility to temporarily alter, amend, or suspend any existing rates, schedules, and orders relating to or affecting any public utility or part of any public utility, pursuant to R.I.G.L. § 39-3-13. Such emergency relief may be sought by motion. An original and four (4) legible copies must be filed with the Clerk.

(a) Contents.

In addition to the usual contents of a pleading, the motion must allege such extraordinary facts of immediate and irreparable injury as would justify the Division's exercise of discretion by granting emergency relief.

(b) Testimony and Exhibits.

The motion requesting emergency relief shall be accompanied by written testimony and exhibits in support of the motion.

(c) Notice.

Copies of the motion seeking emergency relief and the testimony and exhibits filed in support thereof shall be served upon the Department of Attorney General, and any other known parties.

(d) Hearing.

Motions for emergency relief other than emergency rate relief may be acted upon with or without hearing.

(e) Bond.

Emergency relief shall be granted subject to refund and may be conditioned upon a bond or other adequate protection.

(f) Commission Review.

Except with regard to those matters falling under R.I.G.L. § 39-12-1 *et seq*, any relief granted by the Division must be reaffirmed by the Commission within ninety (90) calendar days.

17. INTERVENTION

(a) Procedure

Participation in a proceeding as an intervenor may be initiated by order of the Hearing Officer upon a motion to intervene.

(b) Who May Intervene.

Subject to the provisions of these rules, any person with a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene in any proceeding before the Division. Such right or interest may be:

(1) A right conferred by statute.

(2) An interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Division's action in the proceeding. The following may have such an interest: consumers served by the applicant, defendant, or respondent and holders of securities of the applicant, defendant, or respondent.

(3) Any other interest of such a nature that movant's participation may be in the public interest.

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(c) Form and Contents of Motion.

A motion to intervene shall set out clearly and concisely facts from which the nature of the movant's alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the movant in the proceeding.

(d) Filing and Service of Motion.

Except as otherwise provided, motions to intervene and notices of intervention may be filed at any time following the filing of an application, petition, investigation or other documents seeking Division action, but in no event later than the date fixed for the filing of motions to intervene in any order or notice with respect to the proceedings issued pursuant to these rules, or, where no date is fixed for the filing of motions, the date of hearing, unless, for good cause shown, the Hearing Officer authorizes late filing. Service shall be made as provided in Rule 11 of these rules. Intervention other than as a matter of right may be granted with such limitations and/or upon such conditions as the Division shall determine.

(e) Disposition of Motion.

Unless the Hearing Officer denies a motion for leave to intervene, all timely motions to intervene not objected to by any party within ten (10) calendar days of service of the motion for leave to intervene shall be deemed allowed, provided that the Hearing Officer may, after notice and hearing, thereafter terminate the party status of any intervenor.

(f) Late Intervention

Intervenors are granted party status and are bound by the agreements reached and orders entered in the proceedings prior to their intervention. The Division will not allow

the broadening of issues unless the public interest requires it and no undue prejudice or hardship will result to other parties to the proceeding.

18. PROTESTS

(a) General.

Any person other than a party who objects to the approval of an application, petition, motion, or other matter which is, or will be, under consideration by the Division may file a protest. No particular form of protest is required, but the letter or writing should contain the name and address of the protestant and a concise statement of the protest. If possible, four (4) legible copies of the protest should be forwarded to the Division with the original. The Clerk shall serve copies of all protests filed upon all parties.

(b) Effect of Protest.

A protest is intended solely to alert the Division and the parties to a proceeding of the fact and nature of the protestant's objections to an application, petition, or any other proposed action and does not become evidence in the proceeding. The filing of a protest does not make the protestant a party to the proceedings.

(c) Motor Carrier Protests.

In all matters before the Motor Carrier Section of the Division, the following special protest rules shall apply:

(1) A protest filed with the Administrator, against the granting of an application, shall set forth specifically the ground or grounds upon which it is made and shall contain a concise statement of the interest the protesting party has in the proceeding. A protest shall be filed in writing within seven (7) calendar days after notice of the filing has been given to the public by legal notice in The Providence Journal-Bulletin. A copy of any protest filed with the Administrator under this rule shall be served simultaneously upon the applicant.

(2) Protestants who have satisfied the requirements of Rule 18(c)(1) shall be treated as intervenors and accorded all appropriate rights.

(3) Protestants who are represented by legal counsel shall file with the Administrator, at least three days prior to the scheduled hearings, direct testimony in the form prescribed by Rule 23(d), to be proffered by the protestants at the hearing. A copy of the prefiled testimony shall be served upon the applicant simultaneously by certified mail. The requirements of this paragraph may be waived at the discretion of the Hearing Officer.

(4) Protestants filing direct testimony shall make the witness whose testimony has been prefiled available at the hearing for cross-examination. A protestant may elicit rebuttal testimony from the witness through oral examination.

(5) Members of the general public wishing to be heard at Motor Carrier proceedings shall be allowed to voice their opinions on the record. These witnesses shall be limited to five minutes of testimony, or more at the discretion of the Hearing Officer.

19. MOTIONS

(a) General.

Other than oral motions made during a hearing, any application to the Division to take any action or to enter any order after commencement of a proceeding or after commencement of an investigation by the Division shall be made by filing and original and four (4) legible copies with the Clerk, stating specifically the grounds therefore, setting forth the action or order sought, and shall be served upon all parties.

(b) Movant's Certification.

The movant shall make a good faith effort to determine whether a motion will be opposed. If the motion will not be opposed, the movant shall so state in the motion. Opposed motions shall state affirmatively that concurrence of other parties has been requested but denied, or shall state why no request for concurrence was made.

(c) Delay in Proceeding.

Except as otherwise directed by the Hearing Officer, the filing of a motion, either prior to or during any proceeding, and any action thereon, shall not delay the conduct of such proceeding.

(d) Objections.

Any party objecting to a written motion filed pursuant to this rule shall, within ten (10) calendar days of the service of the motion, file an objection thereto in writing setting forth in detail the grounds for the objection. The time for filing objections may be varied by order of the Administrator.

(e) Summary Disposition.

Any party may file a motion for summary disposition of all or part of any matter pending before the Division. If the Hearing Officer determines that there is no genuine

issue of fact material to the decision, summary disposition of all or part of the matter may be granted.

20. PRE-HEARING PROCEDURE

(a) General.

(1) It is the policy of the Division to encourage the use of pre-hearing conferences in complex or multi-party proceedings as a means of making more effective use of hearing time and to otherwise aid in the disposition of the proceeding or the settlement thereof.

(2) The Division may, with reasonable written notice, require that all parties attend a pre-hearing conference for the purpose of formulating and simplifying the issues in the proceeding or addressing other matters that may expedite orderly conduct and disposition of the proceeding. Such matters may include but are not limited to :

(i) details of the procedural schedule;

(ii) the necessity or desirability of amendments to the pleadings;

(iii) the possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

(iv) limitations on the number of witnesses or time allocated to particular witnesses or issues at the hearings;

(v) procedures at the hearing;

(vi) the compilation of a stipulated list of written testimony and exhibits to be admitted at the hearing;

(vii) the consideration of outstanding motions;

(viii) the status of any settlement negotiations and, if appropriate, identification of any interest in and resources to support professional assistance therewith or other alternative means of dispute resolution;

(ix) agreements to modify the time for or method of transmitting and responding to discovery requests and for service of other documents.

(b) Attendance.

(1) All parties shall attend the pre-hearing conference fully prepared for a productive discussion of all matters and fully authorized to make commitments or take positions. Preparation should include advance study of all material filed and materials obtained through formal and informal discovery and, if feasible, advance informal communication among the parties to ascertain the extent to which the parties will be able to agree upon the pending matter.

(2) Failure of any party to attend or be prepared for a pre-hearing conference without good cause shown shall constitute a waiver of any objection to any agreement reached or to any order or ruling made as a result of the conference.

21. DISCOVERY

(a) General.

(1) The Division favors prompt and complete disclosure and exchange of information and encourages informal arrangements amongst the parties for this exchange. Further, it is the Division's policy to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes.

(2) Techniques of pre-hearing discovery permitted in state civil actions may be employed by any party. Upon experiencing any difficulties in obtaining discovery, the parties may seek relief from the Division by filing a proper motion.

(b) Depositions.

(1) The testimony of any witness may be taken by deposition at any time before the hearing is closed. Objection to the deposition, if any, shall be made in accordance with Rule 19.

(2) The deposition shall proceed in the same manner and pursuant to the same procedures as govern depositions in the Superior Court in the State of Rhode Island.

(c) Data Requests.

(1) In any proceeding pending before the Division, the Division staff and any party may request such data, studies, workpapers, reports, and information as are reasonably relevant to the proceeding and are permitted by these rules or by statute.

(2) Data requests shall be in writing, shall be directed to the party or its attorney, and shall specify in as much detail as possible the material requested. Oral data requests may be allowed at the Hearing Officer's discretion when made on the record during a hearing. Any requested material or portion thereof to which objection is not made as set forth below shall be produced for the requesting party as soon as practicable and in no event later than twenty-one (21) calendar days after service of the request, unless the time for production is otherwise shortened or extended by agreement or order.

(3) Objection to a data request in whole or in part on the ground that the request is unreasonable and/or the material is not relevant or not permitted or required by law shall be made by motion filed as soon as practicable and in no event later than ten (10) calendar days after service of the request. An oral objection may be made at a hearing when the Hearing Officer has allowed an oral data request. Objections shall include the portions of the data request objected to and shall detail the basis for the objection. The Hearing Officer shall thereupon determine the validity of the request and shall establish a date for compliance. The relevancy of a request shall be determined under the standards established for such determinations under Rule 26 of the Superior Court Rules of Procedure.

(4) The failure of a party to comply with a data request or a Division order related thereto shall be grounds for striking any testimony related to such request.

(5) Copies of all data requests shall be served on all parties. In addition, two copies of both requests and responses shall be filed with the Clerk.

(6) Data requests and responses, though part of the docket, are not evidence unless admitted during a hearing, or by consent of the parties.

(d) Supplementation of Responses to Discovery Requests.

A party who has responded to a request for discovery is under a duty to reasonably and promptly amend or supplement the previous response if information supplied in the previous response is incorrect or incomplete.

(e) Protective Orders

Upon motion by a party from whom discovery is sought and for good cause shown, the hearing officer may make an order when justice requires to protect the party from unreasonable annoyance, embarrassment, oppression, burden or expense or from disclosure of confidential business and financial information. If the motion for a protective order is denied in whole or in part, the hearing officer may order that the party provide or permit the discovery.

22. SUBPOENAS

(a) Issuance.

Subpoenas for the attendance of witnesses or for the production of documentary evidence may be issued by any notary public pursuant to R.I.G.L. § 9-17-3 or by the Administrator or Clerk pursuant to R.I.G.L. § 39-1-15.

(b) Service and Return.

Return of service evidences service of a subpoena made by a Rhode Island sheriff or deputy sheriff. If service is made by another person, an affidavit describing the manner in which service was made, returned on or with the original subpoena, evidences service. In making service, a copy of the subpoena shall be shown to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return or affidavit, shall be delivered to the Clerk.

(c) Fees of Witnesses.

Witnesses who are subpoenaed shall be paid fees as provided by the Superior Court Rules of Procedure.

(d) Enforcement of Subpoena

All subpoenas issued in accordance with these rules may be enforced in accordance with R.I.G.L. § 9-17-7.

23. HEARINGS

(a) Public Hearings.

Except as permitted or required by law, or by order of the Hearing Officer with regard to matters exempt from disclosure under the Access to Public Records Act, R.I.G.L. § 38-2-1, *et seq.*, all hearings shall be public. The Hearing Officer may, however, limit the number of spectators and participants to the extent that safety and good order require. The Hearing Officer may also effect or bar the admission of any person who disrupts or threatens to disrupt a public hearing.

(b) Site.

All hearings shall be held in Warwick at the office of the Division, unless by statute or order of the Administrator a different place is designated.

(c) Hearing Officer.

The hearing shall be conducted by a Hearing Officer. The Hearing Officer, if a notary public, the court stenographer, or the Clerk may administer oaths and affirmation. The Hearing Officer shall make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise in the course of the hearing. At any point where the Hearing Officer's impartiality is reasonably questioned, the Hearing Officer is required to disqualify himself or herself.

(d) Rights of Parties.

Parties shall have the right to present evidence, cross-examine witnesses, object, file motions, and present arguments.

(e) Direct testimony.

(1) All direct testimony shall be presented in writing, unless otherwise allowed by the Hearing Officer. Written testimony, when properly authenticated by the witness under oath, may be transcribed into the record or admitted as an exhibit. Direct testimony shall be prefiled at least fourteen (14) calendar days prior to a scheduled hearing. The fourteen (14) day time limit may be waived upon agreement of the parties or order of the hearing officer.

(2) Written testimony shall be prepared in question and answer form, numbering each line of text along the left-hand margin, if possible; shall contain a statement of the qualifications of the witness; shall be signed under oath; and shall be accompanied by any exhibits to which it relates, Such written testimony shall be subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally.

(3) Cross examination of the witness presenting such written testimony shall proceed at the hearing at which it is authenticated if, not less than fourteen (14) calendar days prior to such hearing, service of the written testimony has been made upon each party, unless the Hearing Officer for good cause shall otherwise direct.

(4) The filing and service of testimony and exhibits shall be made in accordance with the pre-hearing conference schedule, if any.

(f) Rebuttal Testimony.

All rebuttal testimony shall be presented in writing, unless otherwise allowed by the Hearing Officer. Written testimony, when properly authenticated by the witness under oath, may be transcribed into the record or admitted as an exhibit. Where time permits, rebuttal testimony shall be prefiled at least seven (7) calendar days prior to a scheduled hearing. Cross-examination of a witness presenting rebuttal testimony shall proceed at the hearing at which it is authenticated if, not less than seven (7) calendar days prior to such hearing, service of the rebuttal testimony has been made upon each party, unless the presiding officer for good cause shall otherwise direct.

(g) Objections.

When objections are made to the admission or exclusion of evidence before the Hearing Officer, the grounds relied upon shall be stated briefly. Formal exception to adverse rulings of the Hearing Officer is not necessary.

(h) Number of Witnesses.

The Hearing Officer may limit the number of witnesses that may be heard upon any issue.

(i) Further Evidence

At any stage of the hearing the Hearing Officer may call for further evidence upon any issue, and require such evidence to be presented by the party or parties concerned. At the hearing, the Hearing Officer may, if deemed advisable, authorize any participant to file specific documentary evidence as part of the record within a fixed time, expiring not less than ten (10) calendar days before the date fixed for filing and serving briefs. If requested by a party, cross examination of this material shall be permitted.

(j) Exhibits.

All exhibits shall, to the extent practicable, be marked for identification prior to commencement of the hearing. The parties are encouraged to stipulate to the admissibility of exhibits. Except as allowed by the Hearing Officer, no exhibit shall be marked for identification unless copies have been provided to all parties and the Hearing Officer. A list of the exhibits to be admitted by stipulation shall be prepared by the parties for the convenience of the stenographer and the Hearing Officer.

(k) Position Memoranda

If any party opposing the application or any portion thereof shall elect not to file testimony, it shall nevertheless file a memorandum which shall summarize the basis for the opposition, and, if applicable, as to each aspect of the applicant's case which is opposed, shall state to the extent possible the monetary difference between the applicant's position and that of the opponent.

(l) Stenographic Record.

Formal hearings shall be stenographically reported by the official reporter of the Division unless the Hearing Officer orders that an individual hearing will be recorded in another manner, selected by the Hearing Officer A transcript of the hearing shall be a part of the record. Such transcripts shall include a verbatim report of the hearing and nothing shall be omitted therefrom except as is directed on the record by the Hearing Officer. Any person may record, with prior notice to the Hearing Officer and parties, all or any portion of a hearing by way of camera, video or tape recorder of any kind.

If a hearing is closed by order of the Hearing Officer, the transcript or recording thereof shall be treated as a document exempt from disclosure under the Access to Public Records Act, R.I.G.L. § 38-2-1 *et seq.*, and only those persons authorized to be present may independently record the proceedings.

(m) Close of Record.

The record in a proceeding shall close at a time set by the Hearing Officer. The proceedings are not automatically closed at the end of testimony unless ordered by the Hearing Officer. Following the date the proceedings are ordered closed by the Hearing Officer, there shall not be received in evidence or considered as part of the record any document, letter or other evidence submitted, unless permitted in the discretion of the Hearing Officer.

24. WITNESSES.

(a) Oral Examination.

Witnesses shall be examined orally unless the testimony is taken by deposition as provided in Rule 21, or the facts are stipulated or testimony is submitted in prepared written form as provided in Rule 23 (e). Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(b) Privilege Against Self-incrimination.

Pursuant to R.I.G.L. § 39-4-21 and § 39-12-34, no person shall be excused from testifying or producing any materials in any investigation or hearing on the ground that such testimony or materials would tend to incriminate him or her.

(c) Expert Witnesses.

Written testimony of an expert witness may be received as provided in Rule 23, where properly supported by the oral testimony of its author on direct examination, subject to cross-examination and motions to strike.

(d) Acceptance Subject to Check.

When a witness accepts a proposition "subject to check", it is the burden of the party offering the witness to correct the record if subsequent study reveals that the witness erred in accepting the proposition. If the area is not explored further in the proceeding, a witness' statement accepting the proposition "subject to check" will be treated as though the witness had accepted the proposition without reservation.

25. RULES OF EVIDENCE - OFFICIAL NOTICE

(a) Rules of Evidence.

Irrelevant, immaterial or unduly repetitious evidence shall be excluded in all proceedings wherein evidence is taken. While the rules of evidence as applied in civil cases in the Superior Court of this state shall be followed to the extent practicable, the Division shall not be bound by technical evidentiary rules. Evidence not otherwise admissible may be submitted, unless precluded by statute, when necessary to ascertain facts not reasonably susceptible of proof under the rules, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply. Objections to evidentiary offers may be made and shall be noted in the record.

(b) Exhibits, Copies.

In all cases wherein evidence is taken, documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(c) Administrative Notice.

In all proceedings wherein evidence is taken, notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts.

26. TRANSCRIPTS

(a) Availability in Public Hearings.

If a hearing is stenographically recorded in accordance with Rule 23(l),any party other than the Division who requests and receives transcripts shall pay the specified costs to the official reporter. If such receipt is earlier than the date on which the Division would otherwise receive transcripts, the reporter shall deliver the Division's copy to the Division on the earlier date.

(b) Corrections.

Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Transcript corrections agreed to by opposing attorneys may be incorporated into the record, if and when approved by the Hearing Officer, at any time during the hearing, or after the close of evidence, but not more than thirty (30) calendar days from the date of receipt of the transcript, unless time is shortened by the Hearing Officer. The Hearing Officer may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of the proceeding.

27. STIPULATIONS AND SETTLEMENT OFFERS

(a) Stipulations.

The parties may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received in evidence at a hearing, shall be binding on the parties with respect to the matters therein stipulated.

(b) Settlement Offers.

(1) Any party to a proceeding may submit an offer of settlement at any time. The offer must be filed with the Clerk, who will transmit the offer to the Hearing Officer. An offer of settlement must include:

(i) the signed settlement offer;

(ii) an attestation by signatories that the settlement is reasonable, in the public interest, and in accordance with law and regulatory policy.

(2) Settlement agreements reached at a very early stage in an proceeding, before the establishment of an adequate evidentiary basis, must be supported by the proponent placing the details of the agreement into the record, including its underlying rationale. The Hearing Officer will determine whether this is appropriate on a case by case basis.

(3) The failure of all parties to agree to or execute a settlement document should not be fatal to an otherwise reasonable settlement. However, nonsignatory parties must have the right to fully present their evidence and legal arguments and cross-examine all pertinent witnesses of other parties, for the purpose of presenting and litigating the contested issues. A party who does not sign settlement documents may not defeat or challenge a settlement simply by refusing to sign the document.

(4) If the Hearing Officer determines that any offer of settlement is contested in whole or in part by any party, the Hearing Officer may decide the merits of the contested settlement issues, if the record contains substantial evidence upon which to base a reasoned decision, or the Hearing Officer determines there is no genuine issue of material fact.

(i) If the Hearing Officer determines that the contested issues are severable from the offer of settlement, (s)he shall so inform the parties and, unless objected to by any party to the offer of settlement, the uncontested portions may be severed and decided upon a finding by the Hearing Officer that the settlement appears to be fair and reasonable and in the public interest. The Hearing Officer will not sever any contested issues; the resolution of which, in the judgment of the Hearing Officer or any party to the offer of settlement, would affect the offer of settlement as a whole or the underlying bargain of the parties thereto.

(ii) If the Hearing Officer finds that the record lacks substantial evidence or that the contested issues, cannot be severed from the offer of settlement, the Hearing Officer will establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based.

(5) The Hearing Officer is not bound by settlement agreements, and (s)he will independently review any settlement proposed to determine whether the settlement is just, fair and reasonable, in the public interest, or otherwise in accordance with law and regulatory policy. When a settlement agreement is presented for decision, the Hearing Officer may accept the settlement, reject the settlement, or state additional conditions under which the settlement will be accepted. If

the Hearing Officer rejects the settlement or if the Hearing Officer's conditional acceptance of the settlement is rejected by the parties to the settlement, the matter shall continue, as though no settlement had been presented, and the settlement shall be deemed withdrawn.

(6) An offer of settlement that is not approved by the Hearing Officer is not admissible in evidence against any participant who objects to its admission. Any discussion of the parties with respect to an offer of settlement that is not approved by the Hearing Officer is not subject to discovery or admissible in evidence against any participant who objects to its admission.

(c) Hearing on Settlement Offer

The Hearing Officer has discretion to conduct a public hearing on any settlement (s)he accepts. No separate public notice shall be required prior to such hearing.

28. BRIEFS AND ORAL ARGUMENT

(a) Briefs and Memoranda of Law.

Unless requested by the Hearing Officer, no briefs or memoranda of law shall be filed.

(b) Oral Argument.

When time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, or the public interest warrants, the Hearing Officer may allow the presentation of oral argument, imposing such limits or time on the argument as deemed appropriate in the proceeding. Such argument shall be transcribed and bound with the transcript of the testimony.

29. REOPENING PROCEEDINGS

(a) By Parties.

(1) At any time after the conclusion of a hearing in a proceeding, but before the issuance of a written order , any party to the proceeding may, for good cause shown, move to reopen the proceedings for the purpose of taking additional evidence. Copies of such motion shall be served upon all parties or their attorneys of record, and shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing, and shall in all other respects conform to the applicable requirements of Rules 9 through 12, inclusive.

(2) Within ten (10) calendar days following the service of such motion, or such shorter or longer time as the Hearing Officer shall order, any

other party to the proceedings may object or shall be deemed to have waived any objections to the granting of such petition.

(b) By the Hearing Officer.

At any time prior to the issuance of the written order, after notice to the parties and opportunity to be heard, the Hearing Officer may reopen the proceeding for the receipt of further evidence.

30. DIVISION ORDERS

(a) Written Orders

The Administrator or the Administration and Operations Officer will issue Division orders in writing in every proceeding. The timeliness of applications for rehearing and notices of appeal shall be calculated from the date the written order is issued.

(b) Adjudication's for Equal Access to Justice for Small Businesses and Individuals.

Pursuant to R.I.G.L. § 42-92-1 *et seq.*, the Hearing Officer shall award reasonable litigation expenses incurred by the prevailing party in connection with certain adjudicatory proceedings, if the Hearing Officer concludes that there was no reasonable basis in fact and law for the Advocacy Section's position. The following conditions must be met:

(1) the adjudicatory proceedings must involve loss of benefits, the imposition of a fine, the suspension or revocation of a license or permit, or the compulsion or restriction of activities; and

(2) the prevailing party just be either:

(i) an individual whose net worth is less than $500,000.00 at the time the adjudication is initiated; or

(ii) an individual, partnership, corporation, association, or private organization doing business and located in the state, which is independently owned and operated, not dominant in its field, and which employs no more than 100 persons at the time the adjudication is initiated; and

(3) the prevailing party must request reimbursement not later than thirty (30) days following the issuance of the written order, detailing:

(i) compliance with Rule 30(b)(1) and (2); and

(ii) the costs incurred in defending against the unreasonable adjudicatory proceedings, including, but not limited to, attorney's fees and witness fees.

If found to the applicable, the Hearing Officer shall issue a supplementary order directing the Division to pay reasonable litigation expenses, as limited by R.I.G.L. § 42-92-2(c).

31. RELIEF FROM ORDER

(a) Clerical Mistakes.

Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Administrator at any time on his or her own initiative, or on motion of any party and after such notice as the Administrator orders. During the pendancy of an appeal, such mistakes may be so corrected before the appeal is docketed in the Superior Court and thereafter, while the appeal is pending, may be so corrected with leave of the Superior Court.

(b) Mistake, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, Other.

On motion or *sua sponte*, and upon such terms as are just, the Administrator may relieve a party from a final order or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect;

(2) Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under Rule 29;

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The order is void;

(5) A prior order on which the order is based has been reversed or otherwise vacated, or it is no longer equitable that the order should have prospective application; or

(6) Any other reason justifying relief from the operation of the order.

(c) Time.

A motion under (a) or (b) above shall be made within a reasonable time not more than one (1) year after the order is entered. A motion under subsection (b) does not affect the finality of an order or suspend its operation. This rule does not limit the power of the

Administrator to entertain an independent action to relieve a party from an order or to set aside an order for fraud upon the Hearing Officer.

(d) Motion for Reconsideration.

Upon motion of any party made not later than ten (10) calendar days after the date of the Division order the Hearing Officer or Administrator may amend his or her findings or make additional findings and may amend the order accordingly.

(e) Jurisdiction.

(1) The Division retains jurisdiction over all matters until an appeal is docketed in the Superior Court. Once an appeal has been docketed jurisdiction lies in the Superior Court and any request for relief must be made to the Superior Court.

(2) Unless the Division acts upon a motion for reconsideration within fourteen (14) calendar days after the request is filed, the request is denied.

32. JUDICIAL REVIEW

(a) Appeal from Division Orders.

(1) Any person aggrieved by a written order of the Administrator may, within thirty (30) calendar days from the date of such order, file a complaint with the Superior Court pursuant to R.I.G.L. § 42-35-15.

(2) If a motion for reconsideration is filed in accordance with Rule 31(d) of these rules, computation of the time for appeal runs as follows:

(a) If the motion is granted, from the date of the amended order

(b) If the motion is denied, from the date of the order denying reconsideration.

(c) If the Division takes no action on the motion for reconsideration, fourteen (14) calendar days after the filing of the motion for reconsideration, in accordance with rule 31(d)(2) above.

(b) Judicial Review of Rules.

The validity or applicability of any rule may be determined in an action for declaratory judgment in the Superior Court of Providence County, when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. The Division shall be made a party to the action.

The following rules and regulations, after due notice and an opportunity for hearing, are hereby adopted and filed with the Secretary of State this day of January, 1999, to become effective on February 15, 1999, in accordance with the provisions of R.I.G.L. §§ 42-35-2(a)(2),42-35-3 and 39-3-33.

Date:

Thomas F. Ahern, Administrator