

Chapter 703 of NAC

LCB File No. T026-06

**PROPOSED TEMPORARY REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to adopt, amend or repeal regulations)
regarding petitions for leave to intervene,) Docket No. 06-12006
including NAC 703.578 through 703.600.)
_____)

**NOTICE OF INTENT TO ADOPT, AMEND OR REPEAL REGULATIONS; NOTICE
OF WORKSHOP AND NOTICE OF HEARING**

In Docket No. 06-09006, the Public Utilities Commission of Nevada (“Commission”) voted to open an investigatory docket regarding possible modification of its procedural regulations concerning petitions for leave to intervene (Nevada Administrative Code (“NAC”) 703.579 and 703.600). On or before November 15, 2006, interested persons filed comments in the Docket No. 06-09006. Subsequently, the Commission closed the investigatory docket and opened a rulemaking docket, designated by the Commission as Docket No. 06-12006. Attached to this notice are two alternative proposed regulations regarding changes to the Commission’s intervention and other related regulations. The Commission may, at its discretion, adopt either alternative proposed regulation in its entirety or adopt regulations that include portions of each alternative proposed regulation.

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NOTICE IS HEREBY GIVEN that the Public Utilities Commission of Nevada (“Commission”) will hold a WORKSHOP in the above matter as follows:

MONDAY, January 29, 2007

10:30 a.m.
Hearing Room A
Public Utilities Commission of Nevada
101 Convention Center Drive, Suite 250
Las Vegas, Nevada 89109

VIA VIDEOCONFERENCE TO:
Hearing Room A
Public Utilities Commission of Nevada
1150 E. William Street
Carson City, Nevada 89701

At the workshop, interested persons may appear and be heard. This workshop may be continued day to day as necessary. The purpose of this workshop is to receive comments from all interested persons regarding the proposed regulations consisting of additions, revisions, and deletions to the Commission’s regulations concerning petitions for leave to intervene. The proposed language updates Nevada Administrative Code (“NAC”) 703.578 through 703.600, and other associated regulations, including but not limited to NAC 703.481, 703.491, 703.500, 703.510, 703.655, 703.695 and 703.750.

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NOTICE IS HEREBY GIVEN that the Commission will hold a HEARING in the above matter as follows:

MONDAY, January 29, 2007

11:00 a.m.
Hearing Room A
Public Utilities Commission of Nevada
101 Convention Center Drive, Suite 250
Las Vegas, Nevada 89109

VIA VIDEOCONFERENCE TO:
Hearing Room A
Public Utilities Commission of Nevada
1150 E. William Street
Carson City, Nevada 89701

At the hearing, interested persons may appear and be heard. The hearing may be continued day to day as necessary. The purpose of this hearing is to receive comments from all interested persons regarding the proposed regulations consisting of additions, revisions, and deletions to the Commission's regulations concerning petitions for leave to intervene. The proposed language updates Nevada Administrative Code ("NAC") 703.578 through 703.600, and other associated regulations, including but not limited to NAC 703.481, 703.491, 703.500, 703.510, 703.655, 703.695 and 703.750.

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The following information is provided pursuant to the requirements of Nevada Revised Statutes (“NRS”) 233B.0603:

In Docket No. 06-09006, the Commission voted to open an investigatory docket regarding possible modification of its procedural regulations concerning petitions for leave to intervene. Comments were filed by interested parties on or before November 15, 2006 in Docket No. 06-09006. The Commission subsequently issued a procedural order, closing the investigatory docket and opening a rulemaking docket, designated as Docket No. 06-12006.

The proposed regulations potentially affect all entities that practice before the Commission. At this time, the Commission cannot quantify either the adverse or beneficial economic effects on the entities affected by the regulation or the public, either immediate or long term, which may result from the regulation.

The methodology to be used by the Regulatory Operations Staff of the Commission to determine the impact of proposed regulations on small businesses is called the Delphi method. The Delphi Method is a systematic interactive forecasting method based on independent inputs of selected experts. The experts form a consensus opinion after reviewing the proposed regulation to determine the likely impact of the regulation on small businesses and the public.

The Commission cannot quantify at this time any increase in costs associated with enforcement of these proposed regulations. The regulations do not overlap or duplicate any other state or local federal government regulation, nor do they establish any fee or increase an existing fee.

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Persons wishing to comment upon the proposed action of the Commission may appear at the scheduled public workshop and/or hearing, or address their comments, data, views, or arguments, in written form, to the Secretary of the Commission, 1150 E. William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109. Written submissions must be received by the Commission on or before **Monday, January 22, 2007**.

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Commission, at 1150 East William Street, Carson City, Nevada 89701 and 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adopting any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been posted at the county courthouses located in Reno, Carson City, and Las Vegas.

By the Commission,

CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

(SEAL)

Chapter 703 of NAC

LCB File No. T026-06

**FIRST PROPOSED TEMPORARY REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

Explanation- Matter in *italics* is new; matter in ~~strickethrough~~ is material to be omitted.

Section 1. Chapter 703 of NAC is hereby amended by adding thereto the provisions set forth as section 2 of this regulation.

Section 2. *Limited status intervener: Conditions and scope of participation in proceedings.*

1. A person who is not a party to a proceeding may participate in the proceeding as a limited status intervener if:

(a) The person has a direct and substantial interest in the proceeding but the person does not desire to participate in the proceeding as an intervener; or

(b) The person does not have a direct and substantial interest in the proceeding to participate in it as an intervener but the person possesses expertise about, or a public interest in, the issues in the proceeding.

2. A person may not participate as a limited status intervener if the person claims an interest that is:

(a) Based on a speculative business or marketing plan;

(b) Based on a transaction or potential transaction that is not the subject of the proceeding, but may be affected by the proceeding;

(c) Based solely on a person's involvement in a proceeding in another unrelated docket;

(d) *Based on an interest that is irrelevant to the proceeding; or*

(e) *Based solely on a desire to monitor the proceeding or to obtain information from the proceeding.*

3. *To participate in the proceeding as a limited status intervener, the person must file a written petition with the Commission which sets forth the following:*

(a) *The title and docket number of the proceeding in which participation is sought;*

(b) *The name and address of the petitioner and, if represented, the name, address and telephone number of his attorney or other authorized representative;*

(c) *A clear and concise statement of the interest of the petitioner in the proceedings and, the specific areas in which the petitioner possesses expertise about, or a public interest in, the issues in the proceeding;*

(d) *A statement as to whether the petitioner intends to present evidence in the proceeding.*

4. *Each person who participates in the proceeding as a limited status intervener:*

(a) *Must be styled a “limited status intervener” in all pleadings;*

(b) *Is not a party of record, but is entitled to be placed on the service list for the proceeding, and the person will receive copies of all pleadings in the proceeding; and*

(c) *Is not entitled to file a petition for reconsideration or rehearing or seek judicial review of a decision of the Commission.*

5. *A limited status intervener is not a party of record to the proceeding, but he may take the following actions that only a party of record may take: presenting or cross-examining*

witnesses, and conducting discovery. A limited status intervener is not a party of record to the proceeding; therefore, he may not participate in stipulation or settlement discussions.

6. *If, during the pendency of the proceeding, a limited status intervener claims to have a direct and substantial interest in the proceeding and desires to participate in the proceeding as an intervener, the limited status intervener may file a petition for leave to intervene with the Commission pursuant to NAC 703.578 to 703.600, inclusive. If the petition for leave to intervene is filed with the Commission after the applicable period set forth in NAC 703.590, the petition must state a substantial reason for the delay as required by that section.*

7. *If it appears during the proceedings that a limited status intervener no longer possesses useful expertise about, or a public interest in, the issues in the proceeding, and that the public interest does not require his further participation, the Commission will or the presiding officer shall dismiss the limited status intervener from the proceeding.*

Section 3. NAC 703.481 is hereby amended to read as follows:

1. In any contested case pending before the Commission, a party, *limited status intervener* or commenter or an authorized representative or attorney of a party, *limited status intervener* or commenter shall not communicate, directly or indirectly, with a Commissioner or a hearing officer regarding any substantive issues of fact or law that relate to the contested case, unless the communication:

- (a) Is part of a pleading filed and served in accordance with the provisions of this chapter; or
- (b) Occurs during a formal hearing before the Commissioner or the hearing officer.

2. The provisions of this section apply from the date on which the pleading or other document that commences the contested case is filed with the Secretary until 15 calendar days after the date on which the Commission issues a final order in the contested case or, if a petition for reconsideration is filed, until the date on which the Commission issues the order on reconsideration.

3. As used in this section, “contested case” means every proceeding pending before the Commission except:

(a) A rule-making proceeding conducted pursuant to NRS 233B.0395 to 233B.115, inclusive, whether the proceeding is commenced pursuant to NAC 703.546 or otherwise;

(b) A proceeding involving a petition for a declaratory order or an advisory opinion pursuant to NRS 233B.120 and NAC 703.825; or

(c) Any proceeding in which the Commission is not required by law to conduct a hearing before determining any issue of fact or law, or both.

Section 4. NAC 703.491 is hereby amended to read as follows:

1. A person who is not a party to a proceeding may participate in the proceeding as a commenter if:

(a) The person has a direct and substantial interest in the proceeding but the person does not desire to participate in the proceeding as an intervener; or

(b) The person does not have a direct and substantial interest in the proceeding to participate in it as an intervener but the person desires to file written comments concerning issues in the proceeding.

2. To participate in the proceeding as a commenter, the person must file with the Commission a notice of intent to participate as a commenter. If the person files such notice, the Commission will place the person on the service list maintained by the Commission, and the person will receive from the Commission copies of Commission-issued pleadings in the proceeding.

3. Each person who participates in the proceeding as a commenter:

(a) Must be styled a “commenter” in all pleadings;

(b) Is not a party of record; and

(c) Is limited to filing written comments in the proceeding pursuant to subsection 4.

4. *Five days prior to* ~~Before~~ the beginning of the hearing in the proceeding, each commenter may file with the Commission written comments concerning issues in the proceeding. The written comments will be made part of the record of the proceeding, but the written comments will not be treated as evidence. *Commenters may make presentations before the Commission in the hearing at the discretion of the presiding officer.*

5. A commenter is not a party of record to the proceeding, and a commenter shall not take any action that only a party of record may take, including, without limitation, presenting or cross-examining witnesses, conducting discovery, filing a petition for reconsideration or rehearing or seeking judicial review of a decision of the Commission.

6. If, during the pendency of the proceeding, a commenter claims to have a direct and substantial interest in the proceeding and desires to participate in the proceeding as an intervener, the commenter may file a petition for leave to intervene with the Commission pursuant to NAC 703.578 to 703.600, inclusive. If the petition for leave to intervene is filed with

the Commission after the applicable period set forth in NAC 703.590, the petition must state a substantial reason for the delay as required by that section.

Section 5. NAC 703.500 is hereby amended to read as follows:

Rights of parties, *limited status interveners* and commenters.

Except as otherwise provided by specific regulation, in any proceeding before the Commission:

1. Each party of record *and limited status intervener* is entitled to enter an appearance, introduce relevant evidence, examine and cross-examine witnesses, make arguments, make and argue motions and generally participate in the proceeding.

2. Each commenter is entitled to file written comments with the Commission pursuant to NAC 703.491.

Section 6. NAC 703.510 is hereby amended to read as follows:

Representation of parties, *limited status interveners*, commenters and Commission's staff; qualifications of attorneys appearing before Commission.

1. Subject to the specific provisions of this section, in any proceeding before the Commission, a person may represent himself or may be represented by an attorney or any other person who satisfies the Commission or the presiding officer that the person possesses the expertise and is otherwise competent to advise and assist in the presentation of matters before the Commission. The Commission may, for good cause shown, exclude any representative or impose conditions upon the participation of any representative appearing before the Commission pursuant to the provisions of this section.

2. The provisions of this section rather than the provisions of Nevada Supreme Court Rule 42 govern appearances before the Commission by attorneys who are not admitted and entitled to practice before the Supreme Court of Nevada.

3. An attorney appearing in any proceeding before the Commission must be duly admitted to practice and in good standing before the highest court of any state or the District of Columbia.

4. In a contested case:

(a) An attorney who is not admitted and entitled to practice before the Supreme Court of Nevada must associate with an attorney so admitted and entitled to practice and shall file a notice of association with the Commission if:

(1) The attorney who is not admitted and entitled to practice before the Supreme Court of Nevada has not appeared before the Commission in the 3 years immediately preceding the date on which the case is filed; or

(2) The Commission, for good cause shown, requires the attorney who is not admitted and entitled to practice before the Supreme Court of Nevada to associate with an attorney so admitted and entitled to practice.

(b) The notice of association required pursuant to paragraph (a) must:

(1) Identify each jurisdiction in which the attorney who is required to file the notice is duly admitted and in good standing;

(2) Identify by name and State Bar of Nevada identification number the attorney with whom the attorney who is required to file the notice is associating;

(3) Describe the qualifications of the attorney who is required to file the notice to advise and assist in the presentation of the contested case before the Commission; and

(4) Be signed by the attorney who is required to file the notice and by the attorney with whom the attorney who is required to file the notice is associating.

(c) The Commission or presiding officer may require the attorney who is admitted and entitled to practice before the Supreme Court of Nevada and who is identified pursuant to subparagraph (2) of paragraph (b) to sign any pleadings and be present at any proceeding on the record.

5. An attorney who resides in Nevada and who is not admitted and entitled to practice before the Supreme Court of Nevada may not appear in any proceeding before the Commission unless the attorney:

(a) Is qualified or has an application for qualification pending for the limited practice of law pursuant to Nevada Supreme Court Rule 49.10; and

(b) Associates with an attorney who is admitted and entitled to practice before the Supreme Court of Nevada in accordance with the provisions of subsection 4.

6. An attorney from the Regulatory Operations Staff of the Commission shall represent the Commission's staff in all proceedings before the Commission.

7. As used in this section, the term "contested case" has the meaning ascribed to it in NRS 233B.032.

Section 7. NAC 703.580 is hereby amended to read as follows:

1. Any person who claims to have a direct and substantial interest in a proceeding and desires to participate in it as an intervener must file a petition for leave to intervene with the Commission requesting an order permitting the intervention.

2. A person has a direct and substantial interest in a proceeding if:

(a) A statute explicitly confers on the person a right to intervene; or

(b) The person claims an interest relating to the property or transaction which is the subject of the proceeding and the person is so situated that the disposition of the proceeding will, as a practical matter, impair or impede the ability of the person to protect that interest, unless the person is adequately represented by existing parties.

3. A person does not have a direct and substantial interest in a proceeding if the person claims an interest that is:

(a) Based on a speculative business or marketing plan;

(b) Based on a transaction or potential transaction that is not the proceeding, but may be affected by the proceeding;

(c) Based solely on a person's involvement in a proceeding in another unrelated docket;

(d) Based on an interest that is irrelevant to the proceeding; or

(e) Based solely on a desire to monitor the proceeding or to obtain information from the proceeding.

4. As used in this section, a direct and substantial interest requires that either legal rights, duties or privileges of the person are directly affected by the proceeding.

Section 8. NAC 703.585 is hereby amended to read as follows:

A petition for leave to intervene must be in writing and set forth the following:

1. The title and docket number of the proceeding in which leave to intervene is sought;

2. The name and address of the petitioner and, if represented, the name, address and telephone number of his attorney or other authorized representative;

3. A clear and concise statement of the direct and substantial interest of the petitioner in the proceedings and, if the petitioner is an association, all information that is necessary for the petitioner to satisfy the requirements set forth in NAC 703.595;

4. The manner in which the petitioner's *legal rights, duties or privileges* will be affected by the proceedings;

5. A statement as to whether the petitioner intends to present evidence in the proceeding; and

6. If affirmative relief is sought, a description of the desired relief and the basis for that relief.

7. *The petitioner has the burden of providing adequate detail to demonstrate the direct and substantial interest.*

Section 9. NAC 703.590 is hereby amended to read as follows:

1. A petition for leave to intervene, *or a petition to participate as a limited status intervenor* must be filed with the Commission within any applicable period set in the public notice published in accordance with NAC 703.160.

2. If a petition for leave to intervene, *or a petition to participate as a limited status intervenor* is filed after the applicable period, the petition must state a substantial reason for the delay. The Commission will not grant a petition for leave to intervene, *or a petition to participate as a limited status intervenor* that is filed after the applicable period if the delay in filing was because of neglect or unreasonable inaction by the petitioner or his attorney.

Section 10. NAC 703.600 is hereby amended to read as follows:

When two or more interveners, *or two or more limited status interveners*, have substantially the same interest and positions, the Commission will, or the presiding officer shall, limit the number of interveners who will be permitted to cross-examine, make and argue motions or make objections during the course of the hearing when such a limitation is appropriate to expedite the hearing.

Section 11. NAC 703.655 is hereby amended to read as follows:

1. The Commission or presiding officer may, upon its or his own motion or at a motion made by a party of record, hold a prehearing conference to accomplish one or more of the following purposes:

- (a) Formulate or simplify the issues involved in the proceeding.
- (b) Obtain admissions of fact or any stipulation of the parties.
- (c) Arrange for the exchange of proposed exhibits or prepared expert testimony.
- (d) Identify the witnesses and the subject matter of their expected testimony and limit the number of witnesses, if necessary.
- (e) Rule on any pending procedural motions, motions for discovery or motions for protective orders.
- (f) Establish a schedule for the completion of discovery.
- (g) Determine the necessary and appropriate content of the notice of hearing required in subsection 6 of NAC 703.2211 or subsection 6 of NAC 703.2511.

(h) Establish a schedule for the submission of a statement of issues and positions by all parties to a hearing on a change in rates by a public utility.

(i) Establish any other procedure which may expedite the orderly conduct and disposition of the proceedings.

2. Notice of any prehearing conference will be provided to all parties of record *and commenters*. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at the conference.

3. The action taken and the agreements made at a prehearing conference:

(a) Must be made a part of the record.

(b) Control the course of subsequent proceedings unless modified at the hearing by the presiding officer.

(c) Are binding upon all parties and persons who subsequently become parties to the proceeding.

4. In any proceeding the presiding officer may call all the parties together for a conference before the taking of testimony or may recess the hearing for such a conference to carry out the intent of this section. The presiding officer will state on the record the results of such a conference.

Section 12. NAC 703.695 is hereby amended to read as follows:

1. Applicants, petitioners or complainants may present their evidence first at a hearing. Then any parties of record opposing the application, petition or complaint may present their evidence. The presiding officer shall designate the stage of the proceeding at which each intervener or member of the Commission's staff may be heard. Evidence must be received in the

following order unless the presiding officer determines that a special circumstance requires a different order:

- (a) Upon an application or petition:
 - (1) Applicant or petitioner;
 - (2) *Limited Status Interveners*;
 - ~~— [(2) Commission's staff;]~~
 - (3) Interveners; ~~and~~
 - (4) *Commission's Staff*;
 - (5) Rebuttal by the applicant or petitioner.
- (b) Upon a complaint:
 - (1) Complainant;
 - (2) Respondent;
 - (3) *Interveners*;
 - (4) *Commission's staff*;
 - (5) Rebuttal by complainant.
- (c) Upon a complaint by the Commission or an order to show cause:
 - (1) Commission's staff;
 - (2) Respondent;
 - (3) Interveners; and
 - (4) Rebuttal by Commission's staff.

2. In addition to any cross-examination by the parties pursuant to NAC 703.685, witnesses may be cross-examined by the presiding officer, any Commissioner, and the administrative assistants and legal counsel for the Commission.

3. If there is more than one applicant, petitioner or complainant, the witnesses of all applicants, petitioners or complainants may present direct testimony on an issue before any of these witnesses may be cross-examined on that issue, unless otherwise ordered by the presiding officer.

4. If two or more matters are set for hearing at the same time and place, the matter having the lowest docket number will be heard first, unless the presiding officer directs a different order for the convenience of the parties.

Chapter 703 of NAC

LCB File No. T026-06

**SECOND PROPOSED TEMPORARY REGULATION OF THE
PUBLIC UTILITIES COMMISSION OF NEVADA**

Explanation- Matter in *italics* is new; matter in ~~strikethrough~~ is material to be omitted.

Section 1. NAC 703.491(4) is hereby amended to read as follows:

Before the beginning of the hearing in the proceeding *and after the close of the hearing*, each commenter may file with the Commission written comments concerning issues in the proceeding. The written comments will be made part of the record of the proceeding, but the written comments will not be treated as evidence.

Section 2. NAC 703.580 is hereby amended to read as follows:

1. Any person who claims to have a direct and substantial interest in a proceeding and desires to participate in it as an intervener must file a petition for leave to intervene with the Commission requesting an order permitting the intervention.

2. A person has a direct and substantial interest in a proceeding if:

(a) A statute explicitly confers on the person a right to intervene; or

(b) The person claims an interest relating to the property or transaction which is the subject of the proceeding and the person is so situated that the disposition of the proceeding will, as a practical matter, impair or impede the ability of the person to protect that interest, unless the person is adequately represented by existing parties.

3. A person does not have a direct and substantial interest in a proceeding if the person claims an interest that *in whole or in part* is:

(a) Based on a speculative business or marketing plan;

(b) Based on a person's involvement in a prior, pending or planned competitive solicitation or other procurement or supply process;

~~(b)~~(c) Based solely on a person's involvement in a proceeding in another unrelated docket;

~~(e)~~(d) Based on an interest that is irrelevant to the proceeding; or

~~(d)~~(e) Based solely on a desire to monitor the proceeding or to obtain information from the proceeding.

4. Nevada-based groups or organizations claiming to represent the public interest of Nevada ratepayers may participate as interveners to a proceeding if participation by these groups or organizations is found to be in the public interest by the presiding officer. The presiding officer has the discretion to determine the limits of participation by these groups or organizations permitted to intervene in a proceeding, including whether intervention will be permitted for some or all of the issues to be decided in the proceeding.

Section 3. NAC 703.750 is hereby amended to read as follows:

1. With the approval of the presiding officer, *any of* the parties may stipulate as to any ~~fact~~*matter* in issue, either by written stipulation introduced in evidence as an exhibit or by an oral statement made upon the record. This stipulation, *if approved*, is binding only upon the parties so stipulating and is not binding upon the Commission.

2. If some but not all parties to a proceeding stipulate as to all matters at issue, the Presiding Officer shall determine whether:

(a) *The stipulation can be severed into matters upon which all parties agree and matters upon which all parties do not agree; or*

(b) *The stipulation should go forward as a partial-party stipulation.*

3. *If the stipulation can be severed, then the stipulation can be presented for consideration and the remaining matters can go forward in hearing.*

4. *If the stipulation cannot be severed, then the non-signing parties shall present evidence to be weighed by the presiding officer in consideration of the stipulation.*

5. *The partial-party stipulation may be presented for consideration to the Commission after the following entities are in agreement as to the partial-party stipulation:*

(a) *The party or parties who initiated the proceeding or the party or parties who are the subject of the proceeding;*

(b) *The Regulatory Operations Staff of the Commission; and*

(c) *The Bureau of Consumer Protection within the Office of the Attorney General, if this entity has intervened in the subject proceeding.*

~~[2]~~6. The stipulation may be considered by the *presiding officer* ~~[Commission]~~ as evidence at the hearing. The Commission or presiding officer may require proof of the facts stipulated to by independent evidence, notwithstanding the stipulation of the parties. A stipulation without additional proof is not binding on the Commission in its determination of the matter.