APPENDIX

001 GENERAL: **All definitions listed in alphabetical order and renumbered accordingly**.

001.01 Definitions: As used in Chapter 1 unless the context otherwise requires:

001.01A Authority: The term includes a certificate, designation, license or permit.

001.01B Commission: The Nebraska Public Service Commission.

001.01C Common Carrier: A person transporting passengers or goods or providing telecommunications services for hire to the public.

001.01D Contested Case: A proceeding before the Commission in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after a hearing before the Commission.

001.01E Contract Carrier: A person transporting passengers or goods or providing telecommunications services under contract to one or a limited number of persons.

001.01F Ex Parte Communication: An oral or written communication, made by any medium, which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. In any proceeding before the Commission in which the public advocate is a party or is appearing for a party, the public advocate shall be considered a party for purposes of the restrictions on ex parte communications. Notwithstanding subdivision (4)(c) of section 84-901, this section applies to all communications by a party in contested cases under the State Natural Gas Regulation Act, including, but not limited to, general rate filings under section 66-1838. Ex parte communication does not include:

001.01F1 Communications that do not pertain to the merits of a contested case;

001.01F2 Communications in a rulemaking proceeding; and

001.01F3 Communications to which all parties have given consent.

001.01G Executive Director: The designated person in charge of the day-to-day operations of the Commission. ~~Secretary to the Commission is a synonymous term.~~

001.01H Hearing Officer: The ~~term means either a~~ Commissioner or Commissioners ~~or an Examiner~~ assigned to preside over the proceeding.

001.01I Holiday: A day or any portion of a day designated by statute or authorized by the Governor during which no business is transacted by the Commission.

001.01J Informal Intervenor: A person granted leave to informally intervene.

001.01K Jurisdictional Utility: A natural gas public utility subject to the jurisdiction of the Commission.

~~001.01K Legal Representative: For the purpose of administering the act and the rules and regulations promulgated thereunder, the term "legal representative" includes widow and/or widower.~~

001.01L Motion: An oral or written request addressed to a Hearing Officer or the Commission by any party to a proceeding. Oral motions ~~are entered~~ may be made only during a hearing on the record.

001.01M Parties:

001.01M1 Applicant: A person filing an application.

001.01M2 Commission Staff: Persons who appear in a proceeding by virtue of their Commission employment.

001.01M3 Complainant: A person filing a complaint.

~~001.01M5 Defendant: A person against whom a complaint is filed.~~

001.01M4 Formal Intervenor: A person ~~permitted~~ granted leave to formally intervene.

001.01M5 Petitioner: Any other person seeking relief other than by complaint or application.

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001.01M6 Protestant: A person filing a protest to the granting of an application.

001.01M7 Respondent: A person designated in an investigative or show cause proceeding or in a complaint.

001.01N Person: Any individual, ~~firm, organization~~, corporation, governmental agency or subdivision, ~~company,~~

~~association,~~ partnership, limited liability company, company or association; or any other legal or commercial entity, including any jurisdictional utility, common or contract carrier and its owners, directors, officers, limited liability company members, agents and employees. ~~joint stock association, body politic, common carrier, society, legal representative, trustee, receiver, assignee, guardian, executor or administrator~~.

001.01O Public Advocate: The person appointed by the Executive Director to represent the interests of Nebraska citizens and all classes of jurisdictional utility ratepayers, other than high-volume ratepayers, in matters involving jurisdictional utilities and as trial staff before the Commission.

001.01P Verified: Verified shall mean that the signature is notarized.

002 APPEARANCES:

002.01 Individual: An individual may appear on his/her own behalf before the Commission.

002.02 On Behalf of Another: An individual may appear on behalf of another person and elicit testimony from witnesses if such individual is admitted to practice law before the Nebraska Supreme Court or is admitted to practice law before the Supreme Court of any other state and ~~is accompanied~~ has been admitted to practice before the Commission in a proceeding upon a motion by a person admitted to practice before the Nebraska Supreme Court.

002.03 On Behalf of Another by Limited Appearance: An individual who is neither admitted to practice law before the Nebraska Supreme Court nor the Supreme Court of any other state may appear for a governmental subdivision, corporation, association or partnership for the sole purpose of making a statement on behalf of such person, but shall not elicit testimony from any other person.

002.04 Staff: Nothing in this chapter will prohibit staff members of the Commission, whether or not admitted to practice law in Nebraska, from interrogating witnesses or otherwise participating in proceedings before the Commission.

002.05 Special Appearance: Objections to the jurisdiction of the Commission will be made by filing a special appearance. A party appearing specially for such purpose shall designate the specific defects upon which ~~he/she~~ it relies. If no objection to the jurisdiction of the Commission is made prior to the hearing or at the time appearances are made, jurisdictional defects (except subject matter) are waived. If a special appearance is overruled, the objection to the jurisdiction of the Commission will be preserved in a further pleading, if any is required.

003 TYPES OF PROCEEDINGS: **All subsections renumbered**.

003.01 Proceedings Before the Commission: The Commission will initiate proceedings based upon the following:

003.01A Receipt of Initial ~~Proceedings~~ Pleadings: The Commission will act ~~only~~ on the following initial pleadings: (1) An application for authority filed by any person pursuant to the Commission's jurisdiction under Article IV, Section 20 of the Nebraska Constitution or Chapters 74, 75, ~~and~~ 88 and 86 of the Nebraska Revised Statutes, ~~R.R.S. 1943~~ as amended; (2) A departmental complaint filed by a director of a Commission department; ~~(3) An order to show cause filed on the Commission's own motion~~; (3) A formal complaint, which may be filed by any person against any person or entity subject to the jurisdiction of the Commission; ~~and,~~ (4) A petition for investigation which may be filed by any person; ~~or upon the Commission's own motion~~. (5) A petition for declaratory ruling, which may be filed by any person; (6) any other lawful requests for Commission action not otherwise specifically listed herein.

003.01B Action Initiated by Commission: The Commission may initiate a proceeding through the following means: (1) Entering an order to show cause on the Commission's own initiative; (2) Entering an order opening an investigation; and (3) Entering an order initiating a rulemaking proceeding.

003.01C Informal Complaints: The Commission may investigate complaints on an informal basis to resolve questions, disputes, develop further information, or otherwise resolve an issue.

~~004 RESPONSIVE PLEADINGS: The only responsive pleadings the Commission will file are: (1) A protest to an application; and, (2) An answer to a departmental complaint, order to show cause, formal complaint, or petition.~~

004 FORM OF PLEADINGS: **Previously Section 005, all subsections renumbered accordingly**. ~~Each pleading shall be filed in the following form:~~

004.01 Initial Pleadings: Initial pleadings shall mean those pleadings set forth in 003.01A and shall be filed in the following forms:

004.01A Applications on Commission Forms: Applications for certain authority and relief, as set forth in Section 025 below, ~~motor carrier authority, grain warehouse and grain dealer licenses, itinerant merchant license, transmission line construction change, telephone boundary change, and automatic dialing-announcing device shall~~ should be filed on forms provided by the Commission.

004.01B Applications on Other Forms: Applications not on Commission forms ~~for a rate tariff, tariff change, railroad change, or any other matter~~ shall be filed by letter, in pleading form or in such other form that identifies the applicant, provides a clear statement of the facts upon which the matter is

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being placed before the Commission, satisfies all other requirements set forth in statute or rule and regulation, ~~and~~ clearly states the relief requested, and includes a verified signature, unless signed by an attorney.

004.01C Departmental Complaint: A departmental complaint shall contain the name of the complainant, ~~defendant~~ respondent, a clear and concise allegation of each offense in terms of each applicable statute or rule, and be signed by the ~~complainant~~ director of the department making the complaint. Such signature of the director shall be verified. A statement that a failure to answer will be construed as an admission to the allegations in a departmental complaint shall be included in the complaint served upon respondent pursuant to Section 011.

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~~005.04 Order to Show Cause: An order to show cause shall contain the name of the respondent, a clear and concise allegation of each cause for which the Commission requires a showing, and be signed by the Executive Director.~~

004.01D Formal Complaint: A formal complaint shall contain the name of the complainant, ~~defendant~~ respondent, a clear and concise allegation of each offense, and ~~be signed by~~ a verified signature of the complainant, unless signed by an attorney.

004.01E Petition: A petition shall contain the name of the petitioner, a statement of the matter for which investigation is requested, a statement of the relief requested, and a verified signature of the petitioner, unless signed by an attorney.

~~005.07 Protest: A protest shall contain the name and address of the protestant, a statement concerning the interest of the protestant in the application protested, and a request for the relief sought by the protestant.~~

004.02 Responsive Pleadings: The only responsive pleadings the Commission will ~~file~~ allow are: (1) A protest to an application; ~~and,~~ (2) A petition for formal or informal intervention; and (3) An answer to a departmental complaint, order to show cause, formal complaint, or petition. Said responsive pleadings shall be made in the following forms:

004.02A Answer to Formal Complaint: An answer to a formal complaint shall be filed and shall admit or deny each material allegation of the formal complaint. The answer shall set forth any affirmative defense which the ~~defense~~ respondent ~~may~~ chooses to assert. The Commission shall have the discretion, upon proper showing, to dismiss the formal complaint, with or without a hearing, or require further action.

004.02A1 Satisfaction of Formal Complaint: A ~~defendant~~ respondent to a formal complaint may file with the

Commission a Statement of Satisfaction of the formal complaint. Such Statement of Satisfaction shall be filed with the Commission within ten (10) days after service of the complaint upon ~~defendant~~ respondent. ~~Defendant~~ Respondent shall serve a copy of Statement of Satisfaction upon the complainant. Within five (5) days after receipt of the Statement of Satisfaction by complainant, complainant may file a Statement of Acceptance, a copy of which shall be served upon ~~defendant~~ respondent. The ~~defendant~~ respondent may then move for dismissal at any time prior to the time set for hearing on the complaint.

004.02A2 If a Statement of Satisfaction is not filed, the ~~defendant~~ respondent shall have ~~fifteen (15)~~ twenty (20) days from service of the complaint to file an answer.

004.02A3 If a Statement of Satisfaction is filed within the time allowed ~~by the defendant~~, but is not accepted by the complainant, then the ~~defendant~~ respondent shall file an answer with the Commission within ~~twenty (20)~~ fifteen (15) days from the date of service of the Statement of Satisfaction with a copy thereof being served on complainant.

004.02A4 Except for good cause shown, and except where a Statement of Satisfaction has been filed and accepted, failure to answer will be construed as an admission of the allegations in the complaint.

004.02B Answer to Departmental Complaint: An answer to a departmental complaint shall be filed and shall admit or deny each material allegation of the departmental complaint. The answer shall set forth any affirmative defense which ~~defendant~~ respondent ~~may~~ chooses to assert. The answer shall be filed with the Commission within twenty (20) days after service of the complaint.

004.02B1 Except for good cause shown, failure to answer will be construed as an admission of the allegations in the complaint.

~~005.10 Failure to Answer: The fact that a failure to answer will be construed as an admission to the allegations in a formal complaint or a departmental complaint shall be included in the complaint served upon defendant pursuant to 011.~~

004.02C Intervention: A petition for intervention shall contain the name and address of the intervenor, a statement concerning the interest of the intervenor in the application at issue, and a statement as to whether said petition is requesting formal or informal intervention.

004.02D Protest: A protest shall contain the name and address of the protestant, a statement concerning the interest of the protestant in the application protested, and a request for the relief sought by the protestant.

004.03 Orders to Show Cause: An order to show cause shall contain the name of the respondent, a clear and concise allegation of each cause for which the Commission requires a showing.

005 ~~006~~ SIGNING: Each pleading of a party represented by an attorney shall be signed by at least one attorney of record, who is admitted to practice before the Commission pursuant to Section 002.02, in his/her individual name, whose mailing address, e-mail address and telephone number will be stated. Except where specifically provided by other rules or statutes, pleadings need not be verified or accompanied by an affidavit. The signature of an attorney constitutes a certificate by ~~him/her~~ the attorney that he/she has read the pleading; that to the best of his/her knowledge, information and belief there ~~is~~ are good grounds to support it; and that it is not interposed for delay. The party who is not represented by an attorney shall sign his/her pleading and state his/her mailing address, e-mail address and telephone number. The signature of a party not represented by an attorney shall be verified.

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006 ~~007~~ COPIES: Except as otherwise provided in these rules, one original and paper copies as required by the Executive Director and one electronic copy of each pleading will be filed with the Commission. The electronic copy of the pleading should be submitted to the Commission by electronic mail or other appropriate media. In its discretion, the Commission may waive the requirement that an electronic copy of the pleading be filed.

007 ~~008~~ WITHDRAWAL OF PLEADING: Pleadings filed with the Commission ~~will~~ may not be withdrawn without approval of the Commission.

008 ~~009~~ SUBSEQUENT APPLICATION: When any application has been denied, in whole or in part, a subsequent application covering substantially the same subject matter will not be considered by the Commission within ~~90~~ 180 days from the date of the final denial, in whole or in part, of the previous application, except for good cause shown.

009 HOURS OF OPERATION; COMPUTATION OF TIME: **Previously Section 010, all subsections renumbered accordingly**

009.01 Office Hours: All public records on file at the Commission ~~files~~ are open to public inspection. Office hours are 8:00 a.m. to 5:00 p.m. (Central Time), Monday through Friday, except Holidays. Commission files and/or transcripts may be checked out of the Commission office only with express prior permission of a Commissioner or the Executive Director.

009.02 Computation: In computing any period of time prescribed or allowed by the rules in Title 291, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a

Saturday, Sunday, or a ~~legal~~ Holiday, in which event the period runs until the end of the next day which is ~~neither a Saturday, Sunday nor a holiday~~ not one of the aforementioned days. When the period of time prescribed or allowed is less than five days, intermediate Saturdays, Sundays and Holidays will be excluded in the computation. ~~When the federal government (Post Office) and the Commission observe the same holiday on different days and such prevents a party from acting within the prescribed time, both days observed will be considered as holidays.~~ Nothing herein shall prevent the modification of the computation of time by the Commission or Hearing Officer in a specific proceeding.

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010 SERVICE AND NOTICE: **Previously Section 011, all subsections renumbered accordingly**

010.01 Service and Notice: For the purpose of service, each person subject to the Commission's jurisdiction shall at all times keep on file with the Executive Director his, her or its business mailing address and e-mail address or, in lieu thereof, notify the Executive Director of an agent (name, mailing ~~and~~ address and e-mail address) designated to receive documents and notices. Until the Executive Director is notified to the contrary, the address on file with the Commission's various departments will be deemed to be the address to which documents and notices will be mailed, electronically mailed or personally delivered. Proof of service that any person subject to Commission jurisdiction was served, or was attempted to be served, at the address on file with the Commission shall be adequate to satisfy any notice requirement imposed by these rules. Any person who does not hold a certificate, permit or license from the Commission, and yet may be subject to the Commission's jurisdiction, may be served wherever such person is found within the state.

010.02 ~~How Served~~ Methods of Service:

010.02A A departmental complaint or order to show cause ~~petition for investigation and a subpoena~~ will be served on the respondent or subject of the order to show cause personally by a Commission inspector or investigator, or, ~~except a subpoena,~~ by ~~certified~~ First Class or certified United States mail.

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010.02B The person filing a formal complaint or petition for investigation shall serve a copy on the respondent personally or by First Class or certified United States mail or shall request that the Commission do so, at the person's expense, in which event the Commission shall make service by the same means.

010.02C Orders opening public investigation and orders opening rulemaking proceeding will be served electronically to all certificated carriers, registered carrier, permitted carriers, and jurisdictional utilities affected, others who have in writing requested notice and others at the discretion of the department director. Said orders will also be posted on the Commission's Web site. A paper copy of said orders will be available upon request

after payment for copying and faxing or mailing.

010.02C1 Subsequent orders in public investigations and rulemaking proceedings will be served electronically on the certificated carriers, registered carrier, permitted carriers, and jurisdictional utilities affected, others requesting by written notice and others at the discretion of the department director. Said subsequent orders will also be posted on the Commission's Web site. A paper copy of said subsequent orders will be mailed to all parties of record.

010.02D Orders in other proceedings will be sent to all parties of record by First Class United States mail.

010.02E Notice of Hearing in all proceedings, including the time and date of the hearing, will be sent to all parties of record by First Class United States mail.

010.02F Subpoenas shall be served personally by a Commission inspector or investigator, county sheriff, or process server or via certified United States mail.

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010.03 Return: The ~~inspector~~ person serving documents shall make proof of service thereof to the Commission promptly and in any event within the time during which the person served must respond. Failure to make proof of service will not affect the validity of the service.

010.04 Personal Service: The Executive Director will be furnished such copies as are necessary to make service. Service will be made as follows:

010.04A Upon an individual other than an incompetent person, by delivering a copy of the document to him/her personally or by leaving a copy thereof at his/her dwelling, house or other place of abode with some person of suitable age and discretion then residing therein or, if any, at his/her usual place of business; provided however, if an agent has been designated, the document will be served upon the agent in the same manner as service is to be made upon the principal.

010.04B Upon a domestic or foreign corporation, ~~or upon~~ an organization, a partnership or other unincorporated association ~~which~~ that is subject to suit under a common name, by delivering a copy of the document to an officer, a managing or general agent; provided, however, if an agent has been designated, the document will be served upon the agent in the same manner as service is to be made upon the principal.

010.04C Upon a legal representative by delivering a copy of the document to him/her personally or by leaving a copy thereof at

his/her usual place of business, if any, or his/her dwelling, house or usual place of abode with some person of suitable age and discretion then residing therein. ~~For the purpose of administering the act and the rules and regulations promulgated thereunder, the~~ The term "legal representative" includes widow and widower.

010.05 Service by Mail: Service other than personal service will be by certified or First Class United States mail to the address on file with the Commission; provided, however, if an agent has been designated, the document will be delivered to the address of the agent by certified or First Class United States mail.

010.05A Date of Service Determined: The date of service of a document which is mailed is the date of mailing plus 3 days.

010.06 Notice of Application: Notice of the filing of all applications will be given to all interested persons by publishing a summary of the authority or relief sought. ~~All interested parties will be given notice of the time and place of the hearing by mail.~~

~~011.07 Notice of Complaint Hearing: The Executive Director shall notify, in writing, the defendant and the complainant, including intervenors, of a time and place for a hearing on the complaint by certified mail or personally by a Commission inspector who shall comply with 011.03 and 011.04.~~

010.07 Official Publication: The legal newspaper is known as The Daily Record and is the official newspaper in which notices will be published by the Commission pursuant to this title. The Commission may publish notice in other publications in addition to The Daily Record.

011 COMMISSION INVESTIGATIONS: **Previously Section 012, all subsections renumbered accordingly**

011.01 General: The Commission may, at any time on its own motion, conduct an investigation or order any hearing which the Commission is authorized by law or inherent power to conduct.

011.02 Interventions: Persons wishing to become parties to the investigatory proceeding shall file a formal intervention pursuant to section 014.

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011.03 Order to Appear: The Commission may, by order, compel any person to appear in an investigative proceeding. The order will state the purpose or scope of the investigation and the time and place of the hearing.

011.04 Investigation/Penalty: If it shall appear, as the result of an investigative hearing by the Commission, that any person ~~who has been personally served~~ has violated the provisions of any statute over which the Commission has jurisdiction, ~~or~~ the rules of the Commission or a

Commission order, the Commission may order such person to cease and desist, enter an order assessing a civil penalty or enter any order justified in the premises.

012 SHOW CAUSE ORDERS: **Previously Section 013, all subsections renumbered accordingly**

012.01 Show Cause Order: The Commission may, by order, compel any person ~~to whom it has granted authority~~ on any matter subject to the jurisdiction of the Commission to show good cause as to why ~~the~~ an authority should not be suspended, changed, revoked in whole or in part, and/or why the ~~holder of the certificate for such authority~~ person should not be subject to a~~n~~ civil penalty or administrative fine as provided for in Commission rules.

012.02 Content: The show cause order shall specifically advise the respondent of the alleged violation or violations and the time and place of the hearing on such order.

012.03 Cease and Desist Order: The Commission may, after proper notice and hearing, enter a cease and desist order ~~or any order~~ , enter an order assessing a civil penalty or enter any order justified in the premises. ~~the Commission deems just and reasonable.~~

013 PROTESTS: **Previously Section 014, all subsections renumbered accordingly**

013.01 Content of Protest; Failure to File: In addition to the requirements of Section ~~005.07~~ 004.02D, a protest shall set forth specifically the grounds upon which it is made, shall state the interest of the protestant in the proceeding, and shall specify the facts and circumstances relied upon. Except as provided in Section ~~015~~ 014, failure to timely file a protest shall be construed as a waiver of opposition and participation in the proceeding, except to the extent that intervention or public comment may be allowed as provided in this chapter.

013.02 Protest Against Application; When Filed: Except as provided in Sections ~~014.03~~ 013.03 and ~~014.04~~ 013.04, and unless otherwise provided in statute, a protest against the granting of any application shall be filed with the Commission within thirty (30) days from the date of publication of ~~said~~ notice of said application pursuant to Section 010.06. The protestant shall serve~~. A~~ a copy of the protest ~~should be served~~ upon all ~~adverse~~ parties of record, or upon their attorneys of record.

013.03 Protest to Temporary Motor Carrier Authority: A protest to the granting of an application for temporary motor carrier authority, which the Commission is empowered to grant after not less than five (5) days notice and without hearing, shall be filed with the Commission within five (5) days after the date such notice is published. Such protest may be made by ~~telegram or~~ facsimile or electronic mail, provided that ~~a formal~~ the original paper pleading is ~~forwarded~~ delivered to the

Commission within five (5) days of the expiration of the time to file the protest.

013.04 Protest to an Emergency Rate Order: In certain emergency situations, the Commission has the statutory authority to temporarily alter, amend, or suspend any existing rates in force, or to fix any such rates where none exist by issuing an order which prescribes an emergency rate. After notice of the emergency rate is given to the ~~common~~ carriers affected by such emergency rate, any such affected ~~common~~ carrier or any interested person shall file a protest to the granting of such rate within fifteen (15) days after notice of the emergency rate is given.

013.05 ~~Telegraphic~~ Protest: A person may preserve ~~his/her~~ the time to file a formal protest by ~~timely~~ filing the protest by ~~a telegram or~~ facsimile or electronic mail ~~which shall set forth in general terms the nature of the protest~~ within the statutory time to file, provided that ~~a formal~~ the original paper pleading is forwarded within five (5) days of the expiration of the time to file the protest.

~~014.06 Protest to Inter-LATA Interexchange Telecommunications Service Application; When Filed: Except as provided in Section 014.05 and unless otherwise provided in the statutes, a protest against the granting of an application for a certificate authorizing inter-LATA interexchange telecommunications service shall be filed with the Commission within ten (10) days from the date of publication of said notice. A copy of the protest should be served upon all adverse parties of record, or upon their attorneys of record. Such protest may be made by telegram or facsimile provided that a formal pleading is forwarded within five (5) days of the expiration of the time to file the protest.~~

014 INTERVENTION IN PROCEEDINGS: **Previously Section 015, all subsections renumbered accordingly**

014.01 Formal Intervention; Status: Any person who has an interest in any proceeding pending before the Commission, but who does not desire to file a formal protest, may file a Petition of Formal Intervention. ~~Such person shall be designated as a "formal intervenor", and shall become a party to the proceeding.~~

014.01A Content: A Petition of Formal Intervention shall set forth the name and address of the ~~intervenor,~~ person petitioning and a statement of facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be affected by the proceedings. ~~the interest of the intervenor in the proceeding, the grounds upon which the intervention is made and shall specify the facts and circumstances relied upon for such intervention.~~

014.01B When Filed; Service: A Petition of Formal Intervention shall be filed with the Commission within the time specified in ~~014.02~~ 013.02 for the filing of a formal protest. The person petitioning to formally intervene shall serve a A copy of the

Petition of Formal Intervention ~~shall be served~~ upon all parties of record to the proceedings or upon their attorneys of record.

014.01C Approval by the Commission or Hearing Officer: Upon a finding that the petitioner has demonstrated that its legal rights, duties, privileges, immunities or other legal interests may be affected by the proceedings, the Commission or Hearing Officer shall grant the petition and designate the petitioner as a "formal intervenor," which confers upon the petitioner status as a party to the proceeding.

014.01D Participation in Proceedings: A formal intervenor shall be entitled to participate in the proceedings to the extent of ~~his/her~~ its express interest in the matter. Such participation shall include~~, without limitation,~~ presentation of evidence and argument, cross-examination of witnesses and submission of rebuttal evidence~~.~~, unless otherwise limited by the Commission. The Hearing Officer or Commission may limit the formal intervenor's participation in the proceedings. Conditions may include:

014.01D1 Limiting the formal intervenor's participation to designated issues in which the formal intervenor has a particular interest demonstrated in the petition;

014.01D2 Limiting the formal intervenor's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

014.01D3 Combining the presentation of evidence and argument, cross-examination, discovery and other participation in the proceeding of two or more intervenors.

014.01E Appeal: As a party, a formal intervenor shall have the right of appeal.

014.02 Informal Intervention; Requirement; Status: Without satisfying the requirements of formal intervention, any person may file a Petition of Informal Intervention. Such Petition of Informal Intervention shall set forth the information required in ~~015.01A~~ 014.01A above. ~~Any person who shall file a Petition of Informal Intervention shall be designated as an "informal intervenor".~~

014.02A When Filed: A Petition of Informal Intervention shall be filed not later than fifteen (15) days prior to the date the hearing in the proceeding commences~~, and shall be accompanied by the statement referred to in 015.02C and any exhibits to be offered by the informal intervenor's witness at the hearing~~. The petitioner shall serve ~~A~~ a copy of the Petition of Informal Intervention and all accompanying pre-filed material ~~shall be~~

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~~served~~ upon ~~on~~ all parties of record ~~to the proceeding,~~ or upon their attorneys of record.

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014.02B Approval by Commission or Hearing Officer: Leave to intervene informally shall be granted only if the petitioner addresses issues reasonably pertinent to the issues already presented and does not unduly broaden the scope of the proceeding. Upon a finding that leave to informally intervene should be granted, the Commission shall grant the petition and designate the petitioner as an "informal intervenor." If leave is granted by the Commission or Hearing Officer, the petitioner becomes an informal intervenor but does not become a party to the proceeding. The Commission, upon proper showing, may designate as an "informal intervenor" any person who has filed a Petition for Formal Intervention, which the Commission has denied, subject to satisfaction of the other requirements of this section.

014.02C Participation in Proceedings: Participation by an informal intervenor shall be limited to the presentation of a pre-filed statement of a single witness together with exhibits by such witness, and participation in oral argument and submission of briefs. The prefiled statement shall be filed on the date ordered pursuant to Rule 016.02, or, if no date is specified, not later than fifteen (15) days prior to the date the hearing in the proceeding commences. An informal intervenor shall not be permitted to engage in discovery, nor to cross-examine or otherwise interrogate the witnesses in the proceeding called by any party. An informal intervenor shall not be subject to discovery proffered by any other party, unless otherwise ordered by the Commission.

014.03 Statements by the Public: Members of the general public unrepresented by counsel ~~shall~~ may be allowed to make statements at the hearing in a proceeding without being required to file either a protest or a petition to formally or informally intervene. Such persons shall not be a party to the proceeding and shall have no right to participate in the proceeding except to make such statements. The Commission shall have the authority to exclude such statements from the record when such statements are immaterial, irrelevant, disruptive or damaging to the hearing. ~~Any person unrepresented by counsel, including common carriers, may be allowed to make statements at a hearing in a proceeding if, at the discretion of the Commission, such statements are necessary to clarify the record. No such person shall become a party to the proceeding by virtue of making such statements at the hearing.~~

015 CONTESTED CASES; PROHIBITION AGAINST EX PARTE COMMUNICATIONS:

015.01 Prohibition Against Ex Parte Communications: With respect to any matter of fact or law at issue in a contested case, a member, staff or agent, not including the Public Advocate, of the Commission shall not have any ex parte communication with any party having an interest in the outcome of the contested case consistent with Neb. Rev. Stat. §§ 75-130.01, 84-901, 84-914, and 66-1835.

015.02 Time Period of Prohibition: The prohibitions of subpart 015.01 shall apply between the time of the filing of the original pleading of a proceeding and the conclusion of any review, appeal or remand proceeding. For purposes of the prohibition, a case shall be considered contested during the pendency of the protest or intervention period.

016 PLANNING CONFERENCES:

016.01 Planning Conference: The Hearing Officer or Commission staff, at the direction of the Hearing Officer, after the deadline for protests in any proceeding, may conduct a planning conference with the parties to the proceeding for the purpose of establishing a hearing date and progression schedule and addressing any other matters, including discovery and settlement, that may warrant discussion.

016.02 Order: Upon conclusion of the Planning Conference, the Commission or Hearing Officer may enter an order setting forth a hearing date, progression schedule and addressing any matters discussed at the Planning Conference.

016.03 Objection to the Order: Subsequent Proceedings: If a Planning Conference order is entered, a reasonable time will be allowed for the parties to present objections on the grounds that it does not fully or correctly embody the agreements reached at the conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings, unless modified for good cause.

017 EVIDENCE: **Previously Section 016, all subsections renumbered accordingly**

017.01 General: Pursuant to section 84-914, ~~E~~evidence which is admissible in civil actions under the ~~Revised Statutes~~ laws of Nebraska will be admissible before the Commission. While the Commission ~~will~~ is not ~~be~~ bound to technically follow the ~~technical~~ rules of evidence, the record will be supported by evidence which possesses probative value commonly accepted by reasonable ~~men~~ prudent persons in the conduct of their affairs. Except as provided herein, no factual information or evidence other than that in the record shall be considered in the determination of a case.

017.01A Examination of Persons: In accordance with the provisions set forth in this section addressing subpoena practices, the Commission may compel the attendance of witnesses. The Commission may examine under oath or otherwise any officer, director, agent or employee of any common carrier, contract carrier or jurisdictional utility or any other person.

017.02 Filing and Serving Exhibits Prior to Hearing: If detailed or complicated exhibits are to be used, the Hearing Officer may require any party to file and serve a copy of such exhibits, or other necessary information, within a specified time in advance of the hearing.

017.03 Documentary Evidence: Documentary evidence may be received in the form of copies or excerpts.

017.04 Copies of Exhibits: Parties shall furnish accurate copies of all documentary evidence to the official reporter, Hearing Officer and the parties of record to the proceeding.

017.05 Official Files: Any party ~~who~~ that wants to introduce into evidence any part or parts of official Commission files shall obtain copies thereof in advance of the hearing. The Commission, on its own motion, may offer and make part of the record in any proceeding before it, all records and documents in the Commission's possession of which the Commission desires to avail itself.

~~016.05 Cumulative Evidence: The hearing officer may exclude evidence which is cumulative or repetitious.~~

017.06 Abstracts from Documents: When documents are numerous, ~~such as freight bills or bills of lading, a~~ the Hearing Officer may refuse to receive in evidence more than a limited number alleged and appearing to be representative. The party will abstract in orderly fashion the relevant data from these documents, affording other parties reasonable opportunity to examine both the documents and the abstract, and thereupon offer the abstract in evidence in exhibit form.

017.07 Material in Books, Papers or Documents: Relevant portions of books, papers, or documents shall be plainly designated and distinguished from all irrelevant portions before the relevant material may be offered into evidence. Where irrelevant material in a book, paper, or document is voluminous so as to encumber the record, the book, paper, or document may be marked for identification and relevant material read into the record. Upon direction of the Hearing Officer, a true copy of the relevant matter may be received as an exhibit, provided copies are delivered to all parties of record and provided all parties of record are afforded an opportunity to examine the book, paper, or document, and to offer into evidence in like manner other portions thereof, if found to be material and relevant.

17.08 Prepared Testimony: Testimony of a witness may be adduced by use of a prepared statement or prefiled testimony, if the witness is present for cross-examination at the hearing. Parties may agree to waive cross-examination with the approval of the Hearing Officer.

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017.09 Cross-examination, Rebuttal and Redirect Examination: In contested cases, every party shall have the right of cross-examination of

witnesses who testify and shall have the right to submit rebuttal evidence. The party offering a witness's testimony may conduct redirect examination of the witness after cross-examination. There shall be no right to recross-examination, but the Commission may allow it in the Commission's discretion when necessary to adequately develop the record.

017.10 Late-Filed Exhibits: The Hearing Officer may authorize or require any party to furnish and serve designated late-filed exhibits within a specified time after the close of the hearing.

017.11 Subpoenas ~~and Witness Fees~~: The Commission, the Hearing Officer or a designee, at the request of any party, at the request of Commission staff or upon the Hearing Officer's own motion, may issue subpoenas in accordance with the rules set forth below:

017.11A Request for Subpoena for Attendance of Witnesses: Requests for issuance of a subpoena shall be made to the Commission at least ten (10) days prior to the hearing day of the proceeding that the witness is required to attend.

017.11B Subpoena for Attendance of Witnesses: Subpoenas requiring the attendance of witnesses will be issued upon written request of any party, at the request of Commission staff, or on order of the Commission or the Hearing Officer. One subpoena may require the attendance of more than one witness.

017.11C Service of Subpoena: Any subpoena may be served by any person not interested in the action, or by a Commission inspector or investigator, or by the sheriff of the county in which the witness or the custodian of documents is located or via certified mail.

017.11D Fees for Witnesses Subpoenaed: Any witness who is summoned and responds thereto shall receive the same fee paid for like service in the district courts of Nebraska, such fee to be paid by the party at whose instance the witness' testimony is to be taken.

017.11E Subpoena for Records: Subpoenas for the production of papers, books, or documents will be issued only upon request in writing, stating specifically which papers, books, or documents are required. All parties directed to produce such books, papers or documents shall furnish and deliver same at the time and place specified in the subpoena to the Executive Director or other designated employee or agent of the Commission.

017.11F Enforcement: Subpoenas issued under this subsection may be enforced by the district court.

017.12 Depositions and Discovery: The use of depositions and discovery in proceedings before the Commission is governed by the rules and

regulations of the Nebraska Supreme Court, except as the Commission or Hearing Officer, upon consultation with the parties at the Planning Conference, establishes other requirements, such as shortened response times, in a written order, and except otherwise provided in the Commission's rules and regulations.

017.12A Discovery Motions; Personal Consultation; Required Regulatory Duties: To curtail undue delay and inefficient utilization of the Commission's resources in the administration of its regulatory duties, the Commission shall refuse to consider any motion relating to discovery unless the moving counsel, as part of the motion, makes a written showing that, after personal consultation with counsel for the other party(ies) and reasonable efforts to resolve differences, counsel are unable to reach an agreement. This showing shall recite, additionally, the date, approximate time and place of such conference and the name of all participants. As used in this subpart, "counsel" includes parties who are acting pro se.

017.12B Discovery Orders: The Hearing Officer or a designee, at the request of any party or upon the Hearing Officer's own motion, may issue discovery orders in accordance with the Nebraska Supreme Court's Discovery Rules.

017.13 Confidential Information Filed with the Commission:

017.13A Confidential Information Filed with Applications:

017.13A1 Claim of Confidentiality; Motion for Protective Order: The party filing an application must indicate any information that is claimed to be confidential and must state the grounds with specificity and cite the legal authority for the claim of confidentiality in a motion for protective order. If such claim is not made with the application, any claim of confidentiality of information filed in or with the application shall be deemed waived.

017.13A2 Filing Requirements: If an applicant contends any portion of the application, prefiled testimony, or exhibits is confidential, it must file the requisite number of copies of the application, prefiled testimony and exhibits without the asserted confidential information. The applicant must also file under seal and on yellow paper marked "CONFIDENTIAL" the requisite number of copies of the complete application, prefiled testimony, and exhibits claimed to be confidential and the subject of a motion for protective order.

017.13B Other Confidential Filings: Any person seeking to prevent disclosure of information filed ~~by~~ with the Commission

must file such information on yellow paper marked "CONFIDENTIAL."

017.13C A protective order may be issued on the motion of any party or on the Hearing Officer or Commission's own motion.

017.14 Offer of Proof: An offer of proof may be made by a party or by counsel.

017.15 Order of Hearings:

017.15A Applications and Petitions: Unless otherwise directed by the Hearing Officer, evidence will be received from participants in the following order: (a) applicants or petitioners; (b) protestants and intervenors; (c) Commission staff; and, (d) rebuttal by applicants or petitioners. Evidence from the Public Advocate will be received according to the Public Advocate's status (as an applicant, petitioner, protestant or intervenor) in the proceeding.

017.15B Complaints: Unless otherwise directed by the Hearing Officer, evidence will be received from participants in the following order: (a) complainant; (b) ~~defendant~~ respondent; and, (c) rebuttal by complainant.

017.15C Investigative Proceedings: Evidence will be received from participants in the following order: (a) the Public Advocate or, in cases in which the Public Advocate is not a party of record, the Commission staff; (b) the respondents, commenters, intervenors, or protestants; and, (c) rebuttal by the Public Advocate or Commission staff in accordance with subpart (a).

017.15D Show Cause Orders: Evidence will be received from participants in the following order: (a) Commission staff; (b) the Public Advocate in cases in which it is a party of record; (c) the respondents; and, (d) rebuttal by Commission staff.

017.15E Order of Intervenor's Evidence: The evidence of i~~I~~ntervenors, including the Public Advocate, ~~evidence~~ will be received following the case in chief that it supports.

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018 MOTIONS: **Previously Section 017, all subsections renumbered accordingly**

018.01 Motion: ~~An~~ motion is any oral or written request addressed to a Hearing Officer or the Commission by any party to a proceeding.

018.02 Filing and Service ~~Ruling~~: Motions made prior to a hearing ~~will~~ shall be in writing and filed with the Commission pursuant to section 006 above; and the moving party shall serve a copy ~~thereof~~ of the motion ~~served~~ on all parties of record or their ~~and~~ attorneys of record personally or by First Class United States mail.

018.03 Response: Non-moving parties of record may respond to motions made prior to the hearing by filing a written reply within ten (10) days of the mailing of service of the motion; provided, however, if the Hearing Officer determines less time for response should be allowed, the Hearing Officer may shorten the reply period. The response shall be filed in accordance with Section 006 above. The party filing the reply shall serve a copy of the reply on all parties of record or their attorneys of record personally or by First Class United States mail at the time the reply is filed.

018.04 Ruling: ~~Such m~~Motions, except ~~a~~ motions ~~constituting~~ praying for final disposition of the proceeding, which must be decided by the Commission, will be ruled on by the Hearing Officer assigned to the case in which the motion is filed or by the Commission. ~~The hearing officer shall note his/her ruling on the motion. A copy of the motion with the ruling noted hereon will be mailed to the parties and attorneys of record.~~

019 CONDUCT OF PROCEEDINGS: **Previously Section 018, all subsections renumbered accordingly**

019.01 Hearing Officer; Duties and Powers: A proceeding will be conducted by a Hearing Officer who, among other things, shall:

019.01A Open the record and receive appearances.

019.01B Enter the notice of hearing into the record.

019.01C Act on pleadings not previously or timely filed.

019.01D Act on pleadings previously filed but not ruled upon.

019.01E Administer oaths in accordance with the rules of civil procedure except as may otherwise be prescribed by law.

019.01F Receive testimony.

019.01G Elicit testimony on behalf of the Commission.

019.01H Rule on objections and motions.

019.01I Close the hearing.

019.02 Hearing Officer; Powers Limited: A Hearing Officer shall not take any action involving a final determination of the proceedings.

019.03 Testimony; Modified Procedure: An application which is not protested may on applicant's motion, or on the Commission's own motion, be processed by use of affidavits and will be processed administratively. ~~The a~~Affidavits ~~will~~ shall be signed by the ~~applicant~~ affiant ~~or counsel~~ and sworn to before a notary.

019.04 Oral Argument: ~~Ordinarily, n~~No oral argument shall be permitted as a matter of right at the close of a hearing. The Hearing Officer may request or permit such argument.

019.05 Briefs: Briefs may be required by the Hearing Officer or the Commission. Any party that wants to submit a brief may do so by request ~~at the close of the hearing~~. ~~Where~~ In cases in which two or more parties want to submit briefs, such briefs will be filed simultaneously unless otherwise ordered by the Commission. The time in which briefs shall be filed, the manner of the filing and service and the number of copies required will be ~~fixed~~ established ~~at the close of the hearing~~ by the Hearing Officer or ~~at such time as determined by~~ the Commission.

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019.06 Standard of Conduct; Contemptuous Conduct: A Hearing Officer may exclude from the hearing any person who displays contemptuous or disruptive conduct.

019.07 Change of Hearing Officer: Proceedings will not be affected by the change of a Hearing Officer.

019.08 Consolidation: Unless any party would be prejudiced, proceedings that are legally or factually related may be heard on a consolidated record.

019.09 Interpreters:

019.09A Interpreters; Intent: It is the intent of Section 019.09 to provide a procedure for the appointment of interpreters to provide clear and accurate interpretation of questions asked of, and testimony given and arguments made at Commission hearings and oral arguments by deaf or hard of hearing persons and persons unable to communicate the English language.

019.09B Terms, Defined: For the purposes of Section 019.09, unless the context otherwise requires:

019.09B1 Deaf or hard of hearing person means a person whose hearing impairment, with or without amplification, is so severe that he or she may have difficulty in auditory processing spoken language without the use of an interpreter or a person with a fluctuating or permanent hearing loss which may adversely affect the ability to understand spoken language without the use of an interpreter or other auxiliary aid; and

019.09B2 Person unable to communicate the English language means a person who cannot readily understand or communicate the English language.

019.09C Interpreters; Request; Appointment: Upon motion by any party or the Commission's initiative, in any proceeding in which

a deaf or hard of hearing person or person unable to communicate the English language appears as a party or witness, the Hearing Officer may appoint an interpreter for the purpose of interpreting questions, testimony and arguments at any hearing or oral argument before the Commission.

019.09D Interpreters; Qualifications: No person shall be appointed as an interpreter pursuant to Section 019.09 unless such person is readily able to communicate with the deaf or hard of hearing person or person unable to communicate the English language, interpret any questions asked to the person at the hearing or oral argument, accurately repeat and interpret the testimony or argument of such person to the Commission, and to perform all of these responsibilities without bias toward or against the person, any other party to the proceeding, any other witness at the hearing or the Commission. A person appointed to interpret for deaf and hard of hearing persons shall be a licensed interpreter as defined in section 20-151 of the Nebraska Revised Statutes or, if a licensed interpreter is unavailable, an interpreter licensed under the laws of another state.

019.09E Interpreters; Oath: Every interpreter appointed pursuant to Section 019.09, before entering upon his or her duties as such, shall take an oath that he or she will, to the best of his or her skill and judgment, make a true and accurate interpretation to the deaf or hard of hearing person or person unable to communicate the English language of all questions to that person at the hearing or oral argument in a language that such person understands; that he or she will, in the English language, truly and accurately repeat the testimony or argument of such person to the Commission; and that he or she will perform all of his or her responsibilities without bias toward or against the person, any other party to the proceeding, any other witness at the hearing or the Commission.

019.09F Interpreters; Fees and Expenses: The fees and expenses of an interpreter shall be set and ordered paid by the Commission, in accordance with a fee schedule established by the Commission, and be paid out of the General Fund with funds appropriated, if such funds are appropriated, to the Commission for that purpose.

020 DECLARATORY RULING: **Previously Section 019, all subsections renumbered accordingly**

020.01 Petition Content: A petition for declaratory ruling ~~will~~ shall set forth the rule or statute on which the petitioner seeks a declaratory ruling and the facts upon which ~~necessitate the ruling~~ the petition is based.

020.02 ~~Submission~~ Filing: A petition for a declaratory ruling will be filed with the Executive Director who shall cause notice thereof to be given in accordance with these rules. The minimum notice to be given before hearing shall be twenty (20) days.

020.03 ~~Disposition~~ Oral Argument or Hearing: The Commission ~~or a hearing officer~~ shall hear argument or receive evidence on a petition for

a declaratory ruling.

020.04 Ruling: The Commission's ruling shall identify the person to be bound by the ruling.

020.05 Statewide Commercial Importance: If a petition for declaratory ruling presents a question of statewide commercial importance or such is noted during or after hearing on the petition, the Commission shall not issue a declaratory ruling but will resolve such question ~~in an investigative proceeding~~ as part of a public investigation.

021 PREHEARING CONFERENCES: **Previously Section 020, all subsections renumbered accordingly**

021.01 Purpose: Upon written notice by the Commission in any proceeding, or upon written or oral instruction of a Hearing Officer, parties or their attorneys may be directed to appear before a Hearing Officer at a specified time and place for a conference, prior to or during the course of a hearing, to submit suggestions orally or in writing for the purpose of formulating issues and considering:

021.01A The simplification of issues.

021.01B The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification or limitation.

021.01C The possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as annual reports or the like, or to avoid introduction of foundation.

021.01D The procedure at the hearing.

021.01E ~~The l~~Limitations of the number of witnesses and time for examination.

021.01F The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits.

021.01G The need for an interpreter at the hearing.

021.01H The status of any settlement discussions or alternative dispute resolution efforts.

021.01I Other matters as may aid in the simplification of the evidence and disposition of the proceeding.

021.02 Facts Disclosed Privileged: Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, will not

be used against participating parties either before the Commission or elsewhere unless fully substantiated by other evidence during open hearing.

021.03 Stipulations: Parties to any proceeding may agree upon any facts involved in the controversy, either by written stipulation entered into the record as an exhibit or by oral agreement stated on the record, provided that the Commission shall not be bound by such stipulation.

021.04 Recordation and Order: Action taken at the conference, including a recitation of the amendments allowed at the pleadings, agreements made by the parties as to any matters considered, and defining the issues, will be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters or agree to a statement on the record by the Hearing Officer.

021.05 Objection to the Order; Subsequent Proceedings: If an order is entered, a reasonable time will be allowed for the parties to present objections on the grounds that it does not fully or correctly embody the agreements reached at the conference. Thereafter, the terms of the order or modification thereof, the written stipulation, or statement of the Hearing Officer, as the case may be, determine the subsequent course of the proceedings, unless modified to prevent manifest injustice.

~~020.05 Stipulations: Parties to any proceeding may agree upon any facts involved in the controversy, either by written stipulation entered into the record as an exhibit or by oral agreement stated on the record, provided that the Commission shall not be bound by such stipulation.~~

022 APPEALS: **Previously Section 021, all subsections renumbered accordingly** ~~A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission may seek such review as provided by this section: (1) A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission pursuant to section 75-156 (1)(b) may appeal such order in accordance with the state's~~ Administrative Procedure Act. ~~(2) A party seeking to obtain reversal, modification, or vacation of an order entered pursuant to section 75-156 to 75-158, other than section 75-156(1)(b), may (a) seek review of the Court of Appeals as provided in section 75-137 as set forth in section 021.01 and 021.02 of these rules or (b) seek judicial review of the order under section 75-136.01 as set forth in section 021.04A of these rules. (3) Any interested party seeking to obtain reversal, modification, or vacation of a Commission order entered by the Commission under Neb. Rev. Stat. sections 75-109, 75-604, 75-609, and 75-609.01 or 86-801 to 86-810 may, after all administrative remedies before the Commission have been exhausted, appeal in accordance with the state's Administrative Procedure Act. (4) A party seeking to obtain reversal, modification, or vacation of any other order of the Commission not otherwise provided for in this section may appeal pursuant to section 75-137 using the procedures provided for in 021.01 and 021.02.~~ Except as otherwise provided by law, if a party to any proceeding is not satisfied with the order entered by the Commission, such party may appeal in accordance with the Administrative Procedure Act.

~~021.01 Direct Appeal: On direct appeal, a notice of appeal, statutory docket fee, and seventy-five dollar ($75.00) cost bond or undertaking shall be filed with the Executive Director within the thirty (30) day period immediately following the day on which a copy of the Commission's order is mailed to the party appealing.~~

022.01 ~~Indirect Appeal:~~ Motion for ~~Rehearing~~ Reconsideration: ~~On indirect appeal, a~~ A motion for ~~rehearing~~ reconsideration ~~must first~~ may be filed within ~~the~~ ten (10) days after the mailing of a copy of the order by the Commission ~~period immediately following the day on which a copy of the Commission=s order is mailed~~ to the party ~~appealing~~ seeking reconsideration. ~~If the Commission overrules the motion for rehearing, a notice of appeal, statutory docket fee, and seventy-five dollar ($75.00) cost bond or undertaking must be filed with the Commission within the thirty (30) day period immediately following the day on which a copy of the Commission=s order overruling the motion for rehearing to the party appealing is mailed. If the Commission does not enter an order ruling on the motion for rehearing within thirty (30) days after such motion is filed, an appeal may be perfected by filing a notice of appeal, and any statutory docket fee and cost bond or undertaking in an amount pursuant to state law before the Commission enters an order ruling on the motion for rehearing.~~

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022.01A Commission Action: If the Commission elects to rule upon the motion for reconsideration, it shall rule on the motion within twenty-five (25) days after the mailing of a copy of the order by the Commission to the party seeking reconsideration.

022.01B Appeal Deadline Not Tolled: The filing of a motion for reconsideration does not toll the time for making an appeal.

022.01C Oral Argument: The Commission shall hear oral argument on motions for ~~rehearing~~ reconsideration if a request is filed at the time such motion for ~~rehearing~~ reconsideration is filed by the moving party or by request filed within seven (7) days of the filing of the motion by ~~the~~ an opposing party. Unless otherwise ordered by the Commission, the parties of record shall be allowed twenty (20) minutes each for oral argument.

~~21.03 Procedure: In either a direct or indirect appeal, appellant shall: (A) certify to the Commission that a copy of the notice of appeal was mailed or personally delivered to other parties and attorneys of record; and, (B) shall file a praecipe with the Executive Director specifying the pleadings or other matters to be included in the transcript. The evidence as certified by the official stenographer and the Executive Director as the true bill of exceptions, along with the pleadings and filings, constitutes the complete record. The other parties of record shall, within twenty (20) days of filing of the notice of appeal, inform the Executive Director in writing whether they intend to become parties to the appeal. The Executive Director shall indicate on the transcript the appellant and appellee parties.~~

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~~021.04 Appeal of Orders:~~

~~021.04A Proceedings For Review: The following procedures may be utilized for review pursuant to Rule 021(2):~~

~~021.04A1 Proceedings for review of an order entered pursuant to section 021(2) of these rules shall be instituted by filing a petition in the District Court of Lancaster County or in the district court of the county in which the party is domiciled within the thirty (30) day period immediately following the day on which the Commission's order is mailed to the party appealing. All parties of record shall be made parties to the proceedings for review.~~

~~021.04A2 Summons shall be served within thirty (30) days of the filing of the petition in the manner provided for service of a summons in a civil action. The court, at its discretion, may permit other interested persons to intervene.~~

~~021.04A3 As provided in 021.04B, the Commission may stay enforcement of a decision, upon such terms as it deems proper, and may require the party requesting such stay to give bond in the amount specified in the order entered by the Commission.~~

~~021.04A4 Within fifteen (15) days after service of the petition, or within such further time as the court for good cause shown allows, the Commission shall prepare and transmit to the court the verbatim testimony transcribed by the official stenographer, including all exhibits, which shall constitute the bill of exceptions. The pleadings, order appealed and bill of exceptions duly certified to by the Executive Director shall constitute the complete record. In addition, if the defendant requests a stay of the Commission's order, the Commission shall also transfer the cashier's check, money order, electronic transfer or supersedeas bond it received from the defendant. Such transfer shall satisfy the bond requirement of 021.04A3.~~

~~021.04A5 A copy of the original order appealed, certified to be a true and correct copy by the Executive Director or a Commissioner, shall be admitted in evidence as prima facie evidence of every fact found and that such order is prima facie just and reasonable.~~

~~021.04A6 The review shall be conducted by the court without a jury de novo on the record of the Commission. The court may affirm the decision of the Commission,~~

~~remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the decision is in violation of constitutional provisions; in excess of the statutory authority or jurisdiction of the Commission; or, arbitrary or capricious.~~

~~021.04B Stays of a Commission Telecommunications Order: Before a party of record to a telecommunications order commences an appeal, one or more parties may apply to the Commission for a stay of a Commission order. The Commission may order a stay of the Commission order only if the Commission finds that (a) the applicant for the stay is likely to prevail when the matter is finally decided, (b) without relief, the applicant will suffer irreparable injury, and (c) the grant of a stay to the applicant will not substantially harm other parties to the proceeding. The Commission may require the party requesting a stay to give bond in an amount or upon conditions as the Commission may direct. The grant or denial of a stay shall not be considered to be a final order.~~

~~021.04B1 For purposes of this section, a telecommunications order shall mean an order entered by the Commission pursuant to the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, subsection (2) of Neb. Rev. Stat. section 75-109, or sections 75-604 to 75-616, 86-801 to 86-811, 86-1001 to 86-1009, 86-1201 to 86-1222.~~

~~021.04C Appeal to the Court of Appeals or to the Supreme Court: The Commission or any party to the proceedings shall have the right to appeal the decision of the District Court or the Court of Appeals under the same rules now provided by law for appeals to the Supreme Court, except that in no case shall security for such appeal be required when security is taken by the Commission.~~

022.02 Judicial Review of Penalties ~~and Failure to Perfect Appeal~~:

022.02A If the ~~defendant~~ respondent against whom a penalty, including a civil penalty, is assessed seeks judicial review as authorized by the statute, the ~~defendant~~ respondent shall forward to the Commission a cashier's check or money order payable to the Treasurer of the State of Nebraska for placement in a contingent liability account in the amount of the penalty assessed by the Commission. As an alternative to paying the penalty into a contingent liability account, the ~~defendant~~ respondent may post with the Commission a supersedeas bond approved by the Commission and payable to the Treasurer of the State of Nebraska for the amount of the penalty, which will remain in effect until all judicial review of the order or decision is final. The ~~defendant~~ respondent shall either remit the payment or post an approved

supersedeas bond with the Commission within the thirty (30) day period immediately following the day on which the Commission's order is mailed. If the ~~defendant~~ respondent is unable financially to comply with the requirements of this rule, the ~~defendant~~ respondent seeking judicial review shall, within the same thirty (30) day period, file with the ~~general counsel~~ Executive Director of the Commission an affidavit stating his/her financial inability and shall attach thereto a balance sheet describing, with particularity, the ~~defendant~~ respondent's assets and liabilities. If the ~~general counsel~~ Commission concludes that the balance sheet and affidavit sufficiently show the ~~defendant~~ respondent's financial inability to comply with this rule, the Commission may waive payment of the civil penalty into the contingent liability account or the posting of a supersedeas bond.

022.02B (A) Failure to pay the penalty in full, (B) failure to forward the amount of the penalty for placement in a contingent liability account, (C) failure to post a supersedeas bond, or (D) failure to obtain a waiver from the Commission of such requirements within the thirty (30) day period immediately following the day on which the Commission's order is mailed shall result in a waiver of all legal rights to judicial review.

022.03 Unfavorable Appellate Determination: In the event the final appellate determination is against the ~~defendant~~ respondent, within thirty (30) days of the date the decision of the appeals court becomes final, the Commission shall forward to the Treasurer of the State of Nebraska the cashier's check, money order or supersedeas bond held by the Commission, plus any interest which may have accrued, pending the outcome of the appellate process.

022.04 Favorable Appellate Determination: In the event the final appellate determination is in favor of the ~~defendant~~ respondent, said ~~defendant~~ respondent shall be absolved of all liability for payment of the amount of the penalty. Within thirty (30) days of the date the decision of the appeals court becomes final, the Commission shall return the amount of the penalty assessed and paid, plus any interest which may have accrued, with a certificate of its return or shall release the supersedeas bond by Commission order, as shall be required under the circumstances.

023 SECURITY ISSUANCES: **Previously Section 022, all subsections renumbered accordingly**

023.01 Applications: Applications for approval of a security issuance will set forth the details surrounding the proposed indebtedness or issuance and will be accompanied by: (A) a certified copy of the Articles of Incorporation with amendments to date; (B) a certified copy of the minutes from the board of directors' or stockholders' meeting, or other proper corporate authority authorizing the action; (C) a certified copy of the by-laws with amendments to date; (D) current balance sheet and

supporting profit and loss statement; and (E) sample of proposed stock certificate.

023.02 Notice: In cases of stock increase and consolidation of stock, a hearing will be held only after proof of publication in a legal newspaper published in the city wherein the common carrier has its principal place of business in the State of Nebraska, or, if no legal newspaper is published in such county, then in some legal newspaper published within the state and having general circulation within such county once each week for two consecutive weeks. The first publication shall be at least 60 days prior to the hearing upon the application for the increase or for the consolidation, as the case may be.

024 ~~023~~ RULES AND REGULATIONS: An application for the amendment, repeal or adoption of any Commission rule or regulation shall state the purpose of the proposed rule and regulation and shall state briefly the reasons for such amendment, repeal or adoption.

025 ~~024~~ FORMS: The Commission has approved certain forms for use by its departments in connection with proceedings before the Commission. The forms are available upon request and ~~will~~ may be used where applicable. These include the following:

025.01 Communications Department:

025.01A Application for Approval of an Interconnection Agreement

025.01B Application to Connect Automatic Dialing-Announcing Device.

025.01C Application for Boundary Change

025.01D Application for Competitive Local Exchange Carrier Authority

025.01E Application for Extended Area Service

025.01F Application for Interexchange Carrier Authority

025.02 Engineering:

025.02A Application for Authority to Construct, Operate and Maintain an Electric Transmission Line

025.02B Completion Notice for Transmission Line

025.03 Transportation Department:

025.03A Affidavit of Applicant
025.03B Affidavit for Lost Plate

025.03C Affidavit of Supporting Shipper

025.03D Affidavit of Transferee

025.03E Affidavit of Transferor

025.03F Application for Motor Carrier Authority~~: To be used to request authority to transport passengers and/or property, or to transfer or lease current operating authority. May be used as original application or as application to extend authority. May be used for Intrastate carriers only.~~

~~024.03B Form A Uniform Application for Registration of Operating Authority Issued by Interstate Commerce Commission (ICC) or NPSC Intrastate Application.~~

~~024.03C Form B Uniform Application for Registration and Identification of Vehicles or Driveaway Operations Operated or Conducted Under Authority Issued by ICC or NPSC Interstate Application.~~

~~024.03D NPSC Application for Itinerant Merchant License.~~

~~024.03E Form IR-1 NPSC Interstate Motor Carrier Cab Card: To be used by ICC exempt and Private Carriers only.~~

~~024.03F Form A-1 Uniform Application for Registration of Interstate Motor Carrier Operations Exempt from ICC Regulation or NPSC Interstate Application.~~

~~024.03G Form B-1 Uniform Application for Registration and Identification of Vehicles of Driveaway Operations Exempt from ICC Regulation or NPSC Interstate Application.~~

~~024.03H Form B-2 International Operating Authority Agreement: To be used for Nebraska ICC exempt and ICC regulated carriers.~~

025.04 Grain Warehouse Department:

025.04A Form GW-1 Application for Public Grain Warehouse License: ~~To be used to conduct the business of a public grain warehouseman.~~

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025.04B Form GD-1 Application for Grain Dealer License: ~~To be used to conduct the business of a grain dealer.~~

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026 ~~025~~ FILING FEES: For each application, complaint or petition filed with the Commission, there shall be a filing fee which shall be established and set forth in the official minutes at least annually. The Commission may waive fees upon the filing of a motion to proceed in forma pauperis and a poverty affidavit.

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027 ~~026~~ HEARING FEES: For each proceeding before the Commission requiring a hearing, a fee, ~~of $50.00 per half day~~ which shall be established consistent with statute and set forth in the official minutes at least annually, shall be assessed by the Executive Director; provided, however, the Commission may waive the hearing fee if ~~unless~~ the proceeding ~~is~~ was initiated by the Commission. The Commission may waive fees upon the filing of a motion to proceed in forma pauperis and a poverty affidavit.

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028 CIVIL PENALTY PROCEDURES: **Previously Section 027, all subsections renumbered accordingly**

~~027.01 Purpose and Scope:~~

~~027.01A The purpose of this section is to establish hearing and related procedures which the Commission will follow when civil penalties are sought against any person as defined in Neb. Rev. Stat. section 75-139.01 pursuant to section 75-156.~~

~~027.01B The section establishes procedures to interpret, clarify and supplement requirements, definitions, and procedures described in the statutes specified in 027.01A. The Commission will follow the requirements, definitions, and procedures in these statutes and rules.~~

~~027.01C For purposes of these rules, civil penalty shall have the same meaning as administrative fine and these terms may be used interchangeably.~~

028.01 Assessing Civil Penalties:

028.01A Authority of the Commission: Except as otherwise provided, i~~I~~n addition to other penalties and relief provided by law, the Commission may, ~~upon a finding that the violation is proven by clear and convincing evidence,~~ assess a civil penalty ~~of up to ten thousand dollars ($10,000) per day against any person for each violation of: (1) any provision of sections 75-301 to 75-390, or section 75-126 as such section applies to any person or carrier specified in sections 75-301 to 75-390; (2) a Commission order entered pursuant to the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, subsection (2) of section 75-109, or sections 75-604 to 75-616, 86-801 to 86-811, 86-1001 to 86-1009, or 86-1201 to 86-1222; (3) any interconnection agreement or agreement of a similar nature approved by the Commission pursuant to section 75-109(2); (4) a self-enforcing provision of an interconnection agreement or an~~

~~agreement of a similar nature approved by the Commission; (5) any term, condition, or limitation of any certificate or permit issued pursuant to sections 75-301 to 75-390; or, (6) any rule, regulation, or order of the Commission issued under authority delegated to the Commission pursuant to sections 75-301 to 75-390.~~ pursuant to Neb. Rev. Stat. § 75-156.

028.01B Annual Maximum: The civil penalty assessed ~~under these rules~~ pursuant to rule 028.01A shall not exceed two million dollars ($2,000,000) per year for each violation. For purposes of ~~section 021 of these rules~~ this subpart, year shall mean calendar year, which is the period from January 1 to December 31 inclusive.

028.01C Jurisdictional Utilities:

028.01C1 Authority of the Commission: In addition to other penalties and relief provided by law, the Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty not less than one hundred dollars ($100) and not more than one thousand dollars ($1,000) against any jurisdictional utility for each violation of (a) any provision of the State Natural Gas Regulation Act, (b) any rule, regulation, order, or lawful requirement issued by the Commission pursuant to the State Natural Gas Regulation Act, (c) any final judgment or decree made by any court upon appeal form any order of the Commission, or (d) any term, condition, or limitation of any certificate issued by the Commission issued under authority delegated to the Commission pursuant to the act.

~~027.02C Discretion to Determine Penalty: The Commission shall have discretion in determining the appropriate amount of the civil penalty assessed for each violation. In determining the amount of the penalty, the Commission shall consider:~~

~~027.02C1 The appropriateness of the penalty in light of the gravity of the violation; and,~~

~~027.02C2 The good faith of the violator in attempting to achieve compliance after notification of the violation is given.~~

~~027.03 Initiation of Civil Penalty Proceedings Before the Commission:~~

~~027.03A Complainants and Complaints: A civil penalty proceeding may be initiated by any person as defined in section 75-139.01 or the person's legal representative. The complaint initiating a civil penalty proceeding shall be filed with the Executive Director and shall conform to the requirements of 005.03~~

~~(departmental complaint), 005.05 (formal complaint) or 013.01 (show cause order), as the case may be, and further shall: (1) consist of a written pleading signed by the complainant or his or her legal representative containing the names of the complainant and the alleged violator or violators; (2) set forth the date, facts, and nature of each act or ommission upon which each charge of a violation is based; (3) specifically identify the particular statute, certificate, permit, rule, regulation, or order allegedly violated; (4) contain a prayer stating the type of relief, action, or order desired by the complainant; (5) inform the defendant that pursuant to Commission rules, failure to answer will be construed as an admission of the allegations in the complaint; and, (6) that upon failure to pay any civil penalty determined by the Commission, such civil penalty may be collected by civil action in the District Court of Lancaster County.~~

028.02 In the case of a formal complaint, a hearing fee may be assessed against the complainant in the amount established by the Commission and as provided by law for hearing fees. If the ~~defendant~~ respondent is found to have committed the violation or violations named in the formal complaint, the hearing costs assessed, if any, shall be refunded to the complainant. If the ~~defendant~~ respondent is found to have committed the violation or violations named in the formal complaint, the ~~defendant~~ respondent may be assessed the costs of the hearing.

~~027.03B Delivery of Complaint: Before a civil penalty complaint filed pursuant to an alleged violation of sections 75-301 to 75-390 by anyone other than the Commission can proceed to a hearing, a copy of said complaint shall be delivered to the Executive Director of the Commission. The Director shall have thirty (30) days to intervene in support of said complaint, intervene in opposition to said complaint, or issue a letter advising the complainant that the Commission has taken no position in the proceeding. In the event the Director takes no action after the thirty (30) day period has expired, the complainant may proceed to a hearing on the complaint no earlier than thirty (30) days after notice is served upon the defendant named in the complaint. Nothing contained herein shall preclude the Commission from intervening as otherwise allowed under the rules of the Commission.~~

~~027.03C Notice to Defendant: When a complaint is filed with the Executive Director, wherein the defendant may be subject to a civil penalty under state law and these rules, the Commission shall notify such defendant in writing (1) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based; (2) specifically identifying the particular statute, certificate, permit, rule, regulation, or order allegedly violated; (3) that a hearing will be held and give notification of the time, date, and place of such hearing; (4) that, in addition to a civil penalty, the Commission may~~

~~enforce additional penalties and relief as provided by law; (5) that pursuant to Commission rules, failure to answer will be construed as an admission of the allegations in the complaint. Failure to file an answer or to appear at the hearing allows the Commission to enter an order assessing a civil penalty as provided by law for the violation or violations alleged in the civil penalty complaint, or the Commission may proceed with a hearing to receive evidence of the alleged violation or violations and may assess civil penalties as provided by law; and, (6) that upon failure to pay any civil penalty determined by the Commission, such civil penalty may be collected by civil action in the District Court of Lancaster County.~~

~~027.03D Method For Notice of Civil Penalty Complaint and Hearing: A copy of the civil penalty complaint described in 027.03A and the notice information specified by 027.03C shall be sent by the Commission to the defendant pursuant to the Service and Notice provisions as contained in Commission rules.~~

~~027.03E Supplemental Pleadings; Other Remedies at Law: Supplemental pleadings filed by a party shall be in writing and be filed with the Executive Director and distributed by him or her to all interested parties under a certificate of service at any time until five (5) days before the hearing date. Supplemental pleadings filed five (5) days or less prior to the hearing date may be allowed by the hearing officer upon a showing of good cause and undue surprise does not disadvantage other parties of record. A civil penalty proceeding shall not be cumulative of all other remedies available under state law and the rules of the Commission. Nothing herein shall be construed so as to preclude the Commission or any other party, person, or entity from seeking any remedy in law or equity not specifically provided for in this section.~~

~~027.03F Withdrawal of Complaint: A civil penalty complaint may be withdrawn by the party who filed the complaint without prejudice to refiling upon the same facts if the Commission approves the withdrawal as provided by these rules.~~

~~027.04 Answer:~~

~~027.04A Form: The defendant shall submit to the Commission a written answer in the manner required by (1) 005.08 (formal complaint); or, (2) 005.09 (departmental complaint), but in either case the written answer shall be filed no later than twenty (20) days after the date on which notice is given.~~

~~027.04B Failure to Properly File Answer: If the defendant fails to timely file an answer as required by this subsection, or fails to appear at the hearing, the Commission may enter an order which assesses a civil penalty as provided by law for the violation or violations alleged in the complaint, or the Commission may~~

~~proceed with a hearing to receive evidence on the alleged violation or violations and the Commission may assess civil penalties or an administrative fine as provided by law.~~

028.03 Settlement Orders:

028.03A ~~Compromise Prior to Complaint Hearing~~ Settlement: Parties may reach a settlement of a matter before the Commission and submit said settlement to the Commission for approval. ~~A defendant may enter into a compromise settlement agreement and proposed final order prior to a hearing pursuant to section 75-157 which does not constitute an admission by the defendant of any alleged violation or violations contained in the civil penalty complaint. Such agreement and proposed final order shall be signed by the defendant and all parties to the proceeding and shall reflect that the defendant consents to the assessment of a specific civil penalty or administrative fine. Settlement of the matters raised by the civil penalty complaint in a proposed final order containing a recommended penalty are subject to the approval of the Commission.~~

~~027.05B Contingent Liability Account Deposit; Submission of Compromise to Commission: If the defendant and all parties to the proceeding enter into a compromise settlement agreement and proposed final order, the settlement of the complaint may include a recommended penalty to the Commission. If a recommended penalty is included as part of the compromise settlement agreement and proposed final order, simultaneous with the filing of a compromise settlement agreement and proposed final order, the defendant shall remit to the Commission a cashier's check or money order in the amount of the recommended penalty payable to the Treasurer of the State of Nebraska. These funds shall be held in a contingent liability account until appropriately allocated upon final order. The compromise settlement agreement and proposed final order shall be submitted to the Commission by the Commission's counsel. If the Commission approves the agreement and proposed order, the civil penalty proceeding shall cease. If the Commission does not approve the proposed order, a hearing on the civil penalty complaint shall be held.~~

~~027.06 Findings of Fact and Conclusions of Law: Every decision and final order rendered by the Commission after a civil penalty hearing is held shall be in writing and accompanied by a finding of facts and conclusions of law. The order entering a civil penalty may, at the discretion of the Commission, provide for a prescribed timetable for the payment of such fines. A copy of the order shall be sent to the parties of record by certified or registered mail.~~

~~027.07 Final Commission Order: Except in the event of a compromise settlement agreement entered into pursuant to the provision of 027.05A which specifically provides that there will not be a finding that a defendant is in violation of a provision found in 027.02A, nothing in~~

~~these rules shall prohibit the Commission from issuing a final order in which the Commission enters a finding that the defendant is found to be in violation of a provision found in 027.02A notwithstanding that such a defendant may already be subject to the annual fine limitation as prescribed in section 027.02B.~~

028.04 Post-Order Requirements:

~~027.08A Issuance of a Final Order Finding Occurrence of a Violation: On the issuance of a final order finding that the violation or violations have occurred, the Commission shall inform the defendant or the defendant's legal representative no later than five (5) business days of the rendition of the order and of the amount of the penalty, if any.~~

028.04A Payment of the Civil Penalty ~~Administrative Fine~~: Within ~~the~~ thirty (30) days ~~period~~ of the date ~~immediately following the day on which~~ the Commission's final order is mailed to the ~~defendant~~ respondent or its attorney of record, the ~~defendant~~ respondent, if it has not previously paid ~~all~~ the full amount of the civil penalty ordered to be paid, shall pay the penalty in full by remitting a cashier's check, electronic transfer or money order to the Commission payable to the ~~Treasurer of the State of Nebraska~~ Commission. The Commission shall then promptly forward the cashier's check or the money order to the State Treasurer as provided by law.

028.04B Judicial Review: Judicial review of a Commission order assessing a civil penalty entered pursuant to ~~027~~ this section shall be conducted pursuant to the appeal procedures found in section 022.04 ~~021.04~~.

028.05 Collection of Penalty in Lieu of Payment: Any failure to pay shall be forwarded to the Attorney General for enforcement. A civil penalty assessed pursuant to these rules and unpaid shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the State in the District Court of Lancaster County. Any civil penalty collected by the Commission pursuant to such judicial proceedings shall be transmitted within thirty (30) days from receipt to the Treasurer of the State of Nebraska for deposit ~~in the permanent school fund~~ pursuant to section 75-158 of the Nebraska Revised Statutes.