

Informal Hearing Process for Small Commercial Customers

R 460.1631 Informal hearing and hearing officers.

Rule 31. (1) If the parties are unable to resolve the dispute, then the utility shall offer small commercial customers the opportunity for an informal hearing before a hearing officer selected from a list of hearing officers previously filed with the commission.

(2) If the customer chooses to have an informal hearing, then the customer shall do both of the following:

(a) Notify the utility within 5 business days of acceptance of the utility offer for an informal hearing.

(b) Pay the amount not in dispute, or, if the utility and customer cannot agree, pay 50% of the disputed amount.

(3) When the customer notifies the utility of the intent to pursue an informal hearing the utility shall do all of the following:

(a) Complete the necessary investigation.

(b) Schedule the hearing within 10 business days of the customer's request for a hearing.

(c) Hold the hearing within 30 business days of the customer's request for a hearing.

(4) If the customer fails to pay the part of the bill that is determined under subrule (2)(b) of this rule within 10 business days of the date that the utility sends the hearing notice, then the utility may exercise its right to shut off service pursuant to these rules.

(5) A utility shall select hearing officers on the basis of all of the following:

(a) They are on the list of hearing officers filed with the commission.

(b) They are notaries public qualified to administer oaths.

(c) They are not engaged in any other activities for or on behalf of the utility.

(6) If the dispute is ultimately resolved in favor of the customer, in whole or in part, then the utility shall return promptly any excess amount paid by the customer, with interest at the rate specified in these rules.

History: 2008 AACS.

R 460.1632 Notice of hearing.

Rule 32. (1) The utility shall personally serve the customer with written notice of the time, date, and place of the hearing on the day scheduling is determined.

(2) The notice shall describe the hearing procedures as contained in these rules.

(3) The notice shall include the amount of the required payment and due date of 10 business days from the date of the notice.

History: 2008 AACS.

R 460.1633 Hearing procedures.

Rule 33. (1) A utility shall establish hearing procedures that ensure the impartiality and integrity of the hearing process and that provide the customer and the utility with all of the following:

(a) The right to represent themselves or to be assisted by persons of their choice who are not attorneys.

(b) The right to examine, not less than 2 business days before a scheduled hearing, a list of all witnesses who will testify and all documents, records, files, account data, and similar material that may be relevant to the issues to be raised at the hearing.

(c) The right to present evidence, testimony, and oral and written argument.

(d) The right to question witnesses appearing on behalf of the other party.

(2) A hearing shall be held during normal business hours. A utility shall take reasonable steps to ensure that a customer who is unable to attend a hearing due to physical incapacity is not denied the right to a hearing.

Failure of the customer, or the utility, to attend the hearing without good reason, or without having requested an adjournment, constitutes a waiver of that party's right to the hearing.

(3) The utility has the burden of proof by a preponderance of the evidence.

(4) All witnesses who appear for either party shall testify under oath.

(5) A hearing shall be informal and the proceedings need not be recorded or transcribed. All relevant evidence shall be received and the formal rules of evidence shall not apply.

(6) For each hearing where the customer has not put his or her position in writing, the hearing officer shall compile a record that contains all of the following:

(a) A concise statement, in writing, of the position of the utility.

(b) A concise statement, in writing, of the position of the customer.

(c) Copies of all evidence submitted by the parties.

(7) At the conclusion of the hearing, the hearing officer may orally state his or her findings and decision, or adjourn the hearing and inform the parties that the decision will be transmitted within 7 business days. At the request of the customer, the hearing officer shall adjourn the hearing and transmit the decision within 7 business days. In all cases, the hearing officer shall issue a complaint determination in a form that is approved by the commission. The complaint determination shall contain both of the following:

(a) A concise summary of the evidence and arguments presented by the parties.

(b) The decision, and the reasons for the decision, based solely upon the evidence received.

(8) At the conclusion of the hearing and again upon issuance of the complaint determination, the hearing officer shall advise the customer and the utility of all of the following:

(a) That each party has the right to make an informal appeal to the commission staff, by mail, telephone, internet, fax, or in person, within 7 business days of issuance of the complaint determination.

(b) That, if appealed, the decision of the hearing officer, including a finding that service may be shut off, cannot be implemented until a review by the commission staff is completed.

(c) The address and telephone number where the customer or the utility may make an informal appeal to the commission staff.

(9) Before issuance of a complaint determination, the hearing officer may propose a settlement to the parties. If both parties accept the settlement, it shall be put in writing and signed by both parties.

(10) Within 7 business days of the conclusion of the hearing, the hearing officer shall serve the parties with all of the following:

(a) A copy of the complaint determination.

(b) Appeal information as provided in subrule (8) of this rule.

(c) If applicable, a copy of the signed settlement agreement as provided in subrule (9) of this rule.

(11) The complaint determination and a copy of the signed settlement agreement, if any, shall be made part of the hearing record. The hearing officer shall certify the hearing record.

(12) The complaint determination is binding upon the parties, unless appealed, as provided in these rules.

(13) A utility's hearing procedures shall be subject to investigation and review by the commission.

History: 2008 AACs.

R 460.1634 Informal appeal procedures.

Rule 34. (1) The commission staff shall assign the informal appeal to a regulation officer or another employee of the commission as the commission may designate. The officer or designated employee shall do all of the following:

(a) Advise the appealing party of the procedures of the commission by telephone or in writing.

(b) Advise the other party that an informal appeal has been filed.

(c) Issue interim determinations as necessary.

(d) Review or investigate the appeal as provided in these rules.

(e) Issue an informal appeal decision.

(2) Upon notification by the commission staff that an informal appeal has been made, the utility shall promptly file, with the commission staff, the certified hearing record. The parties shall be bound by the evidence presented at the hearing and contained in the hearing record. In arriving at the informal appeal decision, the regulation officer or designated employee shall not be required to receive or consider any additional evidence or information.

(3) In all informal appeals, the utility has the burden of proof by a preponderance of the evidence.

History: 2008 AACS.

R 460.1635 Interim determination.

Rule 35. (1) After receiving the hearing record and pending the final resolution of an informal appeal, the regulation officer or designated employee may issue an interim determination with appropriate terms and conditions. In the case of an appeal regarding a bill or deposit, the regulation officer or designated employee may require a customer to pay the undisputed portion of a claim in order to continue the prohibition against the shutoff of service as provided in these rules. The regulation officer or designated employee may consider the amounts that reasonably appear to reflect the cost of utility service in determining the undisputed portion of a claim.

(2) If a customer fails to abide by the terms and conditions of an interim determination within 10 days of the date of personal service or mailing of the interim determination by first-class mail, then the utility may shut off service as provided in these rules.

History: 2008 AACS.

R 460.1636 Appeal review.

Rule 36. The regulation officer or designated employee shall review the informal appeal thoroughly and, when necessary, conduct further investigation. A party may offer new evidence if the regulation officer or designated employee determines that it is relevant. When further investigation is necessary, the regulation officer or designated employee may request additional evidence or, at his or her own initiative, may hold an informal appeal conference with the parties or their representatives at a time and place designated by the officer or employee. If either party fails to appear at the informal conference without a good reason or without having requested an adjournment, then the right of the absent party to appear at the conference shall be waived. At an informal appeal conference, the parties may do all of the following:

(a) Represent themselves or be assisted by persons of their choice who are not attorneys.

(b) Offer oral and documentary evidence, which may be considered at the discretion of the regulation officer.

(c) Refute, in a reasonable manner, the evidence of the other party.

(d) Submit an oral or written statement of position.

History: 2008 AACS.

R 460.1637 Shutoff pending decision.

Rule 37. A utility shall not shut off service or issue a notice of shutoff related to the matter in dispute pending the decision of the commission staff, except pursuant to the terms of an interim determination.

History: 2008 AACS.

R 460.1638 Informal appeal decision.

Rule 38. The regulation officer or other employee so designated by the commission shall, within 30 days after the utility files the certified record, issue a written informal appeal decision affirming, modifying, or reversing the informal hearing determination. In reversing or modifying the informal hearing determination, the decision shall set forth the terms and conditions for continued service, shutoff, or a proposed settlement agreement, as required by the facts and circumstances. The decision shall state the relevant findings of fact, the reasons for the decision, and remedies for failure to comply with the informal appeal decision. A copy of the informal appeal decision shall be served personally or by first-class mail on the parties.

History: 2008 AACS.

R 460.1639 Failure to comply with informal appeal decision.

Rule 39. Failure of either party to comply with the decision within 10 days from the date of service by mailing shall permit implementation of the action or remedy provided by the decision.