

§ 10.104

17 CFR Ch. I (4–1–10 Edition)

which the Commission may in its discretion grant or deny. A request for oral argument must be made within the time provided for filing the initial briefs.

(b) *Time allowed.* Unless otherwise directed by the Commission, not more than one-half hour will be allowed for oral argument by any participant. Where the same or similar interests are represented by more than one participant, an aggregate of not more than one-half hour will be allowed the interests so represented irrespective of the number of participants, the time to be divided equally among such participants or as they may agree among themselves. In appropriate cases the Commission may, in its discretion, extend, shorten or reallocate the time prescribed herein.

(c) *Reporting and transcription.* Oral arguments before the Commission shall be reported and transcribed in written form unless the Commission shall direct otherwise.

(d) *Commissioners not present at oral argument.* A member of the Commission who was not present at the oral argument may participate in the decision of the proceeding. Any Commissioner participating in the decision who was not present at the argument will review the transcript of argument.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995]

§ 10.104 Scope of review; Commission decision.

(a) *Scope of review.* The Commission will ordinarily consider the whole record on review, and base its determination thereon. However, it may limit the issues to those presented in the statement of issues in the brief.

(b) *Decision on review.* On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial decision by the Administrative Law Judge and make any findings or conclusions which in its judgment are proper based on the record in the proceeding. The Commission's decision shall be contained in its opinion and order. In the event the Commission is equally divided as to its decision the initial decision will be affirmed, without opinion.

(c) *Contents of record.* The record of the proceeding before the Commission for final decision shall include:

(1) The complaint, notice of hearing, answers and any amendments thereto;

(2) Any application, motion or objection made during the course of the proceeding, briefs in support thereof, rulings thereon and exceptions thereto;

(3) Any admission or stipulations between the parties, and documents or papers filed in connection with prehearing conferences; and the record of prehearing conferences, if recorded;

(4) The transcript of testimony taken at the hearing, together with exhibits received at the hearing;

(5) Any statements filed under the shortened procedure;

(6) Portions of the official public records of the Commission specified in any of the above;

(7) Any proposed findings of fact, conclusions of law and briefs in support thereof, which were filed in connection with the hearing;

(8) Any written communication accepted by the Administrative Law Judge pursuant to §§ 10.34 and 10.35 relating to limited participation;

(9) The initial decision and the petition for review;

(10) Any other documents which appear on the docket of the proceeding.

§ 10.105 Review by Commission on its own initiative.

The Commission may on its own initiative, within 30 days after the initial decision has been served on all parties, direct review of any initial decision of an Administrative Law Judge. The Commission shall determine the scope of the review and the issues which will be considered and make provisions for the filing of briefs and oral argument, if deemed appropriate by the Commission. Notice that the Commission has directed review on its own initiative shall be served on all parties by the Proceedings Clerk.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995]

§ 10.106 Reconsideration; stay pending judicial review.

(a) *Reconsideration.* Within 15 days after service of a Commission opinion and order any party may file with the

Commission a petition for reconsideration of the opinion and order, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the opinion or order and concerning which the petitioner had no opportunity to argue before the Commission. The filing of a petition for reconsideration shall not operate to stay the effective date of the Commission's order.

(b) *Stay pending judicial appeal*—(1) *Application for stay.* Within 15 days after service of a Commission opinion and order imposing upon any party any of the sanctions listed in §§10.1(a) through 10.1(e), that party may file an application with the Commission requesting that the effective date of the order be stayed pending judicial review. The application shall state the reasons why a stay is warranted and the facts relied upon in support of the stay. Any averments contained in the application must be supported by affidavits or other sworn statements or verified statements made under penalty of perjury in accordance with the provisions of 28 U.S.C. 1746.

(2) *Standards for issuance of stay.* The Commission may grant an application for a stay pending judicial appeal upon a showing that:

(i) The applicant is likely to succeed on the merits of his appeal;

(ii) Denial of the stay would cause irreparable harm to the applicant; and

(iii) Neither the public interest nor the interest of any other party will be adversely affected if the stay is granted.

(3) *Civil monetary penalties and restitution.* Notwithstanding the requirements set forth in paragraph (b)(2) of this section, the Commission shall grant any application to stay the imposition of a civil monetary penalty or an order to pay a specific sum as restitution if the applicant has filed with the Proceedings Clerk a surety bond guaranteeing full payment of the penalty or restitution plus interest in the event that the Commission's opinion and order is sustained or the applicant's appeal is not perfected or is dismissed for any reason and the Commission has determined that neither the public interest nor the interest of any other party

will be affected by granting the application. The required surety bond shall be in the form of an undertaking by a surety company on the approved list of sureties issued by the Treasury Department of the United States, and the amount of interest shall be calculated in accordance with 28 U.S.C. 1961(a) and (b), beginning on the date 30 days after the Commission's opinion and order was served on the applicant. In the event the Commission denies the applicant's motion for a stay, the Proceedings Clerk shall return the surety bond to the applicant.

(c) *Response.* Unless otherwise requested by the Commission, no response to a petition for reconsideration pursuant to paragraph (a) of this section or an application for a stay pursuant to paragraph (b) of this section shall be filed. The Commission shall set the time for filing any response at the time it asks for a response. The Commission shall not grant any such petition or application without providing other parties to the proceeding with an opportunity to respond.

[41 FR 2511, Jan. 16, 1976, as amended at 63 FR 55795, Oct. 19, 1998; 63 FR 68829, Dec. 14, 1998; 64 FR 30903, June 9, 1999]

§10.107 Leave to adduce additional evidence.

Any time prior to issuance of the final decision the Commission may, upon its own motion or upon application in writing by any party, after notice to the parties and an opportunity for them to be heard, reopen the hearing for the reception of further evidence. The application shall show to the satisfaction of the Commission that the additional evidence is material, and that there were reasonable grounds for failure to adduce such evidence at the hearing. The Commission may hear the additional evidence or may refer the proceeding to the Administrative Law Judge for the taking of the additional evidence.

§ 10.108 Settlements.

(a) *When offers may be made.* Parties may at any time during the course of the proceeding propose offers of settlement. All offers of settlement shall be in writing.