

parties are not in agreement and concerning which oral evidence is to be introduced. Unless material facts are in dispute, oral hearing will not be held.

(h) *Subsequent procedure.* Post-hearing procedures shall be the same as those in proceedings in which the shortened procedures have not been followed.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995; 64 FR 30903, June 9, 1999]

§ 10.93 Obtaining default order.

When a respondent has failed to (a) file an answer as provided in § 10.23 of these rules or (b) failed to appear or file a notice of appearance as provided in § 10.62 of these rules or (c) failed to file a statement under the shortened procedures as provided in § 10.92 of these rules, the Division of Enforcement may move the Administrative Law Judge to enter findings and conclusions and a default order against that respondent based upon the matters set forth in the complaint, which shall be deemed to be true for purposes of this determination.

§ 10.94 Setting aside of default.

In order to prevent injustice and on such conditions as may be appropriate, (a) the Commission may at any time set aside a default order obtained under § 10.93; and (b) the Administrative Law Judge may set aside a default order obtained under § 10.93 at any time prior to filing of his initial decision in a proceeding in which there are remaining respondents. Any motion to set aside a default shall be made within a reasonable time, and shall state the reasons for the failure to file or appear and specify the nature of the proposed defense in the proceeding.

Subpart H—Appeals to the Commission; Settlements

§ 10.101 Interlocutory appeals.

Interlocutory review by the Commission of a ruling on a motion by an Administrative Law Judge may be sought in accordance with the following procedures:

(a) *Scope of review.* The Commission will not review a ruling of the Adminis-

trative Law Judge prior to the Commission's consideration of the entire proceeding in the absence of extraordinary circumstances. An interlocutory appeal may be permitted, in the discretion of the Commission, under the following circumstances:

(1) Appeal from an adverse ruling pursuant to § 10.8(b) on a motion to disqualify an Administrative Law Judge;

(2) Appeal from a ruling pursuant to § 10.11(b) suspending an attorney from participation in a particular proceeding.

(3) Appeal from a ruling pursuant to §§ 10.33 and 10.34 denying intervention or limited participation;

(4) Appeal from a ruling pursuant to § 10.68(b) requiring the appearance of an officer or employee of the Commission or another government agency or the production of Commission records;

(5) Upon a determination by the Administrative Law Judge, certified to the Commission either in writing or on the record, that

(i) A ruling sought to be appealed involves a controlling question of law or policy;

(ii) An immediate appeal may materially advance the ultimate resolution of the issues in the proceeding; and

(iii) Subsequent reversal of the ruling would cause unnecessary delay or expense to the parties.

(b) *Procedure to obtain interlocutory review—(1) In general.* An application for interlocutory review may be filed within five days after notice of the Administrative Law Judge's ruling on a matter described in paragraphs (a)(1), (a)(2), (a)(3) or (a)(4) of this section, except if a request for certification under paragraph (a)(5) of this section has been filed with the Administrative Law Judge within five days after notice of the Administrative Law Judge's ruling on the matter. If a request for certification has been filed, an Application for interlocutory review under paragraphs (a)(1) through (a)(5) of this section may be filed within five days after notification of the Administrative Law Judge's ruling on such request.

(2) An application for review shall:

(i) Designate the ruling or part thereof from which appeal is being taken;