

§ 385.505

part, including for the purpose of considering the use of alternative dispute resolution procedures;

(8) Rule on, and dispose of, procedural matters, including oral or written motions;

(9) Summarily dispose of a proceeding or part of a proceeding, as provided in Rule 217;

(10) Certify a question to the Commission, as provided in Rule 714;

(11) Permit or deny appeal of an interlocutory ruling, as provided in Rule 715;

(12) Rule on motions to intervene, as provided in Rule 214;

(13) Separate any issue or group of issues from other issues in a proceeding and treat such issue or group of issues as a separate phase of the proceeding;

(14) Maintain order, as follows:

(i) Ensure that any disregard by any person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;

(ii) In the event any person engages in disrespectful, disorderly, or contemptuous language or conduct in connection with the hearing, recess the hearing for such time as necessary to regain order;

(iii) Request that the Commission take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

(15) Modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any participant;

(16) Limit the number of expert witnesses who may testify on any issue, consistent with the rule against repetitious testimony in Rule 509(a);

(17) Limit the number of persons, other than staff, representing a similar interest who may examine witnesses or make or argue motions or objections;

(18) Require; or authorize the admission of, further evidence upon any issue at any time before the close of the evidentiary record;

(19) Rule on motions for reconsideration of an initial decision as provided in Rule 717;

(20) Take any other action necessary or appropriate to the discharge of the

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duties of a presiding officer, consistent with applicable law and policy.

(c) *Disqualification.* (1) A presiding officer may withdraw from a proceeding, if that officer believes himself or herself disqualified.

(2) The Commission may, for good cause, order the removal of any presiding officer from a proceeding, on motion filed with the Commission or otherwise.

[Order 225, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983, as amended by Order 375, 49 FR 21315, May 21, 1984; Order 466, 52 FR 6970, Mar. 6, 1987; Order 578, 60 FR 19505, Apr. 19, 1995]

§ 385.505 Right of participants to present evidence (Rule 505).

Consistent with the provisions of this part, a participant has the right to present such evidence, including rebuttal evidence, to make such objections and arguments, and to conduct such cross-examination, as may be necessary to assure true and full disclosure of the facts.

§ 385.506 Examination of witnesses during hearing (Rule 506).

(a) *Prepared written direct and rebuttal testimony.* Unless the presiding officer orders such testimony to be presented orally, direct and rebuttal testimony of a witness in a hearing must be prepared and submitted in written form, as required by Rule 507. Any witness submitting written testimony must be available for cross-examination, as provided in this subpart.

(b) *Oral testimony during hearing.* Oral examination of a witness in a hearing must be conducted under oath and in the presence of the presiding officer, with opportunity for all participants to question the witness to the extent consistent with Rules 504(b)(17), 505, and 509(a).

§ 385.507 Prepared written testimony (Rule 507).

(a) *Offered as an exhibit.* The prepared written testimony of any witness must be offered as an exhibit. The presiding officer will allow a reasonable period of time for the preparation of such written testimony.

(b) *Time for filing.* Any prepared written testimony must be filed and served

within the time provided by the presiding officer, in no case later than 10 days before the session of the hearing at which such exhibit is offered, unless a shorter period is permitted under paragraph (c) of this section.

(c) *Late-filed testimony.* (1) If all participants in attendance at the hearing agree, the 10-day requirement for filing any written testimony under paragraph (b) of this section is waived.

(2) The presiding officer may permit the introduction of any prepared written testimony without compliance with paragraph (b) of this section, if the presiding officer determines that the introduction of the testimony:

(i) Is necessary for a full disclosure of the facts or is warranted by any other showing of good cause; and

(ii) Would not be unduly prejudicial to any participant.

(3) If any written testimony is served and filed within the 10 day period provided in paragraph (b) of this section, the presiding officer will provide the participants in attendance with a reasonable opportunity to inspect the testimony.

(d) *Form; authentication.* Prepared written testimony must have line numbers inserted in the left-hand margin of each page and must be authenticated by an affidavit of the witness.

§ 385.508 Exhibits (Rule 508).

(a) *General rules.* (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Any participant who seeks to have an exhibit admitted into evidence must provide one copy of the exhibit to the presiding officer and two copies to the reporter, not later than the time that the exhibit is marked for identification.

(3) The presiding officer will cause each exhibit offered by a participant to be marked for identification.

(b) *Designation and treatment of matter sought to be admitted.* (1) If a document offered as an exhibit contains material not offered as evidence, the participant offering the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(2) If, in a document offered as an exhibit, material not offered in evidence is so extensive as to unnecessarily encumber the record, the material offered in evidence will be marked for identification. The remainder of the document will be considered not to have been offered in evidence.

(3) Copies of any document offered as an exhibit under paragraph (b)(2) of this section must be delivered to the other participants appearing at the hearing by the participant offering the exhibit in evidence. The participants will be offered an opportunity to inspect the entire document and to offer as an exhibit in evidence, in like manner, any other portions of the document.

(c) *Public document items by reference.* If all or part of a public document is offered in evidence and the participant offering the document shows that all or the pertinent part of the document, is reasonably available to the public, the document need not be produced or marked for identification but may be offered in evidence as a public document by identifying all or the relevant part of the document to be offered.

(d) *Official notice of facts.* (1) A presiding officer may take official notice of any matter that may be judicially noticed by the courts of the United States, or of any matter about which the Commission, by reason of its functions, is expert.

(2) The presiding officer must afford any participant, making a timely request, an opportunity to show the contrary of an officially noticed fact.

(3) Any participant requesting official notice of facts after the conclusion of the hearing must set forth reasons to justify the failure to request official notice prior to the close of the hearing.

(e) *Stipulations.* (1) Participants in a proceeding may stipulate to any relevant matters of fact or the authenticity of any relevant documents.

(2) A stipulation may be received in evidence at the hearing and, if received in evidence, the stipulation is binding on the stipulating participants with respect to any matter stipulated.