

§ 10.103

review of an initial decision is mandatory as a prerequisite to seeking judicial review of a final decision entered pursuant to these Rules of Practice.

(7 U.S.C. Secs. 4a, 12a; 5 U.S.C. Sec. 10)

[41 FR 2511, Jan. 16, 1976, as amended at 41 FR 18071, Apr. 30, 1976; 41 FR 19932, May 14, 1976; 47 FR 5999, Feb. 10, 1982; 60 FR 54802, Oct. 26, 1995; 61 FR 21954, May 13, 1996; 63 FR 55794, Oct. 19, 1998; 63 FR 68829, Dec. 14, 1998; 64 FR 30903, June 9, 1999]

§ 10.103 Oral argument before the Commission.

(a) *Request.* Any party may file with the Proceedings Clerk a request in writing for the opportunity to present oral argument before the Commission, 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

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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