

§ 7.31

introduce. The list shall include the name and position of each witness and the aspect of the allegation upon which the witness is expected to testify. If no witnesses are to be called, the Ethics Officer shall be so notified.

(3) Copies of the witness lists shall be given to the examiner by the Ethics Officer.

(b) *Representation.* (1) The Commission shall be represented at the hearing by the Ethics Officer or his or her designee.

(2) The former employee may represent himself or herself or may be represented by counsel.

(c) *Burden of proof.* The burden of proof shall be on the Commission which must establish substantial evidence of a violation.

(d) *Conduct of hearing.* (1) The following items will be introduced by the Commission and will be made part of the hearing record:

(i) The complaint;

(ii) The notification sent to the former employee under 11 CFR 7.27;

(iii) The former employee's response to the notification; and

(iv) If the Commission so chooses, a brief or memorandum of law.

(2) The former employee will then be given an opportunity to submit a brief or memorandum of law to be included in the hearing record.

(3) The Commission shall introduce its witnesses and evidence first. At the close of the Commission's examination of each witness, the former employee will be given an opportunity to cross-examine the witness.

(4) The former employee will present his or her witnesses and evidence at the close of the Commission's presentation. At the close of the former employee's examination of each witness, the Commission shall be given an opportunity to cross-examine each witness.

(5) After the former employee has completed his or her presentation, both parties will be given an opportunity for oral argument with the Commission making its arguments first. Time shall be offered during the oral argument for Commission rebuttal.

(6) Decisions as to the admissibility of evidence or testimony shall be made under the Federal Rules of Evidence.

11 CFR Ch. I (1-1-04 Edition)

§ 7.31 Examiner's decision.

(a) *Initial determination.* No later than 15 days after the close of the hearing, the examiner shall make a determination exclusively on matters of record in the proceeding.

(b) *Form of determination.* The examiner's determination shall set forth all findings of fact and conclusions of law relevant to the matters at issue.

(c) *Copies.* The examiner shall provide copies of his or her determination to the former employee, the complainant, the Ethics Officer, and the Commission.

§ 7.32 Appeal.

(a) *Right of appeal.* Within ten days after receipt by certified mail of the examiner's decision, either party may appeal such decision to the members of the Commission by filing a notice of appeal with the Chairman.

(b) *Notice of appeal.* The notice of appeal shall be accompanied by a memorandum setting forth the legal and factual reasons why the examiner's decision should be reversed or modified.

(c) *Commission review of appeal.* The Commission, by an affirmative vote of four members, may affirm, modify, or reverse the examiner's decision. The Commission's decision shall be based solely on the hearing record or those portions thereof cited by the parties to limit the issues.

(d) *Commission statement on appeal.* If the Commission modifies or reverses the initial decision, it shall specify such findings of fact or conclusions of law as are different from those of the examiner.

§ 7.33 Administrative sanctions.

The Commission may take appropriate disciplinary action in the case of any individual who is found in violation of 18 U.S.C. 207 (a), (b), or (c) after a final administrative hearing, or in the absence of a hearing, after adequate notice such as by:

(a) Prohibiting the individual from making, on behalf of any person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to the Commission on any matter of business for a period not to exceed five years, which