

§ 2200.65 Payment of witness fees and mileage; fees of persons taking depositions.

Witnesses summoned before the Commission or the Judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

§ 2200.66 Transcript of testimony.

(a) *Hearings.* Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Judge before whom the matter was heard.

(b) *Payment for transcript.* The Commission shall bear all expenses for court reporters' fees and for copies of the hearing transcript received by it. Each party is responsible for securing and paying for its copy of the transcript.

(c) *Correction of errors.* Error in the transcript of the hearing may be corrected by the Judge on his own motion, on joint motion by the parties, or on motion by any party. The motion shall state the error in the transcript and the correction to be made. Corrections will be made by hand with pen and ink and by the appending of an errata sheet.

§ 2200.67 Duties and powers of judges.

It shall be the duty of the Judge to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The Judge shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the Commission, to:

- (a) Administer oaths and affirmations;
- (b) Issue authorized subpoenas;
- (c) Rule upon petitions to revoke subpoenas;

(d) Rule upon offers of proof and receive relevant evidence;

(e) Take or cause depositions to be taken whenever the needs of justice would be served;

(f) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(g) Hold conferences for the settlement or simplification of the issues;

(h) Dispose of procedural requests or similar matters, including motions referred to the Judge by the Commission and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;

(i) Make decisions in conformity with section 557 of title 5, United States Code;

(j) Call and examine witnesses and to introduce into the record documentary or other evidence;

(k) Request the parties to state their respective positions concerning any issue in the case or theory in support thereof;

(l) Adjourn the hearing as the needs of justice and good administration require;

(m) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the Commission.

[51 FR 32015, Sept. 8, 1986, as amended at 62 FR 35963, July 3, 1997]

§ 2200.68 Disqualification of the judge.

(a) *Discretionary withdrawal.* A Judge may withdraw from a proceeding whenever he deems himself disqualified.

(b) *Request for withdrawal.* Any party may request the Judge, at any time following his designation and before the filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) *Granting request.* If, in the opinion of the Judge, the affidavit referred to in paragraph (b) of this section is filed

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with due diligence and is sufficient on its face, the Judge shall forthwith disqualify himself and withdraw from the proceeding.

(d) *Denial of request.* If the Judge does not disqualify himself and withdraw from the proceedings, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and the provisions of § 2200.90 shall thereupon apply.

§ 2200.69 Examination of witnesses.

Witnesses shall be examined orally under oath or affirmation. Opposing parties have the right to cross-examine any witness whose testimony is introduced by an adverse party. All parties shall have the right to cross-examine any witness called by the Judge pursuant to § 2200.67(j).

§ 2200.70 Exhibits.

(a) *Marking exhibits.* All exhibits offered in evidence by a party shall be marked for identification before or during the hearing. Exhibits shall be marked with the case docket number, with a designation identifying the party or intervenor offering the exhibit, and numbered consecutively.

(b) *Removal or substitution of exhibits in evidence.* Unless the Judge finds it impractical, a copy of each exhibit shall be given to the other parties and intervenors. A party may remove an exhibit from the official record during the hearing or at the conclusion of the hearing only upon permission of the Judge. The Judge, in his discretion, may permit the substitution of a duplicate for any original document offered into evidence.

(c) *Reasons for denial of admitting exhibit.* A Judge may, in his discretion, deny the admission of any exhibit because of its excessive size, weight, or other characteristic that prohibits its convenient transportation and storage. A party may offer into evidence photographs, models or other representations of any such exhibit.

(d) *Rejected exhibits.* All exhibits offered but denied admission into evidence, except exhibits referred to in paragraph (c) of this section, shall be

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placed in a separate file designated for rejected exhibits.

(e) *Return of physical exhibits.* A party may on motion request the return of a physical exhibit within 30 days after expiration of the time for filing a petition for review of a Commission final order in a United States Court of Appeals under section 11 of the Act, 29 U.S.C. 660, or within 30 days after completion of any proceedings initiated thereunder. The motion shall be addressed to the Executive Secretary and provide supporting reasons. The exhibit shall be returned if the Executive Secretary determines that it is no longer necessary for use in any Commission proceeding.

(f) *Request for custody of physical exhibit.* Any person may on motion to the Executive Secretary request custody of a physical exhibit for use in any court or tribunal. The motion shall state the reasons for the request and the duration of custody requested. If the exhibit has been admitted in a pending Commission case, the motion shall be served on all parties to the proceeding. Any person granted custody of an exhibit shall inform the Executive Secretary of the status every six months of his continuing need for the exhibit and return the exhibit after completion of the proceeding.

(g) *Disposal of physical exhibit.* Any physical exhibit may be disposed of by the Commission's Executive Secretary at any time more than 30 days after expiration of the time for filing a petition for review of a Commission final order in a United States Court of Appeals under section 11 of the Act, 29 U.S.C. 660, or 30 days after completion of any proceedings initiated thereunder.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987]

§ 2200.71 Rules of evidence.

The Federal Rules of Evidence are applicable.

§ 2200.72 Objections.

(a) *Statement of objection.* Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Judge, may be stated orally or in