

any or all issues to be heard. The Judge may order the filing of a statement of position.

§ 2200.40 Motions and requests.

(a) *How to make.* A request for an order shall be made by motion. Motions shall be in writing or, unless the Judge directs otherwise, may be made orally during a hearing on the record and shall be included in the transcript. In exigent circumstances in cases pending before Judges, a motion may be made telephonically if it is reduced to writing and filed as soon as possible but no later than 3 working days following the time the motion was made. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. Prior to filing a motion, the moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion.

(b) *When to make.* A motion filed in lieu of an answer pursuant to § 2200.34(b) shall be filed no later than twenty days after the service of the complaint. Any other motion shall be made as soon as the grounds therefor are known.

(c) *Responses.* Any party or intervenor upon whom a motion is served shall have ten days from service of the motion to file a response. A procedural motion may be ruled upon prior to the expiration of the time for response; a party adversely affected by the ruling may within five days of service of the ruling seek reconsideration.

(d) *Postponement not automatic upon filing of motion.* The filing of a motion, including a motion for a postponement, does not automatically postpone a hearing. See § 2200.62 with respect to motions for postponement.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987, as amended at 57 FR 41685, Sept. 11, 1992; 62 FR 35963, July 3, 1997]

§ 2200.41 Failure to obey rules.

(a) *Sanctions.* When any party has failed to plead or otherwise proceed as

provided by these rules or as required by the Commission or Judge, he may be declared to be in default either:

(1) On the initiative of the Commission or Judge, after having been afforded an opportunity to show cause why he should not be declared to be in default; or

(2) On the motion of a party. Thereafter, the Commission or Judge, in their discretion, may enter a decision against the defaulting party or strike any pleading or document not filed in accordance with these rules.

(b) *Motion to set aside sanctions.* For reasons deemed sufficient by the Commission or Judge and upon motion expeditiously made, the Commission or Judge may set aside a sanction imposed under paragraph (a) of this rule. See § 2200.90(b)(3).

(c) *Discovery sanctions.* This section does not apply to sanctions for failure to comply with orders compelling discovery, which are governed by § 2200.52(e).

(d) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (a) of this section shall be served upon the affected party by certified mail, return receipt requested.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987, as amended at 55 FR 22782, June 4, 1990]

EFFECTIVE DATE NOTE: At 70 FR 22788, May 3, 2005, § 2200.41 was removed and reserved, effective Aug. 1, 2005.

Subpart D—Prehearing Procedures and Discovery

§ 2200.50 [Reserved]

§ 2200.51 Prehearing conferences and orders.

(a) *Scheduling conference.* (1) The Judge shall consult with all attorneys and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, and within 30 days after the filing of the answer, enter a scheduling order that limits the time:

- (i) To join other parties and to amend the pleadings;
- (ii) To file and hear motions; and
- (iii) To complete discovery.