

(3) *Video operator.* The operator(s) of the videotape recording equipment shall be subject to the provisions of Rule 28(c) of the Federal Rules of Civil Procedure. At the commencement of the deposition the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

(4) *Attendance.* Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and demonstrative materials used during the deposition) will be videotaped. Identification on camera of each witness, attorney, and other person attending the deposition may be waived by the attorneys for the parties.

(5) *Standards.* The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a hearing. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Eating and smoking by deponents or counsel during the deposition will not be permitted.

(6) *Interruptions.* Videotape recording will be suspended during all “off the record” discussions.

(7) *Index.* The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends; at which objections are made and examination resumes; at which exhibits are identified; and at which any interruption of continuous tape recording occurs, whether for re-

cesses, “off the record” discussions, mechanical failure, or otherwise.

(8) *Filing.* If a videotaped deposition is used at the hearing, the original of the videotape recording, together with the transcript, the operator’s log index, and a certificate of the operator attesting to the accuracy of the tape, shall be filed with the Judge. No part of a videotaped deposition shall be released or made available to any member of the public unless authorized by the Commission or the Judge.

(9) *Objections.* Requests for pre-hearing rulings on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. If the objection involves matters peculiar to the videotaping, a copy of the videotape and equipment for viewing the tape shall also be provided to the Commission or Judge.

(10) *Use at hearing; purged tapes.* A party desiring to offer a videotape deposition at the hearing shall be responsible for having available appropriate playback equipment and a trained operator. After the designation by all parties of the portions of a videotape to be used at the hearing, an edited copy of the tape, purged of unnecessary portions (and any portions to which objections have been sustained), must be prepared by the offering party to facilitate continuous playback; but a copy of the edited tape shall be made available to other parties at least 10 days before it is used, and the unedited original of the tape shall also be available at the hearing.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987, as amended at 57 FR 41686, Sept. 11, 1992]

**§ 2200.57 Issuance of subpoenas; petitions to revoke or modify subpoenas; right to inspect or copy data.**

(a) *Issuance of subpoenas.* On behalf of the Commission or any member thereof, the Judge shall, on the application of any party, issue to the applying party subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. The party

to whom the subpoena is issued shall be responsible for its service. Applications for subpoenas, if filed prior to the assignment of the case to a Judge, shall be filed with the Executive Secretary at One Lafayette Centre, 1120-20th Street NW., 9th Floor, Washington, DC 20036-3419. After the case has been assigned to a Judge, applications shall be filed with the Judge. Applications for subpoena(s) may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) *Service of subpoenas.* A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein may be made by service on the person named, by certified mail return receipt requested, or by leaving a copy at the person's principal place of business or at the person's residence with some person of suitable age and discretion residing therein.

(c) *Revocation or modification of subpoenas.* Any person served with a subpoena, whether ad testificandum or duces tecum, shall, within 5 days after the date of service of the subpoena upon him, move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The Judge or the Commission shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The Judge or the Commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

(d) *Rights of persons compelled to submit data.* Persons compelled to submit data or evidence at a public proceeding are entitled to retain or, on payment of

lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

(e) *Failure to comply with subpoena.* Upon the failure of any person to comply with a subpoena issued upon the request of a party, the Commission by its counsel shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Act. Neither the Commission nor its counsel shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987, as amended at 57 FR 41687, Sept. 11, 1992; 58 FR 26065, Apr. 30, 1993; 62 FR 35963, July 3, 1997]

### Subpart E—Hearings

#### § 2200.60 Notice of hearing; location.

Except by agreement of the parties, or in an expedited proceeding under § 2200.103, notice of the time, place, and nature of the first setting of a hearing shall be given to the parties and intervenors at least thirty days in advance of the hearing. If a hearing is being rescheduled, or if exigent circumstances are present, at least ten days' notice shall be given. The Judge will designate a place and time of hearing that involves as little inconvenience and expense to the parties as is practicable.

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

#### § 2200.61 Submission without hearing.

A case may be fully stipulated by the parties and submitted to the Commission or Judge for a decision at any time. The stipulation of facts shall be in writing and signed by the parties or their representatives. The submission of a case under this rule does not alter the burden of proof, the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof. Motions for summary judgment are covered by Fed.R.Civ.P. 56.