

§ 385.907

administrative record is always available to the Commission and will not include irrelevant or duplicative documents in the appendices.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 395, 49 FR 35357, Sept. 7, 1984; Order 416, 50 FR 15733, Apr. 22, 1985; Order 416-A, 50 FR 36054, Sept. 5, 1985]

§ 385.907 New facts and issues (Rule 907).

(a) *Raised by the petitioner.* In the answer, as provided in Rule 906(b)(2)(ii) (new facts and issues) the petitioner may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that:

(1)(i) Are facts or issues that were not known and could not, with the exercise of due care, have been known to the petitioner at the time they would otherwise have been raised during the prior proceedings;

(ii) Are facts or issues that the petitioner was unable to raise at the time they could have been raised during the prior proceedings because of unduly restrictive time limits imposed by the Secretary; or

(iii) Are facts or issues that the petitioner was not permitted to raise in the prior proceedings due to erroneous adverse procedural rulings; and

(2) Are necessary for a full and true disclosure of the facts.

(b) *Raised by the Secretary.* In the reply under Rule 906(a)(2) (pleadings), the Secretary may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that:

(1) Are necessary to support the Secretary's case as a result of new facts or issues raised by the petitioner under Rule 906(b)(2)(ii) (pleadings) and this section; and

(2) Are necessary for a full and true disclosure of the facts.

(c) *Raised by interveners.* In the motion to intervene under Rule 906(c)(3) (pleadings) and this section, an intervener may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that:

(1) If the intervener did not participate in the prior proceeding, meet the

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criteria of paragraphs (a)(1) and (a)(2) of this section; or

(2) If the intervener participated in the prior proceedings, are:

(i)(A) Facts or issues that were not known and could not, with the exercise of due care, have been known to the intervener at the time they would otherwise have been raised during the prior proceedings;

(B) Facts or issues that the intervener was unable to raise at the time they could have been raised during the prior proceedings because of unduly restrictive time limits imposed by the Secretary; or

(C) Facts or issues that the intervener was not permitted to raise in the prior proceedings due to erroneous adverse procedural rulings; and

(ii) Are necessary for a full and true disclosure of the facts.

(d) *Determination by the presiding officer.* The presiding officer will determine whether to grant or deny, in whole or in part, the requests of the participants to raise new facts or issues and will serve those determinations on the participants in the proceeding.

§ 385.908 Discovery (Rule 908).

(a) *By petitioner.* In the answer under Rule 906(b)(2) (pleadings), the petitioner may request permission of the presiding officer to conduct discovery, where such discovery:

(1) Relates to new facts or issues raised in accordance with Rule 907(a) (new facts and issues); or

(2)(i) Was not permitted in the prior proceedings on the contested order due to erroneous adverse procedural rulings; and

(ii) Is necessary for a full and true disclosure of the facts.

(b) *By the Secretary.* In the reply under Rule 906(a)(2) (pleadings), the Secretary may request permission of the presiding officer to conduct discovery where such discovery relates to new facts or issues raised in accordance with Rule 907(b) (new facts and issues).

(c) *By interveners.* In a motion to intervene under Rule 906(c)(8) (pleadings) an intervener may request permission of the presiding officer to conduct discovery where such discovery: