promptness after the defect is, or with due diligence should have been, ascertained.

§ 385.406 Data requests, interrogatories, and requests for production of documents or things (Rule 406).

(a) *Availability*. Any participant may serve upon any other participant a written request to supply information, such as responses to data requests and interrogatories, or copies of documents.

(b) *Procedures*. (1) A request under this section must identify with specificity the information or material sought and will specify a reasonable time within which the matter sought must be furnished.

(2) Unless provided otherwise by the presiding officer, copies of any discovery request must be served upon the presiding officer and on all participants to the proceeding.

(3) Each discovery request must be answered separately and fully in writing.

(4) Responses to discovery requests are required to be served only on the participant requesting the information, Commission trial staff, and any other participant that specifically requests service. The presiding officer may direct that a copy of any responses be furnished to the presiding officer. Responses must be served within the time limit specified in the request or otherwise provided by the presiding officer.

(5) If the matter sought is not furnished, the responding participant must provide, in accordance with Rule 410, written explanation of the specific grounds for the failure to furnish it.

§ 385.407 Inspection of documents and other property (Rule 407).

(a) *Availability*. On request, the presiding officer may order any other participant to:

(1) Permit inspection and copying of any designated documents (including writings, drawings, graphs, charts, photographs, sound recordings, computer tapes or other compilations of data from which information can be obtained) that are not privileged and that are in the possession, custody, or control of the participant to whom the order is directed;

(2) Permit inspection, copying or photographing, testing, or sampling of any tangible thing that is not privileged and that is in the possession, custody, or control of the participant to whom the order is directed; and

(3) Permit entry upon or into designated land, buildings, or other property in the possession, custody, or control of the participant to whom the order is directed for the purpose of inspecting, measuring, surveying, or photographing the property or any activity or operation that is not privileged and that is conducted in or upon the property.

(b) *Procedures*. A request for inspection of documents or property under this section must describe with reasonable particularity the documents or other property to which access is sought. The request must also specify a reasonable time, place, and manner of making the inspection.

§ 385.408 Admissions (Rule 408).

(a) *General rule*. A participant may serve upon any other participant a written request for admission of the genuineness of any document or the truth of any matter of fact. The request must be served upon all participants.

(b) *Procedures*. (1) Any request for admission of the genuineness of a document must be accompanied by a legible copy of the document, unless it was previously furnished, is in the possession of the recipient of the request, or is readily available for inspection and copying.

(2) The truth of specified matters of fact or the genuineness of the documents described in a request are deemed admitted unless, within 20 days after service of the request or any longer period designated in the request, the participant that receives the request serves upon the requesting participant a written answer or objection addressed to the matters in the request.

(3) An answer must specifically admit or deny the truth of the matters in the request or set forth in detail the reasons why the answering participant cannot admit or deny the truth of each matter. A denial of the truthfulness of the requested admission must fairly

discuss the substance of the requested admission and, when good faith requires that a participant qualify the answer or deny only a part of the matter of which an admission is requested, the participant must specify that which is true and qualify or deny the remainder. The answer must be served on all participants.

(c) *Effect of admission*. Any admission made by a participant under this section is for the purpose of the pending proceeding only, is not an admission for any other purpose, and may not be used against the participant in any other proceeding. Any matter admitted under this rule is conclusively established unless the presiding officer, on motion, permits withdrawal or amendment of the admission. The presiding officer may permit withdrawal or amendment of an admission, if the presiding officer finds that the presentation of the merits of the proceeding will be promoted and the participant who obtained the admission has failed to satisfy the presiding officer that withdrawal or amendment of the admission will prejudice that participant in maintaining his position in the proceeding.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 466–A, 52 FR 35909, Sept. 24, 1987]

§ 385.409 Subpoenas (Rule 409).

(a) *Issuance*. On request, the presiding officer may issue a subpoena for the attendance of a witness at a deposition or hearing or for the production of documents. A request for a subpoena must be served on all participants.

(b) *Service and return*. A subpoena issued under this section must be served by personal service, substituted service, registered mail, or certified mail. A subpoena may be served by the marshal, by his deputy, or by any other person who is not a party or an employee of a party and is at least 18 years of age. If personal service is made by any person other than a United States marshal or deputy marshal, return of service must be accompanied by an affidavit to the Secretary or the presiding officer and must state the time and manner of service of the subpoena.

(c) *Fees*. Fees paid to subpoenaed persons will be in accordance with Rule 510(e).

(d) *Objections*. Objections to subpoenas must be made in accordance with Rule 410.

§ 385.410 Objections to discovery, motions to quash or to compel, and protective orders (Rule 410).

(a) *Objection to discovery*—(1) *Notice of objections or motion to quash*. A participant, or a recipient of a subpoena, who does not intend to comply with a discovery request must notify in writing the participant seeking discovery within a reasonable time in advance of the date on which a response or other action in conformance with the discovery request is due. A recipient of a subpoena may either provide a notice of objection or file a motion to quash.

(2) *Objections to production of documents*. (i) Unless an objection to discovery under this section is based on the ground that production would impose an undue burden, the objecting participant must provide the participant seeking discovery with a schedule of items withheld and a statement of:

(A) The character and specific subject matter of each item; and

(B) The specific objection asserted for each item.

(ii) If an objection under this section is based on the ground that production of the requested material would impose an undue burden, the objecting participant must provide the participant seeking discovery with a description of the approximate number of documents that would have to be produced and a summary of the information contained in such documents.

(3) *Objections to other discovery requests*. If the discovery to which objection is made is not a request for documents, the objection must clearly state the grounds on which the participant bases its objection.

(4) *Objections to compile or process information*. The fact that information has not been compiled or processed in the form requested is not a basis for objection unless the objection presents grounds for limiting discovery under paragraph (c) of this section.