

Part 4 - Hearings

§ 4.1 In general

Hearings will be held in cases where required by law and in such other cases as the Commission may direct. Evidentiary hearings shall be governed by the provisions of this [p]Part, except as otherwise specifically provided in this Title. Legislative-type hearings shall be conducted in accordance with such procedures as the Commission may direct.

§ 4.2 Notice

The time and place of each hearing may be determined by the Commission, the Secretary, or the presiding officer. Notice of hearings, specifying time, place, and purpose, will be given in accordance with statutory requirements and such additional requirements as the Commission, the Secretary, or the presiding officer may direct. Any party required to publish or otherwise issue notice shall file proof of having done so at or before the hearing.

§ 4.3 Parties

(a) Only the parties to a proceeding may present evidence [or testimony] and examine and cross-examine witnesses.

(b) (1) Parties to a proceeding shall include the applicant, petitioner, or complainant, if any; the affected utility company or certificate holder (even if not the applicant or petitioner); trial staff; appearing agencies; and other persons permitted by statute or regulation or by the presiding officer to intervene.

(2) In cases having numerous parties, the presiding officer may promulgate a list of active parties and identify types of documents that need not be served on parties omitted from that list. Omission from that list, however, shall not otherwise affect a party's standing.

(3) To avoid unnecessary duplication, the presiding officer may require parties with similar interests to consolidate their presentations.

(c) (1) Any person may ask the presiding officer for permission to intervene. Permission will be granted if the intervention is likely to contribute to the development of a complete record or is otherwise fair and in the public interest.

(2) Permission to intervene after a hearing has commenced may be sought and granted at any time, unless the presiding officer determines that granting such permission would be unfairly prejudicial to other parties. A party intervening after the start of the hearing shall be bound by the record as developed to that point and by such conditions of intervention as the presiding officer may impose.

(d) Staff counsel shall provide the presiding officer and all parties a list of persons designated to serve as trial staff in the case as soon as it is practical to do so and shall [report to them] promptly report [on] any additions to the list. A person once included on the list may not later be deleted.

§ 4.4 Pre-hearing conference

(a) A presiding officer may convene a pre-hearing conference to formulate or simplify issues; arrange for the exchange of testimony and exhibits; limit the number of witnesses; set schedules; or otherwise expedite the orderly conduct of the proceeding.

(b) Facts disclosed in pre-hearing conferences shall be privileged. Except by agreement, they may not be used against participating parties unless proven by independent evidence.

§ 4.5 General procedures

(a) At hearings, parties to the proceeding will be afforded reasonable opportunity to present evidence and examine and cross-examine witnesses. Examination of all witnesses will be conducted orally and stenographic minutes will be taken.

(b) (1) Any party or prospective party presenting an initial or rebuttal case in a proceeding shall do so by means of prepared written testimony and exhibits, except that a presiding officer, for good cause in extraordinary circumstances, may allow direct oral testimony to be given.

(2) Prepared written testimony, in question-and-answer form, shall be received in evidence with the same force and effect as though it were stated orally by the witnesses, provided that each of the witnesses is present at the hearing at which his or her prepared written testimony is offered and adopts that testimony under oath. If cross-examination of a witness' prepared written testimony is waived by all other parties, that witness need not be present and his or her testimony may be adopted by affidavit submitted to the presiding officer.

(3) Anyone wishing or required to submit prepared written testimony shall comply with the following requirements:

(i) The testimony shall be prepared in question-and-answer form unless the presiding officer determines that use of some other form would enhance the record.

(ii) The testimony shall be [typed and] double-spaced[.] and [T]he top, bottom and left-hand margins shall be at least one and one-half inches.

(iii) The name of the witness shall be [typed] at the top center of each page one inch from the edge, the case number, if already assigned, shall [be typed] appear in the upper left corner of each page, and the page number for each page shall be [typed] located at the bottom center one inch from the edge. The number of each line of the testimony shall be set out on the left-hand side of each page, to the right of the area constituting the margin.

(iv) A square of approximately one and one-half inches in the upper right-hand corner of each page shall be left clear for Public Service Commission use.

(4) If written testimony is not filed in the proper form, it will be treated as the presiding officer may direct, taking account of such factors as timing, extent of noncompliance, and prejudice to other parties.

(5) Exhibits shall be prepared as a document separate from the testimony and shall be identified by the initials of the sponsoring witness and a number. [They] Pages shall be [typewritten or printed on a] single-sided [of the page,] and [pages of multi-page exhibits shall be] numbered.

(c) (1) Except as otherwise provided in subdivision (d) of this section, [at least five copies] a copy of written testimony and exhibits shall be filed [in the office of] with the Secretary and [one copy] shall be served on the presiding officer and on each party, unless the presiding officer or a provision of this Title otherwise directs.

(2) If an exhibit consists of a drawing, map, plan, or other information that is difficult to reproduce, [only an original and two copies need be filed with the Secretary] parties may consult with the presiding officer regarding the preferred method of service upon other parties and shall consult directly with the Secretary as to the format requirements for filing.

[(3) Either the original or a copy of each exhibit will be kept in the official file of the proceeding.]

(d) (1) In any case in which a major rate change (as defined in the Public Service Law) is proposed, the utility company shall submit with its tariff filing [15 copies of] the prepared written testimony and exhibits that will comprise its initial case in support of its rate filing and shall forward [two copies] a copy [of the written testimony and exhibits] to the New York State Consumer Protection Board. In addition, the utility company shall [supply] serve a copy of the testimony and exhibits [to] on each party appearing in the proceeding [and] who so request[ing]s.

(2) At the hearing, the utility company's initial case shall be limited substantially to the material submitted with its tariff filing, except as otherwise provided in this Title or unless the presiding officer, for the purpose of promoting the fair, orderly, and efficient conduct of the case, shall rule otherwise.

(e) In proceedings set for hearing, discovery of information will be allowed in accordance with Part 5 of this Title.

(f) The presiding officer at any hearing shall have the powers granted by applicable statutes and regulations as well as all authority customarily exercised by presiding officers and not inconsistent with applicable statutes and regulations.

§ 4.6 Postponements and adjournments

All parties should be prepared to proceed at the first hearing called in any proceeding. Any motion to postpone the first hearing [should]shall set forth the reasons why the postponement is needed and be filed in time to permit other parties to be notified. Any hearing may be adjourned from time to time by the presiding officer, and the first hearing may be postponed by the presiding officer even if its date was set by order of the Commission.

§ 4.7 Interlocutory review

(a) Interlocutory review of a ruling by a presiding officer will be available and may be sought only in extraordinary circumstances or in case a request for permission to intervene has been denied. Normally, the prospect of parties incurring additional workload in consequence of a ruling will not in itself constitute extraordinary circumstances.

(b) Any request for interlocutory review must be filed within 15 days of the issuance of the ruling to which it pertains.

(c) In addition to complying with the requirements applicable to motions generally (see [section]§ 3.6 of this [t]Title), a motion for interlocutory review shall:

(1) identify specifically the ruling to be reviewed, and, if the ruling was issued from the bench, set forth as an appendix the pertinent pages of the transcript; and

(2) identify the extraordinary circumstances alleged to warrant interlocutory review[; and].

[(3) be filed, with 25 copies, in the office of the Secretary.]

(d) A party need not file an interlocutory appeal to preserve its right to object to a ruling in its briefs.

§ 4.8 Briefs and argument to the presiding officer

(a) Briefs shall be addressed to the presiding officer unless the Commission determines in any proceeding that briefs shall be addressed directly to it. In that event, references in

this section to the presiding officer shall be deemed to refer to the Secretary.

(b) The presiding officer shall determine the number of briefs that may be written, the schedule for filing them, and the page limitations if any. Copies of exhibits may be appended to any brief without being charged against a page limitation. The presiding officer may authorize oral argument where he or she finds it warranted and determine the scope of any such argument and the procedures to be followed.

(c) Briefs shall meet the general requirements for [all pleadings] documents filed with the Secretary, set out in [section] § 3.5 of this [t]Title. In addition, any brief longer than 10 pages (exclusive of exhibits) shall include a table of contents.

(d) [Twenty-five copies] Pursuant to § 3.5 of this Title, each brief shall be filed with the Secretary, and [a copy shall] at the same time be served on each party to the proceeding.

§ 4.9 Reports and recommended decisions

(a) In any case set for hearing, the presiding officer may submit a report to the Commission or prepare a recommended decision. If a report is submitted, the Commission may decide the case without further proceedings.

(b) If a recommended decision is prepared, the Secretary shall determine in the first instance whether to issue it for exceptions or to present it directly to the Commission. If it is presented to the Commission, the Commission may adopt it (with or without modification) without further proceedings or may direct that it be issued for exceptions. If the Commission directs issuance of a recommended decision, it may restrict exceptions to specified issues. A recommended decision that is issued for exceptions shall be served on all parties.

§ 4.10 Exceptions

(a) If a recommended decision is issued for exceptions, each party may file a brief on exceptions and a brief opposing exceptions, but the Secretary may determine that briefs opposing exceptions will not be entertained. Unless otherwise

specifically authorized by the Secretary for the purpose of promoting the fair, orderly, and efficient conduct of the case, pleadings additional to those authorized by this section will not be entertained.

(b) Briefs on exceptions may be filed within 20 days of the issuance of the recommended decision, and briefs opposing exceptions may be filed within 15 days thereafter. The Secretary may extend or curtail these time limits at the request of a party or on the Secretary's own motion.

(c) (1) In addition to meeting the requirements of this subdivision, briefs on exceptions and briefs opposing exceptions shall comply with the requirements of [section]§ 3.5 of this Title and § 4.8 of this Part. They shall be self-contained, and may not incorporate earlier pleadings by reference.

(2) A brief on exceptions shall contain:

(i) a short statement of the case;

(ii) a summary of the party's basic position;

(iii) the grounds on which the exceptions rest;

and

(iv) the argument in support of the exceptions, including references to the record and to authorities relied on. The argumentation should not simply reiterate the party's position, but should explain why the party believes the recommended decision to be in error.

(3) A brief opposing exceptions shall be directed only at exceptions raised by other parties, and may not raise issues not raised on exceptions. It shall identify each exception replied to.

(4) If only a brief on exceptions is authorized, it may not exceed 50 pages. If briefs on exceptions and opposing exceptions are authorized, they may not exceed 100 pages in total. The Secretary may modify these page limitations at the request of a party or on the Secretary's own motion.

(d) (1) All recommended decisions shall be subject to review by the Commission, in whole or in part, regardless of whether exceptions have been filed.

(2) A party's failure to except with respect to any issue shall constitute a waiver of any objection to the recommended decision's resolution of that issue. If the Commission adopts the recommended resolution, a party that has not excepted may not seek a different resolution of that issue on rehearing.