

Chapter PSC 2

PROCEDURE AND PRACTICE

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Subchapter I – General

PSC 2.01 Communications and documents addressed to commission. (1) All written communications and documents shall be addressed to Public Service Commission of Wisconsin, Public Service Commission Building, 610 N. Whitney Way, P.O. Box 7854, Madison, Wisconsin 53707, and not to individual members of the staff. All communications and documents delivered at the office of the secretary are officially received.

(2) The secretary may designate agents to receive written communications and documents. Presiding officers will receive communications and documents at hearings.

(3) The first page of all communications and documents shall contain a distinctive title identifying the action requested, and a docket number, if one exists.

(4) Office hours are 7:45 to 11:45 a.m. and 12:30 to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays and Sundays and on holidays listed in s. 16.275 (6), Stats.

History: 1-2-56; am. (1), Register, September, 1964, No. 105, eff. 10-1-64; cr. (3), Register, December, 1966, No. 132, eff. 1-1-67; am. (1) and (2), Register, January, 1977, No. 253, eff. 2-1-77; am. (1) and (2), renum. (3) to be (4), cr. (3), Register, June, 1982, No. 318, eff. 7-1-82; correction in (1) made under s. 13.93 (2m) (b) 6., Stats., Register, September, 1997, No. 501.

PSC 2.02 Parties. Parties to proceedings are known as complainants, defendants, interveners, respondents, applicants, objectors, and petitioners according to the nature of the proceeding and the relationship of the parties thereto.

(1) Parties who file complaints are complainants, the parties complained against are defendants, and other parties to the proceeding are interveners.

(2) In investigations or upon orders to show cause, the parties investigated or ordered to show cause are respondents. If the proceeding is initiated by the commissioner upon complaint, the parties complaining are complainants.

(3) All persons seeking approvals, authority, certificates of authority or of public convenience and necessity or other certificates, licenses, permits, or exemptions or other relief are applicants. Those opposing such applicants are objectors. Parties to

such proceedings other than the applicants and objectors are interveners.

(4) Interveners "As Their Interest May Appear" who fail to resolve their appearances further will be considered to be not "In Opposition" to the cause which initiated the proceeding.

History: 1-2-56; cr. (4), Register, December, 1966, No. 132, eff. 1-1-67.

PSC 2.03 Computation of time. The time within which an act is to be done as provided in any rule or order promulgated by the commission, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day be Saturday, Sunday, or a legal holiday, the act may be done on the next secular day. When any such time is expressed in hours, the whole of any intervening Saturday, Sunday, or legal holiday, from midnight to midnight, shall be excluded. When the time within which an act is to be done as specified in any rule or order promulgated by the commission is expressed in days and said period of time consists of less than 10 days, and said latter period contains both a Sunday and a legal holiday, as designated in s. 256.17, Stats., the time within which said act may be done is increased by 2 additional days.

History: 1-2-56; am. Register, June, 1965, No. 114, eff. 7-1-65; am. Register, May, 1967, No. 137, eff. 6-1-67.

PSC 2.04 Furnishing copies of records. (1) One copy of the decision in a proceeding will be furnished free of charge at the time of issuance to each party of record, except that when a party of record is represented by counsel, a copy of the decision will be furnished to said counsel. When a municipal utility is a party of record to a proceeding, a copy of the decision will be furnished both to the management of the utility and to the appropriate official of the municipality free of charge at the time of issuance. Certified copies will be provided on request.

(2) General orders will be distributed free of charge at the time of issuance under the supervision of the executive secretary.

(3) Except for copies distributed free of charge as enumerated in subs. (1) and (2) and in s. PSC 2.36 (1), copies of transcripts, orders, or other records of the commission may be obtained upon

payment, in advance, of applicable rates determined by the commission.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, December, 1971, No. 192, eff. 1-1-72; am. (1), Register, December, 1990, No. 420, eff. 1-1-91.

PSC 2.05 Service of documents. (1) Service of documents upon other parties in commission proceedings may be made by deposit thereof in the first class mail or by delivery in person.

(2) The date of service shall be the day when the matter served is deposited in the mail or is delivered in person, as the case may be.

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Subchapter II - Complain and Investigations

PSC 2.10 Informal complaints. (1) Informal complaints may be made in writing addressed to the commission. Letters may be considered as informal complaints. Matters thus presented are handled by correspondence or other informal investigation or by a formal investigation instituted by the commission upon its own motion.

(2) Complaints with respect to public utility rates, practices, or service made by less than 25 persons (see s. 196.26, Stats.) will be treated as informal complaints. The commission may initiate formal proceedings in such cases upon its own motion.

PSC 2.11 Formal complaints. No particular form of complaint is required. Formal complaints shall be in writing and shall state:

(1) The names, places of residence, and post office addresses of complainants;

(2) The name of the company or person complained of;

(3) The matter concerning which complaint is made. A sufficient number of copies shall be furnished to enable the commission to provide each defendant with one copy.

PSC 2.12 General procedure. Sections 196.26 to 196.34, Stats., prescribe the procedure to be followed in investigation and complaint proceedings involving public utility rates and service. The commission will follow the same procedure in other investigation and complaint cases so far as consistent with other provisions of the statutes and of these rules.

Subchapter III - Applications

PSC 2.20 Form of applications. Applications shall be in writing, shall state their object, shall contain a concise statement of the facts in support of the same, and shall be signed by the applicant or authorized agent. They shall conform in all particulars to the requirements of applicable statutes and of these rules and of general orders of the commission. (For general orders see Wisconsin Administrative Code: Public Service Commission.) Forms of applications in typical cases will be furnished upon request. See s. PSC 2.80 for applications for motor carrier authority and assignment thereof.

History: 1-2-56; correction made under s. 13.93 (2m) (b) 5., Stats., Register, September, 1997, No. 501.

Subchapter IV - Public Hearings

PSC 2.30 Notice of hearings. (1) Written notice of hearing will be sent to all parties and also to others requesting notice. The notice will be mailed sufficiently in advance to give parties, after receipt thereof, the full time provided by statute.

(2) A motor transportation calendar will be issued each week containing applications scheduled for hearing, grants of authority without hearing, full or partial assignments of authority approved without hearing, and changes in previously scheduled hearings. The weekly motor carrier calendar will be sent by first class mail

to each person applying therefor, upon payment for a calendar year, or on a proportionate quarterly basis, of the charge determined by the commission and based primarily on postage rates. The motor transportation calendar will be mailed to each county clerk with a request for posting in a prominent place in the court house. Copies will also be furnished to various publications of motor carrier organizations in Wisconsin upon request and to newspapers of general circulation and will also be posted in the main office and in the motor carrier authorities section of the transportation division of the public service commission.

(3) When the commission deems a hearing necessary for the discontinuance of train service under s. 196.81, Stats., it shall give notice in such proceeding by mailing a copy of the notice to the clerk of every incorporated city or village, where the railroad company maintains a station, along the portion of the line on which discontinuance of service is proposed.

(4) Anyone who has an interest in an application and so informs the commission in writing will be notified of any changes or cancellation of hearing.

History: 1-2-56; am. (2), Register, September, 1964, No. 105, eff. 10-1-64; cr. (4), Register, December, 1966, No. 132, eff. 1-1-67; am. (2), Register, December, 1971, No. 192, eff. 1-1-72.

PSC 2.31 Conduct of hearings. (1) Public hearings will be conducted by one or more commissioners or a duly authorized examiner. Parties making exceptions to rulings may present the same to the commission for review in the manner provided in s. PSC 2.35 (1).

(2) The presiding officer will open the hearing and make a concise statement of its scope and purposes. Appearances then will be entered on the record. If the matter is contested, the examiner then will state the issues in the proceeding. Thereafter, parties may make motions or opening statements in accordance with the practice in circuit courts of Wisconsin.

(3) When opening statements are made they shall be confined to:

(a) A brief summary or outline in clear and concise form of the evidence intended to be offered; and

(b) A statement of ultimate legal points relied upon. There shall be no argument on either the facts or legal theories.

(4) Parties may be off the record only when the examiner permits. If a discussion off the record is pertinent, the examiner will summarize it on the record. Any argument before the examiner on objections to receipt of evidence or on motions to strike will not be recorded. The legal reasons for the objection or motion will be recorded.

(5) No smoking is permitted during hearings. A 10-minute recess is taken at approximately the end of each hour of hearing.

History: 1-2-56; cr. (5), Register, December, 1966, No. 132, eff. 1-1-67.

PSC 2.32 Appearances. (1) A person desiring to participate in a hearing, whether on his or her own behalf or as an authorized agent or attorney, shall enter an appearance in person by giving his or her name and address and the name and address of any party he or she represents and in what capacity he or she is employed by such party.

(2) Each person entering an appearance shall be considered as making a limited intervention unless he or she submits to the presiding officer a written request for full intervention under sub. (3). A person making only a limited intervention shall be entitled to the full rights of a party at the hearing in which he or she appears and shall be served with the commission's order as required by s. 227.11, Stats.; but he or she shall not be served with transcripts, exhibits, pleadings, correspondence and all other documents submitted by parties, including documents specified in ss. 227.07 (7), 227.12 (4) and 227.13 (2), Stats. A person making a limited appearance will not be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judi-

cial review unless that person requests to be certified as a party in response to a notification under s. PSC 2.40.

(3) If a person entering an appearance desires to be served with transcripts, exhibits, pleadings, correspondence and all other documents submitted by parties, including documents specified in ss. 227.07 (7), 227.12 (4) and 227.13 (2), Stats., and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, he or she shall submit in writing to the presiding officer a request for full intervention, which shall specify his or her interest in the proceeding. The presiding officer shall, from time to time during the proceeding, prepare and circulate a list of persons who have been admitted for the purpose of making a full intervention. A final list of persons who have been admitted for the purpose of making a full intervention shall be prepared by the presiding officer at the conclusion of hearings and shall be set forth in the commission's order separately from all other appearances. At the commencement of each hearing in which persons are in attendance who have not been previously admitted for the purpose of making a full intervention, the presiding officer shall summarize on the record the procedure to be followed by any person desiring to be served with transcripts, exhibits, pleadings, correspondence and all other documents submitted by parties, including documents specified in ss. 227.07 (7), 227.12 (4), and 227.13 (2), Stats., and to be certified as a party for the purposes of receiving service of any petition for rehearing or petition for judicial review, and shall provide on request a copy of this section of the code.

(4) Members of the commission staff appear neither in support of nor in opposition to any cause, but solely to discover and present, if necessary, facts pertinent to the issues.

History: 1-2-56; am. (1), Register, December, 1966, No. 132, eff. 1-1-67; am. Register, October, 1978, No. 274, eff. 11-1-78.

PSC 2.33 Changes in time or place of hearing; adjournments. Changes in the time and place of the first session of the hearing in any proceeding will be granted only for good cause shown in a written request, made to the commission reasonably in advance of the time set, showing when and how copies of such request were served upon other known parties. Changes will not be granted in the time and place of the first session of a hearing set by legal publication in a newspaper or by statutory posted notice. Changes will not be made, except in extreme circumstances, when the parties to the proceeding are not known. After a hearing has been called, adjournment thereof shall be under the direction of the examiner. The commission, upon its own motion, may change the time and place of any session. Requests for postponement of hearings on applications for motor carrier operating authority, to be considered by the commission, must be filed no later than Wednesday in the week preceding a hearing scheduled on or after Thursday.

History: 1-2-56; am. Register, December, 1966, No. 132, eff. 1-1-67.

PSC 2.34 Order of presenting evidence. Evidence ordinarily will be received in the following order:

(1) Upon investigation on motion of the commission instituted upon informal complaint—(a) the complainants and supporting interveners, (b) the respondent and supporting interveners, and (c) the commission's staff.

(2) Upon other investigations on motion of the commission—(a) the commission's staff, (b) the respondent, and (c) interveners.

(3) Upon applications and petitions—(a) the applicant or petitioner and supporting interveners, (b) objectors and their supporting interveners, and (c) the commission's staff.

(4) Upon formal complaints—(a) the complainant, (b) interveners supporting the complaint, (c) the defendant, (d) interveners supporting the defense, and (e) the commission's staff.

(5) Upon order to show good cause—(a) the commissioner's staff, (b) the respondent, and (c) interveners.

(6) Upon petition for hearing under s. 194.34 (1), Stats.—(a) the applicant for authority and supporting interveners, (b) objectors and their supporting interveners, and (c) the commission's staff.

(7) Upon rehearing—(a) the applicant for rehearing and supporting interveners, (b) other parties, and (c) the commission's staff.

PSC 2.35 Rules of evidence. (1) Rules of evidence are governed by s. 227.08, Stats.

(a) Any party dissatisfied with a ruling by the presiding officer during a hearing may have such ruling reviewed by the commission by:

1. Noting an exception in the record,

2. Submitting to the commission within 7 days of the date of mailing of the transcript containing such ruling a statement in writing showing the nature of the ruling and a brief summary of the reasons why such ruling is claimed to be erroneous, and

3. Simultaneously serving copies of such statement upon all counsel in the proceeding. Other counsel may reply thereto. Failure of a party noting an exception in the record to perfect the exception as above provided shall constitute waiver of the noted exception. The commission will not rule upon exceptions to rulings of a presiding officer unless the foregoing requirements are complied with.

(b) Records and documents of the commission may be offered in evidence by any party or by the commission's staff, but if offered by reference shall be specified as to particular documents or portions of the record thus offered, shall be designated as items (identified by capital letters in sequence) rather than as exhibits, and shall be subject to the provisions of subs. (4) and (6). Incorporation by reference to commission records and documents will be allowed only as provided herein.

(2) When evidence to be presented consists of technical matter or figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form, supplemented and explained but not duplicated by oral testimony.

(3) Written or printed documents and maps received in evidence may not be withdrawn except with the approval of the presiding officer.

(4) (a) Exhibits of documentary character should be typed on only one side of the paper with a sufficient margin for binding (1½ inches is suggested) on the left side of each sheet. If exhibits are more than 8½ inches by 11 inches in size they should be folded to approximately such dimensions. Exhibits of more than one page should be stapled together and pages numbered. The first page should provide space in the lower right-hand corner for exhibit number, docket number, and name of witness and should show the total pages in the exhibit. The source of information in the exhibit should be shown.

(b) Exhibits are numbered in sequence without designation as to which party submits them.

(5) Petitions or written communications addressed to the commission, not admissible as evidence, may be filed but will not be considered as evidence.

(6) Parties introducing documentary exhibits should be prepared to furnish copies to adverse parties and may be required, in the discretion of the examiner, to furnish such copies.

(7) In larger cases, parties may shorten hearings by preparing written testimony and exhibits and sending copies in advance to known other parties and to the commission. Such written testimony may be offered for inclusion in the transcript as though given orally subject to motions to strike any portion to which there is objection.

(8) When an objection to the receipt of evidence or a motion to strike evidence is made and the objector has stated the legal reasons for the objection or motion, any argument that follows will not be taken down by the reporter.

History: 1-2-56; am. (1), renum. (4) to be (4) (a), cr. (4) (b), cr. (8), Register, December, 1966, No. 132, eff. 1-1-67; am. (1) intro., Register, January, 1977, No. 253, eff. 2-1-77; correction in (8) made under s. 13.93 (2m) (b) 5., Register, September, 1997, No. 501.

PSC 2.36 Transcripts. (1) Proceedings in hearings will be transcribed and one copy of the transcript will be furnished each party free of charge upon request by such party on the record at the hearing. Additional copies of transcripts will be furnished upon request, and upon payment of charges in advance as provided for in s. PSC 2.04 (3).

(2) Any party, within 7 days of the date of mailing of the transcript, may file with the commission a notice in writing of any claimed error therein and shall mail a copy of such notice to each party of record. Other parties may contest any claimed error within 12 days of the date of mailing of the transcript by a filing with the commission and the mailing of copies to other parties. All parties will be advised by the commission of any authorized corrections to the record.

History: 1-2-56; am. Register, April, 1956; No. 4, eff. May 1, 1956; am. Register, December, 1966, No. 132, eff. 1-1-67; am. (1), Register, December, 1971, No. 192, eff. 1-1-72.

PSC 2.37 Close of hearing and evidence. (1) A hearing is closed when evidence is closed and when any period fixed for filing of briefs, presentation of oral argument, or both, has expired. If the time for filing briefs has expired and the brief of one or more parties shall not be filed within such time, the commission may proceed to its determination of the proceeding.

(2) Evidence in any proceeding will be declared closed when due opportunity to furnish relevant evidence, including proper cross-examination of witnesses and rebuttal, has been afforded all parties. If by stipulation of the parties or by direction of the examiner documentary evidence is permitted or directed to be introduced subsequent to the close of testimony, the evidence will be declared closed when such documentary evidence is received or when the specified time for furnishing it has elapsed without its being furnished. The commission, in its discretion, may extend the time as originally prescribed for filing such evidence.

(3) When the evidence is closed, no further evidence shall be received unless the commission shall reopen the hearing for the taking of further evidence. When the hearing is closed, it may be reopened for the filing of briefs or for presentation of oral argument or for both.

History: 1-2-56; am. (3), Register, December, 1966, No. 132, eff. 1-1-67.

PSC 2.38 Briefs. (1) (a) Parties shall indicate on the record after the close of testimony whether they desire to file briefs. The party or parties having the affirmative shall file affirmative briefs within 15 days after date of mailing of transcript. Other parties 8 days thereafter shall file reply briefs, which may be replied to within 5 days.

(b) Where a party having the affirmative does not desire to file a brief but another desires to do so, the presiding commissioner or examiner shall specify the time and order for filing briefs. If the presiding commissioner or examiner makes no specific designation as to the time and order for filing briefs in cases where the party having the affirmative does not desire to file a brief, all other briefs shall be filed within 15 days after date of mailing of transcript. In any case not specifically covered by this rule, the time and order for filing briefs shall be fixed by the presiding commissioner or examiner.

(2) Five legible, dated copies of all briefs shall be filed with the commission together with a certification showing when and upon whom copies have been served. Briefs which contain a sum-

mary of evidence or facts relied upon shall include also reference to specific pages of the record containing such evidence.

(3) The filing of briefs in less time than allowed shall not change the due dates of remaining briefs.

History: 1-2-56; renum. (1) to be (1) (a) and cr. (1) (b), Register, August, 1956, No. 8, eff. 9-1-56.

PSC 2.39 Witnesses, subpoenas and depositions.

(1) Witnesses who appear by order of the commission may obtain from the secretary or from the presiding officer proper voucher blanks for the payment of witness fees.

(2) No witness subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance or travel unless the commission shall certify that the testimony was material to the matter investigated (s. 196.32, Stats.).

(3) The commission or any party in any investigation or hearing may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts (s. 196.33, Stats.).

(4) The presiding officer shall have all the inquisitorial powers granted to the commission and the powers of a court commissioner relative to depositions (s. 196.24, Stats.).

(5) (a) Any commissioner or examiner shall issue subpoenas requiring the attendance of witnesses and subpoenas requiring the production of documentary or other tangible evidence upon request therefore by any party; provided however, that:

1. A subpoena duces tecum will not be issued unless the person requesting the subpoena furnishes to the person requested to issue the subpoena a specific statement of the documents desired brought along by the subpoenaed witness.

2. Where it appears to the person requested to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the person may in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought.

3. In the event the person requested to issue the subpoena shall, after consideration of all the circumstances, determine that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, the person may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, where he or she can do so without undue inconvenience to the participants in the proceeding, the person requested to issue the subpoena may inquire of the other participants whether they will concede the facts sought to be proved; but in this connection, except with the permission of the person seeking the subpoena, the person shall not disclose the identity of the person sought to be subpoenaed.

(b) A person whose request for a subpoena has been denied or modified may not request any other commission official to issue the subpoena; but may appeal to the commission from the denial or modification.

(6) (a) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of service of such subpoena, apply to the examiner, or if he or she is not available, to the commission, to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefor.

(b) The examiner or the commission, as the case may be, may deny the application, or upon notice to the person upon whose request the subpoena was issued, and opportunity for reply, may:

1. Quash or modify the subpoena, or

2. Condition denial of the application to quash or modify the subpoena upon just and reasonable conditions, including in the case of a subpoena duces tecum, a requirement that the person in

whose behalf the subpoena was issued shall advance the reasonable cost of transporting documentary or other tangible evidence to the designated place of hearing.

History: 1-2-56; am. (5), Register, December, 1966, No. 132, eff. 1-1-67; r. and recr. (5) and cr. (6), Register, August, 1976, No. 248, eff. 9-1-76; correction made under s. 13.93 (2m) (b) 5., Stats., Register, September, 1997, No. 501.

PSC 2.391 Objections to proposed decisions.

(1) Where a proposed decision is prepared and circulated pursuant to s. 227.09 (2) or (4), Stats., objections thereto shall be filed within 15 days of service unless a different period is specified by the hearing examiner or commission. Such objections and briefs in support thereof shall be filed together and shall be governed by s. PSC 2.38 (2).

(2) Oral argument will be held only where directed by the commission. Requests for oral argument shall be included with objections and supporting briefs.

History: 1-2-56; am. Register, January, 1977, No. 253, eff. 2-1-77.

PSC 2.40 Requirements for judicial review. Petitions for judicial review must be filed within 30 days after the day of service of a commission decision — or denial of hearing — in the circuit court specified in s. 227.16 (1) (a), Stats., and served on the commission and other parties to the proceeding, as specified in the statute. A list of the parties who must be served will be contained in the decision if there is more than one party to the proceeding.

History: Cr. Register, October, 1978, No. 274, eff. 11-1-78; r. and recr. Register, June, 1982, No. 318, eff. 7-1-82.

Subchapter V – Review by commission of orders and determinations

PSC 2.60 Application for rehearing; objections.

(1) Application for rehearing may be made within 20 days after entry of any determination or order, and the commission may order a rehearing on its own motion within 20 days after entry of an order. A petition for rehearing is not a prerequisite for judicial review.

(2) Applications for rehearing shall set forth the particular grounds as specified in s. 227.12 (3) (a) through (c), Stats., upon which the applicant claims that the order is unlawful, unreasonable, improper or unfair.

(3) If the applicant shall rely on the ground that the commission in making its determination has failed, or that any of the commissioners has failed, to consider any of the evidence presented in the proceeding, the application for rehearing shall so state, and shall include an abstract of all such evidence relied upon by the applicants.

(4) Five copies of all applications for rehearing or objections thereto shall be filed and shall include a certification that copies have been served as required by s. PSC 2.61. Such certificate shall state the names of the persons served, together with the date and manner of service.

History: 1-2-56; am. (4), Register, September, 1958, No. 33, eff. 10-1-58; am. (1) and (2), Register, January, 1977, No. 253, eff. 2-1-77.

PSC 2.61 Service of rehearing applications and objections; technical defects. (1) Applications for rehearing shall be served on all parties to the proceeding. Objections to an application for rehearing shall be served on all parties and filed with the commission within 7 days after the date of service of such application. Such applications for rehearing and objections thereto shall be accompanied by a certificate showing the names of the persons upon whom service was made and the date and manner of service.

(2) The commission will consider timely rehearing applications and objections which do not comply with s. PSC 2.60 (4) or 2.61 (1) if the defect is promptly corrected when called to the

attention of the rehearing applicant or objector by the commission or another party to the proceeding.

History: 1-2-56; am. Register, September, 1958, No. 33, eff. 10-1-58; am. Register, January, 1977, No. 253, eff. 2-1-77.

PSC 2.611 Order entered without hearing; rehearing; evidence. In a rehearing upon an order entered without hearing, the presiding officer may receive such evidence as he or she deems will be of assistance to the commission in making a proper determination in the proceeding, and which otherwise complies with the provisions of s. 227.08 (1), Stats.

History: Cr. Register, August, 1961, No. 68, eff. 9-1-61; am. Register, January, 1977, No. 253, eff. 2-1-77; correction made under s. 13.93 (2m) (b) 5., Stats., Register, September, 1997, No. 501.

PSC 2.62 Denial of applications by lapse of time. Any application for rehearing not granted within 30 days from the date of its filing shall be taken by the applicant to have been denied (s. 227.12 (5), Stats.).

History: 1-2-56; am. Register, January, 1977, No. 253, eff. 2-1-77; am. Register, June, 1982, No. 318, eff. 7-1-82.

PSC 2.63 Petitions for reopening. Parties may petition the commission to reopen a proceeding for the purpose of rescinding, amending, or altering an order or determination (s. 196.39, Stats.). Such petition shall state the ground upon which it is based and the relief sought. It shall be served in the same manner as applications for rehearing. Five copies shall be filed with the commission. Objections to a petition may be filed and served in the same manner as objections to an application for rehearing. Petitions for reopening and objections thereto shall be accompanied by a certificate showing the names of the persons upon whom service was made and the date and manner of service.

History: 1-2-56; am. Register, April, 1958, No. 28, eff. 5-1-58; am. Register, September, 1958, No. 33, eff. 10-1-58.

PSC 2.64 Right of petition. Petitions made pursuant to s. 227.015, Stats., for the promulgation, amendment, or repeal of the rules of the commission shall be addressed to the commission and shall contain a statement of the rules sought to be promulgated or repealed; and, in case of a proposed modification, shall contain a statement of the change thus proposed, together with a concise statement of the considerations upon which the promulgation, modification, or repeal of the rule is requested. Petitioners shall file 4 copies and shall furnish such additional copies as may be required by the commission.

PSC 2.65 Declaratory rulings. Petitions made pursuant to s. 227.06, Stats., for declaratory rulings shall be addressed to the commission and shall state the rule or statute with respect to which declaratory ruling is requested, the applicability of any such rule or statute to the petitioner, and the names of all others upon whom it is sought that the requested declaratory ruling shall be binding. The petition shall be verified and shall be accompanied by 3 additional copies. Petitioner shall furnish additional copies as may be required by the commission for service on such other persons as the commission may designate as proper parties to the proceeding. Any such petition will not be set for hearing unless it states facts showing that petitioner is affected by rule or statute with respect to which a declaratory ruling is requested or that the application of such rule or statute to the petitioner will affect the petitioner adversely.

History: 1-2-56; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, September, 1997, No. 501.

PSC 2.66 Prehearing conference. (1) The commission, prior to hearing upon due notice to the parties, or the presiding officer, after calling a hearing and noting appearances, may call a prehearing conference. The purposes of a prehearing conference shall be those specified in s. 227.07 (4) (a), Stats.

(2) When a prehearing conference is held, the commission or presiding officer shall prepare a memorandum summarizing the

action taken at the conference unless the conference is transcribed or summarized on the record (s. 227.07 (4) (b), Stats.). Parties to the conference shall be served with the memorandum and may submit objections or proposed corrections thereto to the commission or presiding officer within 10 days of service. Such objections or proposed corrections shall be served on all other parties to the conference, who may respond within 7 days of service.

History: 1-2-56; am. Register, January, 1977, No. 253, eff. 2-1-77.

Subchapter VI – Additional Provisions For Particular Proceedings

Utilities

PSC 2.70 Municipal acquisition proceedings. In proceedings by municipalities to acquire the property of public utilities under ch. 197, Stats., the commission at the initial session of the hearing thereon will receive evidence and arguments on the validity of the municipality's determination to acquire the property of the public utility and as to the property to be acquired.

PSC 2.71 Abandonment or discontinuance of public utility service. No abandonment or discontinuance of facilities or service of gas, electric, telephone, or water utilities shall be made without commission authority (s. 196.81, Stats.). A hearing will be held upon an application to abandon or discontinue service or facilities except in cases where it is accompanied by a map indicating location of facilities to be abandoned or facilities from which service is to be discontinued as well as all service locations thereon and a statement that all actual or potential subscribers or consumers have either consented to or waived objection to such abandonment or discontinuance. If such information is furnished, the commission may dispense with a hearing.

PSC 2.72 Sale of utility; reports; assessments. In all cases where the purchase and sale of a complete utility property involves an abandonment of service and the dissolution of the selling utility, it shall be a condition to the commission's approval of the purchase of such utility property that the purchasing utility shall assume the following obligations of the selling utility and shall be responsible:

(1) For all charges which are due or may become due from both the selling and the purchasing utility under the provisions of s. 196.85 (1), Stats., relating to the purchase and sale proceeding;

(2) For all charges which are due or may become due from the selling utility under the provisions of s. 196.85 (2) (a), Stats., relating to the current part-year public utility operations;

(3) For the filing with the commission (s. 196.07, Stats.) of the required part-year final report covering the operations of the selling utility (except where written exemption is obtained from the commission);

Unless the selling utility complies with the particular provisions of ss. 196.85 and 196.07, Stats., as set forth in this rule.

History: Cr. Register, January, 1958, No. 25, eff. 2-1-58.

PSC 2.73 Application for rate increase; notice to utility customers. (1) When any public utility makes application to the public service commission for a general revision of rates which, if authorized, will result in a rate increase, it shall inform each affected customer of the filing of the application and the general nature and effect thereof, by means of a bill insert over one complete billing cycle, using its usual insertion and mailing procedures. If customer bills are not rendered monthly in envelopes, the public utility shall furnish such information to customers by a special mailing or by means of a display advertisement in newspapers having general circulation in the company's service area.

(2) At the first hearing concerning such application for revisions of rates, the public utility shall furnish proof of compliance with the provisions of the foregoing requirement.

History: Cr. Register, April, 1972, No. 196, eff. 5-1-72.

Motor Carriers

PSC 2.80 Applications for motor carrier authority and assignment thereof. (1) Applications for common motor carrier certificates, contract motor carrier licenses, or amendments thereto, should show the correct legal name of the applicant, his or her address, the names and addresses of all partners of a copartnership or of all officers and directors of a corporation, and should contain an accurate and complete description of the operations and transportation services proposed to be rendered in sufficient detail to give full notice to the public and other carriers.

(2) Applications for authority or assignment of authority to engage in intrastate commerce by motor vehicle shall not be combined with applications for state authority or assignment thereof to engage in operations in interstate commerce requiring a certificate or permit under the Federal Motor Carrier Act of 1935 (ss. 194.03 (5) and 194.20, Stats.). In such cases separate applications must be filed and separate filing fees paid.

(3) No hearing will be held upon applications involving only interstate operations unless specifically required by the commission. (3a) Applications for exempt interstate contract carrier authority under s. 194.20, Stats., will be set for hearing, unless application is accompanied by substantial evidence that the entire proposed operations can and will be performed if authorized.

(4) No amendment of any application for a motor carrier license or certificate which includes additional operations not specified in such application and as to which no notice has been given will be allowed at the hearing. Amendments which have the effect of limiting, restricting, or eliminating authority sought by the application may be made at the hearing.

(5) An application for approval of assignment of a severable part or all of the operating authority contained in a certificate or license shall be signed by both the assignor and assignee. The application shall show the names and addresses of all partners of a partnership and of the officers and directors of a corporation. The application shall be accompanied by a copy of any assignment agreement. A form of application containing appropriate instructions will be furnished upon request. An application for approval of a mortgage of any authority shall be accompanied by a copy of the mortgage.

(6) Applications for approval of assignment of licenses will be handled ordinarily without hearing. Applications for approval of assignment of certificates ordinarily will be set for hearing.

(7) When, as provided for in s. 194.34 (1), Stats., a petition is made for a hearing on a grant or amendment of a contract carrier license made without hearing, the following requirements shall be met:

(a) A copy of the petition for hearing shall be forthwith served in the manner provided in s. PSC 2.05 upon the person receiving the grant or amendment.

(b) The petition filed with the commission shall include a certification that a copy has been served as provided in par. (a). Such certificate shall state the name of the person served, together with the date and manner of serving.

(c) The petition for hearing shall state the facts showing the ground on which it is claimed that the petitioner is one having an interest within the meaning of s. 194.34 (1), Stats.

(d) The person receiving the grant or amendment may reply to such petition for hearing within 5 days after the date of service by filing such reply with the commission and mailing a copy thereof to the person who requests a hearing.

History: 1-2-56; cr. 2.80 (7), Register, April, 1956, No. 4, eff. May 1, 1956; am. Register, September, 1958, No. 33, eff. 10-1-58; cr. (7) (d), Register, December, 1966, No. 133, eff. 1-1-67; correction in (1) made under s. 13.93 (2m) (b) 5., Stats., Register, September, 1997, No. 501.

PSC 2.81 Nonappearance of motor carrier applicants at hearings; examiner's proposed decision. Where an application for a new or amended motor carrier certifi-

cate or license has been docketed and set for hearing, failure of the applicant to appear without good cause shown shall be sufficient reason for the dismissal of the application for want of prosecution. The hearing examiner may issue a decision dismissing an application for want of prosecution and such decision shall become the final order of the commission (s. 227.09 (3), Stats.).

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.