

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 summary 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; (1) renum. (1) (a); (b) cr.; 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 his testimony was material to the matter investigated (Section 196.32, Wis. Stats.).

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(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 (Section 196.33, Wis. 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 (Section 196.24, Wis. 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, he may in his 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, he may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, where he 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, he 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 he 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 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.

PSC 2.391 Exceptions to examiners' summary of evidence and recommendations. (1) Exceptions to the summary of evidence and recommendations as submitted by the examiner in any proceeding pursuant to section 227.12, Wis. Stats., shall be filed within 15 days or within the time specified by the commission.

(2) Exceptions to examiners' reports submitted pursuant to section 227.12, Wis. Stats., briefs in support thereof, and reply briefs shall be governed by section PSC 2.38. Exceptions and briefs in support thereof shall be filed together.

REVIEW BY COMMISSION OF ORDERS AND DETERMINATION

PSC 2.60 Application for rehearing; objections. (1) Application for rehearing must be made within 20 days after service of any determination or order. Such application will prevent the order from becoming effective upon and after the filing of the application, and until 10 days after such application for a rehearing is either denied, expressly or by implication, or the commission has announced its final determination on rehearing. Only one rehearing may be granted (Section 196.405, Wis. Stats.).

(2) Applications for rehearing shall set forth the particular grounds as specified in paragraphs (a) to (e), inclusive, of section 227.20 (1), Wis. 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 section 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.

PSC 2.61 Service of rehearing applications and objections. 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.

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

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PSC 2.611 Evidence upon rehearing. In a rehearing upon an order entered without hearing, the presiding officer may receive such evidence as he deems will be of assistance to the commission in making a proper determination in the proceeding, and which otherwise complies with the provisions of section 227.10 (1), Wis. Stats.

History: Cr. Register, August, 1961, No. 68, eff. 9-1-61.

PSC 2.62 Implied denial of applications. Any application for rehearing not granted within 20 days from the date of its filing may be taken by the applicant to be denied (Section 196.405 (4), Wis. Stats.).

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 (Section 196.39, Wis. 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 section 227.015, Wis. 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 section 227.06, Wis. 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 him will affect him adversely.

PSC 2.66 Prehearing conference. The commission, in its discretion, prior to hearing upon due notice to the parties, may call a prehearing conference. The presiding officer, in his discretion after calling the hearing and noting appearances, may call a conference. The purposes of such conference shall be those specified in section 269.65, Wis. Stats., insofar as applicable.

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ADDITIONAL PROVISIONS FOR PARTICULAR PROCEEDINGS*Utilities*

PSC 2.70 Municipal acquisition proceedings. In proceedings by municipalities to acquire the property of public utilities under chapter 197, Wis. 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 (Section 196.81, Wis. 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 section 196.85 (1), Wis. 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 section 196.85 (2) (a), Wis. Stats., relating to the current part-year public utility operations;

(3) For the filing with the commission (section 196.07, Wis. 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 sections 196.85 and 196.07, Wis. 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

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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.