

## Chapter PSC 2

## PROCEDURE AND PRACTICE

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## 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, Hill Farms State Office Building, 4802 Sheboygan Avenue, 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.

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**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 commission 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 certified 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.

(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) of this section and in s. PSC 2.36 (1), copies of tran-  
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scripts, 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.

**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.

## COMPLAINTS 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 complaints;

(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.

## 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 his 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 section PSC 2.80 for applications for motor carrier authority and assignment thereof.

## 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 section 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

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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). 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 judicial review unless that person requests to be certified as a party in response to a notification under 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), 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 subsections (4) and (6) of this rule. 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 his 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.

**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 Wis. Adm. Code section 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 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; renum. (1) to be (1) (a) and cr. (1) (b), Register, August, 1956, No. 8, eff. 9-1-56.

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**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 (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, 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.

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(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 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 rehearing—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.

## 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 pars. (a) through (c) of s. 227.12 (3), 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 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.

**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 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.** (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 section 227.07 (4) (a), Wis. 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. (section 227.07 (4) (b), Wis. 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.

## 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 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 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 (sections 194.03 (5) and 194.20, Wis. 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 section 194.20, Wis. 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 section 194.34 (1), Wis. 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 section 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 (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 section 194.34 (1), Wis. 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.

**PSC 2.81 Nonappearance of motor carrier applicants at hearings; examiner's proposed decision.** Where an application for a new or amended motor carrier certificate 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. (section 227.09 (3), Wis. Stats.)

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

**PSC 2.90 Categorization of commission actions for environmental review purposes.** (1) The following types of commission actions shall always require the preparation of an environmental impact statement:

(a) Approval of construction of electric generation facilities - 20 MW or greater.

(b) Approval of construction of electric transmission lines and substations rated at a nominal voltage of more than 345 kV.

(c) Approval of construction of major railroad facilities.

(2) The following types of commission actions shall be individually screened using a screening worksheet to determine whether an environmental impact statement is required:

(a) Approval of construction of electric generation facilities-less than 20 MW.

(b) Approval of construction of electric transmission lines rated at nominal voltages of 100 kV to 345 kV, inclusive, and more than 1 mile in length. Distribution and subtransmission lines are excluded from this category. A distribution line is defined as a line whose main function is to deliver energy from a distribution substation to individual customers. A subtransmission line is defined as a line whose main function is to deliver energy from a bulk power substation to a distribution substation.

(c) Approval of construction of electrical substations rated at nominal voltages of 100 kV or above, or approval of transformer additions or replacements, which increase capacity at existing substations rated at nominal voltages of 100 kV or above. Distribution substations are excluded from this category. A distribution substation is defined as a station where no more than two high voltage transmission lines terminate and whose primary function is to transform incoming power into distribution voltage.



(d) Approval of construction of synthetic gas production and/or storage facilities.

(e) Electric rate orders in which the utility involved sells more than 5% of the total electric sales in the state by all public utilities.

(f) Gas rate orders in which the utility involved sells more than 5% of the total gas sales in the state by all public utilities.

(g) Authorization to provide utility service to new service areas: cases in which the facilities are designed to accommodate the equivalent of 50 or more average residential customers (or an equivalent combination of industrial, commercial or residential customers) and service extension is greater than one half mile.

(h) Granting of applications for or amendments to common motor carrier certificates.

(i) Approval of abandonment of common carrier or rail passenger service.

(j) Approval of construction of steam production facilities.

(k) Approval of abandonment of train service on a line.

(l) Approval of construction of gas utility transmission facilities.

(m) Establishment of intrastate railroad rates.

(n) Approval of reduction of rail service at stations.

(o) Revision of the following portions of the Wisconsin Administrative Code:

PSC 16	PSC 60
PSC 34	PSC 65
PSC 35	PSC 69
PSC 37	PSC 89
PSC 40	PSC 111
PSC 41	PSC 112
PSC 50	PSC 113.11
PSC 52	PSC 133
PSC 53	PSC 134.04
PSC 55	PSC 140
	PSC 162
	PSC 184

(p) Paragraphs (f), (g), (j), (k), (l), (m), (n) and (o) shall become effective on June 15, 1977.

(3) The following types of commission actions shall not require an environmental impact statement:

(a) Approval of construction of electric transmission lines rated at a nominal voltage of less than 100 kV and all electric transmission lines less than 1 mile in length (excluding those lines rated at a nominal voltage of more than 345 kV). Included in this category are all distribution and subtransmission lines.

(b) Approval of construction of electrical substations, or additions to existing substations, rated at nominal voltages less than 100 kV and all distribution substations.

(c) Approval of construction of water well and distribution systems by water public utilities or by municipal water and sewer public utilities combined under section 66.077, Wis. Stats., except as provided otherwise under PSC 2.90(2) (g).

(d) Approval of construction of telephone utility facilities, except as provided otherwise under PSC 2.90(2) (g).

(e) Approval of construction of gas utility distribution facilities.

(f) Approval of construction of sewage treatment facilities by municipal water and sewer public utilities combined under section 66.077, Wis. Stats.

(g) Other electric rate orders not specified in (2) (e) of PSC 2.90.

(h) Other gas rate orders not specified in (2) (f) of PSC 2.90.

(i) Water, sewer, solid waste recycling, telephone and steam rate actions.

(j) Approval of issuance of securities.

(k) Certification of depreciation rates.

(l) Accounting orders.

(m) Service orders concerning adequacy of utility and rail service.

(n) Authorization to provide utility service to new service areas: other extensions not specified in (2) (g) of PSC 2.90.

(o) Orders relating to grade crossing additions, relocations or closings.

(p) Orders relating to railroad crossing protection.

(q) Approval of depot building removal or relocation.

(r) Approval of railroad station abandonment.

(s) Approval of spur track abandonment.

(t) Granting of applications for or amendments to contract motor carrier licenses.

(u) Other abandonments and discontinuances of service not specified in (2) (i) of PSC 2.90.

(v) Applications for approval of assignment of motor carrier certificates or licenses.

(w) All motor carrier rate matters.

(x) Registration of operations to artificially influence precipitation.

(y) Purchase, sale or transfer of utility property not otherwise specified in PSC 2.90.

(z) Construction of utility facilities not otherwise specified in PSC 2.90.

(za) Approval of mergers under section 196.80, Wis. Stats.

(zb) River water power toll allocations.

- (zc) Approval of territorial agreements between electric utilities.
- (zd) Approval of construction of steam transmission and distribution facilities.
- (ze) Granting of applications for certificates as common carrier by water.
- (zf) Declaratory rulings not otherwise specified in s. PSC 2.90.
- (zg) Approval of affiliated interest transactions.
- (zh) Revisions of the following portions of the Wisconsin Administrative Code:

PSC 1	PSC 95
PSC 2	PSC 98
PSC 5	PSC 100
PSC 8	PSC 102
PSC 10	PSC 103
PSC 13	PSC 104
PSC 15	PSC 108
PSC 17	PSC 109
PSC 18	PSC 110
PSC 19	PSC 113, except 113.11
PSC 20	PSC 114
PSC 21	PSC 130
PSC 22	PSC 134, except 134.04
PSC 24	PSC 135
PSC 25	PSC 150
PSC 38	PSC 160
PSC 70	PSC 164
PSC 71	PSC 165
PSC 72	PSC 166
PSC 82	PSC 180
PSC 83	PSC 185
PSC 84	E 2 to 145, inclusive
PSC 85	(Wis. State Electrical Code)

(4) Any action not specifically categorized in (1), (2) or (3) above is presumed not to be a major action which may significantly affect the human environment. The commission shall consider, on an individual basis, any such action brought to its attention, and may determine that an environmental screening shall be done.

**Note:** These rules are promulgated under the authority granted in s.1.11, Wis. Stats. See also guidelines promulgated by the U.S. Council on Environmental Quality under NEPA 42-USC-4331 appearing at 40 CFR Subpart V, Section 1500. Also see Guidelines for the Implementation of the Wisconsin Environmental Policy Act issued by Governor's Executive Order No. 69 and subsequent revisions.

**History:** Cr. Register, April, 1977, No. 256, eff. 5-1-77.

**PSC 2.91 Environmental screening procedure.** (1) A screening worksheet shall be completed by the commission staff for each individual action for the types of actions identified in PSC 2.90 (2).

(2) The screening worksheet shall contain the following information:

(a) An adequate description of the proposed action, including maps and graphs if appropriate.

(b) A listing, brief description and analysis of alternatives.

(c) A listing of other agencies or groups that may have been contacted and the comments and other pertinent information of the agencies and groups.

(d) An evaluation section which consists of questions, specific to the proposed type of action, that must be considered in evaluating the proposed action.

(e) A finding whether or not an environmental impact statement is required. This shall be based on the findings in the evaluation section.

(f) Identification of the individual evaluating the impact of the proposed action.

(e) Before completion of a screening worksheet, notice of the proposed action and screening procedure shall be sent to known interested persons. Upon completion of a screening worksheet, it shall be made available for public inspection and copies shall be sent to individuals requesting such notification.

(4) If a finding is made in the worksheet that no environmental impact statement is required, the environmental review is complete. If an environmental impact statement is required, the commission staff shall prepare a preliminary environmental report and final environmental impact statement.

**History:** Cr. Register, April, 1977. No. 256, eff. 5-1-77.

**PSC 2.92 Preliminary environmental report.** (1) The Preliminary Environmental Report (PER) shall contain at least 3 major sections:

(a) A description of the proposed action.

(b) Alternatives considered.

(c) A preliminary environmental evaluation of the impacts of the proposed action and significant alternatives.

(2) The PER is based on the information and expertise available within the commission and is not necessarily a complete environmental evaluation.

(3) The PER shall be distributed as follows:

(a) One copy to the governor's office.

(b) At least one copy to the department of natural resources.

(c) One copy to the Wisconsin state historical society.

(d) One copy to other state or federal agencies having related expertise.

(e) One copy to each regional planning agency located within the project area.

(f) One copy to each county planning and zoning agency located within the project area.

(g) At least one copy to the commission's main office.

(h) At least one copy to the project applicant.

(i) At least one copy to each of the following:

1. For projects affecting a small area: to a local library and to the county clerk or town clerk with a request to make the document available in the county courthouse, city hall or town hall.

2. For projects of regional importance: to a reasonable number of public libraries with a geographic distribution which provides public access without undue travel.

3. Projects having statewide significance: to at least one main library in each administrative district established by Executive Order No. 22, issued August 24, 1970, as hereafter amended.

(j) To any individual requesting a copy. A nominal charge may be assessed to cover reproduction and handling costs.

(4) To publicize the availability of the PER, an announcement sheet giving a brief description of the proposed action, description of the administrative procedures to be followed, locations where copies of the PER are available for review, and the public hearing date if known, shall be circulated to the following:

(a) All local and regional units of government which have jurisdiction over the area that may be affected by the proposed action. A request shall be made for posting the announcement sheet at the place(s) normally used for public notices.

(b) Local and regional news media in the area affected.

(c) Groups, clubs, committees, or individuals which have demonstrated an interest or have requested receipt of this type of information.

(5) To assist in obtaining public response to the PER, the commission staff may conduct informal public meetings in the affected area.

(6) A minimum of 45 days from the date the PER is mailed will be allowed for the receipt of comments from other state agencies and the public. Depending on the complexity and length of the PER, the commission may extend the review period up to 90 days. If no notice of interest is received within 20 days of circulation of the PER, the commission may proceed as if the 45 days have expired, but this should be explained in the announcement sheet. A reasonable request for extension (usually up to 15 days) may be granted for the review of a PER. In an emergency situation, the commission may reduce the review period commensurate with the nature of the emergency.

**History:** Cr. Register, April, 1977, No. 256, eff. 5-1-77.

**PSC 2.93 Environmental impact statement.** (1) When the allotted time for comments on the PER has passed, an Environmental Impact Statement (EIS) shall be prepared. The EIS will be based on the information developed in the PER, comments received from other agencies and the public on the PER, and any other information needed to provide an in-depth analysis of the proposed action.

(2) The EIS shall emphasize the major environmental and economic issues and information should be conveyed succinctly in a form

easily understood by the general public. The EIS shall contain the following categories of information:

(a) A description of the proposed action and of the environment affected including the project location, type of facility, anticipated costs and benefits, time schedules, maps and diagrams (where relevant) and other pertinent information which will adequately permit an assessment of the potential environmental impact by commenting agencies and the public. Highly technical and specialized analyses and data should be avoided in the body of the EIS. Such material should be attached as appendices or footnotes with adequate bibliographic references. The statement should also succinctly describe the environment of the area affected as it exists prior to a proposed action. Population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives shall be identified as appropriate. Sources of data should be identified.

(b) The probable impact of the proposed action. Positive and negative effects of the proposed action as it affects both the local and regional environment shall be assessed as appropriate. The attention given to different environmental factors will vary according to the nature, scale and location of proposed actions. Secondary as well as primary consequences to the environment should be included in the analysis.

(c) Alternatives to the proposed action. A rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternative actions, particularly those that might avoid some or all of the adverse environmental effects, shall be made. Examples of such alternatives include: the alternative of taking no action or of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts; alternatives related to different designs or details of the proposed actions which would present different environmental impacts. Alternatives beyond PSC jurisdiction should be considered as appropriate. In each case, the analysis should be sufficiently detailed to permit comparative evaluation of the environmental and economic benefits, costs and risks of the proposed action and each reasonable alternative. Where an existing impact statement already contains such an analysis and the facts have not changed significantly, its treatment of alternatives may be incorporated.

(d) Any probable adverse environmental effects which cannot be avoided. Included should be any adverse effects such as water and air pollution, creation of undesirable land use patterns, damage to life systems, urban congestion, threats to health or other consequences adverse to environmental goals set forth in the Wisconsin Environmental Policy Act, chapter 274, Laws of 1971. Those effects which are unavoidable under the proposed action should be briefly summarized. A statement of how other adverse effects could be mitigated to prevent apparent unavoidable consequences should also be included.

(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. A brief discussion of the extent to which the proposed

action involves trade-offs between short-term environmental gains at the expense of long-term environmental losses or vice-versa shall be presented.

(f) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. This section shall identify the extent to which the action irreversibly curtails the range of potential uses of the environment.

(g) An assessment of economic impact. The economic advantages of the proposal shall be considered. The analysis shall give consideration to the economic impact including both advantages and disadvantages where these may be expected to occur. Consideration should be given to benefits as well as to costs both to the public sector and to the private sector, locally and regionally. Depending on the type of action, the economic impact section may vary from a few sentences to an extensive report.

(3) The EIS shall be distributed in the same manner as the PER (see PSC 2.92(3)) with the following additions:

(a) All local and regional governmental bodies such as town boards and city councils which have commented on the PER.

(4) To publicize the availability of the EIS, an announcement sheet shall be circulated in the same manner as for the PER (see PSC 2.92(4)).

(5) Reference to the availability of the EIS including the nearest place of public availability shall be made in the Class 1 Notice of Hearing.

**History:** Cr. Register, April, 1977, No. 256, eff. 5-1-77.

**PSC 2.94 Public hearing.** (1) A public hearing on the proposed action will be held no less than 30 days after the distribution of the EIS. A period of up to 90 days may be required depending on the complexity and length of the EIS. In an emergency situation the commission may reduce this time limit to a time period commensurate with the nature of the emergency. Holding a public hearing as required by another statute fulfills the obligation to hold a public hearing under the Wisconsin Environmental Policy Act.

(2) A Class 1 Notice of Hearing, as defined in chapter 985, Wis. Stats., shall be published in local newspaper(s) whose distribution covers the area affected at least 15 days prior to the hearing. For actions of state-wide significance the Notice of Hearing shall be published in the official state paper.

(3) The hearing will be held on the proposed action and shall be conducted in accordance with PSC 2.30-2.66 of the Wisconsin Administrative Code. The EIS shall be introduced by the commission staff and shall be received into evidence. The staff shall give testimony relating to the preparation of the EIS and to the issues identified therein. Relevant comments may be received and testimony taken regarding its content. When a joint EIS is prepared under PSC 2.95 the staff of agencies participating in the joint EIS shall assist the commission staff in entering the EIS into the record.

(4) If the EIS is shown to be seriously inadequate the commission may either continue the hearing and remand the EIS for redraft including additional research if deemed necessary, or it may reject the proposed action on the basis of the hearing record and other related information.

(5) A written decision which states the findings of fact including the findings on environmental impact shall be sent to all agencies responding to the EIS, to other parties specifically requesting notification, and to others as required by law.

(6) To facilitate the development of the necessary data, the commission, at its discretion, may initiate and adjourn the public hearing prior to completion and circulation of the EIS. The hearing shall be reconvened in conformance with the time periods specified in PSC 2.94 (1).

**History:** Cr. Register, April, 1977, No. 256, eff. 5-1-77.

**PSC 2.95 Joint environmental impact statement.** The commission may enter into agreements with other state agencies and federal agencies to develop a joint EIS which satisfies the requirements of the participating agencies.

**History:** Cr. Register, April, 1977, No. 256, eff. 5-1-77.