

### § 1.1513

applicant, and why disclosure is not required in the public interest. The material in question shall be served on Bureau counsel, but need not be served on any other party to the proceeding. If the Administrative Law Judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act, §§ 0.441 through 0.466 of this chapter.

#### § 1.1513 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Administrative Law Judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

#### § 1.1514 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, or when the demand of the Commission is substantially in excess of the decision in the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has pre-

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vailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, *final disposition* means the later of

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an Administrative Law Judge becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Commission's order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such petition could have been filed;

(4) Issuance of a final order by the Commission or any other final resolution of a proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for reconsideration, or to a petition for judicial review; or

(5) Completion of judicial action on the underlying controversy and any subsequent Commission action pursuant to judicial mandate.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

#### PROCEDURES FOR CONSIDERING APPLICATIONS

#### § 1.1521 Filing and service of documents.

Any application for an award or other pleading relating to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 1.1512(b) for confidential financial information.

#### § 1.1522 Answer to application.

(a) Within 30 days after service of an application Bureau counsel may file an answer to the application. Unless Bureau counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award request.

(b) If Bureau counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time

for filing an answer for an additional 30 days, and further extensions may be granted by the Administrative Law Judge upon request by Bureau counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of Bureau counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, Bureau counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.1526.

#### § 1.1523 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.1526.

#### § 1.1524 Comments by other parties.

Any party to a proceeding other than the applicant and Bureau counsel may file comments on an application within 30 days after it is served or an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Administrative Law Judge determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

#### § 1.1525 Settlement.

The applicant and Bureau counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Bureau counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If the Administrative Law Judge approves the proposed settlement, it shall be forwarded to the Commission for final approval.

#### § 1.1526 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Bureau counsel, or on his or her own initiative, the Administrative Law Judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than excessive demand or substantial justification, an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency embodied an excessive demand or was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the Administrative Law Judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987; 61 FR 39899, July 31, 1996]

#### § 1.1527 Decision.

The Administrative Law Judge shall issue an initial decision on the application as soon as possible after completion of proceedings on the application. The decision shall include written findings and conclusions regarding the applicant's eligibility and whether the applicant was a prevailing party or whether the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the adversary adjudication, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's position substantially justified, whether the applicant unduly protracted the