

## § 76.8

(g) *Referral to administrative law judge.* (1) After reviewing the pleadings, and at any stage of the proceeding thereafter, the Commission staff may, in its discretion, designate any proceeding or discrete issues arising out of any proceeding for an adjudicatory hearing before an administrative law judge.

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission and the Chief Administrative Law Judge.

(3) Unless otherwise directed by the Commission, or upon motion by the Media Bureau Chief, the Media Bureau Chief shall not be deemed to be a party to a proceeding designated for a hearing before an administrative law judge pursuant to this paragraph (g).

(h) *System community units outside the Contiguous States.* On a finding that the public interest so requires, the Commission may determine that a system community unit operating or proposing to operate in a community located outside of the 48 contiguous states shall comply with provisions of subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable.

(i) *Commission ruling.* The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute, issue an order to show cause, or initiate a forfeiture proceeding.

NOTE 1 TO § 76.7: After issuance of an order to show cause pursuant to this section, the rules of procedure in Title 47, part 1, subpart A, §§ 1.91–1.95 of this chapter shall apply.

NOTE 2 TO § 76.7: Nothing in this section is intended to prevent the Commission from initiating show cause or forfeiture proceedings on its own motion; Provided, however, that show cause proceedings and forfeiture proceedings pursuant to § 1.80(g) of this chapter will not be initiated by such motion until the affected parties are given

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an opportunity to respond to the Commission's charges.

NOTE 3 TO § 76.7: Forfeiture proceedings are generally nonhearing matters conducted pursuant to the provisions of § 1.80(f) of this chapter (Notice of Apparent Liability). Petitioners who contend that the alternative hearing procedures of § 1.80(g) of this chapter should be followed in a particular case must support this contention with a specific showing of the facts and considerations relied on.

NOTE 4 TO § 76.7: To the extent a conflict is perceived between the general pleading requirements of this section, and the procedural requirements of a specific section, the procedural requirements of the specific section should be followed.

[64 FR 6569, Feb. 10, 1999, as amended at 67 FR 13234, Mar. 21, 2002; 76 FR 60673, Sept. 29, 2011]

### § 76.8 Status conference.

(a) In any proceeding subject to the part 76 rules, the Commission staff may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of the matters in controversy by agreement of the parties;

(5) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(6) The need and schedule for filing briefs, and the date for any further conferences; and

(7) Such other matters that may aid in the disposition of the proceeding.

(b) Any party may request that a conference be held at any time after an initiating document has been filed.

(c) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(d) The failure of any attorney or party, following advance notice with an opportunity to be present, to appear at a scheduled conference will be deemed a waiver and will not preclude

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the Commission from conferring with those parties or counsel present.

(e) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of matters relevant to the conduct of the proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the staff.

[64 FR 6571, Feb. 10, 1999]

### § 76.9 Confidentiality of proprietary information.

(a) Any materials filed in the course of a proceeding under this provision may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in FOIA.

(b) Submissions containing information claimed to be proprietary under this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked "Not for Public Inspection." An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited reply is submitted, and shall be served on the opposing parties.

(c) Except as provided in paragraph (d) of this section, materials marked as proprietary may be disclosed solely to

the following persons, only for use in the proceeding, and only to the extent necessary to assist in the prosecution or defense of the case:

(i) Counsel of record representing the parties in the proceeding and any support personnel employed by such attorneys;

(ii) Officers or employees of the parties in the proceeding who are named by another party as being directly involved in the proceeding;

(iii) Consultants or expert witnesses retained by the parties;

(iv) The Commission and its staff; and

(v) Court reporters and stenographers in accordance with the terms and conditions of this section.

(d) The Commission will entertain, subject to a proper showing, a party's request to further restrict access to proprietary information as specified by the party. The other parties will have an opportunity to respond to such requests.

(e) The persons designated in paragraphs (c) and (d) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense of the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statement affirmatively stating, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(f) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (c) and (d) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(g) Upon termination of the complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing