

§ 385.910

conference for the purpose of determining the issues or the nature of the proceeding to be held.

(f) If at any time prior to the certification of the record by the presiding officer under Rule 913 (Certification of the record), with or without a motion of a participant, the presiding officer determines that it is necessary for a full and true disclosure of the facts, the presiding officer may order that the participants be afforded the opportunity for cross-examination on any facts or issues raised in the proceeding.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 416, 50 FR 15733, Apr. 22, 1985; Order 416-A, 50 FR 36054, Sept. 5, 1985]

§ 385.910 Conduct of the hearing (Rule 910).

The presiding officer is responsible for conduct of the hearing, including the order of procedure.

§ 385.911 Burden of proof (Rule 911).

(a) The Secretary has the burden of going forward and must sustain the burden of proof with respect to disputed elements of affirmative case of the Secretary.

(b) The Commission order will be based on a preponderance of the evidence.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 416, 50 FR 15733, Apr. 22, 1985]

§ 385.912 Proposed findings of fact, conclusions of law, and comments (Rule 912).

(a) Within 10 days after the conclusion of the hearing, or, if no hearing is held, within 20 days after the filing of the petitioner's brief under Rule 906(b)(3) (pleadings), a participant may file with the Secretary of the Commission for the presiding officer, and serve upon the other participants proposed findings of fact and conclusions of law, comments in support thereof and any objections with respect to procedural rulings of the presiding officer.

(b) Within 10 days after the filing of proposed findings of fact and conclusions of law under paragraph (a) of this section, a participant may file, and

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must serve on other participants, a reply thereto.

§ 385.913 Proposed order (Rule 913).

(a) After the conclusion of the hearing and after the filings under Rule 912 (a) and (b), (proposed findings of fact, conclusions of law, and comments) the presiding officer will issue a decision and proposed order based on findings of fact affirming, modifying, or vacating the contested order or directing other appropriate relief. The proposed order will be based on the entire record before the presiding officer, including the record of prior proceedings certified by the Secretary.

(b) Participants may file with the Secretary of the Commission, within 15 days of issuance of the proposed order of the presiding officer, written comments on the presiding officer's decision and proposed order.

(c) Participants may file with the Secretary of the Commission, within seven days of the end of comment period prescribed in paragraph (b) of this section, reply comments limited to a response to any arguments and issues raised in the written comment.

(d) The presiding officer will certify and file with the Secretary of the Commission a copy of the record in the proceedings and copies of the written and reply comments filed pursuant to paragraphs (b) and (c) of this section.

(e) Unless otherwise ordered by the Chief Administrative Law Judge, written comments and reply comments must be limited to 15 pages, double-spaced.

[Order 495, 53 FR 16408, May 9, 1988, as amended at 58 FR 1629, Jan. 12, 1994]

§ 385.914 Commission action (Rule 914).

The Commission will upon consideration of the entire record, issue a final order affirming, modifying, or vacating the contested order or directing other appropriate relief. The Commission will serve the final order on the participants.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 416, 50 FR 15733, Apr. 22, 1985]