

§ 1025.45

16 CFR Ch. II (1–1–11 Edition)

§ 1025.45 *In camera* materials.

(a) *Definition.* *In camera* materials are documents, testimony, or other data which by order of the Presiding Officer or the Commission are kept confidential and excluded from the public record.

(b) *In camera* treatment of documents and testimony. The Presiding Officer or the Commission shall have authority, when good cause is found on the record, to order documents or testimony offered in evidence, whether admitted or rejected, to be received and preserve *in camera*. The order shall specify the length of time for *in camera* treatment and shall include:

(1) A description of the documents or testimony;

(2) The reasons for granting *in camera* treatment for the specified length of time; and

(3) The terms and conditions imposed by the Presiding Official, if any, limiting access to or use of the *in camera* material.

(c) *Access and disclosure to parties.* (1) Commissioners and their staffs, Presiding Officers and their staffs, and Commission staff members concerned with judicial review shall have complete access to *in camera* materials. Any party to the proceedings may seek access only in accordance with paragraph (c)(2) of this section.

(2) Any party desiring access to, or disclosure of, *in camera* materials for the preparation and presentation of that party's case shall make a motion which sets forth its justification. The Presiding Officer or the Commission may grant such motion for good cause shown and shall enter a protective order prohibiting unnecessary disclosure and requiring any other necessary safeguards. The Presiding Officer or the Commission may examine the *in camera* materials and excise any portions prior to disclosure of the materials to the moving party.

(d) *Segregation of in camera materials.* *In camera* materials shall be segregated from the public record and protected from public view.

(e) *Public release of in camera materials.* *In camera* materials constitute a part of the confidential records of the Commission and shall not be released

to the public until the expiration of *in camera* treatment.

(f) *Reference to in camera materials.* In the submission of proposed findings, conclusions, briefs, or other documents, all parties shall refrain from disclosing specific details of *in camera* materials. However, such refraining shall not preclude general references to such materials. To the extent that parties consider necessary the inclusion of specific details of *in camera* materials, those references shall be incorporated into separate proposed findings, conclusions, briefs, or other documents marked "Confidential, Contains *In Camera* Material," which shall be placed *in camera* and become part of the *in camera* record. Those documents shall be served only on parties accorded access to the *in camera* materials by these rules, the Presiding Officer, or the Commission.

§ 1025.46 Proposed findings, conclusions, and order.

Within a reasonable time after the closing of the record and receipt of the transcript, all parties and participants may file, simultaneously unless otherwise directed by the Presiding Officer, post-hearing briefs, including proposed findings of fact and conclusions of law, as well as a proposed order. The Presiding Officer shall establish a date certain for the filing of the briefs, which shall not exceed fifty (50) days after the closing of the record except in unusual circumstances. The briefs shall be in writing and shall be served upon all parties. The briefs of all parties shall contain adequate references to the record and authorities relied upon. Replies shall be filed within fifteen (15) days of the date for the filing of briefs unless otherwise established by the Presiding Officer. The parties and participants may waive either or both submissions.

§ 1025.47 Record.

(a) *Reporting and transcription.* Hearings shall be recorded and transcribed by the official reporter of the Commission under the supervision of the Presiding Officer. The original transcript shall be a part of the record of proceedings. Copies of transcripts are available from the reporter at a cost

not to exceed the maximum rates fixed by contract between the Commission and the reporter. In accordance with Section 11 of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. appendix I), copies of transcripts may be made by members of the public or by Commission personnel, when available, at the Office of the Secretary at reproduction costs as provided in § 1025.49.

(b) *Corrections.* Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner described in this section. The Presiding Officer may order corrections, either on his/her own motion or on motion of any party. The Presiding Officer shall determine the corrections to be made and shall so order. Corrections shall be interlineated or otherwise inserted in the official transcript so as not to obliterate the original text.

§ 1025.48 Official docket.

The official docket in any adjudicatory proceedings shall be maintained in the Office of the Secretary and be available for public inspection during normal business hours of the Commission.

§ 1025.49 Fees.

(a) *Fees for deponents and witnesses.* Any person compelled to appear in person in response to a subpoena or notice of deposition shall be paid the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with title 28, United States Code, section 1821. The fees and mileage referred to in this paragraph shall be paid by the party at whose instance deponents or witnesses appear.

(b) *Fees for production of records.* Fees charged for production or disclosure of records contained in the official docket shall be in accordance with the Commission's "Procedures for Disclosures or Production of Information Under the Freedom of Information Act," title 16, Code of Federal Regulations, § 1015.9.

Subpart F—Decision

§ 1025.51 Initial decision.

(a) *When filed.* The Presiding Officer shall endeavor to file an Initial Decision with the Commission within sixty (60) days after the closing of the record or the filing of post-hearing briefs, whichever is later.

(b) *Content.* The Initial Decision shall be based upon a consideration of the entire record and shall be supported by reliable, probative, and substantial evidence. The Initial Decision shall include:

(1) Findings and conclusions, as well as the reasons or bases for such findings and conclusions, upon the material questions of fact, material issues of law, or discretion presented on the record, and should, where practicable, be accompanied by specific page citations to the record and to legal and other materials relied upon; and

(2) An appropriate order.

(c) *By whom made.* The Initial Decision shall be made and filed by the Presiding Officer who presided over the hearing, unless otherwise ordered by the Commission.

(d) *Reopening of proceedings by Presiding Officer; termination of jurisdiction.*

(1) At any time prior to, or concomitant with, the filing of the Initial Decision, the Presiding Officer may reopen the proceedings for the reception of further evidence.

(2) Except for the correction of clerical errors, or where the proceeding is reopened by an order under paragraph (d)(1) of this section, the jurisdiction of the Presiding Officer is terminated upon the filing of the Initial Decision, unless and until such time as the matter may be remanded to the Presiding Officer by the Commission.

§ 1025.52 Adoption of initial decision.

The Initial Decision and Order shall become the Final Decision and Order of the Commission forty (40) days after issuance unless an appeal is noted and perfected or unless review is ordered by the Commission. Upon the expiration of the fortieth day, the Secretary shall prepare, sign, and enter an order adopting the Initial Decision and Order, unless otherwise directed by the Commission.