

**§ 401.16 Statement in response.**

(a) Except as otherwise provided pursuant to § 410.19, a Government and any interested person, other than the applicant, may present a statement in response to the Commission within thirty days after the filing of an application. A statement in response shall set forth facts and arguments bearing on the subject matter of the application and tending to oppose or support the application, in whole or in part. If it is desired that conditional approval be granted, the statement in response should set forth the particular condition or conditions desired. An address for service of documents should be included in the statement in response.

(b) When a statement in response has been filed, the secretaries shall send a copy forthwith to the applicant and to each Government except the Government which presented the said statement in response. If so directed by the Commission, the secretaries shall inform those who have presented statements in response, of the nature of the total response.

**§ 401.17 Statement in reply.**

(a) Except as otherwise provided pursuant to § 410.19, the applicant and, if he is a person, the Government which transmitted the application on his behalf, one or both may present a statement or statements in reply to the Commission within thirty days after the time provided for presenting statements in response. A statement in reply shall set forth facts and arguments bearing upon the allegations and arguments contained in the statements in response.

(b) When a statement in reply has been filed, the secretary shall send a copy forthwith to each Government except the Government which presented the said statement in reply, and to all persons who presented statements in response.

**§ 401.18 Supplemental or amended applications and statements.**

(a) If it appears to the Commission that either an application, a statement in response or a statement in reply is not sufficiently definite and complete, the Commission may require a more definite and complete application,

statement in response or statement in reply, as the case may be, to be presented.

(b) Where substantial justice requires it, the Commission with the concurrence of at least four Commissioners may allow the amendment of any application, statement in response, statement in reply and any document or exhibit which has been presented to the Commission.

**§ 401.19 Reducing or extending time and dispensing with statements.**

In any case where the Commission considers that such action would be in the public interest and not prejudicial to the right of interested persons to be heard in accordance with Article XII of the Treaty, the Commission may reduce or extend the time for the presentation of any paper or the doing of any act required by these rules or may dispense with the presentation of statements in response and statements in reply.

**§ 401.20 Interested persons and counsel.**

Governments and persons interested in the subject matter of an application, whether in favor of or opposed to it, are entitled to be heard in person or by counsel at any hearing thereof held by the Commission.

**§ 401.21 Consultation.**

The Commission may meet or consult with the applicant, the Governments and other persons or their counsel at any time regarding the plan of hearing, the mode of conducting the inquiry, the admitting or proof of certain facts or for any other purpose.

**§ 401.22 Attendance of witnesses and production of documents.**

(a) Requests for the attendance and examination of witnesses and for the production and inspection of books, papers and documents may be issued over the signature of the secretary of the section of the Commission of the country in which the witnesses reside or the books, papers or documents may be, when so authorized by the Chairman of that section.

(b) All applications for subpoena or other process to compel the attendance

### **§ 401.23**

of witnesses or the production of books, papers and documents before the Commission shall be made to the proper courts of either country, as the case may be, upon the order of the Commission.

### **§ 401.23 Hearings.**

(a) The time and place of the hearing or hearings of an application shall be fixed by the Chairmen of the two sections.

(b) The secretaries shall forthwith give written notice of the time and place of the hearing or hearings to the applicant, the Governments and all persons who have presented statements in response to the Commission. Except as otherwise provided by the Commission, the secretaries shall also cause such notice to be published in the Canada Gazette and the FEDERAL REGISTER and once each week for three successive weeks in two newspapers, published one in each country and circulated in or near the localities which, in the opinion of the Commission, are most likely to be affected by the proposed use, obstruction or diversion of water.

(c) All hearings shall be open to the public.

(d) The applicant, the Governments and persons interested are entitled to present oral and documentary evidence and argument that is relevant and material to any issue that is before the Commission in connection with the application.

(e) The presiding chairman may require that evidence to be under oath.

(f) Witnesses may be examined and cross-examined by the Commissioners and by counsel for the applicant, the Governments and the Commission. With the consent of the presiding chairman, counsel for a person other than the applicant may also examine or cross-examine witnesses.

(g) The Commission may require further evidence to be given and may require printed briefs to be submitted at or subsequent to the hearing.

(h) The Commissioners shall be free to determine the probative value of the evidence submitted to it.

(i) A verbatim transcript of the proceedings at the hearing shall be prepared.

### **22 CFR Ch. IV (4-1-09 Edition)**

(j) The hearing of the application, when once begun, shall proceed at the times and places determined by the Chairmen of the two sections to ensure the greatest practicable continuity and dispatch of proceedings.

### **§ 401.24 Expenses of proceedings.**

(a) The expenses of those participating in any proceeding under this subpart B shall be borne by the participants.

(b) The Commission, after due notice to the participant or participants concerned, may require that any unusual cost or expense to the Commission shall be paid by the person on whose behalf or at whose request such unusual cost or expense has been or will be incurred.

### **§ 401.25 Government brief regarding navigable waters.**

When in the opinion of the Commission it is desirable that a decision should be rendered which affects navigable waters in a manner or to an extent different from that contemplated by the application and plans presented to the Commission, the Commission will, before making a final decision, submit to the Government presenting or transmitting the application a draft of the decision, and such Government may transmit to the Commission a brief or memorandum thereon which will receive due consideration by the Commission before its decision is made final.

## **Subpart C—References**

### **§ 401.26 Presentation to Commission.**

(a) Where a question or matter of difference arising between the two Governments involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other along the common frontier between the United States of America and Canada is to be referred to the Commission under Article IX of the Treaty, the method of bringing such question or matter to the attention of the Commission and invoking its action ordinarily will be as set forth in this section.