

§ 1308.31

appeal. Such documents are considered a part of the appeal file.

Subpart D—Prehearing and Hearing Procedures

§ 1308.31 Filing and service.

(a) All documents required to be served shall be served on TVA and Contractor and filed with the Board, except subpoenas.

(b) A request under §1308.15 shall be directed to the General Manager, Tennessee Valley Authority, 400 Commerce Avenue, Knoxville, Tennessee 37902, and shall be transmitted to the Chairman.

(c) All other documents required to be filed shall be directed to the Hearing Officer assigned to the matter.

(d) Service on the opposing party may be made personally or by mail. The copy presented for filing shall bear an appropriate certificate or acknowledgment of service.

§ 1308.32 Prehearing procedures.

(a) Unless otherwise provided in this part, prehearing procedures, including discovery, shall be conducted in accordance with Rules 6, 7(b), 16, 26, 28-37, and 56 of the Federal Rules of Civil Procedure, except that the Hearing Officer may modify those Rules to meet the needs of the parties in a particular case.

(b) The term *court* as used in those Rules shall be deemed to mean "Hearing Officer"; the term *plaintiff* shall be deemed to mean "Contractor"; the term *defendant* shall be deemed to mean "TVA"; and the term *action* shall be deemed to mean the pending appeal.

(c) Discovery subpoenas are subject to Subpart E.

(d) The party giving notice of a deposition is responsible for securing a reporter.

(e) No appeal of counterclaim may be dismissed except by order of the Hearing Officer. The Hearing Officer may order at any time, with or without a motion by a party, that an appeal or counterclaim, or any part thereof, be dismissed because the matter has been settled, because the party no longer desires to pursue the matter, or because of the party's failure to prosecute the matter or to comply with the regula-

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tions in this part or with any order of the Hearing Officer. Any dismissal under this paragraph operates as an adjudication on the merits of the matter which is dismissed, and is a decision within the meaning of §1308.23, but does not affect the Hearing Officer's jurisdiction over any matter not so dismissed.

[44 FR 29648, May 22, 1979. Redesignated at 44 FR 30682, May 29, 1979, and amended at 49 FR 3845, Jan. 31, 1984]

§ 1308.33 Hearings.

(a) TVA shall arrange for the verbatim reporting of evidentiary hearings before the Hearing Officer, and shall provide the Hearing Officer with the original transcript. The parties shall make their own arrangements with the reporter for copies.

(b) Admissibility of evidence shall generally be governed by the Federal Rules of Evidence, subject, however, to the Hearing Officer's discretion. As used in those Rules, the term *court* shall be deemed to mean "Hearing Officer."

(c)(1) Conduct of hearings shall generally be governed by Rules 42-44, 44.1, and 46 of the Federal Rules of Civil Procedure, except that the Hearing Officer may modify those Rules to meet the needs of the parties in a particular case. The terms *court*, *plaintiff*, *defendant*, and *action* as used in those Rules shall be deemed to have the meaning given them in §1308.32.

(2) After the Contractor has completed the presentation of his evidence, TVA, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the Contractor has shown no right to relief. The Hearing Officer as the trier of the facts may then determine them and render a decision against the Contractor, or take the matter under advisement, or decline to render any decision until the close of all the evidence. Any decision rendered under this paragraph shall conform to §1308.37, and is a decision within the meaning of §1308.23.

(d) Hearings shall be as informal as may be reasonable and appropriate under the circumstances, and shall be