

2,611 Evidence upon re-hearing

PUBLIC SERVICE COMMISSION

Chapter PSC 2

PROCEDURE AND PRACTICE

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GENERAL

PSC 2.01 Communications and documents addressed to commission. (1) All written communications and documents should be addressed to Public Service Commission of Wisconsin, State Office Building, 1 West Wilson Street, Madison 2, Wisconsin, and not to individual members of the staff. All communications and documents delivered at the office of the secretary are officially received.

(2) The secretary may designate agents to receive written communications and documents. Presiding officers will receive communications and documents at hearings.

PSC 2.02 Parties. Parties to proceedings are known as complainants, defendants, interveners, respondents, applicants, objectors, and petitioners according to the nature of the proceeding and the relationship of the parties thereto.

(1) Parties who file complaints are complainants, the parties complained against are defendants, and other parties to the proceeding are interveners.

(2) In investigations or upon orders to show cause, the parties investigated or ordered to show cause are respondents. If the proceeding is initiated by the commission upon complaint, the parties complaining are complainants.

(3) All persons seeking approvals, authority, certificates of authority or of public convenience and necessity or other certificates, licenses, permits, or exemptions or other relief are applicants. Those opposing such applicants are objectors. Parties to such proceedings other than the applicants and objectors are interveners.

PSC 2.03 Computation of time. The time within which an act is to be done as provided in any rule promulgated by the commission, when expressed in days, shall be computed by excluding the first day

and including the last, except that if the last day be Sunday or a legal holiday the act may be done on the next secular day; and when any such time is expressed in hours the whole of any intervening Sunday and of any intervening legal holiday, from midnight to midnight, shall be excluded. The time within which an act is to be done as provided in any rule, when expressed in weeks, months, or years, shall be computed by excluding the first day in cases where the time limited runs from a date and by including the first day when its runs from an event.

PSC 2.04 Furnishing copies of records. (1) A certified copy of the decision in a proceeding will be furnished free of charge to each party of record. Additional copies will be furnished at the rates and under the conditions stated below, except that when a party of record is represented by counsel a copy of the decision will be furnished to such counsel and when a municipal utility is a party of record to a proceeding a copy of the decision will be furnished both to the management of the utility and to the appropriate official of the municipality free of charge.

(2) Printed general orders will be distributed free of charge under the supervision of the secretary.

(3) Copies of records of the commission may be obtained at the rates and under the conditions stated below:

Rates

(payable in advance)

Transcript, order, or other record of the commission:

Typewritten original	12¢ a folio
Duplicate copy, if available	8¢ a folio
Minimum charge	35¢
Photostats	at cost
Material to which folio rate cannot be applied	\$1.50 an hour
Certification	25¢

Note: A folio is 100 words, ordinarily 10 typewritten lines or major fraction thereof. See section PSC 2.36 for free transcripts.

PSC 2.05 Service of documents. (1) Service of documents upon other parties in commission proceedings may be made by deposit thereof in the first class mail or by delivery in person.

(2) The date of service shall be the day when the matter served is deposited in the mail or is delivered in person, as the case may be.

COMPLAINTS AND INVESTIGATIONS

PSC 2.10 Informal complaints. (1) Informal complaints may be made in writing addressed to the commission. Letters may be considered as informal complaints. Matters thus presented are handled by correspondence or other informal investigation or by a formal investigation instituted by the commission upon its own motion.

(2) Complaints with respect to public utility rates, practices, or service made by less than 25 persons (see section 196.26, Wis. Stats.) will be treated as informal complaints. The commission may initiate formal proceedings in such cases upon its own motion.

PSC 2.11 Formal complaints. No particular form of complaint is required. Formal complaints shall be in writing and shall state:

- (1) The names, places of residence, and post office addresses of complainants;
- (2) The name of the company or person complained of;
- (3) The matter concerning which complaint is made. A sufficient number of copies shall be furnished to enable the commission to provide each defendant with one copy.

PSC 2.12 General procedure. Sections 196.26 to 196.34, Wis. Stats., prescribe the procedure to be followed in investigation and complaint proceedings involving public utility rates and service. The commission will follow the same procedure in other investigation and complaint cases so far as consistent with other provisions of the statutes and of these rules.

APPLICATIONS

PSC 2.20 Form of applications. Applications shall be in writing, shall state their object, shall contain a concise statement of the facts in support of the same, and shall be signed by the applicant or his authorized agent. They shall conform in all particulars to the requirements of applicable statutes and of these rules and of general orders of the commission. (For general orders see Wisconsin Administrative Code: Public Service Commission). Forms of applications in typical cases will be furnished upon request. See section PSC 2.80 for applications for motor carrier authority and assignment thereof.

PUBLIC HEARINGS

PSC 2.30 Notice of hearings. (1) Written notice of hearing will be sent to all parties and also to others requesting notice. The notice will be mailed sufficiently in advance to give parties, after receipt thereof, the full time provided by statute.

(2) A motor transportation calendar is issued each week containing applications scheduled for hearing, grants of authority without hearing, full or partial assignments of authority approved without hearing, and changes in previously scheduled hearings. The secretary will mail to each person applying therefor a copy of the weekly motor carrier calendar upon payment of \$2 per calendar year or 50 cents for each remaining quarter or fractional quarter of said year. The motor transportation calendar is mailed to each county clerk with a request for posting in a prominent place in the courthouse. The secretary also furnishes copies to various publications of motor carrier organizations in Wisconsin upon request, and to the general press, and posts copies in the main office and filing section of the commission.

(3) When the commission deems a hearing necessary for the discontinuance of train service under section 196.81, Wis. Stats., it shall give notice in such proceeding by mailing a copy of the notice to the clerk of every incorporated city or village, where the railroad company maintains a station, along the portion of the line on which discontinuance of service is proposed.

PSC 2.31 Conduct of hearings. (1) Public hearings will be conducted by one or more commissioners or a duly authorized examiner.

Parties making exceptions to rulings may present the same to the commission for review in the manner provided in section PSC 2.35 (1).

(2) The presiding officer will open the hearing and make a concise statement of its scope and purposes. Appearances then will be entered on the record. If the matter is contested, the examiner then will state the issues in the proceeding. Thereafter, parties may make motions or opening statements in accordance with the practice in circuit courts of Wisconsin.

(3) When opening statements are made they shall be confined to: (a) a brief summary or outline in clear and concise form of the evidence intended to be offered; and (b) a statement of ultimate legal points relied upon. There shall be no argument on either the facts or legal theories.

(4) Parties may be off the record only when the examiner permits. If a discussion off the record is pertinent, the examiner will summarize it on the record. Any argument before the examiner on objections to receipt of evidence or on motions to strike will not be recorded. The legal reasons for the objection or motion will be recorded.

PSC 2.32 Appearances. (1) A person desiring to participate in a proceeding, whether on his own behalf or as an authorized agent or attorney, shall enter his appearance by giving his name and address and the name of any party he represents and in what capacity he is employed by such party.

(2) Members of the commission staff appear neither in support of nor in opposition to any cause, but solely to discover and present, if necessary, facts pertinent to the issues.

PSC 2.33 Changes in time or place of hearing; adjournments. Changes in the time and place of the first session of the hearing in any proceeding will be granted only for good cause shown in a written request made to the commission reasonably in advance of the time set. Changes will not be made, except in extreme circumstances, when the parties to the proceeding are not known. After a hearing has been called, adjournment thereof shall be under the direction of the examiner. The commission, upon its own motion, may change the time and place of any session.

PSC 2.34 Order of presenting evidence. Evidence ordinarily will be received in the following order:

(1) Upon investigation on motion of the commission instituted upon informal complaint—(a) the complainants and supporting interveners, (b) the respondent and supporting interveners, and (c) the commission's staff.

(2) Upon other investigations on motion of the commission—(a) the commission's staff, (b) the respondent, and (c) interveners.

(3) Upon applications and petitions—(a) the applicant or petitioner and supporting interveners, (b) objectors and their supporting interveners, and (c) the commission's staff.

(4) Upon formal complaints—(a) the complainant, (b) interveners supporting the complaint, (c) the defendant, (d) interveners supporting the defense, and (e) the commission's staff.

(5) Upon order to show good cause—(a) the commission's staff, (b) the respondent, and (c) interveners.

(6) Upon petition for hearing under section 194.34 (1), Wis. Stats. — (a) the applicant for authority and supporting interveners, (b) objectors and their supporting interveners, and (c) the commission's staff.

(7) Upon rehearing—(a) the applicant for rehearing and supporting interveners, (b) other parties, and (c) the commission's staff.

PSC 2.35 Rules of evidence. Rules of evidence are governed by section 227.10, Wis. Stats.

(1) Any party dissatisfied with a ruling by the presiding officer during a hearing may have such ruling reviewed by the commission by (a) noting an exception in the record, and (b) submitting to the commission within 5 days of the receipt of transcript containing such ruling a statement in writing showing the nature of the ruling and a brief summary of the reasons why such ruling is claimed to be erroneous. The commission will not rule upon exceptions to rulings of a presiding officer unless the foregoing requirements are complied with. Records and documents of the commission may be offered in evidence by any party, but if offered by reference shall be specified as to particular documents or portions of the record thus offered.

(2) When evidence to be presented consists of technical matter or figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form, supplemented and explained but not duplicated by oral testimony.

(3) Written or printed documents and maps received in evidence may not be withdrawn except with the approval of the presiding officer.

(4) Exhibits of documentary character should be typed on only one side of the paper with a sufficient margin for binding (1½ inches is suggested) on the left side of each sheet. If exhibits are more than 8½ inches by 11 inches in size they should be folded to approximately such dimensions. Exhibits of more than one page should be stapled together and pages numbered. The first page should provide space in the lower right-hand corner for exhibit number, docket number, and name of witness and should show the total pages in the exhibit. The source of information in the exhibit should be shown.

(5) Petitions or written communications addressed to the commission, not admissible as evidence, may be filed but will not be considered as evidence.

(6) Parties introducing documentary exhibits should be prepared to furnish copies to adverse parties and may be required, in the discretion of the examiner, to furnish such copies.

(7) In larger cases, parties may shorten hearings by preparing written testimony and exhibits and sending copies in advance to known other parties and to the commission. Such written testimony may be offered for inclusion in the transcript as though given orally subject to motions to strike any portion to which there is objection.

PSC 2.36 Transcripts. Proceedings in hearings will be transcribed and one copy furnished each party free of cost upon demand by such party at the hearing. Any party, within 5 days of the mailing of the transcript, may file with the commission a notice in writing of any claimed error therein, mailing a copy of such notice to each party of record. All parties will be advised by the commission of any authorized corrections to the record.

History: Am. Register, April, 1956, No. 4. Eff. May 1, 1956.

PSC 2.37 Close of hearing and evidence. (1) A hearing is closed when evidence is closed and when any period fixed for filing of briefs

filing briefs has expired and the brief of one or more parties shall not be filed within such time, the commission may proceed to its determination of the proceeding.

(2) Evidence in any proceeding will be declared closed when due opportunity to furnish relevant evidence, including proper cross-examination of witnesses and rebuttal, has been afforded all parties. If by stipulation of the parties or by direction of the examiner documentary evidence is permitted or directed to be introduced subsequent to the close of testimony, the evidence will be declared closed when such documentary evidence is received or when the specified time for furnishing it has elapsed without its being furnished. The commission, in its discretion, may extend the time as originally prescribed for filing such evidence.

(3) When the evidence is closed, no further evidence shall be received unless the commission shall reopen the hearing for the taking of further evidence.

PSC 2.38 Briefs. (1) (a) Parties shall indicate on the record after the close of testimony whether they desire to file briefs. The party or parties having the affirmative shall file affirmative briefs within 15 days after date of mailing of transcript. Other parties 8 days thereafter shall file reply briefs, which may be replied to within 5 days.

(b) Where a party having the affirmative does not desire to file a brief but another desires to do so, the presiding commissioner or examiner shall specify the time and order for filing briefs. If the presiding commissioner or examiner makes no specific designation as to the time and order for filing briefs in cases where the party having the affirmative does not desire to file a brief, all other briefs shall be filed within 15 days after date of mailing of transcript. In any case not specifically covered by this rule, the time and order for filing briefs shall be fixed by the presiding commissioner or examiner.

(2) Five legible, dated copies of all briefs shall be filed with the commission together with a certification showing when and upon whom copies have been served. Briefs which contain a summary of evidence or facts relied upon shall include also reference to specific pages of the record containing such evidence.

(3) The filing of briefs in less time than allowed shall not change the due dates of remaining briefs.

History: 1-2-56; (1) renum. (1) (a); (b) cr.; Register, August, 1956, No. 8, eff. 9-1-56.

PSC 2.39 Witnesses, subpoenas and depositions. (1) Witnesses who appear by order of the commission may obtain from the secretary or from the presiding officer proper voucher blanks for the payment of witness fees.

(2) No witness subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated (Section 196.32, Wis. Stats.).

(3) The commission or any party in any investigation or hearing may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts (Section 196.33, Wis. Stats.).

(4) The presiding officer shall have all the inquisitorial powers granted to the commission and the powers of a court commissioner relative to depositions (Section 196.24, Wis. Stats.).

(5) Upon request any commissioner or examiner will issue subpoenas to compel the attendance of witnesses (Sections 196.32 and 325.01 (4), Wis. Stats.).

PSC 2.391 Exceptions to examiners' summary of evidence and recommendations. (1) Exceptions to the summary of evidence and recommendations as submitted by the examiner in any proceeding pursuant to section 227.12, Wis. Stats., shall be filed within 15 days or within the time specified by the commission.

(2) Exceptions to examiners' reports submitted pursuant to section 227.12, Wis. Stats., briefs in support thereof, and reply briefs shall be governed by section PSC 2.38. Exceptions and briefs in support thereof shall be filed together.

REVIEW BY COMMISSION OF ORDERS AND DETERMINATION

PSC 2.60 Application for rehearing; objections. (1) Application for rehearing must be made within 20 days after service of any determination or order. Such application will prevent the order from becoming effective upon and after the filing of the application, and until 10 days after such application for a rehearing is either denied, expressly or by implication, or the commission has announced its final determination on rehearing. Only one rehearing may be granted (Section 196.405, Wis. Stats.).

(2) Applications for rehearing shall set forth the particular grounds as specified in paragraphs (a) to (e), inclusive, of section 227.20 (1), Wis. Stats., upon which the applicant claims that the order is unlawful, unreasonable, improper or unfair.

(3) If the applicant shall rely on the ground that the commission in making its determination has failed, or that any of the commissioners has failed, to consider any of the evidence presented in the proceeding, the application for rehearing shall so state, and shall include an abstract of all such evidence relied upon by the applicants.

(4) Five copies of all applications for rehearing or objections thereto shall be filed and shall include a certification that copies have been served as required by section PSC 2.61. Such certificate shall state the names of the persons served, together with the date and manner of service.

History: 1-2-56; am. (4), Register, September, 1958, No. 33, eff. 10-1-58.

PSC 2.61 Service of rehearing applications and objections. Applications for rehearing shall be served on all parties to the proceeding. Objections to an application for rehearing shall be served on all parties and filed with the commission within 7 days after the date of service of such application. Such applications for rehearing and objections thereto shall be accompanied by a certificate showing the names of the persons upon whom service was made and the date and manner of service.

History: 1-2-56; am. Register, September, 1958, No. 33, eff. 10-1-58. Register, September, 1958, No. 33

PSC 2.611 Evidence upon rehearing. In a rehearing upon an order entered without hearing, the presiding officer may receive such evidence as he deems will be of assistance to the commission in making a proper determination in the proceeding, and which otherwise complies with the provisions of section 227.10 (1), Wis. Stats.

History: Cr. Register, August, 1961, No. 68, eff. 9-1-61.

PSC 2.62 Implied denial of applications. Any application for rehearing not granted within 20 days from the date of its filing may be taken by the applicant to be denied (Section 196.405(4), Wis. Stats.).

PSC 2.63 Petitions for reopening. Parties may petition the commission to reopen a proceeding for the purpose of rescinding, amending, or altering an order or determination (Section 196.39, Wis. Stats.). Such petition shall state the ground upon which it is based and the relief sought. It shall be served in the same manner as applications for rehearing. Five copies shall be filed with the commission. Objections to a petition may be filed and served in the same manner as objections to an application for rehearing. Petitions for reopening and objections thereto shall be accompanied by a certificate showing the names of the persons upon whom service was made and the date and manner of service.

History: 1-2-56; am. Register, April, 1958, No. 28, eff. 5-1-58; am. Register, September, 1958, No. 33, eff. 10-1-58.

PSC 2.64 Right of petition. Petitions made pursuant to section 227.015, Wis. Stats., for the promulgation, amendment, or repeal of the rules of the commission shall be addressed to the commission and shall contain a statement of the rules sought to be promulgated or repealed; and, in case of a proposed modification, shall contain a statement of the change thus proposed, together with a concise statement of the considerations upon which the promulgation, modification, or repeal of the rule is requested. Petitioners shall file 4 copies and shall furnish such additional copies as may be required by the commission.

PSC 2.65 Declaratory rulings. Petitions made pursuant to section 227.06, Wis. Stats., for declaratory rulings shall be addressed to the commission and shall state the rule or statute with respect to which declaratory ruling is requested, the applicability of any such rule or statute to the petitioner, and the names of all others upon whom it is sought that the requested declaratory ruling shall be binding. The petition shall be verified and shall be accompanied by 3 additional copies. Petitioner shall furnish additional copies as may be required by the commission for service on such other persons as the commission may designate as proper parties to the proceeding. Any such petition will not be set for hearing unless it states facts showing that petitioner is affected by rule or statute with respect to which a declaratory ruling is requested or that the application of such rule or statute to him will affect him adversely.

PSC 2.66 Prehearing conference. The commission, in its discretion, prior to hearing upon due notice to the parties, may call a prehearing conference. The presiding officer, in his discretion after calling the hearing and noting appearances, may call a conference. The purposes of such conference shall be those specified in section 269.65, Wis. Stats., insofar as applicable.

ADDITIONAL PROVISIONS FOR PARTICULAR PROCEEDINGS*Utilities*

PSC 2.70 Municipal acquisition proceedings. In proceedings by municipalities to acquire the property of public utilities under chapter 197, Wis. Stats., the commission at the initial session of the hearing thereon will receive evidence and arguments on the validity of the municipality's determination to acquire the property of the public utility and as to the property to be acquired.

PSC 2.71 Abandonment or discontinuance of public utility service. No abandonment nor discontinuance of facilities or service of gas, electric, telephone, or water utilities shall be made without commission authority (Section 196.81, Wis. Stats.). A hearing will be held upon an application to abandon or discontinue service or facilities except in cases where it is accompanied by a map indicating location of facilities to be abandoned or facilities from which service is to be discontinued as well as all service locations thereon and a statement that all actual or potential subscribers or consumers have either consented to or waived objection to such abandonment or discontinuance. If such information is furnished, the commission may dispense with a hearing.

PSC 2.72 Sale of utility; reports; assessments. In all cases where the purchase and sale of a complete utility property involves an abandonment of service and the dissolution of the selling utility, it shall be a condition to the commission's approval of the purchase of such utility property that the purchasing utility shall assume the following obligations of the selling utility and shall be responsible

- (1) For all charges which are due or may become due from both the selling and the purchasing utility under the provisions of section 196.85 (1), Wis. Stats., relating to the purchase and sale proceeding;
- (2) For all charges which are due or may become due from the selling utility under the provisions of section 196.85 (2) (a), Wis. Stats., relating to the current part-year public utility operations;
- (3) For the filing with the commission (section 196.07, Wis. Stats.) of the required part-year final report covering the operations of the selling utility (except where written exemption is obtained from the commission);

Unless the selling utility complies with the particular provisions of sections 196.85 and 196.07, Wis. Stats., as set forth in this rule.

History: Cr. Register, January, 1958, No. 25, eff. 2-1-58.

Motor Carriers

PSC 2.80 Applications for motor carrier authority and assignment thereof. (1) Applications for common motor carrier certificates, contract motor carrier licenses, or amendments thereto, should show the correct legal name of the applicant, his address, the names and addresses of all partners of a copartnership or of all officers and directors of a corporation, and should contain an accurate and complete description of the operations and transportation services proposed to be rendered in sufficient detail to give full notice to the public and other carriers.

(2) Applications for authority or assignment of authority to engage in intrastate commerce by motor vehicle shall not be combined with applications for state authority or assignment thereof to engage in operations in interstate commerce requiring a certificate or permit under the Federal Motor Carrier Act of 1935 (Sections 194.03(5) and 194.20, Wis. Stats.). In such cases separate applications must be filed and separate filing fees paid.

(3) No hearing will be held upon applications involving only interstate operations unless specifically required by the commission.

(3a) Applications for exempt interstate contract carrier authority under section 194.20, Wis. Stats., will be set for hearing, unless application is accompanied by substantial evidence that the entire proposed operations can and will be performed if authorized.

(4) No amendment of any application for a motor carrier license or certificate which includes additional operations not specified in such application and as to which no notice has been given will be allowed at the hearing. Amendments which have the effect of limiting, restricting, or eliminating authority sought by the application may be made at the hearing.

(5) An application for approval of assignment of a severable part or all of the operating authority contained in a certificate or license shall be signed by both the assignor and assignee. The application shall show the names and addresses of all partners of a partnership and of the officers and directors of a corporation. The application shall be accompanied by a copy of any assignment agreement. A form of application containing appropriate instructions will be furnished upon request. An application for approval of a mortgage of any authority shall be accompanied by a copy of the mortgage.

(6) Applications for approval of assignment of licenses will be handled ordinarily without hearing. Applications for approval of assignment of certificates ordinarily will be set for hearing.

(7) When, as provided for in section 194.34 (1), Wis. Stats., a petition is made for a hearing on a grant or amendment of a contract carrier license made without hearing, the following requirements shall be met:

(a) A copy of the petition for hearing shall be forthwith served in the manner provided in section PSC 2.05 upon the person receiving the grant or amendment.

(b) The petition filed with the commission shall include a certification that a copy has been served as provided in (a). Such certificate shall state the name of the person served, together with the date and manner of serving.

(c) The petition for hearing shall state the facts showing the ground on which it is claimed that the petitioner is one having an interest within the meaning of section 194.34 (1), Wis. Stats.

History: Cr. 2.80 (7), Register, April, 1956, No. 4, eff. May 1, 1956; am. Register, September, 1958, No. 33, eff. 10-1-58.