

1, 1975, will also be applicable. [Rule 156.]

**§ 502.157 Written evidence.**

(a) The use of written statements in lieu of oral testimony shall be resorted to where the presiding officer in his or her discretion rules that such procedure is appropriate. The statements shall be numbered in paragraphs, and each party in its rebuttal shall be required to list the paragraphs to which it objects, giving an indication of its reasons for objecting. Statistical exhibits shall contain a short commentary explaining the conclusions which the offeror draws from the data. Any portion of such testimony which is argumentative shall be excluded. Where written statements are used, copies of the statement and any rebuttal statement shall be furnished to all parties, as shall copies of exhibits. The presiding officer shall fix respective dates for the exchange of such written rebuttal statements and exhibits in advance of the hearing to enable study by the parties of such testimony. Thereafter, the parties shall endeavor to stipulate as many of the facts set forth in the written testimony as they may be able to agree upon. Oral examination of witnesses shall thereafter be confined to facts which remain in controversy, and a reading of the written statements at the hearing will be dispensed with unless the presiding officer otherwise directs.

(b) Where a formal hearing is held in a rulemaking proceeding, interested persons will be afforded an opportunity to participate through submission of relevant, material, reliable and probative written evidence properly verified, except that such evidence submitted by persons not present at the hearing will not be made a part of the record if objected to by any party on the ground that the person who submits the evidence is not present for cross-examination. [Rule 157.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

**§ 502.158 Documents containing matter not material.**

Where written matter offered in evidence is embraced in a document containing other matter which is not in-

tended to be offered in evidence, the offering party shall present the original document to all parties at the hearing for their inspection, and shall offer a true copy of the matter which is to be introduced, unless the presiding officer determines that the matter is short enough to be read into the record. Opposing parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of the original document which are material and relevant. [Rule 158.]

**§ 502.159 [Reserved]**

**§ 502.160 Records in other proceedings.**

When any portion of the record before the Commission in any proceeding other than the one being heard is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference. [Rule 160.]

**§ 502.161 Commission's files.**

Where any matter contained in a tariff, report, or other document on file with the Commission is offered in evidence, such document need not be produced or marked for identification, but the matter so offered shall be specified in its particularity, giving tariff number and page number of tariff, report, or document in such manner as to be readily identified, and may be received in evidence by reference, subject to comparison with the original document on file. [Rule 161.]

**§ 502.162 Stipulations.**

The parties may, by stipulation, agree upon any facts involved in the proceeding and include them in the record with the consent of the presiding officer. It is desirable that facts be thus agreed upon whenever practicable. Written stipulations shall be subscribed and shall be served upon all parties of record unless presented at the hearing or prehearing conference. A stipulation may be proposed even if not subscribed by all parties without prejudice to any nonsubscribing party's

**§ 502.163**

**46 CFR Ch. IV (10-1-06 Edition)**

right to cross-examine and offer rebuttal evidence. [Rule 162.]

**§ 502.163 Receipt of documents after hearing.**

Documents or other writings to be submitted for the record after the close of the hearing will not be received in evidence except upon permission of the presiding officer. Such documents or other writings when submitted shall be accompanied by a statement that copies have been served upon all parties, and shall be received, except for good cause shown, not later than ten (10) days after the close of the hearing and not less than (10) days prior to the date set for filing briefs. Exhibit numbers will not be assigned until such documents are actually received and incorporated in the record. [Rule 163.]

**§ 502.164 Oral argument at hearings.**

Oral argument at the close of testimony may be ordered by the presiding officer in his or her discretion. [Rule 164.]

**§ 502.165 Official transcript.**

(a) The Commission will designate the official reporter for all hearings. The official transcript of testimony taken, together with any exhibits and any briefs or memoranda of law filed therewith, shall be filed with the Commission. Transcripts of testimony will be available in any proceeding under the rules in this part, and will be supplied by the official reporter to the parties and to the public, except when required for good cause to be held confidential, at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter.

(b)(1) Section 11 of the Federal Advisory Committee Act provides that, except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings. As used in this section, "agency proceeding" means any proceeding as defined in 5 U.S.C. 551(12).

(2) The Office of Management and Budget has interpreted this provision as being applicable to proceedings before the Commission and its administrative law judges. (Guidelines, 38 FR 12851, May 16, 1973.)

(3) The Commission interprets section 11 and the OMB guidelines as follows:

(i) Future contracts between the Commission and the successfully bidding recording firm will provide that any party to a Commission proceeding or other interested person (hereinafter included within the meaning of "party") shall be able to obtain a copy of the transcript of the proceeding in which it is involved at the actual cost of duplication of the original transcript, which includes a reasonable amount for overhead and profit, except where it requests delivery of copies in a shorter period of time than is required for delivery by the Commission.

(ii) The Commission will bear the full expense of transcribing all of its administrative proceedings where it requests regular delivery service (as set forth in the Contract). In cases where the Commission requests daily delivery of transcript copies (as set forth in the Contract), any party may receive daily delivery service at the actual cost of duplication.

(iii)(A) Where the Commission does not request daily copy service, any party requesting such service must bear the incremental cost of transcription above the regular copy transcription cost borne by the Commission, in addition to the actual cost of duplication, except that where the party applies for and properly shows that the furnishing of daily copy is indispensable to the protection of a vital right or interest in achieving a fair hearing, the presiding officer in the proceeding in which the application is made shall order that daily copy service be provided the applying party at the actual cost of duplication, with the full cost of transcription being borne by the Commission.

(B) In the event a request for daily copy is denied by the presiding officer, the requesting party, in order to obtain daily copy, must pay the cost of transcription over and above that borne by the Commission, i.e., the incremental