

161—9.8(216) Protective orders.

9.8(1) Upon motion by a party or by the person from whom discovery is sought or by any person who may be affected thereby, and for good cause shown, the presiding officer for discovery:

a. May make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) That the discovery may be had only by a method of discovery other than that selected by the commission;
- (4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) That discovery be conducted with no one present except persons designated by the presiding officer for discovery;
- (6) That a deposition after being sealed be opened only by order of a court, a commission contested case presiding officer, or the presiding officer for discovery;
- (7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer for discovery.

b. Shall limit the frequency of use of the methods described in subrule 9.6(1) if the presiding officer for discovery determines that:

- (1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (2) The commission has had ample opportunity by discovery in the action to obtain the information sought; or
- (3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the objecting party's resources, and the importance of the issues at stake in the investigation.

9.8(2) If the motion for a protective order is denied in whole or in part, the presiding officer for discovery may, on such terms and conditions as are just, order that any party or other person provide or permit discovery.

9.8(3) Award of expenses of motion. If the motion is granted, the presiding officer for discovery shall, after opportunity for hearing, require the commission, if it opposed the motion, to pay to the party or other person making the motion the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the presiding officer for discovery finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the presiding officer for discovery shall, after opportunity for hearing, require the party or deponent who made the motion or the party or attorney advising such a motion or both of them to pay to the commission the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the presiding officer for discovery finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the presiding officer for discovery may apportion in a just manner the reasonable expenses incurred in relation to the motion.