

**761—13.10(17A) Default.**

**13.10(1)** A party may move for default against another party that has requested the contested case proceeding and that has failed to appear after proper service is served.

**13.10(2)** Notwithstanding subrule 13.10(1), no default may be entered against the department for failure to appear; rather, the presiding officer may either continue the matter or proceed with the hearing and render a decision in the absence of the department.

**13.10(3)** A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within 20 days after the date of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with rule 761—13.5(17A). A motion to vacate is to state all facts relied upon by the moving party that establish that good cause existed for that party's failure to appear or participate.

**13.10(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**13.10(5)** Timely filed motions to vacate are to be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties have ten days to respond to a motion to vacate.

**13.10(6)** "Good cause," for the purpose of this rule, means surprise, excusable neglect or unavoidable casualty.

**13.10(7)** A decision denying a motion to vacate is subject to further appeal in accordance with rule 761—13.5(17A).

**13.10(8)** A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 13.5(3).

**13.10(9)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer is to issue another notice of hearing and the contested case will proceed accordingly.

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