

199—7.23(17A,476) Hearings.

7.23(1) *Commission or presiding officer.* The commission or presiding officer presides at the hearing and may rule on motions and issue such orders and rulings as will ensure the orderly conduct of the proceedings. The commission or presiding officer will maintain the decorum of the hearing and may refuse to admit, may set limits on, or may expel from the hearing anyone whose conduct is disorderly.

7.23(2) *Witnesses.* Each witness will be sworn or affirmed by the commission, presiding officer, or the court reporter and be subject to examination and cross-examination. The commission or presiding officer may limit questioning in a manner consistent with law. In appropriate circumstances, the commission or presiding officer may order that witnesses testify as members of a witness panel.

7.23(3) *Order of presenting evidence.* The commission or presiding officer will determine the order of the presentation of evidence based on applicable law and the interests of efficiency and justice, considering the preferences of the parties. Normally, the petitioner opens the presentation of evidence. In cases where testimony has been prefiled and unless otherwise ordered by the commission or the presiding officer, each party will make its witnesses available for cross-examination on all testimony filed or on behalf of that witness.

7.23(4) *Evidence.*

a. Subject to terms and conditions prescribed by the commission or presiding officer, parties have the right to introduce evidence, cross-examine witnesses, and present evidence in rebuttal. Ordinarily, prefiled testimony is used in hearings pursuant to rule 199—7.10(17A,476). The sponsoring party is to provide one copy of prefiled testimony and included exhibits to the court reporter.

b. The commission or presiding officer will rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with law.

c. Stipulation of facts is encouraged. The commission or presiding officer may make a decision based on stipulated facts.

d. Unless the exhibit was previously included with prefiled testimony, the party seeking admission of an exhibit at a hearing is to provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence are to be marked in accordance with the commission's approved naming convention and made part of the evidentiary record. If an exhibit is admitted, unless it was previously included with prefiled testimony, the sponsoring party is to provide at least one copy of the exhibit to each opposing party, one copy to each commission member or presiding officer, one copy to the witness (if any), one copy to the court reporter, and two copies to commission staff, unless otherwise ordered. Parties are to file all their admitted hearing exhibits in the commission's electronic filing system within three days of the close of the hearing.

e. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony is expected to briefly summarize the testimony or, with the permission of the commission or presiding officer, present the testimony. The commission or presiding officer may direct the offering party to file a written statement of the excluded oral testimony. If the excluded evidence consists of a document or exhibit, it will be marked as part of an offer of proof and inserted in the record. Unless previously included with prefiled testimony, the sponsoring party is to provide at least one copy of the document or exhibit to each opposing party, one copy to each commission member or presiding officer, one copy to the witness (if any), one copy to the court reporter, and two copies to commission staff, unless otherwise ordered.

7.23(5) *Objections.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. All objections will be timely made on the record and state the grounds relied on. The commission or presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

7.23(6) *Further evidence.* At any stage during or after the hearing, the commission or presiding officer may order a party to present additional evidence and may conduct additional proceedings as appropriate.

7.23(7) *Participation at hearings by nonparties.* The commission or presiding officer may permit any person to be heard at any hearing, but such person is not a party to the proceedings unless so designated. The testimony or statement of any person so appearing is given under oath and such person is subject to

cross-examination by parties to the proceeding, unless the commission or presiding officer orders otherwise. If a person who is not a party to a proceeding appears at a hearing and requests to examine or cross-examine witnesses, the commission or presiding officer may grant the person intervention in the proceeding as a party for the limited purpose requested by the person and in compliance with subrule 7.4(7).

7.23(8) Briefs.

a. Unless waived by the parties with the consent of the commission or presiding officer, times for the filing and service of briefs will be set by the commission or presiding officer. Unless otherwise ordered by the commission or presiding officer, initial briefs will be filed simultaneously by all parties and reply briefs will be filed simultaneously.

b. Initial briefs should contain a concise statement of the case and all arguments, with citations to the evidence, that the party intends to offer in support of its case. Unless otherwise ordered, a reply brief should be confined to refuting arguments made in the brief of an adverse party. Unless specifically ordered to brief an issue, a party's failure to address an issue by brief will not be deemed a waiver of that issue and does not preclude the commission or presiding officer from deciding the issue on the basis of evidence appearing in the record.

c. Every brief of more than 20 pages should contain at its beginning a table of contents with page references.

d. Briefs should comply with the following requirements:

- (1) The size of pages should be 8½ by 11 inches.
- (2) All printed matter should appear in at least 11-point type.
- (3) There should be margins of at least one inch on the top, bottom, right, and left sides of the sheet.
- (4) The body of the brief should be double spaced.
- (5) Footnotes may be single spaced.
- (6) The printed matter may appear in any pitch, as long as the characters are spaced in a readable manner. Any readable font is acceptable.

7.23(9) Oral arguments. The commission or presiding officer may set a time for oral argument to address issues raised by the parties during the proceeding or at the conclusion of the hearing or may set a separate date and time for oral argument. The commission or presiding officer may set a time limit for argument. Oral argument may be either in addition to or in lieu of briefs. Unless specifically ordered to argue an issue, a party's failure to address an issue in oral argument will not be deemed a waiver of the issue.

7.23(10) Record. The record of the case is maintained in the commission's electronic filing system. Unless the record is held confidential pursuant to the "public information and inspection of records" rule in 199—Chapter 1, parties and members of the public may examine the record and obtain copies of documents, including the transcript, when available.

7.23(11) Default.

a. If a party fails to appear at a hearing after proper service of notice, or fails to answer or otherwise respond to an appropriate pleading directed to and properly served upon that party, the commission or presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Default decisions or decisions rendered on the merits after a party has failed to appear at a hearing constitute final agency action unless otherwise ordered by the commission or presiding officer. However, within 15 days after the date of electronic notification or mailing of the decision, a motion to vacate may be filed with the commission. The motion to vacate should state all facts relied on by the moving party that show good cause existed for that party's failure to appear at the hearing or answer or otherwise respond to an appropriate pleading directed to and properly served upon that party. The stated facts should be substantiated by citation to evidence in the record or by affidavit attached to the motion. Unless otherwise ordered, adverse parties have ten days to respond to a motion to vacate. If the decision is rendered by a presiding officer, the commission may review it on the commission's own motion within 15 days after the date of notification or mailing of the decision.

c. The time for appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

d. A motion to vacate will not be granted except upon a finding of good cause. The burden of proof as to good cause is on the moving party. “Good cause” for purposes of this rule has the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

e. A presiding officer’s decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case. A presiding officer’s decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to the “interlocutory appeals” rule of 199—Chapter 7.

f. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the commission or presiding officer may schedule another contested case hearing.

g. A default decision may award any relief consistent with the record in the case. The default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a timely motion to vacate, an appeal pursuant to the “appeals to commission from a proposed decision of a presiding officer” rule of 199—Chapter 7, or a request for stay pursuant to the “rehearing and reconsideration” rule of 199—Chapter 7.

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