

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF ENERGY
BEFORE THE
BONNEVILLE POWER ADMINISTRATION

2012 RATE ADJUSTMENT PROCEEDING

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Docket Number

BP-12

SPECIAL RULES OF PRACTICE TO GOVERN THESE PROCEEDINGS

GROUPING

Parties with common interests or positions in these proceedings should group themselves to act as a joint party for purposes of filing, presentation of evidence, cross-examination, and briefing. Such grouping will be without derogation to the right of any party to represent a separate point of view where its position differs from that of the group in which it is participating.

To form a joint party, one member of the proposed joint party must email a list of proposed joint party members to the Hearing Clerks and to counsel for each proposed member. The Hearing Clerks will form the joint party, assign a joint party code, and email notice to all litigants, stating the joint party code and listing the joint party members. For joint party filing requirements, see BP-12-HOO-04, “DOCUMENT NUMBERING SYSTEM AND PRE-MARKING OF EXHIBITS AND BRIEFS.”

EVIDENCE

Expert Witnesses. Expert witnesses may testify in terms of opinion, provided that their testimony includes the reasons and the underlying data in support of their conclusions.

Headings. Each section of a litigant’s testimony must have a heading stating the subject matter of the section. (In these rules “litigants” refers to all parties and BPA.) These headings will not constitute evidence.

Self-Explanatory. Evidence should be self-explanatory. Exhibits must contain appropriate narrative or be accompanied by testimony explaining the source of the information used, how the exhibit is constructed, and the support for the conclusions. Methods used in statistical compilations must be stated, explained, and justified. Assumptions, estimates, and judgments must be expressly stated, and the basis for their adoption justified. Methods of allocation or other division of costs or revenues must be

explained and justified. The consequences of the methods adopted must be spelled out. Where appropriate, standard statistical tests must be made and their results stated. Work papers showing calculations must accompany evidence.

Computers. Witnesses must note in their testimony when computers have been used to obtain statistical results and must specifically list and justify the assumptions made. If calculations or printouts are too extensive for general distribution, they must be described and made available at the Public Information Office or at an office in Portland, Oregon, from the day the testimony is due until the day of the hearing. Objections to the adequacy of the opportunity for pre-hearing examination and discovery of these materials must be raised within 10 days after the day the testimony is due. The materials must be available at the hearing unless a reasonable request is made and granted for good cause not to do so. However, no delay at the hearing will be permitted for a party to analyze the materials.

Cross-References. Where one part of a multi-page exhibit is based on another part, appropriate cross-references must be made. A witness's evidence must indicate wherever the evidence is based on the evidence of another witness.

Official Notice. Litigants requesting official notice must provide a precise citation for the evidence for which it is requesting official notice and must furnish copies of the referenced item for the record and to all litigants.

Conformed Copies. When the Hearing Officer or Administrator strikes a portion of testimony or an exhibit from the record, the offering litigant must file a conformed copy of the evidence showing the portion that was struck as strikethrough deletions. The conformed copy must be filed using the same document number but with the designation "CC" at the end (*e.g.* BP-12-E-BPA-15-CC). In addition, when filing the conformed copy on the secure website, the offering litigant must denote in the "related document" field the document number of the order striking the evidence.

Cross-Examination Exhibits. If a document is offered into evidence during cross-examination, and only part of the document is accepted into evidence, the document must be conformed by the offeror to include only the part of the document that was received in evidence. The new document must be submitted to the Hearing Clerks for inclusion in the official record within 24 hours of the Hearing Officer's order allowing its admission, and the offeror must file a conformed copy, as stated above, on the secure website.

DISCOVERY

Clarification Discovery. Clarification Discovery refers to informal inquiries about the basic facts of a witness's testimony or exhibits, such as: how an exhibit was constructed, sources of data, assumptions and bases for assumptions, how conclusions were derived, or description of methods used in technical or statistical studies or in allocations. Clarification Discovery, and not cross-examination, is to be used to understand prepared testimony and exhibits.

Clarification sessions will be held regarding BPA's initial proposal and each subsequent round of testimony filed by BPA or any party. Witnesses may be made available by telephone. Clarification sessions will be held without transcription. The testimony of witnesses not produced for Clarification Discovery in response to a request will be struck.

Data Requests. In addition to Clarification Discovery, the litigants may submit data requests. Data requests are covered in, BP-12-HOO-03, "ORDER ON DATA REQUESTS AND DATA RESPONSES."

CROSS-EXAMINATION

Notice of intent to cross-examine must be served by the date set forth in BP-12-HOO-01, "ORDER ESTABLISHING SCHEDULE," on BPA's General Counsel Office and directed to Mr. Peter J. Burger, LP-7, and Mr. Barry Bennett, LC-7, via email to pjburger@bpa.gov and bbennett@bpa.gov. In addition, notice must be served on the BP-12 Hearing Clerks at rateclerk@bpa.gov.

Witnesses may not be asked to perform calculations on the stand. If calculations and their results are submitted to a witness on cross-examination, they must be in writing, must state the source of the data used, and must explain how the results are obtained. For information regarding proper service of witness testimony, see the "SERVICE OF DOCUMENTS" section below.

Cross-examination will be limited to witnesses whose testimony is adverse to the party wishing to cross-examine.

REBUTTAL

Rebuttal evidence must refer to the specific evidence being refuted (pages, lines, topic).

New affirmative matter (not in reply to another litigant's direct case) may not be included in rebuttal evidence.

SERVICE OF DOCUMENTS

A. Testimony and Exhibits

- 1) Service to the Hearing Clerks and Litigants. The 2012 Rate Adjustment Proceeding (BP-12) has its own secure website. The link to the secure website is on the webpage located at <https://secure.bpa.gov/ratecase/>. All documents must be submitted electronically to the secure website. Such submittal will also constitute service on all litigants. If the secure website is unavailable, service must be made by email to all litigants and the Hearing Clerks. Service may not be made by facsimile. Service of all documents must be made by 4:30 p.m., Pacific Time, on the appropriate deadline.
- 2) Access. Each party representative needing access to the secure website must request access via the website front page at <https://secure.bpa.gov/ratecase/> (follow “Request Access” hyperlink in left-hand menu and then select “Request Case Access” if you have been a party to a prior Bonneville rate case or “Create New Account” if a new user). When access is granted by the Hearing Clerks, the party representative will receive an email containing a unique username and password, which should be immediately personalized.
- 3) Other. Litigants must bring two copies of the pre-filed testimony and exhibits of each witness to the hearing for the court reporter on the day the witness appears.
- 4) Format. Briefs, pleadings, and all other documents must be submitted to the secure website in PDF format.

B. Cross-Examination Exhibits

Documents to be presented to a witness on cross-examination must be served on counsel for the witness and on the litigants by 4:30 p.m., Pacific Time, two business days before the witness is scheduled to appear. For witnesses appearing on a Monday, the due date for documents is the preceding Thursday at 4:30 p.m. For witnesses appearing on a Tuesday, the due date is the preceding Friday at 4:30 p.m.

In addition, litigants must provide the Hearing Clerks five copies of all cross-examination exhibits by 8:30 a.m. of the day the witness is to appear. The Hearing Clerks will distribute copies to the Hearing Officer, the witness, and the court reporter.

C. Final Post-Hearing Exhibit List

Each party must submit with its post-hearing initial brief a final revised exhibit list reflecting the status of all of its exhibits, including those admitted, withdrawn, and rejected during the hearing.

TELEPHONE CONFERENCES

Telephone conferences may be permitted in appropriate circumstances, provided that the following criteria are met: (1) there is a proposed agenda for the conference concerning the points to be considered and the relief, if any, to be requested during the conference; (2) all interested parties are represented on the line; (3) those on the line are authorized to speak and act on behalf of the party they represent; and (4) a court reporter is present on the line.

GENERAL

Objections and motions to strike shall state briefly the specific grounds for objection.

No party shall be a participant and vice versa. Participant comments submitted by a party will not be included in the record.

If testimony is based in whole or in part on the witness's understanding of the law as it applies to BPA ratemaking, the witness may so state in his testimony and, in order to provide context for the testimony, may testify to his understanding of the law as it applies to the positions he is advocating. In all other cases arguments and legal opinions will not be received into evidence and should be presented in briefs or legal memoranda. Legal memoranda, where appropriate, will be welcome.

All arguments raised by a party in its Initial Brief shall be deemed to have been raised in the party's Brief on Exceptions, regardless of whether such arguments have been included in the Brief on Exceptions.

COMMUNICATIONS

All communications and documents for the Hearing Officer must be filed with the BP-12 Hearing Clerks, Nancy Alexander and James Bennett, via email and/or the 2012 Rate Adjustment Proceeding Secure Website. The Hearing Clerks' email address is: rateclerk@bpa.gov. For informational purposes only, their mailing address is: Hearing Clerk – L-7, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

Their office is located at Bonneville Power Administration, 905 NE 11th Avenue,
Portland, OR 97232.

SO ORDERED, November 19, 2010

/ Samuel J. Petrillo/
Samuel J. Petrillo
BP-12 Hearing Officer