UNITED STATES OF AMERICA

U.S. DEPARTMENT OF ENERGY

BEFORE THE

BONNEVILLE POWER ADMINISTRATION

)

2016 RATE ADJUSTMENT PROCEEDING ) Docket Number BP-16

)

**SPECIAL RULES OF PRACTICE GOVERNING THIS PROCEEDING**

FORMING JOINT PARTIES

Parties with common interests or positions in this proceeding 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-16-HOO-04, “DOCUMENT NUMBERING SYSTEM AND PRE-MARKING OF EXHIBITS AND BRIEFS.”

DISCOVERY

Clarification Sessions. Clarification 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, 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 any party. Witnesses may be made available by telephone. Clarification sessions will be held without transcription. Responses provided at clarification sessions are not part of the evidentiary record. The testimony of witnesses not produced for clarification may be subject to a motion to strike.

Data Requests. In addition to clarification, the litigants[[1]](#footnote-1) may submit data requests. Data requests are addressed in BP-16-HOO-03, “ORDER ON DATA REQUESTS AND DATA RESPONSES.”

Responses to Data Requests. Responses to data requests are not part of the evidentiary record unless the Hearing Offic

er admits them into evidence. A litigant may offer data requests and responses into evidence through an attachment, by making an oral motion during cross-examination of a witness who submitted a data response on behalf of a litigant, or by stipulation.

TESTIMONY AND EXHIBITS

Expert Witnesses. A witness qualified as an expert may testify in the form of an opinion. Conclusions set forth in the testimony of an expert witness must be supported by data and reasoning.

Headings. Each section of a litigant’s testimony must include a heading setting forth its subject matter. These headings will not constitute evidence.

Clarity of Evidence. 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 any conclusions. Methods used in statistical compilations must be stated, explained, and justified. Assumptions, estimates, and judgments must be expressly stated, along with the basis for their adoption. Similarly, methods of allocation or other division of costs or revenues must be explained and justified. The evidence must fully explain the consequences of adopting the proposed methods.

Computers. Witnesses must state in their testimony when computers have been used to obtain statistical results and must specifically list and justify any assumptions made. If calculations or printouts are too extensive for general distribution, they must be described and made available at the BPA Public Information Office or at an office in Portland, Oregon, from the day the testimony is due until the day of the hearing. Any objection to the opportunity for pre‑hearing examination and discovery of these materials must be filed within 10 days after the date the testimony is filed. The materials must be made available at the hearing unless the Hearing Officer finds, upon request, that there is good cause not to do so. In no event shall the hearing be delayed to allow a party to analyze computer-generated 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 testimony must indicate wherever it is based on another witness’s testimony.

Official Notice. Litigants requesting official notice must provide a precise citation for the material for which official notice is requested and must furnish copies of the referenced material 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 showing the portion of the testimony or exhibit that was struck with strike-through deletions.

Conformed copies must be filed using the same document number but with the designation “CC” at the end (*e.g.* BP-16-E-BPA-16-CC). In addition, when filing conformed copies on the 2016 Rate Case Secure Website, the offering litigant must denote the document number of the order striking the evidence in the “related document” field.

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 that part of the document received in evidence. The conformed document must be submitted to the Hearing Clerks for inclusion in the official record and the offeror must file a conformed copy, as stated above, on the secure website.

Rebuttal testimony. 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 testimony.

CROSS-EXAMINATION

Notice of intent to cross-examine must be served by the date set forth in BP-16-HOO-01, “ORDER ESTABLISHING SCHEDULE,” via email to counsel for the witnesses subject to cross-examination. The notice must also be served on the BP-16 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, the submissions must be in writing, must state the source of the data used, and must explain how the results were obtained. For information regarding the proper service of witness testimony, see the “SERVICE OF DOCUMENTS” section on the following page.

Cross-examination is limited to witnesses whose testimony is adverse to the party seeking to cross-examine.

SERVICE OF DOCUMENTS

# A. Testimony and Exhibits

1. Service to the Hearing Clerks and Litigants. The 2016 Rate Case (BP-16) has its own secure website. The link to the 2016 Rate Case Secure Website is on the webpage located at https://www.bpa.gov/secure/RateCase/. All documents must be submitted electronically to the secure website. Such submittal will 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 home page at https://www.bpa.gov/secure/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 you are a new user). When access is granted by the Hearing Clerks, the party representative will receive an email containing a unique username and password. The user should immediately log into the system and create a new password.

3) Other. Litigants must provide the court reporter with two copies of the pre-filed testimony and exhibits of each witness on the day the witness is scheduled to appear at the hearing.

4) Format. Briefs, pleadings, and all other documents must be submitted to the secure website in PDFformat.

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; and (3) those on the line are authorized to speak and act on behalf of the party they represent. If the Hearing Officer schedules a telephone conference, a court reporter must be present on the line.

GENERAL

Objections and motions to strike shall briefly state 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 on the witness’s understanding of the law as it applies to BPA ratemaking, the witness may so state in his or her 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 or she 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 may be filed where appropriate.

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 are included in the Brief on Exceptions.

COMMUNICATIONS

All communications and documents directed to the Hearing Officer must be filed with the BP-16 Hearing Clerks via email and/or the 2016 Rate Case Secure Website. The Hearing Clerks’ email address is [rateclerk@bpa.gov](\\\\HFILE.BUD.BPA.GOV\\LEGAL_WG\\CLERKS\\Local Settings\\Temporary Internet Files\\OLK14D\\rateclerk@bpa.gov). Physical correspondence sent to the Hearing Clerks should be addressed to: Hearing Clerks – L-7, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

SO ORDERED, December 10, 2014.

*/s/ Samuel J. Petrillo*  Samuel J. Petrillo

BP-16 Hearing Officer

1. In these rules, “litigants” refers to all parties including BPA. [↑](#footnote-ref-1)