

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

2010 WHOLESALE POWER)		
AND TRANSMISSION RATE)	Docket Number	BPA-10
ADJUSTMENT PROCEEDING)		WP-10
)		TR-10

SPECIAL RULES OF PRACTICE TO GOVERN THESE PROCEEDINGS

DEFINITIONS

As used herein, *BPA* refers to the Bonneville Power Administration; *parties* refers to all persons admitted as parties to the proceedings; *litigants* refers to BPA and all parties.

CONCURRENT CASE

The 2010 Wholesale Power and Transmission Rate Adjustment Proceeding will consist of concurrent power and transmission cases using the same schedule, same Hearing Officer, and same two Hearing Clerks. There will be two sub-dockets, one for transmission rates and one for power rates. The transmission rates sub-docket is TR-10. The power rates sub-docket is WP-10. Both fall under the main docket, BPA-10. For filing requirements, see BPA-10-X-NN “DOCUMENT NUMBERING SYSTEM AND PRE-MARKING OF EXHIBITS AND BRIEFS.”

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. For joint filing requirements, see BPA-10-X-NN “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.

Relevance. Each section of a party's testimony must have a heading stating the subject matter of the section. 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. Where calculations or printouts are too extensive for general distribution, they must be described and a statement made of their availability at the Public Information Office or by examination prior to the hearing at an office in Portland, Oregon. Objections to the adequacy of the opportunity for pre-hearing examination and discovery of these materials must be raised promptly. 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. Parties 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 for all litigants.

Cross-Examination. 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.

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. The litigants are authorized to engage in Clarification Discovery to raise and resolve all such basic matters before the witness's appearance. Clarifying Discovery, and not cross-examination, is to be used to understand prepared testimony and exhibits.

Clarification sessions, as specified by the Hearing Officer, will be held for inquiries regarding BPA's presentation. Witnesses to be called by the agency or BPA employees with information that may be germane will be available for these inquiries. Witnesses residing outside the region may be made available by telephone. Clarification sessions will be held without transcription. After the parties file their direct cases, a second set of clarification sessions will be held at which the litigants may inquire about the presentations of the parties.

The testimony of witnesses not produced for Clarification Discovery in response to a request will be stricken.

Data Requests. The litigants may also submit data requests to each other. Data requests are covered in **BPA-10-X-NN**, "ORDER ON DATA REQUESTS AND DATA RESPONSES."

CROSS-EXAMINATION

Oral cross-examination may not be used to discover clarifying facts, or to repeat questions and answers from the clarifying sessions.

A witness 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). Such topical references must be neutral.

New affirmative matter (not in reply to another litigant's direct case or not a proper response to relevant cross-examination) may not be included in rebuttal evidence.

SERVICE OF DOCUMENTS

A. Testimony and Exhibits

- 1) Service to the Hearing Clerks and Litigants. Each sub-docket in the 2010 Wholesale Power and Transmission Rate Adjustment Proceeding (WP-10 and TR-10) has its own secure website. The link to each secure website is on the webpage located at <https://secure.bpa.gov/ratecase/>. All documents must be submitted electronically to the secure website pertaining to either WP-10 or TR-10, as appropriate. Such submittal will also constitute service on all litigants. If the secure website is unavailable, service must be made by e-mail to all litigants and the Hearing Clerks. Faxed material will not substitute for service in this proceeding. Service of all documents must be made by 4:30 p.m., Pacific Time, on the appropriate deadline.
- 2) 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.
- 3) 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, and will retain two copies for the Hearing Clerks' official files.

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, providing 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.

Arguments and legal opinions will not be received into evidence. They are the province of the lawyer, not the witness. They 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 BPA-10 Hearing Clerks, James Bennett and Patrick McAtee, via email and/or the 2010 Wholesale Power and Transmission Rate Adjustment Proceeding Secure Website. The Hearing Clerks' email address is 2010hearingclerk@bpa.gov. Their telephone number is (503) 230-7670. For informational purposes only, their mailing address is James Bennett/Patrick McAtee, Hearing Clerks, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208-3621. Their office is located at Bonneville Power Administration, 905 NE.11th Avenue, Portland, OR 97232.

SO ORDERED, *Insert Date*, 2009

DRAFT