

From: Paul Kramer
To: Carlsbad POS
Date: 12/31/2009 4:47 PM
Subject: Fwd: Re: Parties: 07-AFC-6 Carlsbad POS

DOCKET	
07-AFC-6	
DATE	<u>DEC 31 2009</u>
RECD.	<u>DEC 31 2009</u>

Carlsbad AFC parties:

The email from Ms. Siekmann prompts me to make the following general statements, based on something I recently sent to the Ivanpah AFC parties. Keep in mind that these are general, hypothetically based comments; a committee ruling on any objections to evidence or testimony will be based on the specific circumstances and facts then at hand. Nonetheless, I hope that this will help you to prepare your responses due in preparation for the hearings.

The exchange of opening (due January 6) and then rebuttal evidence (due January 14) and the identification of witnesses in Prehearing Conference Statements (also due January 14) is intended to avoid the introduction of last minute "surprise" evidence, whether live or on paper. Documents or testimony offered at the hearings that were not previously identified are subject to exclusion on the motion of a party or the Committee, unless good cause for its late introduction is shown. Changes to earlier filed testimony made after the filing deadline may be subject to exclusion; I can be no more specific until a specific example presents itself. For what its worth, my comments to the Ivanpah parties were prompted, in large part, by a party purporting to reserve the right to modify its testimony up to the end of the Evidentiary Hearings.

Evidence is the testimony of an individual--facts, opinions, or both--offered to prove a point or to refute something another party has said in its testimony. Questions about another party's testimony (i.e., the FSA) are probably in the nature of cross-examination. You don't need to supply the questions in advance but you do need, in your Prehearing Conference Statement, to indicate your intention to cross-examine on the topic and identify any specific witnesses you want to be made available at the hearings. Comment about another party's testimony is probably argument on the law or facts or public comment, neither of which is required, but can be submitted, prior to the hearings. (Remember that public comment cannot by itself support a Commission finding; it can only serve to support sworn testimony.)

If you intend to ask the Committee to take official notice of an official document or report, you must identify that document along with your opening testimony. This gives the other parties a chance to look at the document and respond, if necessary, with rebuttal testimony. Courtesy suggests that you provide a link to the document and, if you are providing electronic documents, include a copy on that CD. If the document is not readily available via a link, then you must provide electronic or paper copies.

Regarding copies of exhibits, the Notice says:

"Printed or electronic (i.e., email or compact disk) copies of the Exhibits shall be provided to the Committee and other parties no later than 4 p.m. on the dates set forth in the filing schedule table, above. If sent by email, a compact disk or paper copy shall also be placed in the first class or overnight mail by the deadline. In addition, a printed copy of all exhibits shall be provided to the Hearing Officer no later than January 21, 2010."

It is normally enough to supply one electronic and one paper copy to Dockets as the filing regulations allow. to Talk to the Staff Project Manager about how many copies (CD or paper) that staff needs.

The Committee needs, as another portion of the notice says, two hard copy sets, one set collating the exhibits by exhibit number and the other breaking down the exhibits by (FSA) topic area.

Rules quite often have exceptions, of course, and, with good cause shown, more leeway might be

allowed. It is not something you can or should rely upon, however.

Paul Kramer
Hearing Officer

>>> Kerry Siekmann <siekmann1@att.net> 12/30/2009 2:02 PM >>>

Maggie

I am an intervener regarding AFC-6 Carlsbad Project. I am a little confused regarding procedures.

- 1) Almost all of my testimony is related to the FSA- by comment or question? Is that proper?
- 2) For testimony due on Jan. 6, 2010, do I need to docket it and send hard copies to the Proof of Service List?
- 3) Am I able to edit my testimony after it is docketed?
- 4) Do I need to send hard copies to each of the Energy Commission individuals listed as they are all at the same address?
- 5) What if I am not able to complete all of my expert witness testimony by Jan. 6?
Can I summarize it and docket their declaration and resume by Jan 14?
- 6) Do I need to have all of my exhibits by Jan. 6 or Jan. 14 or Jan. 20 or Feb. 1?

From: Maggie Read <Mread@energy.state.ca.us>

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Sent: Wed, December 30, 2009 9:27:22 AM

Subject: Parties: 07-AFC-6 Carlsbad POS

A hard copy of the attached document,
(All Parties Letter and Proof of Service List)
will be delivered and filed with the Docket Unit.
You will be receiving a hard copy in the mail shortly.

If you have any questions, please do not hesitate to contact the office.

Regards,

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