

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceedings Rulings
Release No. 6535 / April 2, 2019

Administrative Proceeding
File No. 3-15124

In the Matter of

**David F. Bandimere and
John O. Young**

Scheduling Order

Based on correspondence with the parties, I ORDER the following schedule:

- July 29, 2019: The parties shall exchange and file witness lists and expert disclosures.
- August 5, 2019: The parties shall exchange and file exhibit lists and exchange pre-marked exhibits.
- August 12, 2019: The parties shall exchange and file objections to witnesses and exhibits, if any, and motions in limine, if any.
- August 19, 2019: Deadline for parties to seek subpoenas for hearing witnesses.¹
- August 26, 2019: The parties shall file responses to motions in limine and prehearing briefs, and exchange and file stipulations.

¹ To minimize inconvenience and provide adequate notice to third parties, the parties are encouraged not to wait to submit requests for such subpoenas.

A final telephonic prehearing conference shall be held at 2:00 p.m. EDT.

September 9, 2019: Hearing commences at a location to be determined.

The parties are reminded that all filings must be filed in hard copy with the Office of the Secretary.² They are asked to e-mail courtesy copies of filings to alj@sec.gov in Word and in PDF text-searchable format. Electronic copies of exhibits should not be combined into a single PDF file, but sent as separate attachments, and should be provided in text-searchable format whenever practicable.

Hearing Guidelines

I will follow the general guidelines described below during these proceedings. The parties should review what follows *and promptly raise any objections they may have to these guidelines.*

- 1. Subpoenas.** A party's motion to quash a subpoena will be due within five business days of the submission of the subpoena for signing. Any opposition to the motion to quash will be due within five business days thereafter. A party moving to quash a subpoena duces tecum based on a claim of privilege must support its motion with a declaration and privilege log.³
- 2. Exhibits.** The parties should confer and attempt to stipulate to the admissibility of exhibits. To avoid duplication of exhibits, the parties should identify joint exhibits. Exhibits are not filed with the Office of the Secretary until the close of the hearing at my instruction.
- 3. Exhibit lists.** A comprehensive exhibit list prevents a party opponent from being surprised in the middle of the hearing. Exhibit lists shall be exchanged among the parties and should include all documents that a party expects to use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or which are presumptively inadmissible. Each party should serve its opponent

² See 17 C.F.R. §§ 201.151, .152.

³ See *Dorf & Stanton Commc'ns, Inc. v. Molson Breweries*, 100 F.3d 919, 923 (Fed. Cir. 1996); *Caudle v. District of Columbia*, 263 F.R.D. 29, 35 (D.D.C. 2009).

with any amendments to its exhibit list. Because I rely on the parties' exhibit lists, the parties should provide me with a paper copy of their final exhibit lists at the beginning of the hearing. There is no need to submit exhibit lists to my office before the hearing. Following the hearing, I will issue a separate order directing the parties to file a list of all exhibits, admitted and offered but not admitted, together with citations to the record indicating when each exhibit was admitted.

4. **Expert reports and testimony.** Expert witness disclosures must comply with Rule of Practice 222(b)(1). Because this Rule is modeled on Federal Rule of Civil Procedure 26(a)(2)(B), the parties should look to Rule 26(a)(2)(B) and cases interpreting it for guidance. Failure to comply with the requirements of Rule 222(b) may result in the striking of an expert's report.⁴ The filing of the expert's report according to the prehearing schedule essentially constitutes the filing of the expert's direct testimony. During the hearing, the expert will not be subject to direct examination, and will simply be sworn in and proffered for cross-examination. On request, however, a party may conduct a brief direct examination of the party's expert.
5. **Hearing schedule.** The first day of the proceeding will begin at 9:30 a.m. Unless circumstances require a different schedule, we will begin each subsequent day at 9:00 a.m. Each day of the proceeding should last until at least 5:15 p.m. I generally take one break in the morning, lasting about fifteen minutes, and at least one break in the afternoon. I generally break for lunch between noon and 12:30 p.m., for about one hour.
6. **Hearing issues – Examination.**
 - a. In general, the Division of Enforcement presents its case first because it has the burden of proof. Respondent then presents its case. If necessary, the parties may agree to proceed in some other order and may take witnesses out of order.
 - b. If the Division calls a non-party witness that Respondent also wishes to call as a witness, Respondent should cross-examine the witness as if he were calling the witness in his own case. This means that Respondent's cross-examination of the witness in this circumstance may exceed the scope of what was covered by Division's direct examination of that same witness. This will avoid

⁴ Cf. Fed. R. Civ. P. 37(c).

the need to recall a witness just so the witness can testify for Respondent's case.

- c. In general, cross-examination may be conducted by leading questions, even as to Division witnesses that Respondent wishes to call in its own case. If Respondent is called as a witness in the Division's case, Respondent's counsel may not ask leading questions on cross-examination. Similarly, if a Commission employee is called as a witness for Respondent, the Division may not ask leading questions on cross-examination.
 - d. Avoid leading questions on direct examination. Leading questions during direct examination of a non-hostile witness are objectionable. Repeatedly having to rephrase leading questions slows down the hearing.
7. **Pleadings.** Prehearing and posthearing briefs are limited to 14,000 words.⁵ Parties may seek leave to exceed this limit through a motion filed at least seven days before the relevant briefing deadline. To enhance the readability of pleadings, I urge counsel to limit the use of acronyms to those that are widely known.⁶ For the same reason, I ask that counsel use the same font size in footnotes as that used in the body of a filing.

James E. Grimes
Administrative Law Judge

⁵ Cf. 17 C.F.R. § 201.450(c) (imposing a word-limit for briefs filed before the Commission).

⁶ See *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1320–21 (D.C. Cir. 2014) (Silberman, J., concurring).