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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1642/July 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15766

In the Matter of CLEAN ENERGY CAPITAL, LLC AND SCOTT A. BRITTENHAM	GENERAL PREHEARING ORDER

On February 25, 2014, the Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings. Respondents were served with the OIP on March 3, 2014, and filed an answer on March 26, 2014. A hearing is scheduled to begin on August 11, 2014, in Los Angeles, California.

This order sets forth some of the general rules and guidelines I will follow during these proceedings.

1. Hearing schedule. The first day of the proceeding will begin at 9:30 a.m. Unless circumstances require a different schedule, each subsequent day will begin 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 15 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 and 15 minutes.

2. Exhibit lists. The parties have exchanged exhibit lists and have submitted a joint exhibit list. The parties should serve their opponents with any amendments to their individual exhibit lists. 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. Likewise, if the joint exhibit list is amended, the parties should provide me with a paper copy at the beginning of the hearing. There is no need in the interim to submit amendments to my office. In order to avoid surprise, a party's exhibit list should include, in addition to documents on which a party intends to affirmatively rely, documents that are relevant only for impeachment purposes or which are presumptively inadmissible. 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.

3. Expert reports and testimony. I prefer to streamline the hearing process by substituting the expert's report for direct testimony. The filing of an expert's report according to the current 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. At need, I will entertain requests for a brief direct examination of a party's expert.

4. Foundation and hearsay. Evidence that is irrelevant, immaterial, or unduly repetitious is inadmissible; all other evidence is presumptively admissible. 17 C.F.R. § 201.320. As a result, hearsay objections will generally be denied. The fact that evidence constitutes hearsay goes to weight, not admissibility, and is thus a proper subject for cross-examination or post-hearing briefing. Similarly, it is generally unnecessary for a party to lay a foundation for the admission of an exhibit or to call a document custodian as a witness. Laying a foundation, however, may enhance the probative value of a piece of evidence. A party may therefore lay a foundation if the party deems doing so appropriate.

5. Examination.

    a. In general, the Division of Enforcement presents its case first, because it has the burden of proof. The Respondents then present their 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 a Respondent also wishes to call as a witness, the Respondent should cross-examine the witness as if he or she were calling the witness in his or her own case. This means that cross-examination may exceed the scope of direct examination. This will avoid the need to recall a witness just so the witness can testify for a Respondent's case.

    c. I am flexible regarding the manner of presenting a Respondent's testimony, so long as the parties agree on it. By way of example, if the Division calls a Respondent as its last witness, the parties may agree that the Respondent's counsel will conduct the direct examination, followed by the Division's cross-examination, which may exceed the scope of direct. In the absence of any agreement, a Respondent's testimony will proceed in the usual manner, i.e., the Respondent will be called as a witness and examined potentially multiple times. If the Division calls a Respondent as witness and that Respondent later testifies as part of his or her own case, the Division's cross-examination during the Respondent's case will be limited to the scope of the direct examination.

    d. In general, cross-examination may be conducted by leading questions, even as to Division witnesses that a Respondent wishes to call in his own case. Counsel may

not lead his or her client, however. Thus, if a Respondent is called as a witness in the Division's case, that Respondent's counsel may not ask leading questions on cross-examination. Similarly, if a Commission employee is called as a witness for a Respondent, the Division may not ask leading questions on cross-examination.

6. Other hearing issues.

    a. Avoid leading questions on direct. Leading questions during direct of a non-hostile witness are objectionable. Repeatedly having to rephrase leading questions slows down the hearing.

    b. Hit the high points on cross. It is a waste of time to wade into every bit of minutiae that is related to your case. Cross-examination is more effective and less stultifying if you emphasize the strong points and address tangential points quickly, if at all.

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James E. Grimes
Administrative Law Judge