

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

2007 WHOLESALE POWER RATE
ADJUSTMENT PROCEEDING

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)

BPA Docket WP-07

**ORDER AMENDING MOTION TO AMEND ORDER ESTABLISHING
SCHEDULE**

On February 8, 2006, the Bonneville Power Administration (BPA) filed a Motion to Amend Order Establishing Schedule designated WP-07-M-15 (Motion). The Motion was granted February 10, 2006 by Order WP-07-O-10 which included the following paragraph at page 1:

BPA asserts that Parties already in this proceeding have been notified regarding the BPA proposed supplement and schedule and that none has interposed any objection, but BPA has been requested to hold a Scheduling Conference on February 16, 2006.

On February 13, 2006, BPA filed a Motion to Clarify Motion to Amend Order Establishing Schedule (Motion to Clarify). In the Motion to Clarify, BPA states as follows:

At the settlement conference, BPA asked the Parties if any of them had any objections to the Motion and it was BPA's understanding that the only concern was with the proposed schedule. Based on this understanding, BPA's Motion contained the statement: "The Rate Case Parties that have commented on the Motion indicated that they are not opposed to the Motion, but requested that a scheduling conference be held on February 16, 2006." It has since come to BPA's attention that one of the Parties was not comfortable with this assertion. Hence, BPA now requests that its Motion be amended by striking the previously-cited sentence and replacing it with the following sentence: "Most of the Rate Case Parties that have commented on the Motion indicated that they are not opposed to the Motion, but requested that a scheduling conference be held on February 16, 2006."¹

Discussion. It is central to the notion of fair play that parties have sufficient opportunity to respond to motions filed by other parties in a proceeding. Consequently, a waiver of the period in which to respond to a motion must be predicated upon the prior notification of all parties and receipt of their consent (or, at the very least, failure to

¹ *Motion to Clarify*, pp. 1-2.

object) to the motion. Such consent, if prior to filing the motion, must be clearly stated in the portion of the motion containing the request for waiver of the response period as a representation of the movant's counsel.

In this instance, "one of the Parties was not comfortable with [BPA's] assertion." Had the Party indicated to BPA that it opposed BPA's Motion, BPA would have been obliged to note that fact in its Motion and it would have been necessary for the Hearing Officer to afford the Party an opportunity to respond to the Motion, albeit on an expedited basis. However, it appears that all Parties are now satisfied with the proposed resolution of the misunderstanding of BPA's counsel and the Motion to Clarify shall be granted.

ORDER

1. The Bonneville Power Administration Motion to Clarify Motion to Amend Order Establishing Schedule GRANTED.

2. The Record in this proceeding shall reflect the following changes to WP-07-M-15:

(a) The following sentence on page 2 is deleted: "The Rate Case Parties that have commented on the Motion indicated that they are not opposed to the Motion, but requested that a scheduling conference be held on February 16, 2006."

(b) The following sentence is inserted in place of the sentence deleted in 2(a), above: "Most of the Rate Case Parties that have commented on the Motion indicated that they are not opposed to the Motion, but requested that a scheduling conference be held on February 16, 2006."

SO ORDERED, February 13, 2006.

/s/ Allan J. Arlow
Allan J. Arlow, ALJ
WP-07
BPA Hearing Officer