

PUBLIC  
05-05 2014  
569749

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the Matter of )  
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Ferrellgas Partners, L.P., a limited partnership, )  
and )  
 )  
Ferrellgas L.P., a limited partnership, also doing )  
business as Blue Rhino, and ) DOCKET NO. 9360  
 )  
 )  
Amerigas Partners, L.P., a limited partnership, )  
also doing business as Amerigas Cylinder )  
Exchange, and )  
 )  
 )  
UGI Corporation, a corporation, )  
Respondents. )

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SCHEDULING ORDER

- June 6, 2014 - Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- June 20, 2014 - Respondent Counsel provides preliminary witness lists (not including experts) with a brief summary of the proposed testimony.
- August 8, 2014 - Deadline for issuing document requests, interrogatories and subpoenas duces tecum, except for discovery for purposes of authenticity and admissibility of exhibits
- August 14, 2014 - Complaint Counsel provides expert witness list.
- August 21, 2014 - Respondent Counsel provides expert witness list.
- August 28, 2014 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.

- September 1, 2014 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- September 25, 2014 - Deadline for Complaint Counsel to provide expert witness reports.
- October 9, 2014 - Deadline for Respondent Counsel to provide expert witness reports. Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
- October 10, 2014 - Complaint Counsel provides to Respondent Counsel its final proposed witness and exhibit lists, including depositions or designated portions thereof, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.  
  
Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness including its expert witnesses
- October 17, 2014 - Respondent Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions or designated portions thereof, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.  
  
Respondent Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness including its expert witnesses
- October 20, 2014 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b). See Additional Provision 7.
- October 20, 2014 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of rebuttal is presented,

Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondents).

October 23, 2014 - Exchange deposition transcript conference designations.

October 27, 2014 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert reports.

To the extent the parties stipulate to certain issues, the parties shall prepare a Joint Exhibit which lists the agreed stipulations.

Counsel may present any objections to the final proposed witness lists and exhibits, including to any designated deposition testimony. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a Joint Exhibit which lists the exhibits to which neither side objects. Any Joint Exhibit will be signed by each party (Do not include a signature line for the ALJ)

December 22 2014 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

#### ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: [oalj@ftc.gov](mailto:oalj@ftc.gov). The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. The [oalj@ftc.gov](mailto:oalj@ftc.gov) email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall include the OALJ email address, or the email address of any OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. 410 as the place of service. The subject line of all electronic submissions to [oalj@ftc.gov](mailto:oalj@ftc.gov) shall set forth only the Docket Number and the title of the submission. The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges. The parties are reminded that all filings with the Office of the Secretary, including electronic filings, are governed by the provisions of Commission Rule 4.3(d), which states: "Documents must be received in the Office of the Secretary of the Commission by 5:00 p.m. Eastern time to be deemed filed that day. Any documents received by the agency after 5:00 p.m. will be deemed filed the following business day."

2. The parties shall serve each other by electronic mail and shall include "Docket 9360" in the re line and all attached documents in .pdf format. Counsel and Respondent Counsel agree to waive their rights to Service under 16 C.F.R. § 4.1(a)

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss or a motion for summary decision) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also “recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference.” Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 750 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain

accordance with Provision 6 of this Scheduling Order and 16 C.F.R. §3.45(e)

9. Motions in limine are discouraged. Motion in limine refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is

14. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from ~~parties~~ shall provide copies of the documents received from non-parties to the opposing party within three business days of ~~receiving~~ the documents. No deposition of a ~~party~~ shall be scheduled between the time ~~a party~~ provides documents in response to a subpoena duces ~~tecum~~ ~~party~~, and 3 days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a ~~party~~ produces those documents at the time of the deposition as agreed to by all parties involved.

15. The final witness lists shall represent counsels' good faith ~~designation~~ of all potential witnesses who counsel reasonably expect may be called in ~~their case~~. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling ~~order~~. The final proposed witness list may not include additional witnesses not listed in the preliminary witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

16. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. ~~Additional exhibits may be added after the submission of the final list only by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.~~

17. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

18. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

19. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications ~~authdr~~ by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case. Unless otherwise agreed by the parties, the experts' notes and drafts of expert reports need not be produced. Likewise, communications between experts and with

counsel or consultants need not be produced unless relied upon by the expert in formulating an opinion in this case.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by ~~the~~ parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to ~~be~~ for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been



24. At the final prehearing conference, counsel will be required to produce all documents to be introduced at trial. The parties will be required to produce all documents in advance of the final prehearing conference and will be required to produce all documents in advance of the final prehearing conference.