

without the prior, written approval of the General Counsel.

§ 2608.202 Factors OGE will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

- (a) The purposes of this part are met;
- (b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;
- (c) OGE has an interest in the decision that may be rendered in the legal proceeding;
- (d) Allowing such testimony or production of records would assist or hinder OGE in performing its statutory duties or use OGE resources where responding to the demand or request will interfere with the ability of OGE employees to do their work;
- (e) Allowing such testimony or production of records would be in the best interest of OGE or the United States;
- (f) The records or testimony can be obtained from other sources;
- (g) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;
- (h) Disclosure would violate a statute, Executive order or regulation;
- (i) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;
- (j) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;
- (k) Disclosure would result in OGE appearing to favor one litigant over another;
- (l) Disclosure relates to documents that were produced by another agency;
- (m) A substantial Government interest is implicated;

(n) The demand or request is within the authority of the party making it; and

(o) The demand or request is sufficiently specific to be answered.

§ 2608.203 Filing requirements for demands or requests for documents or testimony.

You must comply with the following requirements whenever you issue demands or requests to an OGE employee for official records and information or testimony:

- (a) Your request must be in writing and must be submitted to the General Counsel. If you serve a subpoena on OGE or an OGE employee before submitting a written request and receiving a final determination, OGE will oppose the subpoena on grounds that your request was not submitted in accordance with this subpart.
- (b) Your written request must contain the following information:
 - (1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;
 - (2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;
 - (3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;
 - (4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on OGE to produce the records or provide testimony;
 - (5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an OGE employee, such as a retained expert;
 - (6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;
 - (7) A description of all prior decisions, orders, or pending motions in the

§ 2608.204

case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require with each OGE employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The Office of Government Ethics reserves the right to require additional information to complete your request where appropriate.

(d) Your request should be submitted at least 45 days before the date that records or testimony is required. Requests submitted in less than 45 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with your request.

§ 2608.204 Service of subpoenas or requests.

Subpoenas or requests for official records or information or testimony must be served on the General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

§ 2608.205 Processing demands or requests.

(a) After service of a demand or request to testify, the General Counsel will review the demand or request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) The Office of Government Ethics will process requests in the order in which they are received. Absent exigent or unusual circumstances, OGE will respond within 45 days from the date that we receive it. The time for response will depend upon the scope of the request.

5 CFR Ch. XVI (1-1-05 Edition)

(c) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of OGE or the United States or for other good cause.

§ 2608.206 Final determination.

The General Counsel makes the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and the court or other authority of the final determination, the reasons for the grant or denial of the demand or request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of an OGE employee.

§ 2608.207 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of OGE employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The Office of Government Ethics may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current OGE employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of OGE unless testimony is being given on behalf of the United States (see also §2635.805 of this chapter).