

# RULES OF PROCEDURE

September 12, 2018





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## **RULES OF PROCEDURE**

### **Section 1010.1 General Provisions**

(a) General rule of applicability. These rules apply to all proceedings conducted under the procedural requirements contained in Section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. § 839e(i), for the purpose of:

- (1) Revising or establishing rates under Section 7 of the Northwest Power Act;
- (2) Revising or establishing terms and conditions of general applicability for transmission service on the Federal Columbia River Transmission System pursuant to Section 212(i)(2)(A) of the Federal Power Act, 16 U.S.C. § 824k(i)(2)(A); or
- (3) Addressing other matters the Administrator determines are appropriate for such rules.

(b) Exceptions to general rule of applicability. These rules do not apply to:

- (1) Proceedings regarding implementation of rates or formulae previously adopted by the Administrator and approved, on either an interim or final basis, by the Federal Energy Regulatory Commission; or
- (2) Proceedings required by statute or by contract, in which the Administrator does not propose either (a) a new rate, formula rate, discount, credit, surcharge, or other rate change, or (b) any new terms and conditions of transmission service or revisions thereto.

(c) Effective date. These rules will become effective 30 days after publication of the final rules in the *Federal Register*.

(d) Scope of rules. These rules are intended to establish procedures and processes for all proceedings described in paragraph (a) of this section. These rules do not establish substantive standards for the Administrator's final decisions on issues in such proceedings.

(e) Waiver. To the extent permitted by law, the Administrator may waive any section of these rules or prescribe any alternative procedures the Administrator determines to be appropriate.

(f) Computation of time. Except as otherwise required by law, any period of time specified in these rules or by order of the Hearing Officer is computed to exclude the day of the event from which the time period begins to run and any day that is not a Business Day. The last day of any time period is included in the time period, unless it is not a Business Day. If the last day of any time period is not a Business Day, the period does not end until the close of business on the next Business Day.

### **Section 1010.2 Definitions**

Capitalized terms not otherwise defined in these rules have the meanings specified below.

- (a) "Administrator" means the Bonneville Administrator or the acting Administrator.
- (b) "Bonneville" means the Bonneville Power Administration.
- (c) "Business Day" means any day that is not a Saturday, Sunday, day on which Bonneville closes and does not reopen prior to its official close of business, or legal public holiday as designated in 5 U.S.C. 6103.
- (d) "Commercially Sensitive Information" means information in the possession of a Litigant (including its officers, employees, agents, or experts) that is not otherwise publicly available and

has economic value or could cause economic harm if disclosed, including but not limited to information that is copyrighted, licensed, proprietary, subject to a confidentiality obligation, or contains trade secrets or similar information that could provide a risk of competitive disadvantage or other business injury.

(e) "Counsel" means any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory, or the District of Columbia. Counsel appearing in a proceeding must conform to the standards of ethical conduct required of practitioners in the Federal courts of the United States.

(f) "Critical Energy/Electric Infrastructure Information" or "CEII" means information related to (1) a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters; or (2) specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) does not simply give the general location of the critical infrastructure.

(g) "Cross-examination Exhibit" means any document or other material to be presented to a witness for any purpose on cross-examination.

(h) "Data Request(s)" means a written request for information in any form, including documents, or an admission submitted in accordance with Section 1010.12(b).

(i) "Draft Record of Decision" means the document that sets forth the Administrator's proposed decision on each issue in the pending proceeding.

(j) "Ex Parte Communication" means an oral or written communication (1) relevant to the merits of any issue in the pending proceeding; (2) that is not on the Record; and (3) with respect to which reasonable prior notice to Parties has not been given.

(k) "Evidence" means any material admitted into the Record by the Hearing Officer.

(l) "Federal Register Notice" means the notice identified under Section 1010.4.

(m) "Final Record of Decision" means the document that sets forth the Administrator's final decision on each issue in the pending proceeding.

(n) "Hearing Clerk" means the individual(s) assisting the Hearing Officer as designated in the Federal Register Notice.

(o) "Hearing Officer" means the official designated by the Administrator to conduct a proceeding under these rules.

(p) "Hearing Officer's Recommended Decision" means the document that sets forth the Hearing Officer's recommendation to the Administrator on each issue in a proceeding pursuant to Section 1010.1(a)(2).

(q) "Litigant(s)" means Bonneville and all Parties to the pending proceeding.

(r) "Participant" means any Person who is not a Party and who submits oral or written comments pursuant to Section 1010.8.

(s) “Party” means any Person whose intervention is effective under Section 1010.6. A Party may be represented by its Counsel or other qualified representative, provided that such representative conforms to the ethical standards prescribed in Section 1010.2(e).

(t) “Person” means an individual; partnership; corporation; limited liability company; association; an organized group of persons; municipality, including a city, county, or any other political subdivision of a state; state, including any agency, department, or instrumentality of a state; a province, including any agency, department, or instrumentality of a province; the United States or other nation, or any officer, or agent of any of the foregoing acting in the course of his or her employment or agency.

(u) “Prefiled Testimony and Exhibits” means any testimony, exhibits, studies, documentation, or other materials in a Litigant’s direct or rebuttal case submitted in accordance with the procedural schedule. Prefiled Testimony and Exhibits do not include pleadings, briefs, or Cross-examination Exhibits.

(v) “Rate” means the monetary charge, discount, credit, surcharge, pricing formula, or pricing algorithm for any electric power or transmission service provided by Bonneville, including charges for capacity and energy. The term excludes, but such exclusions are not limited to, transmission line losses, leasing fees, or charges from Bonneville for operation and maintenance of customer-owned facilities. A rate may be set forth in a contract; however, other portions of a contract do not thereby become part of the rate for purposes of these rules.

(w) “Record” means (1) Evidence; (2) transcripts, notices, briefs, pleadings, and orders from the proceeding; (3) comments submitted by Participants; (4) the Hearing Officer’s Recommended Decision, if applicable; (5) the Draft Record of Decision, if any; and (6) such other materials and information as may have been submitted to, or developed by, the Administrator.

(x) “Secure Website” means the website established and maintained by Bonneville for proceedings under these rules.

### **Section 1010.3 Hearing Officer**

(a) The Hearing Officer is responsible for conducting the proceeding, managing the development of the Record, and resolving procedural matters. In addition, in a proceeding pursuant to Section 1010.1(a)(2), the Hearing Officer is responsible for making a Recommended Decision to the Administrator as set forth in Section 1010.20.

(b) The Hearing Officer shall not expand the scope of the proceeding beyond the scope established in the Federal Register Notice. If the Hearing Officer is uncertain whether a potential action would improperly allow information outside the scope to be entered into Evidence, the Hearing Officer shall certify the question directly to the Administrator for a determination.

(c) The Hearing Officer may, in his or her discretion, issue special rules of practice to implement these rules, provided that such special rules are consistent with these rules.

(d) Except as provided in Section 1010.12(c), the Hearing Officer may issue protective orders or make other arrangements for the review of information requested in a Data Request.

(e) The Hearing Officer may reject or exclude all or part of any document or materials not submitted in accordance with these rules, or order a Litigant to conform such document or materials to the requirements of these rules.

(f) Litigants with questions about administrative issues should contact the Hearing Clerk. The Hearing Clerk's contact information will be provided in the Federal Register Notice.

#### **Section 1010.4 Initiation of Proceeding**

(a) Any proceeding conducted under these rules will be initiated on the day a notice of Bonneville's initial proposal is published in the Federal Register.

(b) The *Federal Register* Notice will:

(1) State, as applicable, the proposed rates and/or the proposed new or revised terms and conditions of transmission service, the justification and reasons supporting such proposals, and any additional information required by law;

(2) State the procedures for requesting access to the Secure Website for purposes of filing petitions to intervene and the deadline for filing such petitions;

(3) State the deadline and the procedures for Participants to submit comments;

(4) If applicable, state that the proceeding is an expedited proceeding under Section 1010.22 and explain the reasons for the expedited proceeding;

(5) State the date on which the Hearing Officer will conduct the prehearing conference;

(6) In a proceeding pursuant to Section 1010.1(a)(2), state the date on which the Hearing Officer will issue the Hearing Officer's Recommended Decision, which date shall be used by the Hearing Officer in establishing the procedural schedule for the proceeding;

(7) State the date(s) on which the Administrator expects to issue the Draft Record of Decision, if any, and the Final Record of Decision, which date(s) shall be used by the Hearing Officer in establishing the procedural schedule for the proceeding;

(8) Define the scope of the proceeding and specify:

(i) Issues that are not within the scope of the proceeding;

(ii) That only Bonneville may prescribe or revise the scope of the proceeding;

(iii) That Bonneville may revise the scope of the proceeding to include new issues that arise as a result of circumstances or events occurring outside the proceeding that are substantially related to the rates or terms and conditions under consideration in the proceeding; and

(iv) That, if Bonneville revises the scope of the proceeding to include new issues, Bonneville will provide public notice, a reasonable opportunity to intervene, testimony or other information regarding such issues, and an opportunity for Parties to respond to Bonneville's testimony or other information.

(9) Provide other information that is pertinent to the proceeding.

#### **Section 1010.5 Ex Parte Communications**

(a) General Rule. No Party or Participant in any proceeding under these rules shall make *Ex Parte* Communications to the Administrator, other Bonneville executives, any Bonneville staff member, the Hearing Officer, or the Hearing Clerk. In addition, no Bonneville staff member shall make *Ex Parte* Communications to the Hearing Officer or the Hearing Clerk. The Administrator, other

Bonneville executives, Bonneville staff members, and the Hearing Officer shall not initiate or entertain *Ex Parte* Communications; however, communications among the Administrator, other Bonneville executives, and Bonneville staff members are not *Ex Parte* Communications.

(b) Exceptions. The following communications will not be considered *Ex Parte* Communications subject to paragraph (a) of this section:

- (1) Relating to matters of procedure only;
- (2) If otherwise authorized by law or other portions of these rules;
- (3) From or to the Federal Energy Regulatory Commission;
- (4) Which all Litigants agree may be made on an *ex parte* basis;
- (5) Relating to communications in the ordinary course of business, information required to be exchanged pursuant to contracts, or information that Bonneville provides in response to a Freedom of Information Act request;
- (6) Relating to a request for supplemental information necessary for an understanding of factual materials contained in documents filed in a proceeding under these rules and which is made after coordination with Counsel for Bonneville;
- (7) Relating to a topic that is only secondarily the object of a proceeding, for which Bonneville is statutorily responsible under provisions other than Northwest Power Act Section 7, or which is eventually decided other than through a Section 7(i) proceeding;
- (8) Between the Hearing Officer and Hearing Clerk or other staff supporting the Hearing Officer;  
or
- (9) Oral or written statements in meetings for which reasonable prior notice has been given.

(c) Application. The prohibitions contained in this Section 1010.5 apply from the day on which Bonneville publishes the *Federal Register* Notice and continue until the day the Administrator issues the Final Record of Decision in the proceeding.

(d) Notice of meetings. Bonneville will give reasonable prior notice to all Parties of any meeting that it intends to hold with any customer, customer group, or member of the public when it reasonably appears that matters relevant to any issue in the pending proceeding will be discussed.

(e) Written communications. Any written *Ex Parte* Communication received by the Administrator, other Bonneville executives, any Bonneville staff member, the Hearing Officer, or the Hearing Clerk will be promptly delivered to Counsel for Bonneville. The document will be posted for public review in a section of Bonneville's website for *ex parte* materials.

(f) Oral communications. If the Administrator, other Bonneville executives, any Bonneville staff member, the Hearing Officer, or the Hearing Clerk receives an oral offer of any *Ex Parte* Communication, they shall decline to listen to such communication and explain that such communication is prohibited by this Section 1010.5. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he or she will not consider the communication. The recipient shall promptly prepare a statement setting forth the substance of the communication and the circumstances thereof and deliver the statement to Counsel for Bonneville. The statement will be posted for public review on the *ex parte* website identified in paragraph (e) of this section.

(g) Notice and opportunity for rebuttal. Bonneville will notify Parties when any *Ex Parte* Communication has been posted on the *ex parte* website identified in paragraph (e) of this section. A motion seeking the opportunity to rebut any facts or contentions in an *Ex Parte* Communication must be filed within five Business Days of Bonneville's notification that the communication has been posted on Bonneville's website. Any such motion shall include a copy of the *Ex Parte* Communication at issue. The Hearing Officer will grant such a motion if he or she finds that providing the opportunity to rebut the *Ex Parte* Communication is necessary to prevent substantial prejudice to a Litigant.

(h) *Ex Parte* Communications not included in the Record. No *Ex Parte* Communication will be included in the Record except as allowed by the Hearing Officer in an order granting a motion filed pursuant to paragraph (g) of this section.

### **Section 1010.6 Intervention**

(a) Filing. A Person seeking to become a Party in a proceeding under these rules must request access to the Secure Website pursuant to the procedures set forth in the *Federal Register* Notice initiating the proceeding. After being granted access, such Person shall file a petition to intervene through the Secure Website.

(b) Contents. A petition to intervene must state the name, address, and e-mail address of the Person and the Person's interests in the outcome of the proceeding. Petitioners may designate no more than eight individuals on whom service will be made. If the petitioner requires additional individuals to be added to the service list, it may request such relief from the Hearing Officer. Entities that directly purchase power or transmission services under Bonneville's rate schedules, or trade organizations representing those entities, will be granted intervention, based on a petition filed in conformity with this Section 1010.6. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the proceeding.

(c) Time.

(1) Petitions must be filed by the deadline specified in the *Federal Register* Notice, unless Bonneville provides a subsequent opportunity to intervene pursuant to Section 1010.4(b)(8)(iv).

(2) Late interventions are strongly disfavored. Granting an untimely petition to intervene must not be a basis for delaying or deferring any procedural schedule. A late intervenor must accept the Record developed prior to its intervention. In acting on an untimely petition, the Hearing Officer shall consider whether:

- (i) The petitioner has a good reason for filing out of time;
- (ii) Any disruption of the proceeding might result from granting a late intervention;
- (iii) The petitioner's interest is adequately represented by existing Parties; and
- (iv) Any prejudice to, or extra burdens on, existing Parties might result from permitting the intervention.

(d) Opposition. Any opposition to a timely petition to intervene must be filed within two Business Days after the deadline for filing petitions to intervene. Any opposition to a late-filed petition to intervene must be filed within two Business Days after service of the petition.

### **Section 1010.7 Joint Parties**

(a) Parties with common interests or positions in a pending proceeding are encouraged to form a Joint Party for purposes of filing pleadings, Prefiled Testimony and Exhibits, and briefs, and for conducting cross-examination. Such grouping will be without derogation to the right of any Party to represent a separate point of view where its position differs from that of the Joint Party in which it is participating.

(b) To form a Joint Party, one member of the proposed Joint Party must e-mail a list of proposed Joint Party members to the Hearing Clerk and to Counsel for each proposed member and represent that all of the named members are in concurrence with the formation of the Joint Party. The Hearing Clerk will form the Joint Party, assign a Joint Party code, and e-mail notice to all Litigants, stating the Joint Party code and listing the Joint Party members.

### **Section 1010.8 Participants**

(a) Any Participant may submit written comments for the Record or present oral comments in legislative-style hearings, if any, for the purpose of receiving such comments. The *Federal Register* Notice will set forth the procedures and deadline for Participant comments. In the event new issues arise after such deadline due to unforeseen circumstances, the Hearing Officer may extend the deadline for Participant comments. Participant comments will be made available on Bonneville's website.

(b) The Hearing Officer may allow reasonable questioning of a Participant by Counsel for any Litigant if the Participant presents oral comments at a legislative-style hearing.

(c) Participants do not have the rights of Parties. The procedures in Sections 1010.6, 1010.7, and 1010.9 through 1010.19 are not available to Participants.

(d) Parties may not submit Participant comments. Employees of organizations that have intervened may submit Participant comments as private individuals (that is, not speaking for their organizations), but may not use the comment procedures to further promote specific issues raised by their intervenor organizations.

### **Section 1010.9 Prehearing Conference**

A prehearing conference will be held on the date specified in the *Federal Register* Notice. During the conference, the Hearing Officer shall establish (1) a procedural schedule, and (2) any special rules of practice in accordance with Section 1010.3(c).

### **Section 1010.10 Filing and Service**

(a) Unless otherwise specified, a Litigant shall make any filing provided for by these rules with the Hearing Officer through the Secure Website. Such filing will constitute service on all Litigants. If the Secure Website is unavailable for filing, a Litigant shall serve the document to be filed on the Hearing Officer, Hearing Clerk, and all Litigants through e-mail and thereafter file the document on the Secure Website as soon as practicable when the Secure Website becomes available.

(b) In addition to Parties whose petitions to intervene are granted by the Hearing Officer, the Administrator may designate additional Persons upon whom service will be made.

(c) Except as provided in paragraph (b) of this section, service will not be made upon Participants.

(d) Submission of Data Requests and responses to such requests is governed by Section 1010.12(b), except that paragraph (e) of this section governs the timing of such requests and responses.

(e) All filings provided for by these rules must be made, and Data Requests and responses must be submitted, on Business Days no later than 4:30 p.m., Pacific Time, in accordance with the procedural schedule adopted by the Hearing Officer. Filings made outside of these times are deemed to have been filed on the next Business Day and, if such day is after an applicable deadline, may be rejected by the Hearing Officer.

### **Section 1010.11 Pleadings**

(a) Types of pleadings. Pleadings include petitions to intervene, motions, answers, and replies to answers. Pleadings do not include Prefiled Testimony and Exhibits, Cross-examination Exhibits, Data Requests and responses, or briefs.

(b) Content. Pleadings must include the docket number and title of the proceeding, the name of the Litigant filing the pleading, the specific relief sought, any relevant facts and law, and an electronic signature (typed as “/s/ *Name*”) of the Litigant’s representative. Pleadings must follow the document numbering system established by the Hearing Officer and display the document number in the footer of the pleading.

(c) Format. Pleadings must be filed as text-recognized PDFs converted directly from a word processing software and conform to the following format: (1) page size must be 8½ by 11 inches; in portrait orientation; (2) margins must be at least 1 inch on all sides; (3) text must be double-spaced, with the exception of headings, block quotes, and footnotes; and (4) font size must be comparable to 12-point Times New Roman (10-point Times New Roman for footnotes) or larger. Parties are encouraged to conform legal citations to the most current edition of *The Bluebook: A Uniform System of Citation*, published by The Harvard Law Review Association.

(d) Answers to pleadings. Unless otherwise determined by the Hearing Officer, answers to pleadings must be filed within four Business Days of service of the pleading.

(e) Replies to answers. Unless otherwise determined by the Hearing Officer, replies to answers are not allowed.

(f) Interlocutory appeal. Interlocutory appeal to the Administrator of an order issued by the Hearing Officer is discouraged. Such an appeal will only be permitted upon a motion filed within five Business Days of the order being appealed and an order by the Hearing Officer certifying the ruling to the Administrator. The Hearing Officer shall certify the ruling to the Administrator upon finding that:

- (1) The order terminates a Party’s participation in the proceeding and the Party’s inability to participate thereafter could cause it substantial and irreparable harm;
- (2) Review is necessary to prevent substantial prejudice to a Litigant; or
- (3) Review could save the Administrator, Bonneville, and the Parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

The Administrator may accept or reject the Hearing Officer’s certification of a ruling at his or her discretion. An answer to a motion for interlocutory appeal must be filed in accordance with paragraph (d) of this section.

## Section 1010.12 Clarification Sessions and Data Requests

### (a) Clarification sessions.

(1) The Hearing Officer may schedule one or more informal clarification sessions for the purpose of allowing Litigants to question witnesses about the contents of their Prefiled Testimony and Exhibits and the derivation of their recommendations and conclusions. The Hearing Officer will not attend the clarification sessions. Clarification sessions will not be used to conduct cross-examination, and discussions in clarification sessions will not be transcribed or become part of the Record. Litigants may participate in clarification sessions by phone or other technology made available by Bonneville.

(2) If a Litigant does not make any witness available for a clarification session, the witness's Prefiled Testimony and Exhibits may be subject to a motion to strike.

(b) Data Requests and responses. All Data Requests and responses to Data Requests must be submitted according to the rules in this Section 1010.12(b) and Section 1010.10(e). For purposes of this Section 1010.12(b), "Requesting Litigant" means the Litigant that submitted the Data Request at issue, and "Responding Litigant" means the Litigant that received the Data Request.

(1) Scope in general. Except as otherwise provided in this Section 1010.12(b), a Data Request may seek information or an admission relevant to any issue in the proceeding; *provided, however*, that such requests must be proportional to the needs of the proceeding considering the importance of the issues at stake, the amount in controversy, the Litigants' relative access to relevant information, the Litigants' resources, the extent of the Responding Litigant's testimony on the subject and participation in the proceeding, the importance of the information sought to develop Evidence on the issue, and whether the burden or expense of responding to the request outweighs the likely benefit if the response were admitted into Evidence.

(i) Each Litigant shall be reasonable in the number and breadth of its Data Requests in consideration of the factors listed in paragraph (b)(1) of this section. A Litigant that believes it has received one or more unreasonable Data Request(s) from another Litigant may object to the request(s) on that basis. Any dispute over such an objection will be resolved in accordance with the procedures in paragraph (e) of this section.

(ii) A Litigant shall not be required to perform any new study or analysis, but a Litigant may, in its sole discretion and without waiving any objection to any Data Request, agree to perform such study or analysis.

(iii) A Litigant shall not be required to produce publicly available information.

(iv) A Litigant shall not be required to produce information that is unduly burdensome to provide, or produce the same information multiple times in response to cumulative or duplicative Data Requests.

(v) A Litigant shall not be required to produce any information that is protected from disclosure by the attorney-client privilege or attorney work product doctrine.

(vi) Bonneville shall not be required to produce documents that, in the opinion of Counsel for Bonneville, may be withheld on the basis of exemptions under the Freedom of Information Act, 5 U.S.C. 552, or the Trade Secrets Act, 18 U.S.C. 1905.

(2) Submitting Data Requests. All Data Requests must be submitted through the Secure Website.

(i) A Data Request must identify the Prefiled Testimony and Exhibits (page and line numbers) or other material addressed in the request.

(ii) A Litigant shall not submit a Data Request seeking the response to another Data Request.

(iii) Except as allowed by the Hearing Officer pursuant to this Section 1010.12(b)(2)(iii), during the period established in the procedural schedule for submitting Data Requests immediately following the filing of Bonneville's Initial Proposal, a Party may submit Data Requests only to Bonneville. The Hearing Officer may allow the submission of limited Data Requests to a Party during such period upon motion by a Litigant providing the proposed Data Request(s) and demonstrating that: (1) the proposed Data Request(s) are within the scope described in paragraph (b)(1) of this section; (2) Bonneville is unlikely to have the requested information or materials in its possession; and (3) the Litigant's ability to develop its direct case would be significantly prejudiced without the requested information or materials. In resolving a motion filed pursuant to this Section 1010.12(b)(2)(iii), the Hearing Officer shall consider, among other things, the factors listed above, the number of proposed Data Requests, and whether the burden of responding to the requests would prejudice the Responding Litigant's ability to prepare such Litigant's direct case.

(iv) A multi-part Data Request must include a reasonably limited number of subparts, and all subparts must address only one section or other discrete portion of a Litigant's Prefiled Testimony and Exhibits. Each subpart of a multi-part Data Request will be considered a separate Data Request for purposes of this Section 1010.12(b).

(3) Responding to Data Requests. All Responses to Data Requests, except responses containing Commercially Sensitive Information or CEII, must be submitted through the Secure Website.

(i) Except as otherwise allowed by the Hearing Officer or as provided in paragraph (b)(3)(iii) of this section, a Litigant must provide a response to each Data Request no later than five Business Days after the day that the Data Request is submitted through the Secure Website. The Hearing Officer may specify exceptions to this rule and establish alternative deadlines, for example, for periods spanning holidays.

(ii) An objection to a data request will be considered a response for purposes of this Section 1010.12(b). In any response that includes one or more objections, the Litigant must state the grounds for the objection(s) and why any information or admission is being withheld.

(iii) As soon as a Responding Litigant estimates that it will not be able to respond to one or more Data Requests by the due dates because of the volume of or other burden caused by the request(s), the Responding Litigant shall contact the Requesting Litigant and confer about a possible delay in the due date. If the Litigants have not resolved the matter by the due date, the Responding Litigant shall file an objection on the due date and supplement the objection with a response in good faith as soon as possible thereafter. Any dispute over such an objection will be resolved in accordance with the procedures in paragraph (e) of this section.

(c) Information that is attorney-client privileged or attorney work product. If a Responding Litigant withholds information from a response to a Data Request on the basis of attorney-client privilege or the attorney work product doctrine, it must object and so state in its response. Upon written request by Counsel for the Requesting Litigant, the Responding Litigant must submit a supplemental response to the Data Request that includes a declaration made by Counsel for such Litigant in accordance with 28 U.S.C. 1746 stating that the information withheld is protected from disclosure by attorney-client privilege or the attorney work product doctrine, and identifying, without revealing information that itself is privileged or protected, the information withheld. The Hearing Officer may not order *in camera* review or release of information that a Litigant has withheld from a response to a Data Request on the basis of attorney-client privilege or the attorney work product doctrine.

(d) Commercially Sensitive Information and CEII.

(1) When a Responding Litigant has determined that responding to a Data Request will require it to produce Commercially Sensitive Information or CEII that is otherwise discoverable, the Litigant shall notify and confer with the Requesting Litigant to attempt to agree to the terms of a proposed protective order, including a non-disclosure certificate, to govern exchange and use of the Commercially Sensitive Information or CEII. If the conferring Litigants agree to the terms of a proposed protective order, they must file the proposed order with the Hearing Officer along with a motion seeking adoption of the order. If the conferring Litigants are unable to agree to the terms of a protective order within three Business Days of starting to confer, each Litigant shall file a proposed protective order, and the Hearing Officer shall enter an order adopting a protective order to govern the exchange and use of Commercially Sensitive Information or CEII. Such protective order may be, but is not required to be, based upon the proposed protective orders filed by the Litigants and must be consistent with the requirements in paragraph (d)(2) of this section. Once the Hearing Officer has adopted a protective order, and the Requesting Litigant has filed its signed non-disclosure certificate(s), the Responding Litigant must provide the Commercially Sensitive Information or CEII to the Requesting Litigant within three Business Days.

(2) Any protective order proposed by a Litigant or adopted by the Hearing Officer must be consistent with the following requirements but is not limited to these requirements:

(i) Prior to receiving any Commercially Sensitive Information or CEII, a Litigant that wants access to such information must file on the Secure Website signed non-disclosure certificate(s) for any individual that the Litigant intends to have access to such information.

(ii) Any documents or other materials that include Commercially Sensitive Information or CEII, including any copies or notes of such documents, must be plainly marked on each page with the following text: "Commercially Sensitive Information [or CEII] – Subject to Protective Order No. \_\_\_\_." Any electronic files must include the same text in the file name. The requirements of this paragraph do not preclude any additional marking required by law.

(iii) Responses to Data Requests that contain Commercially Sensitive Information or CEII must not be submitted via the Secure Website. The protective order must prescribe a secure manner for providing such a response to any Litigant that files a signed non-disclosure certificate(s).

(iv) Any Prefiled Testimony and Exhibits, Cross-examination Exhibits, briefs, or other documents that include Commercially Sensitive Information or CEII must not be filed via the Secure Website. The protective order must prescribe a secure manner for making such a filing directly with the Hearing Officer such as via encrypted e-mail or on physical media (CD, USB stick, etc.) and for simultaneously serving the document on all Litigants that have filed signed non-disclosure certificates. Any Litigant that makes a filing with Commercially Sensitive Information or CEII must simultaneously file a redacted or public version of the document via the Secure Website.

(v) The protective order must authorize Bonneville to file or otherwise submit any Commercially Sensitive Information or CEII from a proceeding under these rules with the Federal Energy Regulatory Commission or any other administrative or judicial body in accordance with any applicable requirements of that body.

(vi) The protective order must authorize Bonneville to retain any Commercially Sensitive Information or CEII from a proceeding under these rules until the decision in the proceeding is no longer subject to judicial review.

(vii) The protective order must include provisions that govern the return or destruction of Commercially Sensitive Information and CEII.

(viii) A protective order may include a "Highly Confidential" designation for Commercially Sensitive Information or CEII that is of such a sensitive nature that the producing Litigant is able to justify a heightened level of protection. The Hearing Officer shall determine the appropriate level or means of protection for such information, including the possible withholding of such information altogether.

(3) Notwithstanding the requirement in paragraph (d)(2)(iv) of this section that a protective order must provide a secure manner of filing documents that include Commercially Sensitive Information or CEII, Litigants are discouraged from making filings with such information because of the administrative burden that would result from the inclusion of such information in the Record. A Litigant should not file a document with such information unless it believes in good faith that its ability to present its argument would be significantly hindered by the absence of the information from the Record. Instead, Litigants are encouraged to summarize, describe, or aggregate Commercially Sensitive Information or CEII in filings in a manner that does not result in the inclusion of the information itself or otherwise effectively disclose the information.

(4) The rules governing CEII in this Section 1010.12(b) do not preclude the application of any federal regulations regarding CEII that apply to Bonneville and are adopted after the effective date of these rules.

(e) Disputes regarding responses to Data Requests. Litigants are strongly encouraged to informally resolve disputes regarding Data Requests and responses.

(1) Duty to Confer. Before filing a motion to compel a response to a Data Request, the Requesting Litigant must confer with the Responding Litigant to attempt to informally resolve any dispute. Each Litigant must confer in good faith to attempt to informally resolve the dispute.

(2) Motion to Compel. If a dispute is not resolved informally, the Requesting Litigant may file a motion to compel no more than four Business Days after the earlier of the date a response to the Data Request is provided or the due date for the response. A motion to compel must

demonstrate that the Data Request(s) at issue are within the scope described in paragraph (b)(1) of this section, and the Requesting Litigant must certify in the motion that it attempted to informally resolve the dispute in accordance with paragraph (e)(1) of this section.

(3) Answer to motion to compel. Any answer to a motion to compel must be filed in accordance with Section 1010.11(d).

(4) Resolution of dispute by the Hearing Officer. The Hearing Officer may hold a conference to discuss and attempt to resolve a dispute regarding a response to a Data Request. In ruling on any motion to compel, the Hearing Officer shall consider, among other things, the factors listed in paragraph (b)(1) of this section and the potential impact of the decision on completing the proceeding according to the procedural schedule. For any oral ruling made by the Hearing Officer during a conference, the Hearing Officer shall memorialize that ruling in a written order as soon as practicable thereafter.

(f) Sanctions. The Hearing Officer may remedy any refusal to comply with an order compelling a response to a Data Request or a violation of a protective order by:

(1) Striking the Prefiled Testimony and Exhibits to which the Data Request relates;

(2) Limiting Data Requests or cross-examination by the Litigant refusing to comply with the order; or

(3) Recommending to the Administrator that an appropriate adverse inference be drawn against the Litigant refusing to comply with the order.

(g) Moving responses to Data Requests into Evidence. A response to a Data Request must be admitted into Evidence to be considered part of the Record. A Litigant that intends to introduce a response to a Data Request into Evidence must either: (1) attach the full text of each such response as an exhibit in the Litigant's Prefiled Testimony and Exhibits; or (2) submit a motion to admit the response, by the deadline(s) established by the Hearing Officer.

### **Section 1010.13 Prefiled Testimony and Exhibits**

(a) General rule.

(1) All Prefiled Testimony and Exhibits must identify the witness(es) sponsoring the testimony and exhibits. Each Litigant that submits Prefiled Testimony and Exhibits must separately file a qualification statement for each witness sponsoring the testimony and exhibits. The qualification statement must describe the witness's education and professional experience as it relates to the subject matter of the Prefiled Testimony and Exhibits.

(2) Except as otherwise allowed by the Hearing Officer, all prefiled testimony must be in written form and conform to the format of pleadings in Section 1010.11(c). Each section of prefiled testimony must include a heading setting forth its subject matter. Prefiled testimony must include line numbers in the left-hand margin of each page.

(3) If prefiled testimony is based on the witness's understanding of the law, the witness shall so state in the testimony and, in order to provide context for the testimony, describe the witness's understanding of the law as it applies to the witness's position. In all other cases, legal arguments and opinions must not be included in Prefiled Testimony and Exhibits.

(4) A witness qualified as an expert may testify in the form of an opinion. Any conclusions by the witness should, if applicable, be supported by data and explanation.

(5) Litigants shall be provided an adequate opportunity to offer refutation or rebuttal of any material submitted by any other Party or by Bonneville. Any rebuttal to Bonneville's direct case must be included in a Party's direct testimony, along with any affirmative case that Party wishes to present. Any subsequent rebuttal testimony must be limited to rebuttal of the Parties' direct cases. New affirmative material may be submitted in rebuttal testimony only if in reply to another Party's direct case. No other new affirmative material may be introduced in rebuttal testimony. Rebuttal testimony must refer to the specific material being addressed (pages, lines, topic).

(6) For documents or materials of excessive length that a Litigant wants to include in its Prefiled Testimony and Exhibits, the Litigant should create and include an excerpt of the document or materials that excludes irrelevant or redundant material.

(b) Items by reference. Any materials that are incorporated by reference or referred to via electronic link in Prefiled Testimony and Exhibits will not be considered part of the testimony and exhibits for purposes of introducing the materials into Evidence. Only materials included as exhibits to Prefiled Testimony and Exhibits will be considered part of the testimony and exhibits for purposes of introducing the materials into Evidence.

(c) Moving Prefiled Testimony and Exhibits into Evidence. Prefiled Testimony and Exhibits must be admitted into Evidence to be considered part of the Record. If a Litigant's witness(es) sponsoring Prefiled Testimony and Exhibits are cross-examined, the Litigant shall move the witnesses' Prefiled Testimony and Exhibits into Evidence at the conclusion of the cross-examination. If there is no cross-examination of a Litigant's witness(es), a Litigant that intends to introduce the witness(es)'s Prefiled Testimony and Exhibits into Evidence shall, by any deadline established by the Hearing Officer, file a declaration of the witness(es) made in accordance with 28 U.S.C. 1746 that lists the Prefiled Testimony and Exhibits and certifies that the material is the same material previously filed in the proceeding and is true and correct to the best of their knowledge and belief. Upon filing of the declaration, the witnesses' Prefiled Testimony and Exhibits will be admitted into Evidence.

(d) Motions to strike. Motions to strike Prefiled Testimony and Exhibits must be filed by the deadlines established in the procedural schedule. An answer to a motion to strike must be filed in accordance with Section 1010.11(d). If the Hearing Officer grants a motion to strike, the Litigant sponsoring the stricken material shall file conformed copies with strikethrough deletions of such material within five Business Days of the Hearing Officer's order. Conformed copies must be filed with the same document number as the original exhibit, but with the designation "-CC" at the end (*e.g.*, BP-20-E-BPA-16-CC). Material stricken by the Hearing Officer shall not be admitted into Evidence but will be considered part of the Record for purposes of reference regarding whether the motion should have been granted.

#### **Section 1010.14 Cross-Examination**

(a) Except as otherwise allowed by the Hearing Officer, witnesses generally will be cross-examined as a panel for Prefiled Testimony and Exhibits that they co-sponsor, provided that each panel member (1) has submitted a qualification statement, and (2) is under oath.

(b) At the time specified in the procedural schedule, a Litigant intending to cross-examine a witness shall file a cross-examination statement. The statement shall:

(1) Identify the witnesses the Litigant intends to cross-examine and the Prefiled Testimony and Exhibits sponsored by the witnesses that will be the subject of the cross-examination;

(2) Briefly describe the subject matter and portions of the Prefiled Testimony and Exhibits for cross-examination;

(3) Specify the amount of time requested for cross-examination of each witness; and

(4) Provide any other information required in an order issued by the Hearing Officer.

(c) A Litigant waives cross-examination for any witnesses not listed in its cross-examination statement, except that any Litigant may ask follow-up questions of witnesses appearing at the request of another Litigant.

(d) After the Litigants file cross-examination statements, the Hearing Officer shall issue a schedule setting forth the order of witnesses to be cross-examined.

(e) Cross-examination is limited to issues relevant to the Prefiled Testimony and Exhibits that (1) are identified in the Litigant's cross-examination statement, or (2) arise in the course of the cross-examination.

(f) Witnesses are not required to perform calculations on the stand or answer questions about calculations that they did not perform. Witnesses appearing as a panel shall determine in good faith which witness will respond to a cross-examination question.

(g) A Litigant may only cross-examine witnesses whose position is adverse to the Litigant seeking to cross-examine. Notwithstanding the preceding sentence, a Litigant whose position is not adverse to the witnesses subject to cross-examination may, immediately following any redirect testimony by those witnesses, seek leave from the Hearing Officer to ask limited follow-up questions of the witnesses. Any such follow-up questions allowed by the Hearing Officer must be limited to the scope of the cross-examination of the witnesses.

(h) Only a Litigant's Counsel may conduct cross-examination. Only Counsel for the witnesses being cross-examined may object to questions asked during cross-examination, except that Counsel for any Litigant may object to friendly cross-examination.

(i) To avoid duplicative cross-examination, the Hearing Officer may impose reasonable limitations if the Litigants conducting cross-examination have substantially similar positions.

(j) The Hearing Officer may impose reasonable time limitations on the cross-examination of any witness.

(k) Cross-examination Exhibits.

(1) A Litigant must file each Cross-examination Exhibit to be presented to a witness for any purpose two Business Days before the witness is scheduled to appear. For example, for a witness appearing on a Monday, the due date for documents is the preceding Thursday at 4:30 p.m.

(2) A Litigant must provide physical copies of each Cross-examination Exhibit to the Hearing Officer, the Hearing Clerk, each panel witness, witness's Counsel, and the court reporter at the beginning of cross-examination on the day the witness is scheduled to appear.

(3) A Cross-examination Exhibit must be limited to material the Litigant intends to introduce into Evidence.

(4) If a document is introduced into Evidence during cross-examination, and only part of the document is admitted into Evidence, the document must be conformed by the Litigant to

include only that part of the document admitted into Evidence. The conformed document must be filed through the Secure Website.

(l) All other matters relating to conduct of cross-examination are left to the Hearing Officer's discretion.

### **Section 1010.15 Stipulations**

The Hearing Officer may admit into Evidence stipulations on any issue of fact.

### **Section 1010.16 Official Notice**

The Administrator or the Hearing Officer may take official notice of any matter that may be judicially noticed by Federal courts or any matter about which Bonneville is an expert. A Litigant requesting official notice shall provide a precise citation for the material for which official notice is requested and file the material on the Secure Website at the time the request is granted or as soon as practicable thereafter. The Hearing Officer may afford any Litigant making a timely request an opportunity to show the contrary of an officially noticed fact.

### **Section 1010.17 Briefs**

(a) General rule. Briefs must be filed at times specified in the procedural schedule. All evidentiary arguments in briefs must be based on cited material admitted into Evidence. Material not admitted into Evidence must not be attached to or relied upon in any brief, except to address disputes regarding the admissibility of specific material into Evidence. Incorporation by reference is not permitted. The Hearing Officer may impose page limitations on any brief. All briefs must comply with the format requirements in Section 1010.11(c) and the template provided in Attachment A, as may be amended.

(b) Initial brief. At the conclusion of the evidentiary portion of a proceeding, each Party may file an initial brief. The purpose of an initial brief is to identify separately each legal, factual, and policy issue to be resolved by the Administrator and present all arguments in support of a Party's position on each of these issues. The initial brief should also rebut contentions made by adverse witnesses in their Prefiled Testimony and Exhibits. The initial brief must contain a final revised exhibit list reflecting the status of all of the Party's Prefiled Testimony and Exhibits, Cross-examination Exhibits, and any other exhibits, including those admitted, withdrawn, conformed, and rejected.

(c) Brief on exceptions. After issuance of Bonneville's Draft Record of Decision, each Party may file a brief on exceptions. The purposes of the brief on exceptions are to (1) raise any alleged legal, policy, or evidentiary errors in the Draft Record of Decision; or (2) provide additional support for draft decisions contained in the Draft Record of Decision. All arguments raised by a Party in its initial brief will be deemed to have been raised in the Party's brief on exceptions, regardless of whether such arguments are included in the brief on exceptions.

(d) Additional briefing rule for proceedings pursuant to Section 1010.1(a)(2). In a proceeding pursuant to Section 1010.1(a)(2), Bonneville is considered a Party for purposes of filing briefs in accordance with this Section 1010.17, except that Section 1010.17(f) does not apply to Bonneville. In addition, in such a proceeding, the Hearing Officer or the Administrator may provide Litigants with additional briefing opportunities not otherwise set forth in these rules. Such additional briefing opportunities may include briefs on exceptions in addition to those set forth in Section 1010.17(c), above.

(e) Optional brief and memorandum of law. The Hearing Officer may allow the filing of a brief and memorandum of law not otherwise provided for by this section.

(f) Waiver of issues or arguments. A Party whose briefs do not raise and fully develop the Party's position on any issue shall be deemed to take no position on such issue. Arguments or alleged errors not raised in initial briefs in accordance with Section 1010.17(b), briefs on exceptions in accordance with Section 1010.17(c), or briefs permitted by Section 1010.17(d) are deemed to be waived.

### **Section 1010.18 Oral Argument**

(a) An opportunity for each Litigant to present oral argument will be provided in proceedings conducted under these rules.

(b) At the time specified in the procedural schedule, each Litigant that intends to present oral argument shall file a notice of intent to present oral argument. The notice must identify the speaker(s), a brief description of the subject matter to be addressed, and the amount of time requested.

(c) After Litigants file notices of intent to present oral argument, the Hearing Officer shall issue an order setting forth the schedule of oral argument.

### **Section 1010.19 Telephone Conferences**

Telephone conferences may be permitted in appropriate circumstances, provided that: (1) there is a proposed agenda for the conference concerning the points to be considered and the relief, if any, to be requested during the conference; and (2) Litigants are provided notice and given an opportunity to be represented on the line. If the Hearing Officer schedules a telephone conference, the Hearing Officer may require that a court reporter be present on the line.

### **Section 1010.20 Hearing Officer's Recommended Decision**

In a proceeding pursuant to Section 1010.1(a)(2), the Hearing Officer shall, unless he or she becomes unavailable, issue the Hearing Officer's Recommended Decision stating the Hearing Officer's findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion.

### **Section 1010.21 Final Record of Decision**

(a) The Administrator will make a decision adopting final proposed rates for submission to the Federal Energy Regulatory Commission for confirmation and approval based on the Record.

(b) In a proceeding pursuant to Section 1010.1(a)(2), the Administrator will make a determination in a Final Record of Decision on any terms and conditions of transmission service, or revisions thereto, at issue in the proceeding.

(c) Any Final Record of Decision will be uploaded to the Secure Website and made available to Participants through Bonneville's external website.

### **Section 1010.22 Expedited Proceedings**

(a) General rule. The Administrator will determine, in his or her discretion, whether to conduct an expedited proceeding. The Final Record of Decision in a proceeding conducted under this section will be issued on an expedited basis in 90 to 120 days from the date of the Federal Register Notice. The Hearing Officer may establish procedures or special rules as set forth in Section 1010.3(c) necessary for the expedited schedule.

(b) Extensions. The Hearing Officer may extend the schedule in response to a written motion by a Litigant showing good cause for the extension.

**Attachment A – Brief Template**

**CATEGORY [all issues pertaining to a particular category, for example: POWER RATES, TRANSMISSION RATES, TRANSMISSION TERMS AND CONDITIONS, JOINT ISSUES, PROCEDURAL ISSUES]**

**A. General Topic Area [for example: Secondary Sales]**

*Issue 1: The specific issue to be addressed [for example: Whether Bonneville’s forecast of energy prices should be revised upward].*

**Summary of Party’s Position**

A brief statement summarizing the party’s position.

[For example: Bonneville staff’s forecast of energy prices for secondary sales is too conservative. The record demonstrates that the trend in market prices is upward. The Administrator should revise the forecast for the price of secondary energy upward consistent with Party X’s proposal.]

**Party’s Position and Argument**

Statements of argument, including citations to the record.

**Requested Action or Decision**

A brief description of the requested action or decision the party wants the Administrator to make.

[For example: The projection of energy prices for Bonneville’s secondary sales should be revised consistent with Party’s X’s proposal.]

*Issue 2: The specific issue to be addressed [for example: Whether Bonneville’s surplus power sales forecast is reasonable.]*

**Summary of Party’s Position**

[For example: Bonneville’s surplus power sales forecast is flawed because it does not account for extraregional power sales.]

**Party’s Position and Argument**

Statements of argument, including citations to the record.

**Requested Action or Decision**

[For example: Bonneville’s surplus power sales forecast should be increased to reflect extraregional power sales.]

**POST-HEARING LIST OF EXHIBITS**

Filing Code	Title	Date Filed	Status
XX-XX-E-XX-01	Direct Testimony	mm/dd/yyyy	Admitted
XX-XX-E-XX-02	Rebuttal Testimony	mm/dd/yyyy	Rejected