

**RULES GOVERNING
THE DISCLOSURE OF CONFIDENTIAL INFORMATION IN
BPA’S AVERAGE SYSTEM COST REVIEW PROCEEDINGS**

1. SCOPE OF THESE RULES

These Rules Governing the Disclosure of Confidential Information in BPA’s Average System Cost Review Proceedings (“ASC Confidentiality Rules”) govern the acquisition and use of “Confidential Information” in BPA’s ASC review proceedings under the 2008 ASC Methodology, as amended or revised.

2. DEFINITIONS

2.1. “Confidential Information” is information that falls within an exemption from the mandatory disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552, or is otherwise exempt from public disclosure.

2.1.1. Confidential Information does *not* include any document or information obtained by BPA or other parties to this proceeding from secondary sources (except where such information was obtained under a separate protective order or confidentiality agreement).

2.2. A “Qualified Person” is an individual who is:

2.2.1. An author(s) or originator(s) of the Confidential Information;

2.2.2. A BPA representative or staff person;

2.2.3. A person qualified pursuant to Section 4.2.3 below. This includes parties and their employees.

2.3. “ASC Filing” means the Appendix 1, ASC Forecast Model, and all other documents, data, models, and other information provided by a Utility to support and calculate its Exchange Period ASC.

2.4. “Utility” means an investor-owned utility or consumer-owned utility that has filed an ASC with BPA for review and approval under the provisions of the 2008 ASC Methodology, 18 C.F.R Part 301, *et seq.*, as amended or revised.

3. DESIGNATION OF CONFIDENTIAL INFORMATION

3.1. A party providing Confidential Information shall designate such material as confidential by placing the following legend on each page of the information:

CONFIDENTIAL

To the extent practicable, the party shall designate as confidential only those portions of the document that are within the definition of Confidential Information.

3.2. For electronic files, the Utility should identify the Confidential Information with a generic file name that sufficiently describes the nature of the information without disclosing any Confidential Information.

3.3. A party may designate as confidential any information previously provided by giving written notice to BPA and the other parties. Parties in possession of newly designated Confidential Information shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the party desiring confidentiality.

4. TREATMENT OF CONFIDENTIAL INFORMATION PROVIDED AS PART OF A UTILITY'S ASC FILING

4.1. Duty of Utility to Provide BPA with Confidential Information at Time of Utility's ASC Filing

4.1.1. Confidential Information in an ASC Filing shall be submitted to BPA at the same time as non-confidential data and supporting documentation in accordance with this section.

4.1.2. The Utility shall upload Confidential Information separately from non-confidential information to BPA's secure REP website. The Utility must select the "confidential" option when uploading Confidential Information to ensure that it is viewed only by authorized parties.

4.1.3. Confidential Information submitted by a Utility ~~shall not be disclosed to any party~~ shall be protected in accordance with these rules, except that the name of the file containing Confidential Information will be visible on BPA's secure REP website.

4.2. Disclosure of Confidential Information Contained in Utility's ASC Filing

4.2.1. Except as provided in Section 4.3, only persons designated as "Qualified Persons" shall have access to Confidential Information in a Utility's ASC Filing. Utilities will provide Qualified Persons access to Confidential Information at such time designated by BPA, unless the Utility objects as provided in Section 4.3 below. BPA and the parties shall limit the use and dissemination of Confidential Information as required by Section 56.

4.2.2. Qualified Persons may disclose Confidential Information to any other Qualified Person of the same party, unless the party desiring confidentiality protests as provided in Section 4.3.

4.2.3. To become a Qualified Person under Section 2.2.3 above, a person must:

- 4.2.3.1. Be a consultant, counsel, or employee of an entity that has received party status to the Utility's pending ASC review proceeding;
 - 4.2.3.2. Have responsibility for reviewing the Utility's ASC filing on behalf of such entity;
 - 4.2.3.3. Read a copy of these ASC Confidentiality Rules;
 - 4.2.3.4. Execute **and date the Consent to be Bound Form, appended as Attachment 1**, acknowledging that the person has read the ASC Confidentiality Rules and agrees to be bound by its terms; and
 - 4.2.3.5. Provide a name, address, employer, and job title.
- 4.2.4. Parties requesting access to Confidential Information shall include a signed Consent to be Bound Form in the party's intervention. A party must file a revised Consent to be Bound Form with BPA and the Utility to add or remove a Qualified Person(s). The Utility may file pursuant to Section 4.3 below to object to a party's request to add a new Qualified Person(s).

4.3. Objections to Disclosure of Confidential Information to Qualified Person

- 4.3.1. The Utility desiring to restrict a Qualified Person(s) access to Confidential Information provided in an ASC Filing must notify counsel for the party associated with the Qualified Person(s) within three (3) calendar days of receipt of the Consent to be Bound Form or by such other date designated by BPA. The Utility and the party(s) must promptly confer and attempt to resolve any dispute over access to Confidential Information on an informal basis.
- 4.3.2. If the dispute cannot be resolved informally, the Utility must file a motion with BPA within seven (7) calendar days of receipt of the party's Consent to be Bound Form or by such date designated by BPA. Such motion must describe in detail what steps the parties took to attempt to resolve the dispute, including selected redaction explored by the parties, and explain why such measures do not resolve the dispute. The party requesting access to Confidential Information shall have four (4) calendar days to respond to the Utility's objection.
- 4.3.3. Confidential Information will not be disclosed to a party's Qualified Person(s) until BPA renders a decision on the Utility's pending motion.

4.4. Objections to the Designation of Confidential Information in Utility's ASC Filing

- 4.4.1. If a party disagrees with a Utility's decision to designate information as Confidential Information, the party has three (3) calendar days from the date the Confidential Information is made available to the party's Qualified Person to notify the Utility of such objection. If the party has no Qualified Person(s) and has not otherwise filed a Consent to be Bound Form with BPA and the Utility, the three (3) calendar days shall start on the day ~~BPA grants the~~

~~party's intervention~~ the Confidential Information is uploaded to BPA's secure REP website.

4.4.2. The party requesting the removal of the Confidential Information designation must confer with the Utility to determine if the objection can be resolved informally. If the party and the Utility are unable to resolve the issue, the party may file a motion stating its objection within seven (7) calendar days from the date the Confidential Information is made available to the party's Qualified Person, *or* if the party has no Qualified Person and has not filed a Consent to be Bound Form, seven (7) calendar days from the day ~~BPA grants the party's intervention~~ the Confidential Information is uploaded to BPA's secure REP website. The party's motion must include the following:

4.4.2.1. Identify the contested information; and

4.4.2.2. Assert and explain why the information does not fall within the definition of Confidential Information.

4.4.3. Upon receiving the party's motion, the Utility resisting disclosure shall have four (4) calendar days to respond. The Utility has the burden of showing that the challenged information falls within the definition of Confidential Information. If the Utility resisting disclosure does not respond within four (4) calendar days, the challenged information shall be removed from the protection of these rules.

4.4.4. The asserted Confidential Information shall not be disclosed pending a decision by BPA.

4.5. Use of Confidential Information in Issue Lists and Comments

4.5.1. Parties should not include Confidential Information in Issue Lists or Comments unless reference to such Confidential Information is essential to the issue or argument being made by the party. If reference to Confidential Information is necessary, the party shall separate from all other Issue Lists or Comments the Issue List or Comment that contains such Confidential Information.

4.5.2. After separating such material, the party shall upload the Comment or Issue List that contains Confidential Information as a "confidential" document on BPA's secure REP website. The party should designate BPA, the Utility, and the party (if different than the Utility) that provided the Confidential Information referenced in the Issue List or Comment as authorized persons to review the document.

5. TREATMENT OF CONFIDENTIAL INFORMATION REQUESTED IN DISCOVERY

- 5.1. Confidential Information requested in a request for data under BPA's ASC Rules of Procedure shall be made available to a Qualified Person *unless* the disclosing party objects pursuant to this section.
- 5.2. The party desiring to restrict the Qualified Person(s) from obtaining Confidential Information in a data request must notify counsel for the party associated with the Qualified Person(s) within three (3) **calendar** days of receipt of the data request. The parties must promptly confer and attempt to resolve any dispute over access to Confidential Information on an informal basis.
- 5.3. If the dispute cannot be resolved informally, the party objecting to the data request must file a motion with BPA within ten (10) **calendar** days of receipt of the data request. Such motion must describe in detail what steps the parties took to attempt to resolve the dispute, including selected redaction explored by the parties, and explain why such measures do not resolve the dispute. The party requesting access to Confidential Information shall have four (4) **calendar** days to respond to the Utility's objection.
- 5.4. The objecting party may withhold contested Confidential Information until BPA renders a decision on the party's pending motion.
- 5.5. Notwithstanding any of the foregoing, no party may request Confidential Information obtained in a data request from another party. For example, if party X receives Confidential Information from a Utility through a data request, party Y may not submit a data request to party X requesting the same Confidential Information. In this example, party Y must submit a data request directly to the Utility to obtain the Confidential Information.

6. PRESERVATION OF CONFIDENTIALITY

- 6.1. All persons provided access to Confidential Information by reason of the ASC Confidentiality Rules shall not use or disclose the Confidential Information for any purpose other than preparation for and participation in the relevant ASC review proceeding, and shall take all reasonable precautions to keep the Confidential Information secure. *Disclosure of Confidential Information for purposes of business competition is strictly prohibited.*
- 6.2. Qualified Persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information to the extent necessary for the preparation for, and participation in, the relevant ASC review proceeding. Qualified Persons may disclose Confidential Information only to other Qualified Persons associated with the same party.
- 6.3. If a party violates the ASC Confidentiality Rules, BPA may take remedial action against such party, including, but not limited to, denying such party access to

Confidential Information in the current or future ASC review proceeding(s), dismissing or denying the party's intervention in the current or future ASC review proceeding(s), or such other action that BPA deems necessary or appropriate.

6.4. BPA shall notify the party that provided Confidential Information as soon as practicable of any request received under the Freedom of Information Act (FOIA), or under any other Federal law or judicial or administrative order, for any Confidential Information. BPA shall only release such Confidential Information to comply with the FOIA or if required by any other Federal law or judicial or administrative order.

6.5. Any party in possession of Confidential Information shall notify the party that provided the Confidential Information as soon as practicable of any request received pursuant to a judicial or administrative order, or applicable law, for any Confidential Information. Confidential Information shall only be released if necessary to comply with such judicial or administrative order, or if required by applicable law.

7. DURATION OF PROTECTION

BPA shall preserve the confidentiality of Confidential Information for a period of five (5) years from the date of the final order in the relevant docket, unless extended by BPA at the request of the party desiring confidentiality.

8. DESTRUCTION AFTER PROCEEDING

Parties' counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents, whether electronic or hard copy, containing Confidential Information to the extent reasonably necessary to maintain a file for the relevant ASC review proceeding or to comply with requirements imposed by another governmental agency, judicial order, or applicable law. The information retained may not be disclosed to any person other than a Qualified Person of the same party. Any person retaining Confidential Information or documents containing such Confidential Information must destroy or return it to the party requesting confidentiality within ninety (90) days after final resolution of the relevant proceeding unless the party requesting confidentiality consents, in writing, to retention of the Confidential Information or documents containing such Confidential Information. This paragraph does not apply to BPA.

9. ADDITIONAL PROTECTIONS

9.1. A party desiring additional protections not otherwise afforded by these rules may file a motion with BPA requesting such additional protections. The motion shall state:

- 9.1.1. The parties and persons involved;
- 9.1.2. The exact nature of the information involved;
- 9.1.3. The exact nature of the relief requested;
- 9.1.4. The specific reasons the requested relief is necessary; and
- 9.1.5. A detailed description of the steps the parties have taken to attempt to resolve the dispute, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

| 9.2. Objection to such additional protections must be filed within four (4) calendar days following receipt of the party's motion.

9.3. BPA shall determine whether such additional protections are necessary for the relevant ASC review proceeding.

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ATTACHMENT 1

CONSENT TO BE BOUND FORM

Docket Nos. [List all that apply]

I. Consent to be Bound

This agreement governs the use of “Confidential Information” in the above-noted proceeding(s).

_____ (Party) agrees to be bound by the terms of the Rules Governing the Disclosure of Confidential Information in BPA’s Average System Cost Review Proceedings.

By: _____
Signature Date

Print Name Title

II. Persons Qualified Pursuant to Sections 2.2.3 and 4.2.3

I have read the Rules Governing the Disclosure of Confidential Information in BPA’s Average System Cost Review Proceedings and agree to be bound by the terms of such rules.

By: _____
Signature Date

Print Name Title

Employer Address

By: _____
Signature Date

Print Name Title

Employer Address

CONSENT TO BE BOUND FORM

Docket Nos. [List all that apply]

(Extra Signature Page)

II. Persons Qualified Pursuant to Sections 2.2.3 and 4.2.3

I have read the Rules Governing the Disclosure of Confidential Information in BPA’s Average System Cost Review Proceedings and agree to be bound by the terms of such rules.

By: _____
Signature Date

Print Name Title

Employer Address

By: _____
Signature Date

Print Name Title

Employer Address

By: _____
Signature Date

Print Name Title

Employer Address