

Bonneville Power Administration
United States Department of Energy
Rules of Procedure ~~Governing Rate Hearings~~

- § 1010.1 Applicability and Scope of Rules
- (a) General rule of applicability
 - (b) ~~Transitional application~~ Effective date
 - (c) Exceptions to general rule of applicability
 - (d) Scope of rules
 - (e) Waiver
- § 1010.2 Definitions
- ~~§ 1010.3~~ § 1010.3 Hearing Officer
- ~~§ 1010.4~~ § 1010.4 Initiation of Hearing Proceeding
- ~~§ 1010.4~~ § 1010.5 Intervention
- (a) Filing
 - (b) Contents
 - (c) Time
 - (d) Opposition
- ~~§ 1010.5~~ § 1010.6 Joint Parties
- ~~§ 1010.6~~ § 1010.7 Participants
- ~~§ 1010.8~~ § 1010.8 Prehearing Conference
- ~~§ 1010.7~~ § 1010.9 Pleadings
- (a) Types of pleadings
 - (b) Content
 - (c) Format
 - (d) Submission and service of pleadings
 - (e) Answers to pleadings
 - (f) Replies to answers
 - (g) Interlocutory appeal
- ~~§ 1010.8~~ § 1010.10 Ex Parte Communications
- (a) General rule
 - (b) Exceptions
 - (c) Application
 - (d) Notice of meetings
 - (e) Written materials
 - (f) Oral communications
 - (g) Rebuttal
- ~~§ 1010.8~~ § 1010.11 Clarification Sessions and Data Requests
- (a) ~~Informal requests~~ Clarification sessions
 - (b) Data requests
 - (c) ~~Clarification sessions~~ (d) Objections to discovery
 - (e) Motions to compel
 - (f) ~~(d) Privileged and Commercially Sensitive~~ Information
 - (g) Sanctions
 - (h) ~~Copies~~ Record
- ~~§ 1010.9~~ § 1010.9 General Rate Proceedings
- ~~§ 1010.10~~ § 1010.10 Expedited Rate Proceedings
- (a) ~~General rule~~
 - (b) ~~Extensions~~
 - (c) Special Procedure
- ~~§ 1010.11~~ § 1010.11 Prefiled Testimony and Exhibits
- (a) General rule
 - (b) Items by reference
 - (c) ~~Official notice~~ Record
 - (d) Motions to strike
 - (e) ~~Record of participants~~
 - (f) ~~Sanctions~~
- ~~§ 1010.12~~ § 1010.12 Hearing
- (a) ~~Panels~~ 13
 - (b) ~~Cross-Examination~~
 - (c) ~~Cross-examination exhibits~~
- ~~§ 1010.14~~ § 1010.14 Stipulations
- ~~§ 1010.13~~ § 1010.15 Official Notice
- ~~§ 1010.16~~ § 1010.16 Briefs
- (a) General rule
 - (b) Waiver of issues or arguments
 - (c) Optional brief and memorandum of law prior to cross-examination
 - (d) Initial brief
 - (e) ~~Brief on exceptions~~
 - (f) ~~§ 1010.14~~ (f) Additional briefing rule for proceedings under Section 1010.1(a)(2)
- ~~§ 1010.17~~ § 1010.17 Oral Argument
- ~~§ 1010.15~~ § 1010.18 Filing and Service of Documents
- ~~§ 1010.16~~ § 1010.19 Telephone Conferences
- ~~§ 1010.20~~ § 1010.20 Hearing Officer's Recommended Decision
- ~~§ 1010.21~~ § 1010.21 Final Record of Decision
- ~~§ 1010.22~~ § 1010.22 Expedited Proceedings

(a) General rule

(b) Extensions

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Section 1010.1 Applicability and Scope of Rules

(a) General rule. ~~This rule applies of applicability. These rules apply~~ to all proceedings conducted under the procedural requirements ~~for ratemaking~~ contained in Section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. § 839e(i). ~~On determining that new or revised rates may be needed to satisfy fiscal or other statutory obligations of Bonneville Power Administration (BPA), the Administrator may initiate a hearing in accordance with this rule to develop a full and complete record on proposed rates, 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) Transitional application. This rule applies only to rate hearings initiated on or after March 7, 1986. All hearings initiated prior to that date shall be conducted pursuant to the "Procedures Governing Bonneville Power Administration Rate Adjustments," 47 FR 6240 (February 10, 1982). Rate hearings are initiated as provided in § 1010.3 of this rule. (c) Exceptions. This rule does not apply to:~~

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

(c) 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;

(2) Proceedings required by statute or by contract, in which the Administrator does not propose ~~any~~ either (a) a new rate, formula rate, discount, credit, surcharge or other rate change, or (3) negotiation ~~(b) any new terms and conditions of, transmission service or the receipt~~ revisions thereto; or

(3) Contract negotiations unless otherwise provided by Section 1010.1(a).

(d) Scope of public comment on, any contract, except rules. These rules are intended to establish procedures and processes for provisions which satisfy the definition all proceedings described in s-1 paragraph (a) of this section. These rules do not establish substantive standards for the Administrator's final decisions on issues in such proceedings.

010.20).

~~(d)~~

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

Section 1010.2 Definitions

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

(a) "Administrator" means the BPA Administrator or the acting Administrator.

(b) "Bonneville" or "BPA" means the Bonneville Power Administration.

(c) "Commercially Sensitive Information" means information that 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 agreement, or contains trade secrets or similar information that could provide a competitive advantage.

(d) "Counsel" means a Litigant's attorney who is admitted to practice law by a state bar.

(e) "Cross-examination exhibit" means any document or other material to be presented to a witness for the any purpose of § 1010.7, the hearing officer, on cross-examination.

~~(b) "Agent" means counsel, consultants, witnesses, employees and other representatives of a person.~~(f) "

~~(e) "Draft Record of Decision" means the document, issued by BPA after the submission of initial briefs, which identifies each issue BPA will resolve in the pending rate hearing; summarizes the factual, legal and policy arguments presented by BPA and the parties on each issue; and that sets forth the Administrator's tentative proposed decision on each issue in the pending proceeding.~~

~~(d) g "Ex Parte Communication" means (i) an oral or written communication regarding the merits of any substantive issue in the pending in a hearing conducted pursuant to Northwest Power Act section 7(i) proceeding, (ii) which is not on the record, and (iii) with respect to which reasonable prior notice to Parties has not been given, but it shall not include request for status reports on any hearings.~~

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

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

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

(k) "Hearing Officer" means the official designated by the Administrator to conduct a hearing pursuant to Northwest Power Act section 7(i)(2) proceeding under these rules.

~~(f) "Legal Issue" includes any issue grounded on any contractual right or obligation, any of BPA's organic statutes, the Administrative Procedure Act, 5 U.S.C. 551, et seq., or the Trade~~

~~Secrets Act, 18 U.S.C. 1905, which has a bearing of the propriety of a rate proposed by BPA or any party.~~

~~(g) "(1) "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 held pursuant to Section 1010.1(a)(2).~~

~~(m) "Litigant(s)" means BPA and all Parties to the pending proceeding.~~

~~(n) "Participant" means any Person submitting for the record who is not a Party and who submits oral or written comments pursuant to § 1010.5 on a rate proposed by the Administrator Section 1010.7.~~

~~(h) "(o) "Party" means any person whose intervention is effective under §Section 1010.4.5. A Party may be represented by an attorney or other qualified representative. A Party appearing in a proceeding must conform to the standards of ethical conduct required of practitioners in the Federal courts of the United States. To make legal arguments or sign legal documents in BPA proceedings, an attorney must be in good standing with a state bar.~~

~~(i) "(p) "Person" means an individual; partnership; corporation; limited liability company; association; an organized group of persons; a municipality, including a city, county, or any other political subdivision of a state; a 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.~~

~~(j) "(q) "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.~~

~~(r) "Rate" means the monetary charge, discount, credit, surcharge, pricing formula, or pricing algorithm for any electric power or transmission service provided by BPA, including charges for capacity and energy. However, The term does excludes, but such exclusions are not included limited to, transmission line losses, leasing fees, facility use charge other than for BPA transmission services, or charges from BPA 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.~~

~~(k) "Record" means the testimony, exhibits, transcripts, notices, comments, briefs, pleadings, draft record of decision and record of decision certified by the hearing officer.~~

~~(s) "Record" means (1) exhibits (including but not limited to Prefiled Testimony and Exhibits, and cross-examination exhibits) and other documents admitted into evidence by the Hearing Officer; (2) transcripts, BPA 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 Records of Decision, if any; and (6) such other materials and information as may have been submitted to, or developed by, the Administrator.~~

(t) “Secure Website” means the website established and maintained by BPA 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 any proceeding conducted pursuant to these rules. In a proceeding pursuant to Section 1010.1(a)(2), the Hearing Officer shall also make a Recommended Decision to the Administrator as set forth in Section 1010.20.

(b) The Hearing Officer may, in his or her discretion, issue rules of practice to clarify implementation of these rules.

(c) The Hearing Officer may reject or exclude all or part of any document or other materials not submitted in accordance with these rules.

(d) Litigants shall direct communications regarding procedural issues to the Hearing Clerk. The Hearing Clerk’s contact information will be provided in the Federal Register Notice.

Section 1010.4 Initiation of Hearing Proceeding

~~A hearing on the Administrator's proposal to establish or revise the rate for any power or transmission service shall be~~ Any proceeding conducted under these rules will be initiated on the day a notice of ~~BPA's~~ BPA's initial ~~rate~~ proposal is published in the Federal Register. The notice ~~shall~~ will:

~~(a) Specify~~ State, as applicable, the proposed rates and ~~summarize/or the proposed new or revised terms and conditions of transmission service, a statement of the justification and reasons supporting such proposals, and~~ any studies, analyses, or other available ~~additional~~ information that BPA intends to use in the hearing to justify the proposed rates, ~~required by law;~~

~~(b) Establish a deadline for~~ (b) State the procedures for requesting access to the Secure Website for purposes of filing petitions to intervene;

~~(c) State whether~~ a deadline and ~~the hearing will be conducted~~ procedures for Participants to submit comments;

~~(d) If applicable, state that the proceeding is an expedited proceeding under the rule for general rate proceedings §~~ Section 1010.9, or ~~22 and explain the rule for expedited rate proceedings §~~ 1010.10, together with a statement of ~~reasons for the~~ expedited proceeding;

~~(e) Administrator's choice between~~ State ~~the two rules;~~

~~(d) Establish a~~ date on which the Hearing Officer will conduct the prehearing conference;

~~(e) Specify~~ (f) In a proceeding conducted pursuant to Section 1010.1(a)(2), state the date on which the Administrator ~~Hearing Officer~~ will issue the ~~record of~~ Hearing Officer’s Recommended

Decision, which date shall be used by the Hearing Officer in establishing the procedural schedule for the ~~hearing, and proceeding~~;

(g) 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;

(h) ~~(f)~~ Define the scope of the proceeding and state which issues are not within the scope;

(i) State that the scope may include new issues that arise as a result of circumstances or events occurring outside the proceeding if BPA provides additional evidence regarding such issues and also provides an opportunity for Parties to respond; and

(j) Provide other information which the Administrator determines to be pertinent to the ~~hearing~~ proceeding.

Section 1010.45 Intervention.

(a) Filing. A Person seeking to become a Party in a ~~rate hearing~~ 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 with the hearing officer. A copy of the petition shall be served on BPA's Office of General Counsel through the Secure Website.

(b) Contents. ~~The~~ petition ~~shall to intervene must~~ state the name ~~and~~, address, ~~and email address~~ of the Person and the ~~person's~~ Person's interests in the outcome of the ~~hearing proceeding~~. Petitioners may designate no more than ~~two persons~~ 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. BPA customers and customer groups whose applicable rates and/or terms and conditions of transmission service are subject to revision in the ~~hearing proceeding~~ will be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the ~~hearing proceeding~~.

(c) Time.

(1) Petitions must be filed within the time specified in the ~~§ 1010.3(b)~~ Federal Register Notice for the ~~hearing~~ proceeding in question.

(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 ~~later~~ 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 allowing a later intervention,

(iii) The ~~petitioner's~~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 ~~an intervention~~a timely petition ~~shall to intervene must~~ be filed ~~and served at least 24 hours before~~within two business days after the ~~prehearing conference.~~deadline for filing petitions to intervene. Any opposition to a late ~~intervention~~-filed petition ~~shall to intervene must~~ be filed ~~and served~~ within two business days after service of the petition.

~~(e) Application of hearing procedures. Procedures specified in §§ 1010.6, 1010.8-1010.15 are available only to parties, and are not available to participants.~~

Section 1010.5~~Participation~~6 Joint Parties

Parties with common interests or positions in a pending proceeding should form a Joint Party for purposes of filing pleadings, presenting evidence, conducting cross-examination, and briefing. 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.

To form a Joint Party, one member of the proposed Joint Party must email a list of proposed Joint Party members to the Hearing Clerk and to Counsel for each proposed member and affirmatively 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 email notice to all Litigants, stating the Joint Party code and listing the Joint Party members.

Section 1010.7 Participants

(a) Any ~~person, who is not a party,~~Participant may ~~become a participant by submitting~~submit written ~~recommendations~~comments for the Record or ~~by testifying~~present oral comments in legislative-style hearings ~~when conducted by the Administrator, if any,~~ for the purpose of receiving ~~public comment.~~ Written comments must be submitted to the ~~BPA Public Involvement Office.~~ 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 compiled in a section of the Record that is separate from evidence or pleadings.

(b) The Hearing Officer may allow reasonable questioning of ~~participants by BPA counsel.~~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 1010.8, 1010.9, and 1010.11 through 1010.19 are not available to Participants.

(d) Parties may not submit Participant comments. Members or 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 1010.68 Prehearing Conference

A prehearing conference ~~shall~~will be held on the date specified in the ~~Administrator's~~ Federal Register Notice ~~for the proceeding.~~ During the conference, the Hearing Officer shall: ~~(a) Act on all intervention petitions.~~

~~(b)~~

~~(a)~~ Establish any special rules of procedure practice the Hearing Officer considers appropriate, provided that such special rules ~~conform to BPA's rules of procedure governing rate hearings,~~are consistent with these rules, and

~~(c) Establish a service list,~~

~~(b)~~

~~(d)~~ Establish a procedural schedule ~~for the entire hearing, and.~~

Section 1010.9 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 submitting Party, the specific relief sought, any relevant facts and law, and an electronic signature of the submitting attorney. Pleadings must follow the document numbering system established by the Hearing Officer and display such number in the footer of the pleading.

(c) Format. Pleadings must be submitted 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 points Times New Roman (10 points 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) Submission and service of pleadings. Pleadings must be filed in accordance with Section 1010.18.

(e) Answers to pleadings. Unless otherwise determined by these rules (see Sections 1010.11(c) (Motions to Compel) and 1010.12(d) (Motions to Strike)) or the Hearing Officer, answers to pleadings are due within two business days of service of the pleading.

~~(f) (e) Consolidate parties with similar interests into groups for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination.~~

~~Section 1010.7~~ Replies to answers. Unless otherwise determined by these rules or the Hearing Officer, replies to answers are not allowed.

(g) Interlocutory appeal. Motions to the Administrator appealing an order of the Hearing Officer are disfavored and may be granted only in exceptional circumstances. Such motions may be accepted or rejected by the Administrator at his or her discretion.

Section 1010.10 Ex Parte Communications

(a) General Rule. ~~Except as permitted in paragraph (b) of this section, no~~ **No** Party or Participant in any hearing proceeding under these rules shall ~~submit ex-~~ **make Ex Parte** Communications to the Administrator ~~or,~~ any BPA employee ~~regarding any matter pending before BPA in,~~ the Hearing ~~Neither~~ Officer, or the Hearing Clerk. In addition, ~~no BPA employee shall~~ **make Ex Parte Communications to the Hearing Officer or the Hearing Clerk.** The Administrator ~~nor any,~~ BPA ~~employee request~~ **employees, and the Hearing Officer shall not initiate** or entertain ~~such ex-parte communications.~~ Ex Parte Communications.

(b) Exceptions. The ~~prohibitions contained in~~ following communications will not be considered Ex Parte Communications subject to paragraph (a) of this section ~~do not apply to a communication:~~

- (1) Relating to matters of procedure only;
- (2) From a Person when otherwise authorized by law or other portions of these procedures;
- (3) From or to the Federal Energy Regulatory Commission ~~after coordination with BPA counsel;~~
- (4) Which all Parties agree may be made on an *ex parte* basis;
- (5) Relating to exchanges of data communications in the ordinary course of business, data information required to be exchanged pursuant to contracts, or data information which would be available pursuant to Freedom of Information Act requests;
- (6) Which relates solely to a request for supplemental information ~~or data~~ necessary for an understanding of factual materials contained in documents filed with BPA during in a hearing proceeding under these rules and which is made ~~in the presence of or~~ after coordination with BPA counsel; ~~or~~
- (7) Which relates to a topic that is only secondarily the object of a hearing proceeding, for which BPA is statutorily responsible under provisions other than Northwest Power Act Section 7, or which is eventually decided other than through a Section 7(i) hearing proceeding; or
- (8) Between the Hearing Officer and Hearing Clerk or other support staff reporting to the Hearing Officer.

(c) Application. The prohibitions contained in this Section ~~shall~~ **1010.10** apply from the day on which BPA publishes the Federal Register Notice specified in ~~§ 1010.3, or the person responsible for such communication has knowledge that a notice will be published~~ Section 1010.4 and continue until the day the Administrator issues the Final Record of Decision in the proceeding.

(d) Notice of meetings. BPA will give reasonable public notice of any meeting which BPA intends to hold with any customer group or member of the public when it reasonably appears that matters of ~~substance relative material~~ to any substantive issue in the merits of a section 7(i)-hearing pending proceeding will be discussed. For any such meeting held individually with customers, customer groups, and others, BPA will prepare a memorandum reciting the date of the meeting, persons in attendance, and a summary of issues discussed and positions taken. This memorandum will be ~~placed in~~ posted on BPA's website and identified as an *Ex Parte* ~~file separate from the material~~ Communication. The *Ex Parte* Communication will not become part of the Record upon which the Administrator relies in reaching a decision. This file will be available for review through ~~BPA's Public Involvement Office~~ a section of BPA's website separate from the Record.

(e) Written materials. Any written ~~material~~ *Ex Parte* Communication received by the Administrator, any BPA employee, or ~~BPA staff which would otherwise be subject to the prohibition of paragraph (a) of this section automatically~~ Hearing Officer will be ~~placed~~ promptly delivered to BPA Counsel, who will place the document in the *ex parte* file identified in paragraph (d) of this section.

(f) Oral communications. If the Administrator, any BPA employee, or ~~any BPA employee who the Hearing Officer~~ receives an oral offer of any ~~communication prohibited by paragraph (a) of this section~~ *Ex Parte* Communication, they shall decline to listen to such communication and shall explain that ~~the matters such communication~~ is pending for determination. prohibited by this Section 1010.10. 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 BPA Counsel, who will place the statement in the *ex parte* file identified in paragraph (d) of this section.

~~the substance of the communication and the circumstances thereof within 48 hours and deliver the statement to BPA's Office of General Counsel. BPA's Office of General Counsel must deliver these statements to the hearing officer who will serve copies on parties to the proceedings. The hearing officer will also serve a copy of the statements to the communicator and allow him or her a reasonable opportunity to file a response.~~

(g) Rebuttal. Requests for an opportunity to rebut, on the record, any facts or contentions contained in ~~either any document in the *ex parte* communication or in a memorandum prepared pursuant to paragraph~~ file ~~(h) of this section~~ should be filed with the Hearing Officer. The Hearing Officer will grant such requests only where the dictates of fairness so require.

Section 1010.8 Discovery

BPA11 Clarification Sessions and ~~the parties to any rate hearing may engage in discovery, and be subject to discovery requests, according to the following rules:~~ **Data Requests**

(a) ~~Informal requests. Prior to initiation of a rate hearing, information concerning BPA rates may be requested by making a written request through BPA's Office of General Counsel.~~

~~(b) Data requests. Data requests shall be made in writing at the times designated in the procedural schedule. Any relevant information may be requested that is not privileged or unduly burdensome to produce. BPA or any party may request data in hard copy or computer tape, studies, or admissions; however, no party shall be required to perform any new study or to run any analysis or computer program. Requests shall be addressed to counsel for the party to whom the requests are sent (or directly to a party not represented by counsel), and shall be served on all parties to the service list compiled by the hearing officer. Responses to data requests are required to be served only on counsel for the requesting party.~~

~~(c) Clarification sessions. .~~

~~(1) The Hearing Officer may schedule one or more transcribed informal clarification sessions for the purpose of allowing parties Litigants to question witnesses about the contents of their prepared testimony Prefiled Testimony and Exhibits and the derivation of their recommendations and conclusions. The procedural schedule shall require that BPA and the parties wishing to 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. Witnesses may participate in clarification of a witnesses' testimony serve all data requests pertaining to that testimony at least one business day prior to the session. Witnesses shall have the option of providing answers to data requests during the clarification session. sessions by phone or other technology made available by BPA.~~

~~(2) If a witness is unable to answer a given question during the clarifying a clarification session, the answer to that question shall may be provided submitted as a data request in accordance with paragraph (bc) of this section.~~

~~(d) Objections to discovery. Objections to data requests or to questions asked during clarification sessions shall be submitted within the time specified in the procedural schedule. Objections~~

~~must explain the grounds on which response is being withheld.~~

~~(3) If a Litigant does~~

~~(e) Motions to compel. Anyone whose data request or clarifying question is not answered may file a motion 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. Litigants may submit data requests, and must respond to data requests, according to the rules in this Section 1010.11. Litigants shall be reasonable in the number of data requests submitted to any Litigant. A Litigant may seek relief from what it believes is an unreasonable number of data requests, including relief from the cumulative burden of successive requests, by motion filed with the Hearing Officer to compel an answer. The movant. Before filing such a motion, and within 24 hours of submission of the requests, a responding Litigant shall confer with the requesting Litigant to attempt to determine an additional amount of time to respond to the requests. If such a motion is filed, the Hearing Officer shall not unreasonably withhold relief. The Hearing Officer may adopt limitations on data requests not set forth in this section.~~

~~(1) Scope in general. Except as otherwise provided in this section, Litigants may request information or materials relevant to any Litigant's Prefiled Testimony and Exhibits and proportional to the needs of the case, considering the importance of the issues at stake in~~

the proceeding, the amount in controversy, the Litigants' relative access to relevant information, the Litigants' resources, the importance of the information sought to develop the record on the issue, whether the burden or expense of responding to the request outweighs the likely benefit in terms of development of the record, and the potential impact to the procedural schedule.

(i) Litigants shall not be required to perform any new study or to run any analysis or computer program, but a Litigant may, in its sole discretion and without waiving any objection to any data request, agree to perform such study or analysis.

(ii) Litigants shall not be required to produce publicly available information or information that is unreasonably cumulative or duplicative.

(2) Submitting data requests. Data requests must be submitted through the Secure Website at the times designated in the procedural schedule. Data requests submitted at or before 4:30 p.m. will be considered as submitted that day. Data requests submitted after 4:30 p.m. will be considered as submitted on the following day.

(i) Litigants shall not submit a data request asking for the response to another data request. All Litigants have access to all data requests and responses through the Secure Website during the proceeding.

(ii) Multi-part data requests are not permitted; each data request must include only one question or request for information.

(3) Responses and objections to data requests. Responses and objections to data requests must be submitted through the Secure Website.

(i) Except as otherwise provided by the Hearing Officer, Litigants must either respond or object to each data request no later than five business days after the day that the data request is submitted through the Secure Website (as determined in Section 1010.11(b)(2)). The Hearing Officer may specify exceptions to this rule and establish alternative deadlines, for example, for periods spanning holidays.

(ii) In no case shall a Litigant be required to respond to more than 100 data requests per day. This includes all data requests received cumulatively by a Litigant, without regard to the identity of the requesting Litigant or Litigants. If a Litigant has more than 100 data responses due on any one day, responses in excess of the first 100 received are due the next business day; if the Litigant has more than 100 data responses due that day, responses in excess of the first 100 are due the next business day, and so on, such that a Litigant is not required to respond to more than 100 data requests on any day. Due dates will be based on the order in which the data requests were received.

(iii) Objections to any data request must explain the grounds upon which the response is being withheld.

(c) Motions to compel. Before filing a motion to compel a response to a data request, the Litigant that submitted the data request must contact the Litigant to which the data request was directed in an attempt to informally resolve any objection. Both Litigants must confer in good

faith to attempt to informally resolve the dispute. If the Litigants are unable to do so, the Litigant submitting the data request may file a motion to compel no more than three business days after the earlier of receiving notice of an objection to the data request or the due date for the response to the data request. The Litigant filing the motion must certify that it first attempted to resolve the objection informally with the objecting party. Motions Litigant. An answer to a motion to compel must be made is due within the time specified in three business days. The Hearing Officer may hold a telephone conference to discuss and attempt to resolve the dispute. In ruling on a motion to compel, the Hearing Officer shall consider, among other things, the potential impact of the decision on completing the proceeding according to the procedural schedule.

~~(d) Privileged and Commercially Sensitive Information. The hearing officer may issue protective orders or make in camera inspection of documents as necessary to protect copyrighted, proprietary, or otherwise privileged information.~~

(1) The Hearing Officer may not order release of documents in BPA's possession withheld on the basis of exemptions to where a Litigant has asserted the documents are protected by attorney-client privilege, contain attorney work product, or contain Commercially Sensitive Information. If a Litigant withholds requested information on the basis that it is Commercially Sensitive Information, such withholding may, in the Administrator's discretion, affect the weight given to evidence and arguments made in reliance upon such information.

(2) The Hearing Officer may not order BPA to release documents that BPA asserts may be exempt from release under the Freedom of Information Act, 5 U.S.C. § 552, or the Trade Secrets Act, 18 U.S.C. § 1905.

~~(e)~~

(3) The Hearing Officer may issue protective orders or make arrangements for private inspection of information withheld on the basis of Section 1010.11(d)(1) only at the request of the Litigant withholding the information.

~~(e) Sanctions. The Hearing Officer may remedy any refusal to comply with an order compelling answer to a data request or clarification question by:~~

~~(1) Striking the testimony or Prefiled Testimony and Exhibits to which the question or data request relates, or;~~

~~(2) Limiting discovery or cross-examination by the Party refusing to answer or respond; or~~

~~(3) Recommending to the Administrator that an appropriate adverse inference be drawn against the Party refusing to answer or respond.~~

~~(h) Copies. Any party wishing copies of data responses should request them from the party submitting the response.~~

(f) Record. Data requests and data responses are not part of the Record unless the Hearing Officer admits them into evidence. A Litigant wishing to introduce data requests and responses into the Record must do so by either (1) attaching the full text of such data

requests and responses as an exhibit to prefiled testimony, or (2) submitting a motion to that effect.

Section 1010.9 General Rate Proceedings

~~(a) General rule. A general rate proceeding is a hearing on the Administrator's proposal to revise all, or substantially all, of BPA's power and transmission rates in instances where the Administrator does not utilize the procedures in § 1010.10 for an expedited rate proceeding. The hearing officer may establish the procedures and conduct hearings, consistent with this rule, as necessary to develop a full and complete record and to receive public comment and argument related to the proposed rates.~~

Section 1010.10 Expedited Rate Proceedings

~~(a) General Rule. The record of decision in rate hearings conducted under this section shall be issued within 90 days after notice is issued under § 1010.3, except as provided in paragraph (b) of this section. Consistent with fairness to the parties, the hearing officer shall establish the procedures or special rules necessary to satisfy the Administrator's expedited schedule.~~

~~(b) Extensions. Only the hearing officer may request the Administrator to extend the 90-day hearing limit, on a showing of good cause by a party. Upon a determination of the hearing officer that a party's showing has merit and is not dilatory, the hearing officer may request in writing an extension of time from the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of his determination within four days thereafter.~~

~~(c) Special procedure. Oral argument will not be heard in expedited rate proceedings, unless all parties agree to substitute oral argument for a brief on exceptions.~~

Section 1010.11 12 Prefiled Testimony and Exhibits

(a) General rule.

(1) Parties (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 1010.9(c). Each section of prefiled testimony must include a heading setting forth its subject matter. These headings will not constitute evidence. 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 expert 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 BPA. Except as provided in § 1010.5, witnesses shall submit all testimony and exhibits at the times specified in the procedural schedule. Oral testimony will be permitted only by leave of the hearing officer.~~

~~(2) Any rebuttal to BPA's direct case must be contained in a party's direct testimony, which shall also contain along with any affirmative case that Party wishes to present. Any subsequent rebuttal testimony permitted by the hearing officer shall must be limited to rebuttal of the parties' direct cases. In lieu of cross-examination, the hearing officer is encouraged to allow the filing of surrebuttal testimony on an issue.~~ New affirmative evidence may be submitted in rebuttal testimony only if in reply to another Party's direct case. No other new affirmative evidence may be introduced in rebuttal testimony. Rebuttal testimony must refer to the specific evidence being addressed (pages, lines, topic).

~~(3) Written testimony must have line numbers inserted in the left hand margin of each page. It is the responsibility of each party to obtain from the hearing officer's clerk exhibit numbers for display on prefiled testimony and exhibits.~~

~~(4) The hearing officer shall~~ (6) Upon motion by a Litigant, the Hearing Officer may reject prefiled exhibits and/or other documentation of excessive length. Parties may only introduce into evidence excerpts or summaries of such documentation, which that exclude irrelevant or redundant material.

~~(b) Items by reference. Testimony, exhibits, or studies from other BPA rate hearings may be designated as items by references in any proceeding. Items~~ Any material electronically linked or incorporated by reference should will not be physically included in part of the Record. A Party wishing to submit such material into the Record shall file it, or relevant excerpts thereof, as an exhibit.

~~(c) Record. Prefiled Testimony and Exhibits are not part of the record, unless the hearing officer so orders until they have been admitted into evidence by the Hearing Officer. Litigants shall move their Prefiled Testimony and Exhibits into evidence at the conclusion of cross-examination of the witness(es) sponsoring the material. If there is no cross-examination of a Litigant's witness(es), counsel for the Litigant shall file on the Secure Website a certification of the Litigant's witness(es) listing all Prefiled Testimony and Exhibits, and certifying 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 certification, the witnesses' Prefiled Testimony and Exhibits will be admitted into evidence.~~

~~(e) 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 BPA is expert.~~

(d) Motions to strike.

~~(d) Motions to strike.~~ Motions to strike Prefiled Testimony and Exhibits ~~shall~~must be filed within ~~7~~five business days after service. Answers to the motion may be made; however, ~~the~~movant Litigants may not reply to the answer. If the Hearing Officer grants a motion to strike, the Litigant sponsoring the evidence shall file conformed copies

~~(e) Record of participants. Testimony and comments received pursuant to § 1010.5 shall be compiled in a separate section of the record.~~

~~(f) Sanctions. The hearing officer may reject or exclude all or part of any evidentiary material or pleading not submitted in accordance with this section.~~strikes through deletions of the stricken material within five business days of the Hearing Officer's order. Conformed copies must be filed with the same document number as the original evidence, but with the designation "-CC" at the end (e.g., BP-20-E-BPA-16-CC). Material struck by the Hearing Officer shall not be part of the Record except for purposes of reference regarding whether the motion should have been granted.

Section 1010.12. Hearing ~~12~~ 13 Cross-Examination

~~(a) Panels. The hearing officer may permit a party's witnesses to testify in a panel.~~(a) Except as provided otherwise by the Hearing Officer, witnesses generally shall be cross-examined as a panel for Prefiled Testimony and Exhibits or studies that they co-sponsor, provided that each panel member (1) has submitted a statement of qualifications, and (2) is under oath. Any panel member may respond to a cross-examination question.

~~(b) Cross-examination.~~

~~(1) Cross-examination. At the time specified in the procedural schedule, Litigants intending to cross-examine a witness shall be limited to issues relevant to the proposed rates or to issues identified in a file a cross-examination statement of issues adopted by the hearing officer. The hearing officer statement shall:~~

~~may impose reasonable time limitations on the cross-examination of any witness.~~

(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) Only counsel Briefly describe the subject matter and specific portions of the Prefiled Testimony and Exhibits for a witness 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) Litigants waive cross-examination for any witnesses not listed in their cross-examination statement, except that all Litigants may ask follow-up questions of witnesses appearing at the request of other Litigants.

(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 identified in the Litigant's cross-examination statement.

(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 in instances of that Counsel for any Litigant may object to friendly cross-examination or where the objector can demonstrate that answers would unduly prejudice its interests.

(3i) Where Parties have substantially similar positions, the Hearing Officer may require the Parties to appoint lead counsel to conduct cross-examination.

(4

(j) The Hearing Officer shall not permit may impose reasonable time limitations on the cross-examination on issues where it is clear that the questioner's position is not adverse to that of the any witness, viz, friendly cross-examination.

(ek) Cross-examination exhibits.

(1) Documents used during cross-examination of any witness must be submitted to the hearing officer and to the witnesses' counsel.

(2) If a document used as

(1) Litigants must file every cross-examination exhibit to be presented to a witness for any purpose by 4:30 p.m., Pacific Time, 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) Litigants must provide physical copies of cross-examination exhibits 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) If a cross-examination exhibit contains material not offered as evidence, the Party utilizing the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(4) If a document is offered into evidence during cross-examination, and only part of the document is accepted into evidence, the document must be conformed by the offeror to include only that part of the document received in evidence. The conformed document must be filed through the Secure Website, as stated in Section 1010.18 below.

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

Section 1010.14(d) Stipulations

~~The Hearing Officer may receive~~ **admit** into evidence stipulations on any issue of fact. ~~(e) All other matters relating to conduct of hearings are left to the discretion of the hearing officer.~~

Section 1010.13-15 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 BPA is expert. Litigants 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 1010.16 Briefs

(a) General rule. Briefs ~~shall~~ **must** be filed at times specified by the Hearing Officer in the procedural schedule. All evidentiary arguments in briefs must be based on cited material contained in the record. ~~Materials~~ **Evidence** not admitted into ~~evidence shall~~ **the Record will** not be attached to ~~or relied upon in~~ any brief, ~~except to address disputes regarding the admissibility of specific evidence.~~ Incorporation by reference ~~shall~~ **is** not ~~be~~ permitted. The Hearing Officer may impose page limitations on any brief. All briefs must comply with the guidelines provided in Attachment A, as may be amended.

(b) Waiver of issues or arguments. Parties whose briefs do not raise and fully develop their positions on any issue shall be deemed to take no position on such issue. ~~Arguments not raised~~ Arguments or alleged errors not raised in initial briefs in accordance with Section 1010.16(d), in briefs on exceptions in accordance with Section 1010.16(e), or briefs permitted by Section 1010.16(f) are deemed to be waived.

(c) Optional brief and memorandum of law prior to cross-examination. The Hearing Officer may allow the filing of a brief and memorandum of law prior to cross-examination.

~~(d) Initial brief. At the conclusion of the evidentiary portion of a hearing, the hearing officer shall allow~~ **proceeding**, each Party ~~to submit any~~ **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 ~~prepared~~ **testimony** Prefiled Testimony and Exhibits. The initial brief must contain a final revised exhibit

list reflecting the status of all of the Party's exhibits, including those admitted, withdrawn, conformed, and rejected.

~~(de)~~ Brief on exceptions. After issuance of ~~BPA's~~BPA's Draft Record of Decision, each Party may file a brief on exceptions. The purposes of the brief on exceptions are to: (i) Raise any alleged legal, policy, or evidentiary errors in the Draft Record of Decision, or (ii) provide additional support for ~~tentative draft~~ decisions contained in the Draft Record of Decision. ~~- Alleged errors not~~All arguments raised by a Party in briefs its initial brief will be deemed to have been raised in the Party's brief on exceptions shall be deemed waived, regardless of whether such arguments are included in the brief on exceptions.

~~(e) Sanctions. The hearing officer shall not admit into the record any brief that does not conform to this section.~~

(f) Additional briefing rule for proceedings under Section 1010.1(a)(2). In a proceeding pursuant to Section 1010.1(a)(2), BPA is considered a Party for purposes of filing briefs in accordance with this Section 1010.16, except that Section 1010.16(b) does not apply to BPA. 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 1010.16(e), above.

Section 1010.17

~~Section 1010.14.~~ Oral Argument

(a) An opportunity for ~~parties~~ Litigants to present oral argument ~~may will~~ be provided ~~at the discretion of the~~ in proceedings conducted under these rules.
~~Administrator, except as limited by § 1010.10(e).~~

(b) At the time specified in the procedural schedule, Litigants intending 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 they request.

(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 1010.15-18 Filing and Service of Documents

~~BPA and each party~~(a) Unless otherwise specified, Litigants shall ~~provide a copy of file~~ all ~~motions~~ testimony, exhibits, briefs, and pleadings ~~and prefiled materials to with the Hearing Officer through BPA's Secure Website. Such filing will constitute service on all persons listed in the service list compiled~~ Litigants. All filings must be made by 4:30 p.m., Pacific Time, on the appropriate deadline. If the Secure Website is unavailable for filing, Litigants shall serve the document to be filed on the Hearing Officer, Hearing Clerk, and all Litigants through email 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. ~~Until a service list is adopted by the hearing officer under § 1010.6, service on parties may be made by service on BPA General Counsel. Parties may designate no more than two persons on whom~~

~~service shall be made.~~ the Administrator may designate additional Persons upon whom service will be made.

~~(c) Except as provided in Section 1010.18(b), service will not be made upon Participants shall not be included on the service list.~~

~~(d) Service of data requests for data and responses to such requests is governed by § Section 1010.8-11(b) and (h)(2).~~

Section 1010.16-19 Telephone Conferences

Telephone conferences may be permitted in appropriate circumstances, provided that the following criteria are met: (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 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 presented in the record.

Section 1010.21 Final Record of Decision

~~Based on the entire hearing record,~~(a) The Administrator shall make a decision adopting final proposed rates for submission to the Federal Energy Regulatory Commission for confirmation and approval based on the Record. The Final Record of Decision shall will include a full and complete justification for the final proposed rate or rates. The Administrator shall promptly serve copies of the record of decision on all parties to the proceeding. Copies of theThe Final Record of Decision will be uploaded to the Secure Website and made available to Participants through BPA's external website.

(b) In a proceeding pursuant to Section 1010.1(a)(2), the Administrator shall 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, setting forth the reasons for reaching any findings and conclusions, including the reasons for reaching any findings and conclusions which may differ from those in the Hearing Officer's Recommended Decision.

Section 1010.22 Expedited Proceedings

(a) General rule. The Final Record of Decision in a proceeding conducted under this section will be issued on an expedited basis in 90-120 days from the date of the Federal Register Notice. The Hearing Officer may establish procedures or special rules necessary for the expedited schedule.

(b) Extensions. BPA's Public Involvement manager. 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

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I. 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: [Whether Bonneville's surplus power sales forecast is reasonable].]

Summary of Party's Position

[Bonneville's surplus power sales forecast is flawed because it does not account for extraregional power sales.]

Party's Position and Argument:

[State argument, including citations to the record.]

Requested Action or Decision

[Bonneville's surplus power sales forecast should be increased to reflect extraregional power sales.]

POST-HEARING LIST OF EXHIBITS

| <u>Filing Code</u> | <u>Title</u> | <u>Date Filed</u> | <u>Status</u> |
|----------------------|---------------------------|-------------------|-----------------|
| <u>XX-XX-E-XX-01</u> | <u>Direct Testimony</u> | <u>01/01/2000</u> | <u>Admitted</u> |
| <u>XX-XX-E-XX-02</u> | <u>Rebuttal Testimony</u> | <u>12/31/2000</u> | <u>Rejected</u> |
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