Lackland Air Force Base, Texas 78236–9853.

Both the courier address and U.S. Postal Service address are listed on the project website (*www.AFRC-F35A-Beddown.com*), which also provides more information on the Environmental Impact Statement and related materials.

SUPPLEMENTARY INFORMATION: The Notice of Intent provided the public with instructions on how to submit scoping comments to the Air Force in consideration of the four alternatives being considered, which include: Homestead Air Reserve Base, Homestead FL; Naval Air Station Fort Worth Joint Reserve Base, Fort Worth, TX; Davis-Monthan Air Force Base, Tucson, AZ; and Whiteman Air Force Base, Knob Noster, MO. The Air Force has subsequently been made aware that the address provided for submittal of courier delivered public scoping comments (*e.g.,* Federal Express or United Parcel Service) was incorrect. This notice corrects the address for courier delivered public scoping comments and provides 10-working days for the interested public to submit scoping comments. During this 10-working day period, the Air Force is offering multiple ways in which comments can be submitted. Comments can be provided through the project website (*www.AFRC-F35A-Beddown.com*), via email to the email address provided below and via regular mail or via courier to the addresses listed below. The website also provides additional information on the Environmental Impact Statement and related materials. The Air Force will consider all scoping comments submitted.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2018–17324 Filed 8–10–18; 8:45 am]

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DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: RP–18]

Final Rules of Procedure

AGENCY: Bonneville Power Administration (Bonneville), Department of Energy (DOE).

ACTION: Notice of final rules of procedure.

SUMMARY: These final rules of procedure revise the rules of procedure that govern Bonneville's hearings conducted under section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).

DATES: The final rules of procedure are effective on September 12, 2018.

FOR FURTHER INFORMATION CONTACT: Heidi Helwig, DKE–7, BPA Communications, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; by phone toll-free at 1–800–622–4520; or by email to *hyhelwig@bpa.gov.*

Responsible Official: Mary K. Jensen, Executive Vice President, General Counsel, is the official responsible for the development of Bonneville's rules of procedure.

SUPPLEMENTARY INFORMATION:

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Part I—Introduction and Background

The Northwest Power Act provides that Bonneville must establish and periodically review and revise its rates so that they recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment in the Federal Columbia River Power System over a reasonable number of years, and Bonneville's other costs and expenses. 16 U.S.C. 839e(a)(1). Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that Bonneville's rates be established according to certain procedures, including notice of the proposed rates; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposed rates; and a decision by the Administrator based on the record.

In addition, section 212(i)(2)(A) of the Federal Power Act, 16 U.S.C. 824k(i)(2)(A), provides in part that the Administrator may conduct a section 7(i) hearing to determine the terms and conditions for transmission service on the Federal Columbia River Transmission System under certain circumstances. Such a hearing must adhere to the procedural requirements of paragraphs (1) through (3) of section 7(i) of the Northwest Power Act, except that the Hearing Officer makes a recommended decision to the Administrator before the Administrator's final decision.

Bonneville last revised its procedures to govern hearings under section 7(i) of the Northwest Power Act in 1986. *See* Procedures Governing Bonneville Power Administration Rate Hearings, 51 FR 7611 (Mar. 5, 1986). Since the establishment of those procedures, there have been significant advancements in the technology available to conduct the hearings. The revised rules of procedure incorporate changes to reflect the manner in which Bonneville will apply these advancements. In addition, through conducting numerous hearings over the past few decades, Bonneville gained insight regarding the strengths and weaknesses of its procedures. The revised rules reflect changes to make the hearings more efficient and to incorporate procedures that were regularly adopted by orders of the Hearing Officers in previous hearings. Finally, the revised rules now explicitly apply to any proceeding under section 212(i)(2)(A) of the Federal Power Act.

In order to encourage public involvement and assist Bonneville in the development of the revisions to the rules, Bonneville met with customers and other interested parties on February 13, 2018, in Portland, Oregon, to discuss how the then-current rules might be revised. Bonneville also posted an initial draft of proposed revisions to the rules for public review and informally solicited written comments over a two-week period ending February 28, 2018. After reviewing the comments, Bonneville incorporated a number of revisions to the initial draft of proposed revisions to the rules. On May 2, 2018, Bonneville published a Notice of proposed revised rules of procedure in the **Federal Register**. *See* Proposed Revised Rules of Procedure and Opportunity for Review and Comment, 83 FR 19262 (May 2, 2018). Although rules of agency procedure are exempt from notice and comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), Bonneville nevertheless published notice of the proposed revisions to the procedural rules in the **Federal Register** to promote transparency and public participation. Bonneville accepted written comments on the proposed revisions until June 4, 2018.

Part II—Response to Comments and Changes to Proposed Rules

Bonneville received seven comments on its proposed revisions to the rules of procedure (''proposed rules''). In response to these comments, changes were made to the proposed rules as noted below. For purposes of clarity, if a term used in the discussion below is defined in the rules, the term has the meaning found in the rules. For example, ''Party'' refers to all

intervenors and not Bonneville, while ''Litigant'' refers to all Parties and Bonneville.

Section 1010.1 General Provisions

Avangrid Renewables LLC, Avista Corporation, Idaho Power Company, PacifiCorp, Portland General Electric Company, and Puget Sound Energy, Inc. (''Avangrid/IOU'') note that Section 1010.1(b)(3) of the proposed rules states that the rules do not apply to ''[c]ontract negotiations unless otherwise provided by paragraph (a) [general rule of applicability] of this section.'' Avangrid/IOU Comments at 1. Avangrid/IOU states that this subsection is unclear, and the intent is not apparent. *Id.* Bonneville agrees that the provision is unclear. Upon further review, the provision is unnecessary because contract provisions are not negotiated or determined in section 7(i) ratemaking proceedings, but rather through separate negotiations. Furthermore, Bonneville's rates may be referenced in contracts, but rates can be effective only after they are established in section 7(i) proceedings. Hence, Bonneville has removed Section 1010.1(b)(3) from the final rules.

Section 1010.2 Definitions

Sacramento Municipal Utility District, Turlock Irrigation District, and the Transmission Agency of Northern California (the ''Northern California Utilities'' or ''NCU'') suggest revising the definition of ''Litigant'' to refer to ''Bonneville trial staff'' rather than ''Bonneville.'' NCU Comments at 9. NCU separately suggests adopting ''separation of functions'' rules and revising the proposed *ex parte* rule to prohibit *ex parte* communications between ''Bonneville trial staff'' and the Administrator or other Bonneville employees during section 7(i) proceedings. Bonneville has not adopted separation of functions rules or the distinction of a separate ''trial staff'' for the reasons explained in the discussion of the *ex parte* rule in Section 1010.5 below.

Section 1010.3 Hearing Officer

Avangrid/IOU states that Section 1010.3(f) of the proposed rules, which requires Litigants to ''direct communications regarding procedural issues to the Hearing Clerk,'' could be interpreted to preclude communications between Litigants on procedural issues. Avangrid/IOU Comments at 1–2. The intent of this section was to ensure that parties would contact the Hearing Clerk with any inquiries about administrative matters arising during the hearing instead of contacting Bonneville counsel or staff. The provision was not intended to limit discussions among Litigants on procedural issues. Section 1010.3(f) has been revised accordingly.

Section 1010.5 Ex Parte Communications

Avangrid/IOU states that Section 1010.5(d) of the proposed rules requires notice of an anticipated ''*ex parte* meeting'' but fails to require Bonneville to prepare and make available a statement setting forth the substance of any *ex parte* communication that takes place at any such meeting. Avangrid/IOU Comments at 2–3. Section 1010.2(j) of the proposed rules, however, provides that an *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.*'' (Emphasis added.) Under this definition, oral or written statements at noticed meetings are not *ex parte* communications and therefore do not require the preparation of a memorandum summarizing the meeting. This is not a change from Bonneville's existing procedural rules. When public notice is provided for a meeting, all Litigants have the opportunity to attend, to identify the attendees, and to note any issues discussed, positions taken, and statements made by any other attendees. However, in order to ensure that there is no ambiguity, Bonneville has added oral or written statements made at noticed meetings to the list in Section 1010.5(b) of communications that are not *ex parte.*

NCU urges Bonneville to adopt ''separation of function'' rules that would distinguish separate Bonneville ''trial staff'' that work on section 7(i) proceedings and prohibit *ex parte* communications between the trial staff and the Administrator or other Bonneville employees. NCU Comments at 19. NCU notes that Bonneville added language to the existing rules to prohibit *ex parte* communications between the Hearing Officer and Bonneville staff members and argues that the principle behind this prohibition applies equally to communications between Bonneville staff working on a section 7(i) proceeding and the Administrator. NCU suggests that such prohibitions are critical to fair and transparent proceedings. *Id.*

Bonneville added the language explicitly prohibiting *ex parte* communications with the Hearing Officer in recognition of the Hearing Officer's unique responsibility in proceedings under section 212(i)(2)(A) of the Federal Power Act. Section 212(i)(2)(A) requires the Hearing Officer to issue a recommended decision to the Administrator on the substantive issues in a proceeding to establish terms and conditions of transmission service. This requirement does not appear in the Northwest Power Act or apply to proceedings to establish rates. In proceedings to establish rates, the Hearing Officer's decision-making is limited to procedural issues.

NCU states that the inclusion of Bonneville staff members among those who are prohibited from having *ex parte* communications with the Hearing Officer under the revised rules implicitly acknowledges shortcomings in the existing rules. *Id.* This is incorrect. Bonneville has been conducting a public process in recent months (separate from revision of the procedural rules) to address the use of the section 212(i)(2)(A) procedures for the adoption of terms and conditions of transmission service. Stakeholders in that process expressed concern about the need to explicitly prohibit *ex parte* communications between the Hearing Officer and all participants in section 212(i)(2)(A) proceedings given that the Hearing Officer would make a recommended decision on the substantive issues in those proceedings. Bonneville added the language in response to those concerns, not because of a lack of transparency or fairness in the existing rules or complaints about such issues in the proceedings that Bonneville has conducted under those rules for many years.

NCU acknowledges that Bonneville's statutes do not require adoption of rules governing the separation of functions. NCU Comments at 21. Instead, the separation of functions requirement applies only to certain adjudications under the Administrative Procedure Act. 5 U.S.C. 554. Bonneville's section 7(i) proceedings, in contrast, are formal rulemakings. Indeed, the Northwest Power Act provides that ''[n]othing in this section shall be construed to require a hearing pursuant to section 554, 556, or 557 of title 5.'' 16 U.S.C. 839f(e)(2). Legislative history confirms that ''[t]he adjudication provisions of 5 U.S.C. 554 and 557 do not apply to hearings under this bill.'' H.R. Rep. 96–976, Pt. I, 96th Cong., 2d Sess. 71 (1980). Bonneville's section 7(i) proceedings establish generally applicable rates or terms and conditions of transmission service. These proceedings do not determine the legal status of particular persons or practices. Because these proceedings are not adjudications, Bonneville is not required to adopt separation of function rules.

Aside from the lack of legal requirements, adopting separation of function rules would lead to nonsensical results. It would effectively isolate the Administrator and the rest of Bonneville from the very subject matter experts that Bonneville employs to work on rates and terms and conditions of transmission service. Bonneville staff plays a critical role in providing expertise to the agency's establishment of rates. Sound decision-making in the context of formal rulemaking requires the input of subject matter experts.

Bonneville has not adopted NCU's suggestion regarding the separation of functions or associated *ex parte* provisions in the final rule.

Section 1010.6 Intervention

The Alliance of Western Energy Consumers (''AWEC'') states that Bonneville should decline to adopt proposed revisions to Section 1010.6(b), which provide that petitioners other than those ''that directly purchase power or transmission services under Bonneville's rate schedules, or trade organizations representing those entities'' must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the proceeding. AWEC Comments at 2. AWEC believes that the interests of end-use industrial consumer groups have been directly addressed in Federal case law, that customers and Bonneville understand the rights provided under the existing rules, and that making minor adjustments to the existing language runs the risk of creating confusion and disputes. *Id.*

The revisions in the proposed rules were not intended to change the rights or standards governing intervention in Bonneville's section 7(i) proceedings. The proposed rules use more specific language to clarify that the ''customers and customer groups'' referred to in the previous rules are entities that directly purchase power or transmission services under Bonneville's rate schedules (or trade organizations representing those entities). Those entities are permitted to intervene upon filing a petition that conforms to Section 1010.6. Any petitioners other than those entities will continue to be permitted to intervene if they submit petitions that demonstrate a relevant interest in the proceeding.

NCU seeks clarification that a Party that is granted intervention after the deadline for petitions to intervene may introduce evidence, conduct discovery, and participate in other ways if the time for doing so under the procedural schedule has not yet lapsed. NCU Comments at 9–10. Bonneville has not made changes in the rules in response to this comment, but ''late'' intervenors have the same rights and obligations as other parties with respect to participation in accordance with the procedural schedule.

Section 1010.11 Pleadings

NCU seeks clarification of the proposed rule governing interlocutory appeal of a Hearing Officer's decision to the Administrator. NCU Comments at 10. The proposed rule requires a Litigant to submit a motion for the Hearing Officer to certify a decision for interlocutory review by the Administrator, and the Hearing Officer must grant the motion in order for any review by the Administrator to occur. NCU requests that Bonneville revise the rule to allow a Litigant to appeal an issue directly to the Administrator if the Hearing Officer denies a Litigant's motion for certification. *Id.*

As the rule states, interlocutory appeal is discouraged. Bonneville included the ''certification'' requirement in the proposed rule to provide more guidance with respect to the process for seeking interlocutory appeal and to have the Hearing Officer assess whether appeal is justified based on specific criteria set forth in the rule. If the Hearing Officer finds that the appeal does not meet those criteria, the consideration of interlocutory review ends. The Hearing Officer acts as a gatekeeper to ensure that the Administrator is not burdened with unwarranted requests. Allowing Litigants to appeal directly to the Administrator notwithstanding the Hearing Officer's denial of certification would undermine the certification requirement. Bonneville has not made this proposed change.

Section 1010.12 Clarification Sessions and Data Requests

a. Section 1010.12(a) Clarification Sessions

NCU seeks clarification of Section 1010.12(a)(1) that statements made during clarification sessions may be used for the limited purpose of impeachment on cross-examination and as a basis for data requests. NCU Comments at 10–11. Clarification sessions are not transcribed or otherwise recorded. Parties, however, may submit data requests about statements made in clarification sessions, subject to the limitations of the rules. Absent a data response regarding such statements, using alleged statements from clarification sessions for purposes of impeachment during cross-examination would be problematic because of the lack of a record of such statements. If a Party believes that it might want to use such a statement as part of its case, it may submit a data request to confirm the statement in writing. The Hearing Officer will decide all issues regarding data requests based on the circumstances at the time.

b. Section 1010.12(b) Data Requests and Responses

Multiple entities commented on the proposed rules governing data requests, which included significant changes to the existing rules. Within the last four or five section 7(i) rate proceedings, Bonneville has had multiple experiences of a single Party in the proceeding submitting hundreds of data requests to Bonneville on a single issue. In the most recent rate proceeding, a Party submitted significant numbers of data requests to parties other than Bonneville, and the Hearing Officer was required to resolve a contentious dispute over requests that raised issues about, among other things, the potential disclosure of commercially sensitive information to a business competitor. Bonneville has drawn upon these experiences in developing the proposed revisions to the rules governing data requests and has attempted to balance (1) the need for procedures that facilitate the submission of data requests that could help further the development of a full and complete record, with (2) the discouragement of requests that are disproportionate to the needs of the case or the efficient completion of the section 7(i) process. Several commenters acknowledged Bonneville's attempt to strike such a balance, but the comments reveal differing perspectives on issues related to that balance, such as the scope of permissible data requests, access to commercially sensitive information, and the treatment of claims of privilege.

1. Section 1010.12(b)(1) Scope in General

Section 1010.12(b)(1) of the proposed rules allows data requests ''relevant to any issue in the proceeding'' and includes factors that are intended to help otherwise define the scope of permissible data requests and ensure that such requests are proportional to the needs of the case. Section 1010.12(b)(1)(i) of the proposed rules requires each Litigant to be ''reasonable'' in the number and breadth of its data requests in consideration of these factors, and Section 1010.12(e)(4) requires the Hearing Officer to consider these factors in deciding any motion to compel. The Public Power Council, Eugene Water & Electric Board, Seattle

City Light, Public Utility District No. 1 of Snohomish County, PNGC Power, Northwest Requirements Utilities, and Western Public Agencies Group (''Joint Customers'') note that the factors in Section 1010.12(b)(1) and (e)(4) appear to limit the scope of discovery and prevent abuse and suggest that Bonneville acknowledge this intent in the Final FRN. Joint Customers Comments at 2. They believe such an acknowledgement would assist the Hearing Officer in applying Section 1010.12. Other commenters made similar suggestions that Bonneville comment on or clarify the potential application of the rules under specific scenarios that could arise in the future. Bonneville is not addressing any specific scenario in this notice or determining how the Hearing Officer should resolve any specific issue. In principle, however, Bonneville agrees that its comments regarding the intent of the rules could prove useful for parties and the Hearing Officer in the future. The Joint Customers' observations about the intent behind the factors included in Section 1010.12(b)(1) and (e)(4) are correct: Those factors are intended by Bonneville to limit the scope of discovery and prevent abuse.

Powerex comments that the relevancy standard in Section 1010.12(b)(1) creates the ''potential for broad, invasive, and burdensome discovery'' and that such a standard could be applied in a manner at odds with Bonneville's statutory requirement to conduct section 7(i) proceedings expeditiously and develop a full and complete record. Powerex Comments at 2. Powerex also maintains that the scope of data requests under Section 1010.12(b)(1) appears to be substantially broader than the statutory requirement that the hearing give parties ''adequate opportunity to offer refutation or rebuttal of any material submitted by any other person. . . .'' *Id. quoting* 16 U.S.C. 839(e)(i)(2)(A). Powerex believes that the factors limiting the scope of discovery and preventing abuse are necessary for conducting expeditious hearings and for reducing the disincentive to participate in Bonneville's proceedings.

Bonneville appreciates Powerex's concern about broad, invasive, and burdensome data requests. All of the provisions in Section 1010.12(b)(1) are intended to comprehensively define the scope of permissible data requests. The relevancy standard for data requests was the subject of significant debate within Bonneville and among stakeholders. Bonneville ultimately opted for allowing data requests relevant to any issue in the proceeding, as limited by other aspects of the rules. This includes the requirement that each Litigant must be ''reasonable'' in the number and breadth of its requests. Bonneville intentionally used ''breadth'' in Section 1010.12(b)(1)(i) because that term could encompass a variety of situations or requests (or patterns of requests) of an objectionable nature. Moreover, by allowing a Responding Litigant to object to an ''unreasonable'' request or pattern of requests, Section 1010.12(b)(1)(i) is intended to help ensure that a Requesting Litigant will observe its obligation with respect to reasonableness at the time it is submitting requests. In the event of a dispute over a data request, Section 1010.12(e)(2) explicitly places the burden on a Litigant filing a motion to compel to demonstrate that the request is within the scope of Section 1010.12(b)(1). This includes demonstrating that the request is reasonable. Bonneville believes these limitations help limit the potential for broad, invasive, and burdensome data requests.

Bonneville disagrees that the provisions in Section 1010.12(b)(1) are inconsistent with the Northwest Power Act's requirements to conduct proceedings expeditiously, develop a full and complete record, and provide an adequate opportunity to rebut any other person. *See* Powerex Comments at 2. As described above, Bonneville's goal in this section was to create a balance that implements and adheres to those standards.

NCU urges Bonneville to revise the factor in Section 1010.12(b)(1) that considers ''the extent of the Responding Litigant's testimony on the subject.'' NCU Comments at 7. NCU maintains that the focus on the extent of a Litigant's testimony is an ''inferior proxy for the extent of a Responding Litigant's stake in the outcome of the issue.'' *Id.* It suggests revising the rule to refer to the Litigant's stake in the outcome.

Bonneville has not adopted the revision suggested by NCU. Bonneville is concerned that the concept of a Litigant's ''stake'' in an issue is ambiguous and would be difficult to assess by an objective measure using available information. This would pose problems for the Hearing Officer in resolving disputes over data requests and for Litigants submitting those requests in the first place. Indeed, because the factors in Section 1010.12(b)(1) help define the scope of permissible data requests, a Litigant should consider those factors when drafting and submitting a data request. It is unclear how a Litigant could know another Litigant's ''stake'' in the outcome of an issue at the time of the request. In contrast, both a Litigant submitting a data request and a Hearing Officer addressing a dispute over a request can easily assess the extent of a Litigant's testimony on an issue.

As an alternative to its suggestion to replace the factor referring to ''the extent of the Responding Litigant's testimony,'' NCU asks Bonneville to clarify that a Party cannot avoid producing relevant information *solely* by claiming that it has not offered testimony on the subject. *Id.* at 8. In response, the extent of a Litigant's testimony is just one of the factors for the Hearing Officer to consider when resolving data request issues, but this factor is intended to provide a Party some ability to manage the extent of its exposure to data requests. The scope in Section 1010.12(b)(1) is not so broad as to expose a Party to broad or invasive requests about every issue in the proceeding simply because the Party intervened. In addition, although nothing in the rules prohibits submitting a data request to a Litigant about another Litigant's testimony, Bonneville expects that, absent unusual circumstances, a request will seek information relevant to issues raised in the testimony of the Litigant to which the request is submitted.

NCU also raises an issue related to a dispute over the scope of data requests in the BP–18 rate proceeding, arguing that Bonneville had ''promised'' to address the issue in the revision of the procedural rules. NCU Comments at 15. The issue in BP–18 stemmed from the Hearing Officer's denial of a motion to compel filed by Joint Party 3 (''JP03''), which consisted of the same entities that comprise NCU. In the order denying the motion to compel, the Hearing Officer found that for ''information to be relevant in a rate proceeding, it must fall within the scope of the testimony put forward by the witness and the information used by the witness to produce that testimony.'' Order on JP03 Motion to Compel JP01's Response to Data Requests, BP–18–HOO–21, at 2. NCU argued in BP–18 that requiring information to be ''used by'' a witness to be relevant and subject to data requests created the potential to shield information from discovery by not providing it to a witness. The BP–18 Final Record of Decision acknowledged this issue and stated that ''Staff and stakeholders should consider these arguments in the review of Bonneville's procedural rules after the BP–18 proceeding has concluded.'' Administrator's Final Record of Decision, BP–18–A–04, at 183–84.

As an initial matter, Bonneville did not ''promise'' that the revised procedural rules would expressly address this issue. *See* NCU Comments at 15. The Final Record of Decision instructed Staff and stakeholders to consider NCU's arguments as part of the process for revising the procedural rules, and all stakeholders have now had opportunity to advocate for what they believe the rules should include. Whereas the previous rule governing data requests includes relatively undefined language that had not been interpreted in detail since it was adopted, Staff and stakeholders have had considerable discussion about the language in the revised rules and the attempts to strike the right balance concerning data requests.

As for the specific issue NCU raises, Section 1010.12(b)(1) defines the scope of permissible data requests, and nothing in that section explicitly excludes information or materials from that scope solely because a witness did not use or rely on that information or material in the development of his or her testimony. The final rule is not intended to limit data requests to only the information that a witness relied on in developing testimony. However, Bonneville expects that the Hearing Officer will resolve any dispute over data requests based on all of the facts and information available at the time.

Avangrid/IOU notes Section 1010.12(b)(1)(vi) of the proposed rules, which provides: Bonneville shall not be required to produce documents that, in the opinion of Counsel for Bonneville, *may* be exempt from production under the Freedom of Information Act, 5 U.S.C. 552, or the Trade Secrets Act, 18 U.S.C. 1905.

Avangrid/IOU Comments at 3 (emphasis added). Avangrid/IOU believes this language is too broad and suggests the following language:

Bonneville shall not be required to produce documents that, in the opinion of Counsel for Bonneville, would be determined to be exempt from production under the Freedom of Information Act, 5 U.S.C. 552, or the Trade Secrets Act, 18 U.S.C. 1905.

Id. at 3–4. This is a reasonable suggestion for clarification of this provision; however, Bonneville must be mindful not to predetermine the applicability of any particular exemption under the Freedom of Information Act (''FOIA'') before it receives an actual FOIA request. Bonneville has revised the final rule to be more consistent with the language used in the existing rule. Under this subsection, Bonneville's Counsel will make a good faith effort to make a reasonable determination.

2. Section 1010.12(b)(2) Submitting Data Requests

Avangrid/IOU suggests Section 1010.12(b)(2)(i) of the proposed rules should be revised as follows:

A Data Request must identify the Prefiled Testimony and Exhibits (page and line numbers *insofar as is practicable*) or other material addressed in the request.

Avangrid/IOU Comments at 4. Avangrid/IOU notes that it may be impracticable to specify a page and line number in a data request if, for example, a data request asks where in a prefiled testimony or exhibit a topic is addressed. *Id.* Although Bonneville understands the intent behind the proposed revision, it is important that Litigants specifically identify the source material to which a data request is addressed. Avangrid/IOU's proposed language could be interpreted to allow Parties to ignore the basic rule and determine independently that a specific citation was not ''practicable.'' Therefore, Bonneville will not adopt the proposed language. However, in the event the source material cannot be cited by page and line number, Litigants must take steps to ensure the material is cited in a manner that allows the Responding Litigant to easily identify it.

NCU takes issue with Section 1010.12(b)(2)(iii) of the proposed rules, which prohibits submitting data requests to any Litigant but Bonneville during the period immediately following Bonneville's initial proposal. NCU Comments at 11–12. NCU maintains that Bonneville has not explained the reason for this limitation and that the rule could make the hearing process less efficient and fair. *Id.* at 11.

One of the themes that has emerged during discussions about the revising the procedural rules is that Bonneville should be the primary focus of data requests submitted by a Party in a section 7(i) proceeding. The comments of the Joint Customers and Powerex make clear their concerns about rules that create opportunities for expansive or invasive Party-to-Party data requests, particularly among competitors. Bonneville takes those concerns seriously. Moreover, Bonneville shares the perspective that Bonneville should be the primary focus in section 7(i) proceedings, particularly during the period after publishing its initial proposal.

Bonneville adopted the limitation in Section 1010.12(b)(2)(iii) of the proposed rules out of concern that Litigants other than Bonneville potentially could be exposed to data requests over a lengthy period of time at a point in the proceeding when the Parties must be preparing their answering cases to Bonneville's extensive initial proposal. The testimony in Bonneville's initial proposal is the *only* testimony that would have been filed at this point. The circumstances that would justify a Party submitting data requests about Bonneville's initial proposal to a Litigant other than Bonneville would be rare.

Bonneville acknowledges that Party-to-Party data requests about Bonneville's initial proposal have not been an issue in previous section 7(i) proceedings, but this is because such requests have never been submitted in the 38–year history of such proceedings. As explained above, however, Bonneville has seen use of the data request procedures in the last several rate proceedings that it would not have contemplated, and this is one area where Bonneville feels it is appropriate to exercise its discretion over the rules governing data requests to address this concern even if the specific situation has not yet presented itself.

NCU's primary point is that a blanket prohibition on the submission of Party-to-Party data requests immediately following the initial proposal is overly restrictive, because a Responding Party will still have the opportunity to raise all applicable objections to a request. NCU Comments at 12. Bonneville is concerned about adopting rules that may increase the likelihood of disputes over data requests at a time in the proceeding when Parties are preparing their direct testimony, but NCU's point that a blanket prohibition lacks balance has merit. There could be limited circumstances when Party-to-Party data requests immediately following the publication of Bonneville's initial proposal might be appropriate, and a Party should not be foreclosed from the opportunity to submit such requests if it would be essential to the development of the Party's case. Bonneville has made changes in the final rule to provide the opportunity to seek leave from the Hearing Officer to submit such requests in limited circumstances. To be clear, the standard for justifying the need for such requests has intentionally been set very high, and Bonneville believes that the circumstances in which such requests would be justified are rare.

NCU also requests clarification that the requirement in Section 1010.12(b)(2)(iv) that subparts of a data request ''must address only one section or other discrete portion of *a* Litigant's Prefiled Testimony and Exhibits'' was not intended to require that the data requests must be directed to the

Responding Litigant's testimony. *Id.* NCU correctly notes that the intent of this provision is to ensure that the subparts of a multipart data request are limited in number and related to the same general subject matter.

3. Section 1010.12(b)(3) Responding to Data Requests

Powerex notes that Section 1010.12(b)(3)(iii) of the proposed rules provides that as soon as a Responding Litigant believes it will not be able to respond to one or more data requests by the due date because ''of the volume of or other burden caused by the request(s),'' the Responding Litigant must contact the Requesting Litigant and confer about a possible delay in the due date. Powerex Comments at 4. If the Litigants have not resolved the issues by the due date, the Responding Litigant must object and then supplement the objection with a response in good faith as soon as possible thereafter. *Id.* Powerex notes the rules provide that a Responding Litigant has five business days to respond to a data request, but Section 1010.12(b)(3)(iii) permits informal extension of that deadline to some undefined time to allow Responding Litigants to respond to broad and/or voluminous data requests. *Id.* Powerex believes only the Hearing Officer has authority to extend the due date of a data response. *Id.* Powerex also suggests that, in such circumstances, the Litigants should confer about the scope and burden of the data request(s) and seek to refine the request(s) to permit production within the five-day response period. *Id.*

Bonneville has revised Section 1010.12(b)(3)(i) to clarify that Litigants attempting to resolve a data request dispute also have the ability to agree to a response date outside the five-day deadline. Although Powerex is correct to be concerned about an extension resulting in a response being received too late to be incorporated into a Litigant's testimony, Bonneville believes this will be avoided by the Litigants' resolution of the issue; in other words, a Requesting Litigant would not agree to a date for a response that would arrive too late to be used. In the event the Litigants cannot resolve the response date, the Hearing Officer would resolve the issue based on a motion filed by the Requesting Litigant and a response filed by the Responding Litigant.

4. Section 1010.12(c) Information That Is Attorney-Client Privileged or Attorney Work Product

Section 1010.12(c) of the proposed rules provides that a Litigant may be required to identify materials that the Litigant has withheld from a response to a data request on the basis of the attorney-client privilege or the work product doctrine. This section also prohibits the Hearing Officer, however, from ordering an *in camera* review or releasing such information.

NCU requests clarification that the Hearing Officer may apply the sanctions provided for in Section 1010.12(f) if he or she determines that the Responding Litigant's claim of privilege is unsubstantiated. NCU Comments at 13. The proposed rule governing attorney-client privilege and work product information intentionally limits the Hearing Officer's ability to order the review or disclosure of such information. Bonneville believes that disputes about materials that are claimed to be attorney-client privileged or attorney work product are unlikely to be a productive use of resources, particularly given the requirement that, upon request, Counsel for a Responding Litigant must declare under penalty of perjury that the materials are protected from disclosure.

Bonneville believes that a sworn declaration provided by Counsel for a Responding Litigant should be sufficient to address any questions about claims of privilege or work product in almost all cases. Nevertheless, if a Requesting Litigant believes that the information provided in such a declaration is unsubstantiated, nothing in the rules prohibits the Requesting Litigant from filing a motion to compel. If the Hearing Officer were to grant the motion to compel, failure to comply with the Hearing Officer's order would be a basis to impose sanctions under Section 1010.12(f).

5. Section 1010.12(d) Commercially Sensitive Information and Critical Energy/Electric Infrastructure Information

Powerex urges revision of the proposed rules related to commercially sensitive information (''CSI''). Powerex Comments at 3. Powerex argues that the permissiveness of the rules threatens the development of a full and complete record because parties are less likely to fully participate to avoid having to produce commercially sensitive information in response to data requests. *Id.*

The production of commercially sensitive information has not been a significant issue in most section 7(i) proceedings. Other than a provision allowing the Hearing Officer to adopt a protective order, the previous rules do not address the disclosure of such information. In response to the discovery dispute in the BP–18 proceeding, described above, the final record of decision identified the requirements around commercially sensitive information as one of the topics to address in the revision of the procedural rules. Administrator's Final Record of Decision, BP–18–A–04, at 185.

The proposed rules require the disclosure of commercially sensitive information (for a data request that is otherwise within the scope), subject to a protective order. The rules specify certain requirements that Bonneville needs in any protective order for procedural reasons, but the rules otherwise provide for the Requesting and Responding Litigants to negotiate the terms of the order. Notwithstanding the rules providing for disclosure of commercially sensitive information, subsection (d)(3) discourages the *use* of such information in any filing because of the administrative burden associated with having such information in the record.

Powerex urges revising the rules to discourage both the *discovery* and *use* of commercially sensitive information in section 7(i) proceedings. *Id.* Bonneville has made no changes in response to Powerex's comments but acknowledges the concerns about discovery of commercially sensitive information. Bonneville does not typically designate information or materials as commercially sensitive in response to data requests, so the primary concern here relates to disclosure of commercially sensitive information by a Party. Some aspects of the revised rules should help to address such concerns. First, given the primary focus on Bonneville's proposals in section 7(i) proceedings, only unusual circumstances would make it important to seek a Party's commercially sensitive information to assess a Bonneville proposal. All Litigants should be particularly attentive to the requirement to be ''reasonable'' in the breadth of a request that might seek commercially sensitive information, particularly for a request to a competitor. Section 7(i) proceedings are not a forum to seek information to adjudicate the status of particular persons or practices or to gain strategic advantage over competitors. Bonneville will monitor this issue in upcoming proceedings to assess whether revisions to the rules are necessary to prevent abuse.

Second, in many types of administrative proceedings, protective orders are commonly used to protect against unauthorized disclosure or misuse of confidential information provided in response to data requests. For the most part, the rules put the

terms of that protective order in the hands of the Requesting and Responding Litigants. The rules allow the Responding Litigant to make a proposal for almost all of the substantive terms of the protective order, which should provide the opportunity to develop acceptable terms.

Third, the rules provide for a ''highly confidential'' designation for information or materials that require heightened protection. Furthermore, the rules authorize the Hearing Officer, as a form of heightened protection, to allow the Responding Litigant to withhold the information altogether. In other words, a Litigant will have the opportunity to convince the Hearing Officer that the sensitivity of particular information justifies excusing the Responding Litigant from disclosing the information.

Finally, Powerex urges Bonneville to revise Section 1010.13(f) to disallow the Hearing Officer to impose sanctions under certain circumstances. Powerex Comments at 3–4. Powerex maintains that ''if a party files no testimony or its filed testimony does not rely on or reference CSI, then the responding party should not be penalized for protecting its own legitimate business interests when it refuses to produce CSI.'' *Id.* at 3. Powerex's proposal would be unworkable as it relates to the provisions of the rules governing disputes over data requests and motions to compel. If the Hearing Officer grants a motion to compel a Responding Litigant to produce commercially sensitive information in response to a data request, permitting a Litigant to refuse to comply with the order would undermine the rules that govern disputes over data requests. Bonneville has not adopted Powerex's suggestion for this reason.

With respect to Powerex's concern about being required to disclose commercially sensitive information in a situation where a Litigant files no testimony or does not rely on such information, the rules already require consideration of that factor in assessing whether a request is within the scope established in Section 1010.12(b)(1) and is ''reasonable'' under Section 1010.12(b)(1)(i). In addition, Section 1010.12(e)(4) requires the Hearing Officer to consider that factor in resolving a motion to compel. As described above, that factor is intended to provide a Litigant some ability to manage its exposure to data requests. A Litigant that is concerned about potentially having to provide commercially sensitive information in response to a data request certainly should not put that information at issue in its testimony. Bonneville is not directly addressing the specific situation that Powerex raises. The Hearing Officer will resolve any dispute over data requests based on the facts and information available at the time.

In considering Powerex's comments and an NCU comment that Bonneville addresses in the next section, Bonneville found that the reference in Section 1010.12(e)(4) to whether a Litigant filed testimony related to the data request effectively repeated the factor in Section 1010.12(b)(1) referring to ''the extent of the Responding Litigant's testimony on the subject.'' Bonneville has removed the reference in Section 1010.12(e)(4) of the final rules, but the intent of this provision has not changed. In resolving a motion to compel, the Hearing Officer must consider the extent of a Litigant's testimony as one of the factors under Section 1010.12(b)(1).

6. Section 1010.12(e)(4) Resolution of Dispute by the Hearing Officer

Powerex notes that Section 1010.12(e)(4) provides that the Hearing Officer may hold a telephone conference ''to discuss and attempt to resolve a data request dispute . . .'' and suggests that Bonneville should clarify whether the rules allow or intend the Hearing Officer to rule on motions to compel orally during teleconferences, and if so, the rules should clarify how the Hearing Officer must document such an order. Powerex Comments at 4. Powerex states that the rules should clarify that a Hearing Officer's order on a motion to compel should be memorialized in writing if either Party so requests, in order to provide adequate opportunity for appeal, if necessary. *Id.* Bonneville believes the Hearing Officer should have the authority to orally rule on a data request dispute, including a motion to compel, during a teleconference. Bonneville also agrees that any oral ruling by the Hearing Officer in a teleconference must be memorialized in writing, regardless of whether a Party so requests. All Litigants should be able to know the resolution of discovery disputes arising during the proceeding. Section 1010.12(e)(4) has been revised accordingly.

Powerex also suggests that Bonneville should clarify whether Section 1010.19, governing telephone conferences, applies to telephone conferences attempting to resolve data request disputes. Powerex Comments at 4. Section 1010.19 provides:

> 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 1010.19 does not apply to conferences under Section 1010.12(e)(4) to resolve data request disputes. Section 1010.19 is intended to apply to telephone conferences regarding issues in which all Litigants might have an interest and which all Litigants should have the opportunity to attend. Data request disputes should be resolved, if possible, by the Litigants involved in the dispute and the Hearing Officer. As such, conferences to address data request disputes should not be subject to the notice and other requirements in Section 1010.19. Conferences regarding such disputes should involve only matters of procedure and not substantive matters that would result in *ex parte* communications with the Hearing Officer. In the event that communications relevant to the merits of any issue in the proceeding are made to the Hearing Officer during such a conference, the requirements of Section 1010.5(f) apply. Section 1010.12(e)(4) has been revised to remove the reference to a ''telephone'' conference to reflect that the requirements of Section 1010.19 do not apply to conferences regarding data request disputes.

NCU urges Bonneville to modify Section 1010.12(e)(4) to require the Hearing Officer to consider a Litigant's ''stake in the outcome'' of an issue in deciding a motion to compel rather than whether the Litigant ''filed testimony related to the data request'' before it received the request. NCU Comments at 14–15. NCU raises the same concern that it did under Section 1010.12(b)(1), discussed above. Bonneville is not adopting this factor for the reasons discussed previously.

Section 1010.13 Prefiled Testimony and Exhibits

Avangrid/IOU suggests Section 1010.13(a)(5) of the proposed rules should be revised as follows:

> Rebuttal testimony must *insofar as is practicable* refer to the specific material being addressed (pages, lines, topic).

Avangrid/IOU Comments at 4. Avangrid/IOU notes that it may be impracticable to specify pages and lines being addressed—for example, if the rebuttal testimony points out that the testimony being rebutted fails to address a factor. *Id.* Although Bonneville understands the intent of Avangrid/IOU's proposed revision, it will not be adopted for the reasons stated in

response to Avangrid/IOU's comments on Section 1010.12(b)(2)(i) above. If the testimony being rebutted fails to address a factor, a Litigant should cite where the other factors are addressed.

Section 1010.14 Cross-Examination

Avangrid/IOU notes Section 1010.14(k)(1) of the proposed procedures:

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.

Avangrid/IOU Comments at 4. Avangrid/IOU suggests that this sentence be clarified to explain how a Cross-Examination Exhibit is to be filed. *Id.* In response, Section 1010.10(a) of the proposed rules provides that ''[u]nless otherwise specified, a Litigant shall make any filing provided for by these rules with the Hearing Officer through the Secure Website.'' This provision governs the manner in which Cross-Examination Exhibits are to be filed.

Section 1010.20 Hearing Officer's Recommended Decision

NCU argues that the Hearing Officer should issue a recommended decision in Bonneville's rate cases. NCU Comments at 22–24. NCU suggests this would ensure that the first look at the Bonneville staff's proposal would be an independent one, not influenced by communications from the same Bonneville staff advocating for its adoption. *Id.* at 22. This proposal, however, is not supported by the language or the intent behind section 7(i) of the Northwest Power Act and is contrary to 38 years of administrative practice.

Section 7(i) of the Northwest Power Act prescribes the procedures Bonneville uses to establish its power and transmission rates. 16 U.S.C. 839e(i). Section 7(i) provides that, when establishing rates, ''[o]ne or more hearings shall be conducted as expeditiously as practicable by a Hearing Officer to develop a full and complete record and to receive public comment in the form of written and oral presentation of views, data, questions, and argument related to such proposed rates.'' *Id.* Thus, the Hearing Officer's role in the section 7(i) ratemaking hearings is to develop the record. Section 7(i) does not grant the Hearing Officer the authority to make *any* decision regarding the merits of the issues in the ratemaking proceedings, nor to make any substantive or recommended decision on the merits.

This is in contrast to Section 212 of the Federal Power Act, which provides that when the Bonneville Administrator provides an opportunity for a hearing under section 7(i)(1)–(3) of the Northwest Power Act, ''the hearing officer *shall* . . . make a recommended decision to the Administrator that states the hearing officer's findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the record . . . .'' 16 U.S.C. 824k(i)(2)(A)(ii)(II) (emphasis added). Congress explicitly requires a Hearing Officer to make a recommended decision to the Administrator in a section 212 proceeding, but there is no such requirement for the Hearing Officer in Bonneville's power and transmission rate cases.

Furthermore, as noted previously, the adjudication requirements of the Administrative Procedure Act do not apply. The Northwest Power Act explicitly provides that ''[n]othing in this section shall be construed to require a hearing pursuant to section 554, 556, or 557 of title 5.'' 16 U.S.C. 839f(e)(2). The legislative history confirms that ''[t]he adjudication provisions of 5 U.S.C. 554 and 557 do not apply to hearings under this bill.'' H.R. Rep. 96–976, Pt. I, 96th Cong., 2d Sess. 71 (1980).

Finally, sound decision-making regarding Bonneville's rates necessitates access to Bonneville staff with subject matter expertise. This is particularly necessary to determine whether Bonneville's rates are set to satisfy the applicable statutory requirements. It would be impractical for the Administrator to delegate substantive rate decision-making authority to the Hearing Officer or limit access to Bonneville staff expertise.

NCU argues that despite the fact that section 7(i) does not mandate that a Hearing Officer issue a recommended decision, the functions of advising the agency head and litigating the rate case should be handled by separate personnel to preserve the actual and perceived fairness of the process. NCU Comments at 22–23. NCU also argues that having agency staff assist with preparing the Administrator's draft and final records of decision reduces the value of the rule prohibiting *ex parte* communications between Bonneville employees and the Hearing Officer. *Id.* at 24. Bonneville addressed NCU's comments regarding separation of functions and the *ex parte* rule in the discussion of Section 1010.5 of the rules above. Bonneville has been conducting section 7(i) proceedings to establish rates for almost 40 years and has not heard public concern about actual or perceived unfairness in those proceedings during that time. Bonneville is following the process prescribed by Congress to establish rates, and there is nothing novel or unfair about having agency staff prepare a rulemaking proposal and assist the decision-maker in developing a final proposal. Also, the Hearing Officer addresses only procedural matters in Bonneville's rate cases, so the rule prohibiting *ex parte* communications between Bonneville employees and the Hearing Officer only increases the value of Bonneville's *ex parte* rule compared to Bonneville's previous rules. Agency staff's work on records of decision does not reduce this value.

NCU also argues that the reasonableness of Bonneville's transmission rates may be affected by the terms and conditions of its transmission services and vice versa, and having the Hearing Officer responsible for fashioning recommendations on both rates and terms and conditions of transmission service in a single recommended decision could reduce the potential for incompatible outcomes. NCU Comments at 23. Bonneville believes NCU's concerns are best addressed on a case-by-case basis rather than through general procedural rules. For example, the potential interrelationship between issues in a terms and conditions proceeding and a ratemaking proceeding could be addressed through the adjustment of the terms and conditions proceeding's procedural schedule. Although Bonneville believes that incompatible outcomes in the draft decisions in the two proceedings would be unlikely, the Administrator's authority with respect to final decisions on all issues would avoid any inconsistencies.

NCU argues that Bonneville recognizes the benefits of having one decision-maker (the Hearing Officer) write a draft decision on terms and conditions while another decision-maker (the Administrator) writes the final opinion. *Id.* at 23–24. It is the law, however, that requires the Hearing Officer to write a recommended decision in the terms and conditions proceeding. Thus, Bonneville has not chosen to delegate authority to the Hearing Officer in a terms and conditions proceeding to write a recommended decision because of any particular ''benefits.'' This is the same reason Bonneville does not require a recommended decision for Bonneville's ratemaking; it is not required by law and was not intended by Congress.

The Los Angeles Department of Water and Power (''LADWP'') encourages

Bonneville to revise Section 1010.20 to add the standard that the Hearing Officer will apply to make decisions on the terms and conditions of transmission service in section 212(i) proceedings. LADWP Comments at 1. The scope of the rules, which is set forth in Section 1010.1(d), includes the ''procedures and processes'' for Bonneville proceedings. The rules do not establish substantive standards for the Administrator's final decisions in those proceedings. Adding a substantive standard for the Administrator's decisions would be at odds with the purpose of the rules. Bonneville is conducting a separate public process to discuss the use of FPA section 212(i) to adopt the terms and conditions of transmission service, and Bonneville encourages stakeholders to direct comments about the substantive standards for section 212(i) proceedings to that process.

Section 1010.21 Final Record of Decision

Powerex notes that in Section 1010.21 governing Final Records of Decision, Bonneville deleted the requirement that any Final Record of Decision (either in a rate case or a section 212(i) hearing) should set forth the reasons for reaching any findings and conclusions or a full and complete justification for the rates. Powerex Comments at 4. Powerex suggests that Bonneville retain the deleted language or clarify why it should be deleted. *Id.* As described in the preceding paragraph, the rules establish the procedures governing the conduct of section 7(i) proceedings, not the substantive standards for deciding any issue in such proceedings on the merits. Removing substantive standards for the Administrator's decisions is consistent with the purpose of the rules.

Miscellaneous

Mr. Charles Pace states that Bonneville appears to be conflating the section 7(i) Bonneville ratemaking and section 212 transmission terms and conditions proceedings without providing a cogent reason for doing so. Pace Comments at 1. Bonneville, however, is not conflating the ratemaking proceedings with section 212 terms and conditions proceedings. To the contrary, each type of proceeding is conducted independently based on its particular subject matter and in a separate docket. The fact that the two proceedings are conducted using most of the same provisions of Bonneville's section 7(i) procedures does not mean the substantive proceedings are the same.

Mr. Pace suggests that the section 7(i) ratemaking process will be used to divert attention from the section 212 terms and conditions process, and vice versa. *Id.* This argument is unclear. Each proceeding will receive the same ''attention'' because Bonneville will publish separate notices in the **Federal Register** for each proceeding, and each hearing will be conducted by an independent Hearing Officer with the intervening Litigants.

Mr. Pace states that the procedural rule revisions are intended to devise a ''crosswalk'' between the section 7(i) ratemaking and section 212 terms and conditions proceedings that allows Bonneville to avoid compliance with the requirements of both. *Id.* This argument is also unclear. Bonneville's procedures simply establish the rules by which the respective proceedings are conducted. Bonneville must still comply with all statutory requirements regarding the establishment of rates and all statutory requirements regarding the establishment of transmission terms and conditions. The procedures do not allow Bonneville to avoid compliance with any applicable substantive statutory standards.

Mr. Pace states that the ratemaking process envisioned by Congress is ''infused'' with direct public involvement, but that this is not reflected in the rules of procedure, which are therefore contrary to law. *Id.* To the contrary, Bonneville's procedural rules are designed to implement, and supplement, the procedural requirements of section 7(i) of the Northwest Power Act for Bonneville's ratemaking and terms and conditions proceedings. The rules allow formal public participation in the section 7(i) ratemaking hearings by Bonneville and intervening Parties. *See* Section 1010.6. The rules also allow informal participation in the ratemaking process by members of the general public. *See* Section 1010.8. Members of the general public, called ''participants,'' may submit written comments regarding Bonneville's ratemaking for the record or present oral comments in legislative-style hearings when scheduled. *Id.* In the event new issues arise after a deadline for participant comments, the Hearing Officer may extend the deadline for such comments. *Id.* Also, participant comments are made available on Bonneville's website. *Id.* Bonneville believes these provisions enable and encourage direct public involvement in Bonneville's ratemaking.

The Joint Customers urge Bonneville to closely monitor the hearing officer's interpretation of the rules in the BP–20 and TC–20 proceedings and correct any misapplication of the rules in the agency's records of decision or through subsequent revisions. Joint Customers Comments at 2. They note that although having durable, predictable procedural rules is important to all Litigants, Bonneville should update the rules as regularly as necessary to keep them robust and up-to-date. *Id.* Bonneville agrees that the BP–20 and TC–20 proceedings will be the first proceedings in which Bonneville will implement the new procedural rules. Only by using the rules in actual proceedings will Bonneville be able to identify any problems. For this reason, Bonneville will monitor the implementation of the rules in the BP–20 and TC–20 proceedings, and in subsequent proceedings, and will address any problems in records of decision or through revisions of the rules.

Part III—Final Rules of Procedure

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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 email 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 email 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 email 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 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, 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 email 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

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: 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.

End of Brief Template

Issued this 2nd day of August, 2018.

Elliot E. Mainzer,

Administrator and Chief Executive Officer.

[FR Doc. 2018–17223 Filed 8–10–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–388–A]

Application to Export Electric Energy; TEC Energy Inc.

AGENCY: Office of Electricity, DOE.

ACTION: Notice of application.

SUMMARY: TEC Energy Inc. (Applicant or TEC) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 12, 2018.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. §§ 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. § 824a(e)).

On December 19, 2013, DOE issued Order No. EA–388 to TEC, which authorized the Applicant to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on December 19, 2018. On July 30, 2018, TEC filed an application with DOE for renewal of the export authority contained in Order No. EA–388 for an additional five-year term.

In its application, the Applicant states that it ''does not own or control any electric generation or transmission facilities'' and ''does not hold a franchise or service territory for the transmission, distribution or sale of electric power.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by TEC have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning TEC's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–388–A. An additional copy is to be provided directly to both Etienne Lapointe, CPA, CA, MSc, TEC Energy Inc., 88 Prince St, Suite 202, Montreal, Quebec H3C 2M8, and Legalinc Corporate Services Inc., 35–15 84th Street 2H Jackson Heights, New York, NY 11372.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.