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April 6, 2021

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of Rulemaking to Review and Amend Division 001 Procedural Rules.
Docket No. AR 641

Dear Filing Center:

Pursuant to Chief Administrator Law Judge Moser's email dated March 24, 2021, soliciting redlines to Division 001 procedural rules, please find enclosed the Alliance of Western Energy Consumers' redlines and comments regarding the following rules:

OAR 860-001-0070 (insertions highlighted in yellow)
OAR 860-001-0080 (insertions and deletions in red)
OAR 860-001-0170
OAR 860-001-0540 (insertions and deletions in red)

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosures

AR 641 AHD Redlines

860-001-0070
Confidential Information

(1) This rule applies to information submitted under a claim of confidentiality under the Public Records Law, but does not apply to information designated as confidential under a protective order in a contested case proceeding.

(2) At the time of submission, a person may designate a document or portion of a document as containing confidential information. A designation must be made in good faith and be limited to information that qualifies for protection. The person asserting confidentiality must state the legal basis for the claim of confidentiality.

(3) Unless otherwise provided by Commission order, confidential information submitted under this rule must be clearly labeled on each electronic page as confidential and identified as confidential in the document name~~, or printed on yellow paper, separately bound, and placed in a sealed container or provided on a portable data storage device clearly labeled with the word CONFIDENTIAL and placed in a sealed container. Spreadsheets containing confidential information must be labeled with "confidential" in the header or footer. To the extent practicable, the provider must place only the portions of the document that contain confidential information in the container.~~ The confidential information on each page must be clearly marked by inserting [Confidential] before and after the portion of information that is confidential. The container must be marked "CONFIDENTIAL." ~~Multiple sealed containers may be mailed in one package.~~ This rule in no way affects OAR 860-001-0180(3)(b).

(4) Confidential information submitted to the Commission is exempt from public disclosure to the extent provided under the Public Records Law, ORS 192.410 through 192.505.

(5) Any failure to comply with the requirements in this rule may result in the submission not being treated as including confidential information or being returned to the provider for correction and resubmission.

860-001-0170
Filing Requirements in Contested Case and Declaratory Ruling Proceedings

(1) Every pleading or other document submitted to the Commission in contested case or declaratory ruling proceedings must be filed electronically with the Filing Center on or before the date due. All filings must be labeled with the applicable docket number, a description of the filing, and the date filed. Electronic copies of ~~non-confidential~~public documents must not be password protected, or have any PDF security features enabled.

(a) Documents may be electronically filed by sending the filing as an attachment to an electronic mail message addressed to the Filing Center or by personally delivering or mailing a portable data storage device to the Filing Center. If a portable data storage device is delivered or mailed to the Filing Center, it must be received on or before the date due to be considered timely filed.

Commented [MN1]: The term we use for contested cases is "protected" information. We should discuss making this section consistent with that term.

Commented [TCP2R1]: I think it's better to keep it phrased as "confidential information" since this rule applies to information provided outside of, or prior to, a contested case.

Commented [MN3]: I've taken out the reference to the submission of printed confidential information. This does not mean we won't accept printed material in the future, but in general I think these rules need to be more generalized, and that we need specific filing guidance that we can change more easily as technology changes, that would be provided by the filing center.

We could do this through the website, or through docket specific instructions. The challenge in changing this rule is that we want flexibility, but we also need to communicate filing instruction details to participants.

I would like those details to set separately from rules, so that they can be more flexible and more accessible. We should discuss this at the next workshop.

- Overall, is it reasonable to not reflect all filing requirements in rules?
- If we had more detailed, flexible filing submission requirements, where would we publish them? How would be best communicate them?
- How should we establish or change separate, more detailed filing requirements?

If we did this, we would need to clearly communicate in the rule where more detailed filing guidance could be found.

Commented [TCP4R3]: Since this rule applies to confidential information submitted without a protective order in place, I think the most important thing is that the confidential portions of the filing are clearly designated so that if a PRA request is made, the chance that confidential information is inadvertently disclosed is minimized. It seems like the rule with the deletions captures that need since it still requires all confidential pages to be "clearly labeled" as confidential. Ultimately, it is in the filer's interest to ensure that confidential information is clearly designated as such.

Commented [TCP5]: The current rules allow for a two-day grace period for hard copies of confidential filings. While that is proposed to be removed below, this grace period still seems appropriate to apply to anything that needs to be mailed to the filing center. Otherwise, the due date effectively gets pushed up two days earlier, which can be burdensome when there are tight response times and voluminous information. Another option here would be to require the filer to electronically file on the due date a summary page of the information that will follow via data storage device.

(b) Electronic copies of documents must be in text-searchable format and provided in either Microsoft Word, Microsoft Excel, or .pdf (Adobe Acrobat) format, unless otherwise permitted by the ALJ.

~~(c) An electronic mail message to the Filing Center and its attachments must be less than 20 megabytes in size. Filings larger than 20 megabytes may be divided into multiple electronic mail messages. Each message must be numbered sequentially, and the subject line of the message must include "E-mail x of y," where x equals the message number and y equals the total number of messages. Filings larger than 20 megabytes may also be provided to the Filing Center on a portable data storage device.~~

(c~~d~~) The subject line of each electronic mail message to the Filing Center must include the docket number (if one is assigned), the party name or identifier, and the title or type of filing. ~~For example, for a brief filed by the Citizens' Utility Board of Oregon in UE XXX, the subject line is UE XXX CUB Brief; and for a new application from NW Natural for financing authorization, the subject line is NWN New UF Application.~~

(d~~e~~) If a document relates to multiple dockets that are officially consolidated, then the filer should file the document in the lead docket only. If a document relates to multiple dockets that are not officially consolidated, then the filer must file the document in each docket, even if all dockets are following the same procedural schedule.

~~(f) When electronically filing a redacted version of a filing that contains confidential information, the filer must file the confidential version so that it is received by the Filing Center within 2 business days after the date the redacted version was electronically filed.~~

(e~~g~~) When filing a document that is entirely confidential, the filer must electronically file a cover letter. ~~The filer must file the confidential version so that it is received by the Filing Center within 2 business days after the date that the cover letter was electronically filed.~~

~~(2) Parties must supplement an electronic filing with physical copies of certain filings. For general rate revisions filed under OAR 860-022-0019, integrated resource plans filed under OAR 860-038-0080, the utility must provide 20 physical copies. For filings of more than 100 pages, parties must coordinate with the Filing Center to determine the number of physical copies to be filed.~~

Commented [MN6]: For the time being, we can't accept filings 10 MB. That noted, with our new software, we will be able to.

Commented [MN7]: See comment above – if we separately outline detailed requirements on the website we can include multiple examples.

I'm okay with deleting this. Folks find it confusing.

Commented [MN8]: If most filings will be made electronically going forward, including for confidential information, there is no need for the 2 day lag allowance.

Commented [TCP9R8]: The comment above states that "most filings" will be made electronically. If there is any circumstance in which a hard copy filing will be made, then AWEC supports retaining this language, as it ensures that when a hard copy is required, the party does not need to finalize its filing two days earlier than the due date.

Commented [MN10]: We'll consider eliminating the requirement for physical copies of rate cases and IRPs. This was originally put in rules at the behest of Staff, so we need to discuss this with them in particular.

860-001-0080
Protective Orders

(1) Protective Orders. The Commission's protective orders govern the access and use of protected information in Commission proceedings. The purpose of a protective order is to allow ~~parties~~ for the ability to review protected information while ensuring that it is not disclosed publicly. A general protective order sets forth the processes for a person to become qualified to access protected information, to designate and handle protected information, and to challenge the designation of protected information. For good cause shown, a modified protective order may include specialized restrictions on access to certain highly protected information.

(2) General Protective Order. A party may file a motion for a general protective order when it expects a filing or discovery will involve information that falls within the scope of ORCP 36(C)(1). The general protective order, as adopted by the Commission, is available on the Commission's website and by request from the Administrative Hearings Division.

(a) The motion for a general protective order must be made in writing unless otherwise allowed by the Commission or ALJ consistent with OAR 860-001-0420(1).

(b) An ALJ may issue a general protective order immediately upon receipt of the motion to facilitate filing of protected information and discovery. Pending the ALJ's issuance of a general protective order, the information at issue need not be released.

(c) The general protective order sets forth the processes for parties to dispute a proposed signatory to a protective order or to challenge the designation of specific information as protected.

(3) Modified Protective Order. A party may file a motion under OAR 860-001-0420 for a modified protective order that provides additional protection beyond that provided by the general protective order. A modified protective order may also combine the terms of the general protective order with special provisions for highly protected information, if a party seeks to have one consolidated protective order. A modified protective order provides that certain information is designated as highly protected information. A modified protective order may limit the persons that may access the highly protected information, or designate the time or place or special handling for highly protected information. A modified protective order may also require signatories to make a more specific certification that they have a legitimate and non-competitive need for the designated information and not simply a general interest in the proceeding, and that they intend to be actively involved in the docket by filing written materials and participating in proceedings.

(a) The motion for a modified protective order must be made in writing unless otherwise allowed by the Commission or ALJ consistent with OAR 860-001-0420(1). The motion must

Commented [COM1]: On certain occasions, AWEC has tried to file its signature pages to a protective order simultaneously with, or shortly after filing, its intervention. The filing containing the protective order signature pages is denied because AWEC has not yet been granted party status. It is AWEC's understanding that this is due to the inclusion of "parties" in this rule, as well as the reference to "parties" in the standard protective order.

AWEC requests the proposed modification – and also requests similar modifications to the standard protective order – so that it and other parties' access to confidential information is not unduly delayed. Cases often proceed on an expedited schedule or include numerous complex issues, and potential parties may lose several weeks of investigation and discovery waiting for their intervention to be granted. Notably, under a Protective Order, the utility has the right to object to a party being covered by it. Therefore, there is a remedy available even before an intervention is granted.

Additionally, no stakeholder is entitled to issue discovery until they are made a party. In practice, however, the utilities have accommodated early data requests from AWEC, when issued. This cooperative option is partially foreclosed if a stakeholder whose intervention is pending has not been allowed access to confidential information.

include:

(A) The parties and the exact nature of the information involved;
(B) The legal basis for the claim that the information is protected under ORCP 36(C)(1) or the Public Records Law;
(C) The exact nature of the relief requested;
(D) The specific reasons the requested relief is necessary;
(E) A detailed description of the intermediate measures, including selected redaction, explored by the parties and why these measures are insufficient;
(F) A certification that the requesting party conferred with the other parties regarding the request for a modified protective order indicating whether the parties support the motion; and
(G) A draft of the requested modified protective order.

(b) If the motion is being filed prior to parties being identified, the Filing Center will serve the motion to the generic industry list.

(c) The ALJ will provide expedited review of any motion for modified protective order and may issue a modified protective order within 3 business days to facilitate filing of protected information and discovery . Pending the ALJ's issuance of a modified protective order , the information at issue need not be released.

(d) As a substantive motion, any response to a motion for a modified protective order regarding the terms of the modified protective order must be filed within 15 days of filing of the motion, and the moving party may file a reply within 7 days, consistent with OAR 860-001-0420(4) and (5). A modified protective order will set forth separate processes for parties to dispute a proposed signatory to the protective order, or to challenge the designation of information as protected or highly protected.

(e) When a response is filed to the motion for modified protective order, the ALJ will conduct a de novo review of the terms of the modified protective order. The ALJ will issue a ruling explaining the ALJ's determination. If the ALJ's determination requires changes to the terms of the modified protective order previously issued, the ALJ will issue an amended modified protective order, explaining if signatory pages need to be refiled.

(f) Under OAR 860-001-0110, a party may request that the ALJ certify to the Commission the determination resulting from the de novo review. A party must make this certification request within 15 days of the date of service of the applicable ALJ's decision.

(g) If a modified protective order requires signatories to certify active participation in the proceeding,

(A) A certifying party may decertify itself as eligible to receive information under the modified protective order; or

(B) A certifying party may be decertified as eligible to receive information under the modified protective order after a motion by another party or the ALJ's own motion for failing to fully participate in the proceeding. A certifying party who is the subject of a motion to decertify may file a response within 15 days of the motion to decertify.

(4) A party alleging that the terms of a protective order have been violated may file a complaint under ORS 756.500, or the Commission may, on the Commission's own initiative, file such complaint. Any person that fails to comply with the terms of a protective order may be subject to sanctions. Depending upon the severity of the violation, the Commission may impose any sanction it deems appropriate, up to and including:

(a) Issuing a public reprimand;
(b) Expelling the person or associated party from the proceeding in which the protective order was violated;
(c) Prohibiting the person or associated party from appearing in future proceedings;
(d) Imposing penalties under ORS 756.990(2)(c); or
(e) Reporting any attorney that violated the protective order to the bar association in all states where the attorney is admitted to practice law.

OAR 860-001-0500
Discovery in Contested Case Proceedings

No suggested redlines

OAR 860-001-0540
Data Requests

(1) A party may submit data requests to any other party, subject to the discovery rules in the ORCP. Data requests are written interrogatories or requests for production of documents. Data requests must be answered within 14 days from the date of service, or such other time period ordered by the Commission or an Administrative Law Judge. Each data request must be answered fully and separately in writing or by production of documents, or objected to in writing.

(2) A party submitting a data request must serve the request on all parties to the proceedings. For nonconfidential requests, service may be made by electronic mail or by electronic mail notification of upload to a designated shared workspace for data requests and responses. If the request contains confidential information, then the submitting party must serve a complete copy on all parties eligible to receive confidential information under the terms of a protective order and a redacted copy to all other parties. The complete confidential copy must be served using means identified in the protective order. ~~Nonconfidential data requests and responses submitted to the Staff of the Commission must be sent to PUC.Datarequests@state.or.us. If a designated shared workspace is being used for data~~

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~~requests and responses, the notification of uploaded data requests and responses must be sent to PUC.Datarequests@state.or.us.~~

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(3) The party answering the data request must provide a response or an electronic mail notification of upload to a designated shared workspace to the submitting party and all other parties that filed a written request for a copy of the response. A party must agree to be bound by the applicable protective order to be eligible to receive a response containing confidential information.

(4) A party may offer into evidence data requests and the answers to the data requests. Any objection to substance or form of a data request or answer must be attached to the submitted data request or answer with specific reference and grounds. Every remedy available to a party using deposition procedures is available to a party using data requests.

(5) Except when requested by the Commission or ALJ, or when seeking resolution of a discovery dispute under these rules, data requests are not filed with the Filing Center or provided to the ALJ.

OAR 860-022-0019
General Rate Revision

No suggested redlines