

**From:** [MENZA Candice \\* PUC](#)  
**To:** [PUC Oregon Notification \\* PUC](#)  
**Cc:** [BATMALE JP \\* PUC](#); [CONWAY Bryan \\* PUC](#); [DOUGHERTY Michael \\* PUC](#); [MOSER Nolan \\* PUC](#)  
**Bcc:** [oregondockets@pacificorp.com](#); [dockets@idahopower.com](#); [efiling@nwnatural.com](#); [pge.opuc.filings@pgn.com](#); [dockets@mrq-law.com](#); [dockets@oregoncub.org](#); [greg@richardsonadams.com](#); [cathie.allen@pacificorp.com](#); [jennifer.angell@pacificorp.com](#); [mannis@idahopower.com](#); [mbarlow@newsunenergy.net](#); [BATMALE JP \\* PUC](#); [shawn.bonfield@avistacorp.com](#); [BROCKMAN Kacia \\* PUC](#); [rebecca.brown@nwnatural.com](#); [CLARK Christopher \\* ODOE](#); [blc@dvclaw.com](#); [CONWAY Bryan \\* PUC](#); [angela@oseja.org](#); [DAVIS Diane \\* PUC](#); [memery@oregoncable.com](#); [mfreese@rflawlobby.com](#); [mike@oregoncub.org](#); [jog@dvclaw.com](#); [peter.gose@lumen.com](#); [sgray@nippc.org](#); [max@renewablenw.org](#); [HALL Sarah \\* PUC](#); [diane@utilityadvocates.org](#); [paul.kimball@avistacorp.com](#); [zdk@nwnatural.com](#); [LACKEY Alison \\* PUC](#); [efiling@nwnatural.com](#); [shannon.lipp@ziply.com](#); [etta.lockey@pacificorp.com](#); [jravenesanmarcos@yahoo.com](#); [kevin.lynch@avangrid.com](#); [rob.macfarlane@pgn.com](#); [pge.opucfilings@pgn.com](#); [jeremy.mcveety@state.or.us](#); [com@dvclaw.com](#); [MOSER Nolan \\* PUC](#); [alisha@mrq-law.com](#); [eric.nelsen@nwnatural.com](#); [lnordstrom@idahopower.com](#); [dockets@idahopower.com](#); [pge.opuc.filings@pgn.com](#); [mpapsdorf@lclark.edu](#); [barbara.parr@pgn.com](#); [mary.penfield@pacificorp.com](#); [tcp@dvclaw.com](#); [nicolle.prehn@pgn.com](#); [anne-marie.puustinen@nwnatural.com](#); [frederick@utilityadvocates.org](#); [samantha.ridderbusch@lumen.com](#); [johanna.riemenschneider@doj.state.or.us](#); [dromain@rflawlobby.com](#); [irion@sanger-law.com](#); [joni@sanger-law.com](#); [SMITH Madeline \\* PUC](#); [george.thomson@ziply.com](#); [jennifer@staytonlaw.com](#); [doug.tingey@pgn.com](#); [marktrinchero@dwt.com](#); [betsy.watkins@pacificorp.com](#); [mary.widman@pgn.com](#); [natasha.siores@nwnatural.com](#)  
**Subject:** AR 641  
**Date:** Wednesday, April 28, 2021 5:34:00 PM  
**Attachments:** [AR 641 AHD Redlines - 4 28.docx](#)

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Dear AR 641 Stakeholders,  
Please see the email below from Chief ALJ Moser.  
Thank you,  
Candice Menza

**Good afternoon everyone,**

**I apologize for being a day late on this.**

**Attached you'll find our latest redline of the rules for review. As I said in my previous email, you will continue to be able, throughout this rulemaking, even as we move to other sections, to propose changes to these rules. The attached draft is a working draft of our proposed redlines after consideration of your proposals. It can and will change, as we continue to engage together and we add more rules to our review. And of course, when we go before the Commission to move to the formal phase, you will be able to make argument directly to the Commission.**

**I've tried to explain reasoning throughout, and am happy to elaborate and continue to engage on any change proposed.**

**I look forward to our next workshop on May 7<sup>th</sup>.**

**Please let me know if you have any questions, and thank you.**

**Nolan Moser  
503-689-3622**

## **AR 641 AHD Redlines**

### **860-001-0500**

#### Discovery in Contested Case Proceedings

- (1) Discovery must be commensurate with the needs of the case, the resources available to the parties, and the importance of the issues to which the discovery relates.
- (2) Discovery that is unreasonably cumulative, duplicative, burdensome, or overly broad is not allowed. Instructions and definitions included in discovery requests must be consistent with these rules and ORS Chapters 756, 757, and 759.
- (3) Privileged material is not discoverable except as provided under the Oregon Rules of Evidence.
- (4) A party will not be required to develop information or prepare a study for another party, unless the capability to prepare the study is possessed uniquely by the party from whom discovery is sought, the discovery request is not unduly burdensome, and the information sought has a high degree of relevance to the issues in the proceedings.
- (5) Parties must make every effort to engage in cooperative informal discovery and to resolve disputes themselves. If a party receives a data request that is likely to lead to a discovery dispute, then that party must inform the requesting party of the dispute as soon as practicable and attempt to resolve it informally.
- (6) If parties are unable to resolve a dispute informally, then any of the parties involved in the dispute may request that the ALJ conduct a conference to facilitate the resolution of discovery disputes. A requesting party must identify the specific discovery sought and describe the efforts of the parties to resolve the dispute informally.
- (7) A party may file a motion to compel discovery. The motion must contain a certification that the parties have conferred and been unable to resolve the dispute. A party filing a motion to compel will be allowed the opportunity to file a reply to the response to the motion.
- (8) A party's assertion that information responsive to a discovery request is confidential may not be used to delay the discovery process; provided, however, a party pursuing protection will not be required to produce information that it claims is inadequately protected until such time as its claim for the need for a general protective order or a modified protective order is resolved. If an answering party believes that a response to a discovery request involves confidential information that is inadequately protected by the safeguards existing in the docket, the answering party must notify the requesting party of this belief as soon as practicable and, if appropriate, promptly move for an appropriate protective order.
- (9) A party may by motion, or the ALJ may on the ALJ's own motion, propose that sanctions be imposed if a party fails or refuses to comply with an oral or written ruling resolving a discovery dispute. The ALJ may impose sanctions including: default; dismissal; or striking of testimony, evidence, or cross-examination.

### **860-001-0540**

#### Data Requests

**Commented [MN1]:** I understand the desire to limit discovery on smaller or less active intervenors. I struggle with ways to accomplish this given due process concerns, and the overriding principle that our contested proceedings should treat parties impartially, particularly with respect to our rules. That noted, an ALJ can and should understand that what is burdensome to one party may not be burdensome to another, given their individual circumstances. We should continue to discuss ways to apply the rules that recognize that parties are not always similarly situated, but at this stage I have not been able to get comfortable with specific rule language that would achieve with some stakeholders desire, in terms of explicitly lessening burdens, while not differentiating in rule between parties.

(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 ALJ. Each data request must be answered fully and separately in writing or by production of documents, or objected to in writing.

**Commented [MN2]:** At this time, propose to leave at 14 days, with clearer indication that ALJ may adopt different time periods.

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

**Commented [MN3]:** Given use of huddle, no longer necessary.

(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 and responses to data requests are not filed with the Filing Center or provided to the ALJ.

**(6) In matters of general utility regulation, nonconfidential data responses and redacted versions of confidential data responses must be uploaded to a website accessible by any person regardless of whether or not the person is a party. A document must be filed in the public record for the applicable proceeding detailing where a person may locate the nonconfidential data responses and provide a link to the website. For the purposes of this rule, matters of general utility regulation includes rate cases, rulemakings, integrated resource plan dockets, request for proposals dockets, investigations, or any other docket in which the commission is reviewing or considering the adoption of a broadly applicable policy.**

**Commented [MN4]:** This is the proposal from OSSEIA/CREA that at this time I do not plan to put forward in the draft for formal rulemaking. As I said on our last call, I plan to work with this language to find some workable options for the Commission that is consistent with our contested case requirements – I will present them as options for the Commissioners that stakeholders can comment on or propose revisions too. Also as I said on our call, the most significant challenge with this language are the issues associated with record development in contested cases. I will make sure to provide alternative language to all interested stakeholders well before I finalize the recommendation and memo to put before the Commissioners, to ensure you have time for review and comment.

#### 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. As an alternative to the electronic filing of confidential information and after notifying the Commission filing center of the incoming filing, printed Confidential information may be submitted physically to the Commission, or on~~ 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.

***(6) The Commission recognizes the importance of allowing stakeholders to participate and access confidential information to further the public interest. In the event of a Request for Proposal, nonbidders may: (a) access confidential information by signing the appropriate protective order, if any, and (b) participate in shortlist acknowledgement to voice concerns while the Commission is actively considering the shortlist, rather than affect the bidding has completed.***

**Commented [MN5]:** Some stakeholders have noted the value of having the opportunity to submit hard copies of confidential information to the Commission. I've re-inserted that option.

#### **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.

(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.

**Commented [MN6]:** This is NIPPC's proposal on RFP information access. After review, I agree with the utility commenters that this change, if adopted would be best addressed in the RFP portion of our rules. Accordingly, I will present this for consideration by the Commissioners as we move the formal phase of the rulemaking. The memo will outline the proposal, and offer Commissioners the option of expanding this rulemaking to address this narrow issue in the context of the RFP rules.

~~(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.~~

**Commented [MN7]:** Eliminating reference to 20 megabytes.

~~(cd) 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.~~

**Commented [MN8]:** See comment above – if we separately outline detailed requirements on the website we can include multiple examples.

~~(de) 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.~~

**Commented [MN9R8]:** I agree with comments that this must be very clear on our website, and must be made clear to case participants.

~~(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.~~

**Commented [MN10]:** If most filings will be made electronically going forward, including for confidential information, there is no need for the 2 day lag allowance.

~~(eg) 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.~~

**Commented [MN11R10]:** After review of comments, propose to leave this section in.

~~(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 [MN12]:** We'll consider eliminating the requirement for physical copies of rate cases and IRPs.

## 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 ~~how such information is stored and secured 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.

**Commented [MN13R12]:** We note that OAR 860-001-0180(3)(b) requiring hard copy service of documents greater than 100 pages will remain in place at this time.

**Commented [MN14]:** AWEC proposal to allow for earlier sharing of information under the protective order.

(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, or otherwise specify the manner in which highly protected information is provided to the parties and the requirements that parties must follow to access, store and secure such information. No party is required to provide highly protected information in electronic format, including, but not limited to, uploading such information to a designated shared workspace. If a party agrees to upload its highly protected information to a designated shared workspace, no party is permitted to download such information from that shared workspace without the consent of the party that provided the 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.

**Commented [MN15]:** Suggestion from NWN.

(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 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.

#### **860-022-0019**

#### **General Rate Revisions**

(1) Any utility filing new or revised tariff schedules that constitute a general rate revision must include supporting testimony and exhibits, work papers, and an executive summary. A general rate revision is a filing by a utility that affects all or most of the utility's rate schedules. The term "general rate revision" does not include the exclusions in OAR 860-022-0017(1). The executive summary must contain an exhibit showing in summary form the following information:

- (a) The dollar amount of total revenues that would be collected under the proposed rates;
- (b) The dollar amount of revenue change requested, total revenues, and revenues net of any credits from federal agencies;
- (c) The percentage change in revenues requested, total revenues, and revenues net of any credits from federal agencies;
- (d) The test period;
- (e) The requested return on capital and return on equity;
- (f) The rate base proposed in the filing;
- (g) The results of operations before and after the proposed rate change; and
- (h) The proposed effect of the rate change on each class of customers.

(2) The initial filing of a general rate revision must contain ~~the following:~~

~~(a) All information required by the most recent version of the Standard Data Requests for Energy Rate Cases, available at <http://www.puc.state.or.us> including tax-related information; and~~

~~(b) a~~ motion for a general protective order or modified protective order under OAR 860-001-0080, if necessary for the release of information under sections (1)(a) through (g), and (2)(a) of this rule.

(3) Responses to the most recent version of the Standard Data Requests for Energy Rate Cases, available at <http://www.puc.state.or.us>, including tax-related information must be submitted to the shared data response workspace at the time of the initial filing.

~~(4)~~ Telecommunications utilities partially exempt from regulation under ORS 759.040 must file tariffs as specified in OAR 860-034-0300.

Commented [MN16]: Suggestion from Idaho Power.