

**§ 179.85**

could not reasonably have been foreseen.

(d) If a party fails to comply substantially and in good faith with this section, the presiding officer may infer that such failure was for the purpose of withholding information that is unfavorable to the party's position, and may make such further adverse inferences and findings with respect to such failure as are warranted.

(e) Parties may reference each other's submissions. To reduce duplicative submissions, parties are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

[55 FR 50293, Dec. 5, 1990, as amended at 57 FR 28087, June 24, 1992]

**§ 179.85 Purpose of preliminary conference.**

The presiding officer will conduct one or more preliminary conferences for the following purposes:

(a) To determine the areas of factual disagreement to be considered at the hearing.

(b) To establish any necessary procedural rules to control the course of the hearing and the schedule for the hearing.

(c) To group parties with substantially similar interests, for purposes of presenting evidence, making objections, cross-examination, and presenting oral argument.

(d) To obtain stipulations and admissions of facts.

(e) To take other action that may expedite the hearing.

**§ 179.86 Time and place of preliminary conference.**

A preliminary conference will commence at the date, time, and place announced in the Notice of Hearing, or as otherwise specified by the Administrator or presiding officer in a subsequent notice. The preliminary conference may not commence until after expiration of the time for filing notices of participation under § 179.42. The pre-

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siding officer may specify that two or more such conferences shall be held.

**§ 179.87 Procedures for preliminary conference.**

Parties in a hearing must appear at the preliminary conference(s) prepared to present a position on the matters specified in § 179.85. A preliminary conference may be held by telephone, or other electronic means, if appropriate.

(a) To expedite the hearing, parties are encouraged to prepare in advance for the conference. Parties should cooperate with each other and should request information and begin preparation of testimony at the earliest possible time. Failure of a party to appear at the preliminary conference or to raise matters that could reasonably be anticipated and resolved at that time will not delay the progress of the hearing, and constitutes a waiver of the rights of the party regarding such matters as objections to the agreements reached, actions taken, or rulings issued. Such failure to appear may also be grounds for striking the party's participation under § 179.42(f).

(b) Each party shall bring to the preliminary conference the following specific information, which will be filed with the hearing clerk under § 179.80:

(1) Any additional information to supplement the submission which may have been filed under § 179.83, and/or which may be filed if approved under § 179.83(c).

(2) A list setting forth each person who has been identified as a witness whose oral or written testimony will be offered by the party at the hearing, with a full curriculum vitae for each and a summary of the expected testimony (including a list of the principal exhibits on which the witness will rely) or a statement as to when such a summary will be furnished. A party may amend its witness and document list to add, delete, or substitute witnesses or documents.

(c) The presiding officer may hold preliminary conferences off the record in an effort to reach agreement on disputed factual or procedural questions.

(d) The presiding officer shall issue and file under § 179.80 a written order reciting the actions taken at each preliminary conference and setting forth