

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

NOTICE TO THE PUBLIC

PROCEDURES FOR HANDLING EXHIBITS AND DEVELOPING THE  
ELECTRONIC HEARING RECORD

(Issued December 12, 2014)

1. This Notice supersedes the Notice to the Public on Procedures for Handling Exhibits issued on September 11, 2012, and will be made effective on January 6, 2015.

2. This document has been developed to advise all participants of procedures to be used in Federal Energy Regulatory Commission (FERC) hearings before an Administrative Law Judge (ALJ). Pursuant to Rule 101(e)<sup>1</sup>, the Chief Judge hereby waives the provisions of Rule 508(a)(2)<sup>2</sup> in order to effectuate these new procedures immediately.

**I. Pre-filed Testimony and Exhibits**

3. Participants will file all pre-filed testimony and exhibits electronically where possible. Each party's exhibits will be numbered in seriatim from one up and must have an alpha-numeric designation, indicating by no more than three (3) letters the sponsor of the exhibits (*e.g.*, "S-1" for Staff Exhibit #1). Temporary exhibit numbers will not be used.<sup>3</sup> All pre-filed written testimony must continue to be designated as a separate exhibit. The parties will not "reserve" numbers, but instead will assign all numbers in consecutive sequence.

4. The presiding judge must ensure that all pre-filed exhibits are marked for identification and either admitted, rejected, or withdrawn on the record before the hearing

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<sup>1</sup> 18 C.F.R. § 385.101(e) (2014).

<sup>2</sup> 18 C.F.R. § 385.508(a)(2) (2014).

<sup>3</sup> Additionally, intervenors will not identify their exhibits with the letter "I" since the proceeding may involve multiple intervenors.

is closed. In order to ensure that every exhibit will be identified in the transcript index with a title for the exhibit, the presiding judge must make sure that the identification as it appears in the transcript contains an appropriate title for the document, either through the identification statement by sponsoring counsel or by the Judge's own identifying statement.<sup>4</sup>

5. Participants seeking to have an exhibit admitted into evidence are no longer required to provide one copy of the exhibit to the presiding judge as long as it has been pre-filed electronically, unless otherwise directed by the presiding judge.

6. Participants are no longer required to provide the presiding judge hard copies of pre-filed testimony and other exhibits, unless otherwise directed by the presiding judge.

7. Unless otherwise directed by the presiding judge, participants are not required to provide hard copies of pre-filed testimony and other exhibits to all other participants. All pre-filed testimony and exhibits may be provided electronically.

8. Participants will provide the court reporter one copy of pre-filed testimony, cross-examination exhibits, and other exhibits, either prior to the commencement of the hearing or when the exhibit is marked for identification. The copy may be provided electronically.

## **II. Exhibits Presented for the First Time at Hearing**

9. For those exhibits presented for the first time at hearing (*i.e.*, new exhibits used during cross-examination and re-direct examination), participants will continue to provide hard copies at the hearing to all other participants, the presiding judge, the law clerk, and the court reporter, unless otherwise directed by the presiding judge.

10. At the time of their cross-examination, or as soon as possible thereafter, participants will provide electronic versions of those exhibits to the presiding judge, the law clerk, the court reporter, and all other participants at the hearing, unless the presiding judge orders otherwise.

11. As with pre-filed testimony and exhibits, the presiding judge must ensure that all other exhibits are marked for identification, and either admitted, rejected, or withdrawn

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<sup>4</sup> Compliance may be achieved through the use of pre-hearing procedures as established in the Manual for Complex Litigation, 4th Edition, and Federal Rules of Civil Procedure Rule 16, and Rule 26(a)(3); so long as a sufficient description and identification of the document is provided in the record.

on the record before the hearing is closed. Whenever a discrepancy on an exhibit exists on the transcript, such as where an exhibit identified or ruled on at a particular hearing session is not listed on the Contents Page of the transcript, the Presiding Judge must issue a transcript correction.

### **III. Filing of the Official Record**

12. Within seven days of the end of the hearing, participants will file (via e-Filing) a Joint Exhibit List in the format provided in Appendix A. The Joint Exhibit List will include for each exhibit: (1) the exhibit number, (2) its status (admitted/rejected/withdrawn, containing transcript page references), (3) a brief description, (4) the date the exhibit was marked for identification, (5) privileged/CEII designation, and (6) date admitted/rejected. The Joint Exhibit List will also include the docket number and case name in the header of the document.

13. If an exhibit is partially rejected, the pages, or portions that were admitted will be specified in the description field of the Joint Exhibit List for that exhibit.

14. Within seven days of the end of the hearing, each sponsoring party will file (via e-Filing) the "Official Copies" of each exhibit that was offered into evidence and admitted or rejected (but NOT withdrawn exhibits). Privileged or Critical Energy Infrastructure Information (CEII) exhibits will be provided on a medium that is separate from the non-privileged or non-CEII exhibits and marked accordingly. Exhibits will not be altered in any way after they are admitted without leave of the presiding judge. Any admitted or rejected exhibit e-Filed at this time must include the marking "Official Copy." on the first page. Filers will also add the text "Official Copy" in the description of the document in the e-Filing interface to distinguish between the pre-filed and official copies. Whenever possible, exhibits will be filed in searchable format.

15. Parties will provide a courtesy copy of the official exhibits and the Joint Exhibit List to the presiding judge on a digital media in searchable format. Privileged or Critical Energy Infrastructure Information (CEII) exhibits will be provided on a medium that is separate from the non-privileged or non-CEII exhibits and marked accordingly.<sup>5</sup> Whenever possible, the exhibit list will contain hyperlinks to the referenced exhibit.

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<sup>5</sup> The Commission's long-standing practice has been to refer to confidential materials, including confidential business trade secrets, as privileged. The Commission's use of the term privileged for these materials does not detract from a filing party's ability to assert a common law evidentiary privilege. See Filing of Privileged Materials and Answers to Motions, Order No. 769, FERC Stats. & Regs. ¶ 31,337, at 31,747 (2012).

**IV. Privileged Materials and Critical Energy Infrastructure Information**

16. Under no circumstances will an exhibit be moved into evidence that is marked “privileged” or “CEII” without designating the exhibit as such on the record and obtaining approval from the presiding judge. Once an exhibit is identified on the record as privileged or CEII, it must be approved by the presiding judge and admitted or rejected as such. All electronic and hard copies of the exhibit must be clearly marked “privileged” or “CEII.”

17. Every privileged exhibit admitted must also have a public redacted version admitted and must be clearly marked as public. If the exhibit in its entirety is privileged and there is no way to provide a public redacted version, a one-page document indicating such that is otherwise blank, must be admitted in place of a public version.

18. If a portion of an exhibit is marked as privileged, there shall be a public version and a privileged version. If at some point, the privilege is removed, every page of the exhibit that was originally marked privileged will be marked by the submitting party as “PRIVILEGED LIFTED.”

**V. Reproduction of Copyrighted Online Imagery in Exhibits, Decisions, Etc.**

If an exhibit contains copyrighted material, to the extent it is necessary, the party sponsoring the exhibit is responsible for obtaining in advance the permission of the copyright owner to use and reproduce that material in the involved proceeding and in all publications arising from this proceeding, including the Initial Decision of the Administrative Law Judge and Orders of the Commission. In the event that such permission is restricted, the exhibit will include a legend at the bottom of the first page identifying the copyright date, the copyright owner, and the nature of the restriction. In the absence of such legend, it is assumed that any use of such material in this proceeding is a “fair use” in accordance with 17 U.S.C. § 107 (2000), or is permitted under an agreement with the copyright owner.

Curtis L. Wagner, Jr.  
Chief Administrative Law Judge



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