ELECTRONIC HEARING
RULES AND PROCEDURES
Office of Administrative Law Judges

Issued: September 27, 2019

Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
Section 1. Electronic Hearing Site.

The Office of Administrative Law Judges (OALJ) will conduct all hearings on a cloud-based Hearing Site created specifically for each case on a Microsoft SharePoint Online (SharePoint) platform. The SharePoint platform is a cloud-based Microsoft service that provides a secure place to store, organize, and share information.

(a) The SharePoint platform allows participants to upload their exhibits remotely before the hearing begins and protects the confidentiality of those exhibits.

(b) The SharePoint platform is the sole mechanism for admitting exhibits into the official hearing record during the proceeding.

(c) The Hearing Site will have two folder categories:

(1) Participant Folders; and

(2) Shared Folder.

Section 2. Participant Folders.

(a) The Hearing Site will contain an individual folder for each participant who intends to introduce exhibits at the hearing.

(1) To obtain access to your individual participant’s folder, six (6) weeks prior to the hearing start date, each participant must email the Presiding Judge’s Law Clerk and Paralegal Specialist a list of the names and email addresses of individuals who will require access to the folder to upload exhibits and introduce them at the hearing.

(2) Four (4) weeks prior to the hearing start date, a representative from FERC’s IT SharePoint team will email each of the authorized representatives identified in Section 2(a)(1) above instructions on how to access that participant’s folder. The FERC IT SharePoint team email will include instructions on how to log into the Hearing Site with a Microsoft Live account. If you do not receive an email from the IT SharePoint team at this time, please contact the Presiding Judge’s Law Clerk and Paralegal Specialist.
(3) To protect confidentiality, each participant will only be able to access or view the contents of the participant’s own folder.

(4) The Presiding Judge and her/his staff will not have the ability to view the contents of any participant’s folder at any time before, during, or after the hearing.

(5) A participant’s authorized representatives will have EDIT/ADD/DELETE permissions in their participant’s folder. The EDIT/ADD/DELETE permissions allow the authorized representatives to upload, download, and/or delete exhibits in the participant’s designated folder. The authorized representative will be able to view exhibits and save changes made to the exhibit (e.g., a participant may open the exhibit, use Adobe Acrobat’s highlighting tool to highlight text, and save the highlight so that it will appear the next time the exhibit is opened).

(b) Each Participant’s Folder will be set up initially to contain a standard list of subfolders. The following are the subfolders that will be initially established in each Participant’s Folder, which can be renamed and reorganized by the participant:

(1) Participant 1
   (i) Prefiled Public Exhibits
   (ii) Prefiled Privileged Exhibits
   (iii) Cross-Examination Exhibits
   (iv) Redirect Exhibits

Section 3. Uploading Exhibits into Participant’s Folder Subfolders.

At least five (5) business days prior to the hearing start date, each authorized representative will remotely upload to its folder (as separate files in the subfolders) all of the participant’s prefiled exhibits and any additional exhibits that the participant anticipates introducing at the hearing.

Section 4. The Shared Folder.

The Shared Folder is the location where exhibits are uploaded from the Participants’ Folders during the hearing and where the exhibits are temporarily housed before being moved into the appropriate subfolder of the Shared Folder. While in the Shared Folder, the exhibit will be projected on the display screens after each is introduced and marked for identification, while oral examination regarding that exhibit is ongoing.
(a) The contents of the Admitted and Rejected subfolders in the Shared Folder will comprise the official evidentiary record of the hearing.

(1) The following subfolders will be within the Shared Folder, and will be identified as follows:

(i) Admitted Privileged
(ii) Admitted Public
(iii) Rejected Privileged
(iv) Rejected Public

(b) At the commencement of the hearing, authorized representatives (previously identified as such) will be granted ADD ONLY and READ ONLY permissions to the Shared Folder. No participant will be granted ADD ONLY permissions to the subfolders within the Shared Folder.

(1) ADD ONLY permission will allow an authorized representative to upload exhibits from the Participant’s Folder into the Shared Folder.

(2) These permissions do not allow the authorized representatives to edit or delete exhibits within the Shared Folder.

(c) READ ONLY permission will allow an authorized representative to view exhibits in the Shared Folder that they or other participants have placed in the Shared Folder. Participants’ authorized representatives will have READ ONLY permission to the Shared Folder’s subfolders. All participant’s authorized representatives will be able to open and view exhibits in the Shared Folder’s subfolders via their own personal computer, but will not be able to add, edit, delete, or move an exhibit once it has been moved into an Admitted Public, Admitted Privileged, Rejected Public, or Rejected Privilege subfolder.

(d) The FERC IT SharePoint team and designated OALJ personnel will have EDIT/ADD/DELETE permission for exhibits in the Shared Folder.
Section 5. The Presentation Laptop.

OALJ will provide a Presentation Laptop for each hearing. The Presentation Laptop will be the sole device that will control the exhibits projected on the display screens during the hearing. The Presentation Laptop will be equipped with Exhibit View software. Participants will use the Presentation Laptop during the examination of each witness. Each authorized representative of a participant must provide an individual who will operate the Presentation Laptop during that participant’s examination of any witness, ensuring projection of all materials used or referenced during that participant’s examination of any witness. Each authorized representative of a participant must ensure that the proper material is opened and that the display screens accurately show the material being used during examination at all times.

(a) Using the Presentation Laptop only, an authorized representative will move each exhibit from the Shared Folder into the Admitted or Rejected subfolders, as appropriate, following the Presiding Judge’s ruling on the exhibit’s admissibility. At the Presiding Judge’s discretion, the transferring of exhibits into the designated subfolder will be undertaken by the Presiding Judge or his/her staff.

(b) The Presentation Laptop will have READ/ADD/DELETE permissions to the Shared Folder.

(i) The Presentation Laptop will have ADD permission to the subfolders within the Shared Folder. This will allow exhibits to be moved from the Shared Folder into the Admitted and Rejected subfolders.

(ii) The Presentation Laptop will have DELETE permission to allow an authorized representative to remove exhibits that a participant requests to be withdrawn. The Presentation Laptop can be used to view only those exhibits that are in the Shared Folder and the Shared Folder’s subfolders.

(iii) The Presentation Laptop will have READ permission to allow an authorized representative to view only those exhibits that are in the Shared Folder and exhibits that have been previously moved into the Admitted and Rejected subfolders.

(c) Upon request to the Presiding Judge’s Law Clerk and Paralegal Specialist by an authorized representative at least six (6) weeks prior to the start of hearings, OALJ may provide manual assistance with the Presentation Laptop.
Section 6. Equipment at Witness Stand.

Witnesses will have a presentation monitor and a witness stand laptop while testifying on the witness stand to allow the witness to cross-reference exhibits in real-time and aid the witness in responding to the examining attorney’s questions.

(a) The presentation monitor will allow witnesses to view what is being presented on the display screens in real-time. The witness will not have the ability to control the presentation monitor.

(b) The witness will be able to use the witness stand laptop to view and scroll through any exhibit in the Shared Folder and Admitted Public subfolder. The witness stand laptop will have READ ONLY permission to the Shared Folder and Admitted Public subfolder.

   (1) A privileged exhibit may be copied to the Shared Folder for use during examination of a witness, and then deleted if that exhibit does not need to be adjudicated because the exhibit was already admitted/rejected or will be submitted later.

   (2) Alternatively, at the Presiding Judge’s discretion, the witness may receive READ ONLY permission to access other subfolders with the witness stand laptop, such as the Admitted Privileged subfolder, if the witness has the ability do so (e.g., by having signed a non-disclosure agreement).

Section 7. Exhibits.

The electronic hearing procedures require that the exhibits that comprise the electronic hearing record are correctly named, labeled, and numbered.

(a) Exhibits. All exhibits used in hearing proceedings must follow the following conventions:

   (1) File Size. Each exhibit uploaded to the participants’ subfolders, the Shared Folder, and eLibrary must not exceed 50 MB.
(2) **Exhibit Numbering:**

(i) Exhibits must be numbered sequentially, with an alphanumeric designation indicating the sponsoring participant’s name and the sequential number of that participant’s exhibit.

(ii) This alphanumeric designation must be at the top right-hand side of the page.

(iii) The designation cannot contain more than three (3) letter characters. Intervenors must not identify their exhibits solely with the letter “I,” since a single proceeding may involve multiple intervenors.

(iv) The designation must contain at least four (4) digits, and sufficient antecedent “zero” (0) digits to ensure that at least one (1) zero digit will remain in front of the highest anticipated exhibit number (e.g., “S-0001” for Trial Staff Exhibit No. 1, where Trial Staff expects to introduce a maximum of 999 exhibits).

(v) When numbering exhibits, digits should not be separated by commas. Temporary exhibit numbers or letters (i.e., referencing the sponsoring witness’s initials, etc.) are prohibited.

(3) **Exhibits with Privileged and/or Critical Energy/Electric Infrastructure Information (CEII) Material.** All exhibits that contain Privileged and/or CEII material must be labeled consistent with the Commission Secretary’s Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff, 82 Fed. Reg. 18,632 (Apr. 20, 2017) (April 2017 Notice). Pursuant to the April 2017 Notice:

(i) Documents containing CEII material must include a top center header on each page of the document with the text “CUI//CEII” and documents containing Privileged material must include a top center header on each page of the document with the text “CUI//PRIV.” If the document contains both categories, the header should include the text “CUI//CEII/PRIV.”
(ii) The specific portions of the document that contain Privileged or CEII material must be clearly indicated by designating the corresponding individual words or line(s), e.g., “START PRIVILEGED MATERIAL [ ] END PRIVILEGED MATERIAL.”

(4) Revised Exhibits. All revised exhibits must be labeled as such (including either substantive and/or nonsubstantive revisions) with the designation “REV” or “Rev” or “REV2.” This designation must be placed after the alphanumeric label.

(5) Other Labels. If there are other labels on the exhibit (e.g., Bates numbers), these labels should not interfere with the visibility of the exhibit number.

(6) Electronic File Names. All exhibits uploaded to eLibrary, the participant’s folders, and the Shared Folder must conform to the naming conventions identified herein.

(i) **File Name Length.** Electronic file names of exhibits must not exceed fifty (50) characters in length. Spaces and underscores (i.e., “_”) between characters are included in the character count of the exhibit’s file name.

(A) For example, an exhibit titled “S-0001 Jones Direct Testimony CEII-PRIV” is deemed to contain thirty-nine characters.

(B) File names exceeding fifty (50) characters cannot be properly uploaded to the FERC eLibrary system.

(C) The number of characters in all file names should be counted before they are uploaded into a participant’s folder.

(ii) **Prohibited Characters.** Electronic file names of exhibits must not include most special characters, commas, or periods at the end of the exhibit name.

(A) Hyphens, underscores, and parantheses are the only special characters allowed in an exhibit name.
(B) For example, an exhibit titled “S-0001 CEII/PRIV/HC Testimony of David M REV#2.” cannot be uploaded to e-library due to three issues: the use of special characters “#” and “/”, as well as the period at the end of the exhibit name.

(7) **Participant Certification.** At the conclusion of the hearing, participants will certify to the Presiding Judge that all exhibits in the subfolders of the Shared Folder conform to the exhibit name requirements. Failure to conform to the file name requirements may require reopening the record at the Presiding Judge’s discretion.

(b) **Identifying Exhibits on the Record.** When an exhibit is identified during the hearing, the participant will move the exhibit from the participant’s folder to the Shared Folder. This will be done using the participant’s own laptop that must be connected to the FERC Guest WiFi network, which should be requested prior to the start of the hearing.

(c) **Moving for Admission.** Upon marking an exhibit for identification, the presenter will open the exhibit for examination so that it is projected onto the display screens. Once examination of a witness has concluded, counsel may move for admission of one or more exhibits. After the Presiding Judge has ruled on the admission of each introduced exhibit, a presenter will move the exhibit into the appropriate subfolder of the Shared Folder using the Presentation Laptop.

(1) It is the participants’ responsibility to ensure exhibits are not marked and/or admitted more than once.

(2) Participants must keep track of when their exhibits are identified and admitted into evidence.
Section 8. Official Record.

At the conclusion of the hearing, the Admitted and Rejected subfolders within the Shared Folder will constitute the official evidentiary record of the proceeding.

(a) Participants’ Obligations. All participants have a continuing obligation to review and monitor the contents of the Shared Folder and its subfolders for accuracy throughout the hearing and immediately alert the Presiding Judge of any problems or concerns with the accuracy of the record.

(1) At the conclusion of the hearing, all participants must confirm on the record that the Shared Folder’s subfolders are accurate and complete.

(2) For five (5) business days following the conclusion of the hearing, authorized representatives will have READ ONLY permission to the Shared Folder and will be able to view and download exhibits from the subfolders.

(b) Reopening the Official Evidentiary Record. If there is an issue with an exhibit after the record has closed, the Presiding Judge may reopen the record to make further determinations as necessary to ensure due process and the accuracy of the record.
APPENDIX A

For illustrative purposes, the format of the Shared Folder and Participant Folders would appear as follows:

For illustrative purposes, the format of the participant folders would appear as follows:

For illustrative purposes, the format of the Shared Folder would appear as follows:
## APPENDIX B
### Quick Reference Guide

<table>
<thead>
<tr>
<th>Deadline</th>
<th>Action</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 weeks prior to hearing</td>
<td>Each participant must email the Presiding Judge’s Law Clerk and Paralegal Specialist a list of the names and email addresses of individuals who will need access to the participant’s folder to upload exhibits and introduce them at the hearing.</td>
<td>Section 2(a)(1)</td>
</tr>
<tr>
<td>6 weeks prior to hearing (optional)</td>
<td>Optional: Upon receiving a request six weeks in advance, OALJ may provide assistance with the Presentation Laptop and exhibit presentation software.</td>
<td>Section 5(c)</td>
</tr>
<tr>
<td>4 weeks prior to hearing</td>
<td>A representative from FERC’s IT SharePoint team will email instructions to each authorized representative on how to access that participant’s folder.</td>
<td>Section 2(a)(2)</td>
</tr>
<tr>
<td>At least 5 business days prior to hearing</td>
<td>Each authorized representative will remotely upload to its folder (as separate files in the subfolders), all of the prefilled exhibits, and any additional exhibits, the participant anticipates introducing at the hearing.</td>
<td>Section 3</td>
</tr>
<tr>
<td>Commencement of hearing</td>
<td>Authorized representatives will be granted the appropriate permissions to access the Shared Folder.</td>
<td>Section 4(b)</td>
</tr>
<tr>
<td>Throughout hearing</td>
<td>All participants have a continuing obligation to review and monitor the contents of the Shared Folder and its subfolders for accuracy throughout the hearing and immediately alert the Presiding Judge of any problems or concerns with the accuracy of the record.</td>
<td>Section 8(a)</td>
</tr>
<tr>
<td>At the conclusion of the hearing</td>
<td>Participants will certify to the Presiding Judge that all exhibits in the subfolders of the Shared Folder conform to the exhibit name requirements before the close of the hearing.</td>
<td>Section 7(a)(7)</td>
</tr>
<tr>
<td>At the conclusion of the hearing</td>
<td>All participants must confirm on the record that the Shared Folder’s subfolders are accurate and complete.</td>
<td>Section 8(a)(1)</td>
</tr>
<tr>
<td>5 business days after conclusion of the hearing</td>
<td>Authorized representatives will have READ ONLY permission to the Shared Folder and will be able to view and download exhibits from the subfolders.</td>
<td>Section 8(a)(2)</td>
</tr>
<tr>
<td>Before the record is certified</td>
<td>If there is an issue with an exhibit after the record has closed, the Presiding Judge may reopen the record to make further determinations as necessary to ensure due process and the accuracy of the record.</td>
<td>Section 8(b)</td>
</tr>
</tbody>
</table>