

# UNIFORM HEARING RULES

Office of Administrative Law Judges



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Federal Energy Regulatory Commission  
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## **Section 1. Scope**

- (a) Consistent with the Commission Rules of Practice and Procedure (Rules),<sup>1</sup> the Chief Administrative Law Judge (Chief Judge) Notices to the Public,<sup>2</sup> the Office of Administrative Law Judges (OALJ) Electronic Hearing Rules and Procedures, and the OALJ Remote Hearing Guidance for Participants, the following rules govern hearing proceedings before Presiding Administrative Law Judges at the Federal Energy Regulatory Commission.
- (b) The Presiding Judge may regulate practice in any manner consistent with the Commission's rules, federal laws and these Uniform Hearing Rules (Hearing Rules).

## **Section 2. Discovery**

- (a) **Discovery Time Standards.** Participants must adhere to the Commission's Time Standards for Discovery.<sup>3</sup>
- (b) **Motions to Compel.** Participants must employ good-faith efforts to resolve discovery disputes before filing a motion to compel. All efforts to resolve discovery disputes must be delineated in all discovery motions and corresponding answers.
- (c) **Submissions to the Presiding Judge.** Unless otherwise authorized by the Presiding Judge, participants should not submit discovery requests, responses, or objections to the Presiding Judge, except as part of a motion to compel.

## **Section 3. Duty to Confer**

- (a) **Non-Dispositive Motions.** Before filing any non-dispositive motion, the movant must discuss the anticipated motion with each opposing counsel to determine whether the requested relief is opposed, and if so, to narrow

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<sup>1</sup> 18 C.F.R. pt. 385.

<sup>2</sup> The recently issued Chief Judge's Notices to the Public are available in Docket No. AD20-12-000 and at <https://www.ferc.gov/enforcement-legal/legal/administrative-litigation>.

<sup>3</sup> Time Standards for Discovery (issued Dec. 8, 1999), *available at* [https://www.ferc.gov/sites/default/files/2020-04/notice-to-public-TimeStandDiscovery\\_0.pdf](https://www.ferc.gov/sites/default/files/2020-04/notice-to-public-TimeStandDiscovery_0.pdf).

areas of disagreement. The motion must state whether it is opposed or unopposed and, if opposed, the motion must explain the efforts made to resolve the dispute.

#### **Section 4. Testimony and Exhibits**

- (a) **Exhibit Manipulation.** If an exhibit is demonstratively manipulated during the hearing and requested for admission into evidence, the demonstrative exhibit must be saved as a PDF or other electronically accessible format and labeled according to the labeling conventions specified by the Electronic Hearing Rules and Procedures.

#### **Section 5. Privilege and Critical Energy/Electric Infrastructure Information (CEII) Designations**

- (a) All exhibits, testimony, briefs, and other pleadings must be labeled and submitted consistent with the Commission's regulations governing Privileged (18 C.F.R. § 388.112) and Critical Energy/Electric Infrastructure Information (CEII) (18 C.F.R. § 388.113) material, and the Secretary's April 17, 2017 Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff. For further information on privileged and CEII treatment of documents, please refer to the OALJ Electronic Hearing Rules and Procedures.<sup>4</sup>
- (b) **Lifting Privileged or CEII Designations.** If the Privileged or CEII designations for a document are lifted, counsel must file a revised copy of the document that removes such designations from the document.
- (c) **Public Version.** Every Privileged exhibit must have a corresponding public, redacted version that is clearly marked as public. If an exhibit is Privileged in its entirety, a one-page document with the word "[REDACTED]" must be admitted as the public version.
- (d) **Designations Must Be Warranted.** Counsel must ensure that any documents and individual portions thereof designated as Privileged or CEII legitimately warrant those designations. Blanket Privileged or CEII designations should not be used unless approved by the Presiding Judge.

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<sup>4</sup> See Office of Administrative Law Judges (OALJ), Electronic Hearing Rules and Procedures, Section 7(a)(3), Docket No. AD20-12-000, *available at* <https://www.ferc.gov/enforcement-legal/legal/administrative-litigation>.

## **Section 6. Service and Courtesy Copies of Filings**

- (a) **Service of Filings on Participants.** Each participant must serve copies of all pleadings, pre-filed exhibits, briefs, and any other filed documents to every other participant on the date the documents are filed. These documents must be served electronically.
- (b) **Delivery of Courtesy Copies to Presiding Judge and Law Clerk.** Participants must provide courtesy copies of all filings to the Presiding Judge and law clerk on the same date the filings are made. To the extent possible, courtesy copies must be delivered electronically either through email to the Presiding Judge and the law clerk or uploaded to the Presiding Judge's Courtesy Copy SharePoint site.

## **Section 7. Hearing Conduct and Witness Examinations**

- (a) **Proper Foundation.** Every exhibit must be properly authenticated and have a proper foundation for its admission into evidence.
- (b) **Cross-Examination Scope.** Cross-examination is limited by the scope of the direct examination of the witness.
- (c) **Redirect Scope.** Redirect is limited to matters brought out on cross-examination.
- (d) **Objections.** Counsel may object to questions put to a witness during cross-examination only if counsel is sponsoring that witness.
- (e) **Clarification Requests.** Requests for clarification of a question may only be made by the witness or the Presiding Judge.
- (f) **Follow-Up Examination to Presiding Judge Questions.** All counsel will be permitted to conduct follow-up examination concerning any question asked of a witness by the Presiding Judge.

## **Section 8. Closing the Evidentiary Record.**

- (a) Upon completion of the hearing, the Presiding Judge will close the evidentiary record. The evidentiary record may be reopened upon motion

from a participant or by the Presiding Judge under Rule 716 and Section 8(c) of the Electronic Hearing Rules and Procedures.<sup>5</sup>

**Section 9. Briefs and Joint Participant Filings.**

(a) The following documents must be filed prior to the commencement of the hearing and in accordance with the deadlines established by the procedural schedule:

1. **Joint Stipulation of Issues.** The participants must file a joint stipulation of issues. Each issue in the joint stipulation must be numbered seriatim and be stated in the form of question or an objective summary caption.
2. **Joint Witness List.** Participants must file a joint witness list that provides the anticipated order witnesses will be called to testify and the estimated time required to complete examination of each witness.
3. **Initial Exhibit List.** Participants sponsoring exhibits must submit an initial index of all exhibits to be offered through their own witnesses. The format in Appendix A to these rules may be used for this purpose.

(b) The following documents must be filed after the conclusion of hearing and in accordance with the deadlines established by the procedural schedule:

1. **Final Joint Exhibit List.** Within seven (7) days of the conclusion of the hearing, participants must file a final joint exhibit list that includes every exhibit admitted or rejected on the record during the hearing.
2. **Transcript Corrections.** No later than three (3) weeks after the conclusion of the hearing, the participants must file a joint statement of proposed transcript corrections.

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<sup>5</sup> 18 C.F.R. § 385.716 (requirements for reopening the record); Office of Administrative Law Judges (OALJ), Electronic Hearing Rules and Procedures, Section 8(c), Docket No. AD20-12-000, available at <https://www.ferc.gov/enforcement-legal/legal/administrative-litigation>.

3. **Post-Hearing Briefs.** All briefs must address the issues in the joint statement of issues.
4. **Hyperlinked Briefs.** Participants should submit hyperlinked, citation-enabled electronic versions of their post-hearing briefs, unless the Presiding Judge directs otherwise. Any hyperlinked brief should include pin cite hyperlinks to any cited legal authorities (e.g., statutes, regulations, court cases, Commission opinions/orders), exhibits admitted into evidence, and the official transcript. Hyperlinked briefs of 50 megabyte (MB) or more may be sent via email or mail service. Hyperlinked briefs under 50 MB should be e-filed.

### **Section 10. Remote Hearings**

- (a) Given the existing public health emergency and to protect the health of the public and Commission personnel, it is necessary to modify the venue for conducting Commission hearings. Until the public health emergency is resolved, all hearings must be conducted remotely as required by the Chief Judge's Notice to the Public on Remote Hearings.<sup>6</sup>
- (b) The Chief Judge has also issued Remote Hearing Guidance for Participants. This issuance provides instructions on how to navigate the Webex videoconference platform and details for the logistics of remote hearings.<sup>7</sup>

### **Section 11. Violation of Rules**

- (a) Counsel maintains responsibility to identify any violation of these rules by making a timely objection to the Presiding Judge. Counsel's failure to make a timely objection will constitute consent to waiver of the relevant rule.

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<sup>6</sup> Chief Administrative Law Judge's Notices to the Public, Notice of Remote Hearings, Docket No. AD20-12-000 (issued April 23, 2020), *also available at* <https://www.ferc.gov/enforcement-legal/legal/administrative-litigation>.

<sup>7</sup> Chief Administrative Law Judge's Notices to the Public, Notice of Remote Hearing Guidance for Participants, Docket No. AD20-12-000 (issued June 4, 2020), *also available at* <https://www.ferc.gov/enforcement-legal/legal/administrative-litigation>.

**Section 12. Public Comment on Uniform Hearing Rules**

- (a) Any person may submit written suggestions for amendments to the OALJ Uniform Hearing Rules. All suggestions should be directed to the Chief Judge and her staff.



**Appendix A: Sample Joint Exhibit List**

[Caption Name]

Docket No[s].

Exhibit No. <sup>8</sup>	Description (100-character limit)	Electronic File Name (50-character limit)	Designation Category <sup>9</sup>	Date Identified	Date Admitted or Rejected	Admitted or Rejected (Transcript Page Reference)

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<sup>8</sup> For exhibits that have dual versions (i.e., there is a public and privileged version), each version of the exhibit must be separately listed on its own row of this list.

<sup>9</sup> The applicable designations include: Public, PRIV, or CEII.

# Quick Reference Guide

## Dates to be Included in a Proposed Procedural Schedule

Pre-Hearing	Joint Stipulation of Issues
	Pre-Hearing Briefs (if required by the Presiding Judge)
	Joint Witness List
	Initial Joint Exhibit List
Post-Hearing	Final Joint Exhibit List
	Transcript Corrections
	Post-Hearing Briefs
	Hyperlinked Briefs