

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Chief Administrative Law Judge's
Notices to the Public

Docket No. AD20-12-000

NOTICE TO THE PUBLIC

REVISIONS TO THE ELECTRONIC HEARING RULES AND PROCEDURES

(Issued June 17, 2020)

1. As required by the Chief Judge's previous notice, issued September 27, 2019, the Electronic Hearing Rules and Procedures the Office of Administrative Law Judges (OALJ) conducts all hearings in accordance with the Electronic Hearing Rules and Procedures. As set forth in Order No. 811, the Electronic Hearing Rules and Procedures have facilitated a shift toward electronic hearing procedures which have improved the efficiency and administrative convenience of the Commission hearing process, reduced the burden and expense associated with paper exhibits, and facilitated the compilation and transmittal of the hearing record to the Commission in electronic format.¹
2. On June 3, 2020, Section 8(c), which governs the official administrative record, was revised to explain the appropriate procedure used to correct exhibits after the record has closed.²

¹ See *Revised Exhibit Submission Requirements for Commission Hearings*, Order No. 811, 151 FERC ¶ 61,221, at P 1 (2015).

² See Electronic Hearing Rules and Procedures, § 8(c) ("If an exhibit needs to be corrected after the record has closed, the Presiding Judge will issue an order notifying the participants that the record must be reopened to correct exhibits, allow time for answers, require revised exhibits be submitted, and then close the record. Alternatively, the Presiding Judge may convene a post-hearing conference to resolve these issues on the record. This process will ensure both due process and an accurate record. This rule applies to matters such as exhibit naming conventions (which prevent the exhibit from being uploaded to e-library), incorrect confidentiality labelling, and any other exhibit information regardless of whether such changes may be considered *de minimis*.").

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3. In this most recent revision, Section 8(a) is revised to clarify that the record will be closed and the Hearing Site will be locked at the end of the hearing, unless there are outstanding record issues that are still pending.³

4. The current version of the Electronic Hearing Rules and Procedures is available on the Commission's Administrative Litigation webpage⁴ and in the above-captioned docket.

SO ORDERED.



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Carmen A. Cintron
Chief Administrative Law Judge

³ *Id.* § 8(a) (“At the conclusion of the hearing, the record will be closed and the Hearing Site will be locked. The Admitted and Rejected subfolders within the Shared Folder will constitute the official evidentiary record of the proceeding. If there are outstanding issues regarding the record at the close of the hearing, the Presiding Judge will address these issues, and close the record once these record issues are resolved.”).

⁴ FERC, Administrative Litigation, available at <https://www.ferc.gov/legal/admin-lit.asp>.

ELECTRONIC HEARING RULES AND PROCEDURES

Office of Administrative Law Judges



Last Updated: June 17, 2020

Federal Energy Regulatory Commission
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Section 1. Electronic Hearing Site.

- (a) 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.
- (b) The SharePoint platform allows participants to upload their exhibits remotely before the hearing begins and protects the confidentiality of those exhibits.
- (c) The SharePoint platform is the sole mechanism for admitting exhibits into the official hearing record during the proceeding.
- (d) 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) 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 Hearing Site.
 - (2) These authorized representatives will be able to i) upload exhibits to their respective participant folder, ii) move exhibits from their participant folder to the Shared Folder during the hearing when such exhibits are identified on the record, and iii) use their personal laptops to review and inspect the exhibits and materials that other participants move into the Shared Folder when questioning witnesses or seeking admission into the evidentiary record.

- (3) Four (4) weeks prior to the hearing start date, a representative from FERC's Information Technology (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 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 four weeks before the hearing, please contact the Presiding Judge's Law Clerk and Paralegal Specialist.
 - (4) To protect confidentiality, each participant will only be able to access or view the contents of the participant's own folder.
 - (5) The Presiding Judge and her/his Law Clerk will not have the ability to view the contents of any participant's folder at any time before, during, or after the hearing.
 - (6) 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 participant's subfolders can be renamed, reorganized, and new folders can be created by the participant. The following are the subfolders that will be initially established in each participant's folder:
- (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.

- (a) At least five (5) business days prior to the hearing start date, each authorized representative will remotely upload to its participant folder (as separate files in the subfolders) all of the participant's prefiled exhibits.
- (b) All other exhibits must be uploaded to the participant's folder prior to moving the exhibits into the Shared Folder and the appropriate subfolder within the Shared Folder.
- (c) Documents that will not be admitted as exhibits, but may be used to question a witness or refresh recollections, should also be uploaded to the participant folder prior to moving them into the Shared Folder so that the document may be projected on the display screen. Such documents, for which admission is not sought, will not be moved into the Shared Folder's subfolders, which comprise the evidentiary record.

Section 4. The Shared Folder.

- (a) During the hearing, authorized representatives will move their exhibits from their participant's folder into the Shared Folder using their personal laptop. Once the exhibit is ruled on, the participant will move the exhibit from the Shared Folder into the appropriate subfolder within the Shared Folder using the presentation laptop.
- (b) During oral examination, an exhibit in the Shared Folder can be projected on the display screen after it is introduced and marked for identification. Other materials used to question a witness or refresh recollection may also be projected on the display screen, although they will not necessarily be moved into evidence.
- (c) The contents of the Admitted and Rejected subfolders within the Shared Folder will comprise the official evidentiary record of the hearing.
 - (1) The following subfolders will be in the Shared Folder:
 - (i) Admitted Privileged
 - (ii) Admitted Public
 - (iii) Rejected Privileged
 - (iv) Rejected Public
- (d) At the hearing start date, authorized representatives (previously identified in Section 2(a)(1)) 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, because the presentation laptop must be used to add exhibits to the Shared Folder's subfolders.

- (1) The ADD ONLY permission allows authorized representatives to upload exhibits from the Participant's Folder into the Shared Folder.
 - (2) The READ ONLY permission will allow an authorized representative to view exhibits or materials 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 participants' authorized representatives will be able to open and view exhibits in the Shared Folder's subfolders via their personal laptop, 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.
 - (3) These permissions do not allow the authorized representatives to edit or delete exhibits within the Shared Folder.
- (e) The IT SharePoint team and designated OALJ personnel will have EDIT/ADD/DELETE permissions for exhibits within the Shared Folder and subfolders.

Section 5. The Presentation Laptop.

- (a) 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 screen during the hearing. The Presentation Laptop will be equipped with Exhibit View, an optional software application that provides additional presentation functionality that participants may elect to use. Participants will use the Presentation Laptop during the examination of each witness. Each 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 participant must ensure, at all times, that the proper material is opened and that the display screen accurately show the material being used during examination.

- (b) 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 moving of exhibits into the designated subfolder will be undertaken by the Presiding Judge or his/her staff.
- (c) The Presentation Laptop will have ADD/DELETE/READ permissions to the Shared Folder.
 - (1) 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.
 - (2) The Presentation Laptop will have DELETE permission to allow the individual operating the presentation laptop to remove exhibits that a participant requests to be withdrawn.
 - (3) The Presentation Laptop will have READ permission to allow the individual operating the presentation laptop to view only those exhibits that are in the Shared Folder and exhibits that have been previously moved into the Admitted and Rejected subfolders.
- (d) Upon an authorized representative's request to the Presiding Judge's Law Clerk and Paralegal Specialist at least six (6) weeks prior to the hearing start date, OALJ personnel may provide manual assistance with the Presentation Laptop.

Section 6. Equipment at Witness Stand.

- (a) OALJ will provide witnesses a presentation monitor and a witness stand laptop while testifying on the witness stand. This will enable the witness to cross-reference exhibits in real-time and aid the witness in responding to the examining attorney's questions.

- (b) The presentation monitor will allow witnesses to view what is being presented on the display screen in real-time. The witness will not have the ability to control the presentation monitor.
- (c) 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 admitted because the exhibit was already admitted, rejected, or will be submitted later.
 - (2) Alternatively, at the Presiding Judge's discretion, witnesses may receive READ ONLY permissions to access other subfolders with the witness stand laptop, such as the Admitted Privileged subfolder, if the witnesses have the authority do so (e.g., by signing a non-disclosure agreement).

Section 7. Exhibits.

- (a) **Exhibits.** All exhibits must comply with the following requirements:
 - (1) **File Size.** Each exhibit uploaded to the participants' subfolders, the Shared Folder, and eLibrary must not exceed fifty (50) megabytes (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 must not 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) numerical 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 must 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.”
- (iii) The designations PRIV, CEII, or both (as applicable), must be included as part of the naming convention for exhibit numbers (e.g., S-0001 PRIV) and exhibit electronic file names (e.g., S-0001 PRIV Jones Direct Testimony).

(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 at the end of the exhibit electronic file name (e.g., S-0001 PRIV Jones Direct Testimony REV2).

(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) **Exhibit Electronic File Names.** All exhibits prefiled on eLibrary, uploaded to a participant folder, and uploaded to the Shared Folder must comply with the following requirements.

(i) **File Name Length.** Exhibit electronic file names 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 CEII-PRIV Jones Direct Testimony” is deemed to contain thirty-nine (39) characters.

(ii) **Prohibited Characters.** Exhibit electronic file names must not include special characters, except for hyphens, underscores, and parentheses.¹ Additionally, no period may be used at the conclusion of the exhibit electronic file name except for the period that is part of the file extension (e.g., “.pdf”).

(A) For example, an exhibit titled “S-0001 CEII/PRIV/HC Testimony of David M REV#2..pdf” 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 that is in addition to the period that is part of the file extension.

¹ Prohibited special characters include (but are not limited to): , # % & * : > ? / {

- (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 personal laptop that must be connected to the FERC Guest WiFi network, which should be requested prior to the hearing start date.
- (c) **Moving for Admission.** After marking an exhibit for identification, the presenter will open each exhibit upon which a witness is specifically questioned so that it is projected onto the display screen. 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.

- (a) At the conclusion of the hearing, the record will be closed and the Hearing Site will be locked. The Admitted and Rejected subfolders within the Shared Folder will constitute the official evidentiary record of the proceeding. If there are outstanding issues regarding the record at the close of the hearing, the Presiding Judge will address these issues, and close the record once these record issues are resolved.
- (b) **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 issues with the accuracy of the record.
- (1) 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.
 - (2) At the conclusion of the hearing, all participants must also confirm, on the record, that the Shared Folder's subfolders are accurate and complete.

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

(c) **Reopening the Official Evidentiary Record.** If an exhibit needs to be corrected after the record has closed, the Presiding Judge will issue an order notifying the participants that the record must be reopened to correct exhibits, allow time for answers, require revised exhibits be submitted, and then close the record. Alternatively, the Presiding Judge may convene a post-hearing conference to resolve these issues on the record. This process will ensure both due process and an accurate record. This rule applies to matters such as exhibit naming conventions (which prevent the exhibit from being uploaded to e-library), incorrect confidentiality labelling, and any other exhibit information regardless of whether such changes may be considered *de minimis*.

APPENDIX A

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

The screenshot shows a SharePoint site for 'Southwest Power Pool, Inc Hearing'. The breadcrumb trail is: Home > Chairman > Commissioner > OAL > OALJ. The folder ID is ER18-99-003. The folder structure is as follows:

Name	Modified	Modified By
Participant Folders	February 4	Sterling Poteat (CTR)
Shared Folder	February 26	Sterling Poteat (CTR)

Presiding Judge: Jennifer Long (OALJ)

Law Clerk: Elizabeth Doherty

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

The screenshot shows a SharePoint site for 'White Cliffs Pipeline Hearing'. The breadcrumb trail is: Home > OR18-9-000 > Site contents. The folder ID is OR18-9-000. The folder structure is as follows:

Name	Modified	Modified By
1. Commission Trial Staff	February 27	Sterling Poteat (CTR)
2. Grand Mesa Pipeline, LLC	February 27	Sterling Poteat (CTR)
3. Liquid Shippers Group	February 27	Sterling Poteat (CTR)
4. White Cliffs Pipeline	February 27	Sterling Poteat (CTR)

Presiding Judge: Suzanne Krolikowski (OALJ)

Law Clerk: Shereen Panahi (OALJ)

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

The screenshot shows a SharePoint site for 'Southwest Power Pool, Inc Hearing'. The breadcrumb trail is: Home > Chairman > Commissioner > OAL > OALJ. The folder ID is ER18-99-003. The folder structure is as follows:

Name	Modified	Modified By
Admitted Privileged	March 4	Sterling Poteat (CTR)
Admitted Public	March 4	Sterling Poteat (CTR)
Rejected Privileged	A few seconds ago	Jeremy Hessler
Rejected Public	A few seconds ago	Jeremy Hessler

Presiding Judge: Jennifer Long (OALJ)

Law Clerk: Elizabeth Doherty (OALJ)

Exhibits are temporarily housed below the subfolders before being moved into the appropriate subfolder

APPENDIX B - Quick Reference Guide

Deadline	Action	Citation
6 weeks prior to hearing	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.	Section 2(a)(1)
6 weeks prior to hearing (optional)	Optional: Upon receiving a request six weeks in advance, OALJ may provide assistance with the Presentation Laptop and exhibit presentation software.	Section 5(d)
4 weeks prior to hearing	A representative from FERC's IT SharePoint team will email instructions to each authorized representative on how to access that participant's folder.	Section 2(a)(3)
At least 5 business days prior to hearing	Each authorized representative will remotely upload to its folder (as separate files in the subfolders) all of the participant's prefiled exhibits.	Section 3(a)
Hearing Start Date	Authorized representatives will be granted the appropriate permissions to access the Shared Folder.	Section 4(d)
Throughout hearing	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.	Section 8(b)
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 before the close of the hearing.	Section 8(b)(1)
At the conclusion of the hearing	All participants must confirm on the record that the Shared Folder's subfolders are accurate and complete.	Section 8(b)(2)
5 business days after 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.	Section 8(b)(3)
Before the record is certified	If an exhibit needs to be corrected after the record has closed, the Presiding Judge will issue an order notifying the participants that the record must be reopened to correct exhibits, allow time for answers, require revised exhibits be submitted, and then close the record. Alternatively, the Presiding Judge may convene a post-hearing conference to resolve these issues on the record.	Section 8(c)

Document Content(s)

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