

# UNIFORM HEARING RULES

Office of Administrative Law Judges



Updated: January 5, 2022

Federal Energy Regulatory Commission  
888 First St NE, Washington, DC 20426

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## Section 1. Scope

These *Uniform Hearing Rules* (Hearing Rules) govern hearing proceedings at the Federal Energy Regulatory Commission (Commission).<sup>1</sup> Hearing proceedings are also governed by the *Electronic Hearing Rules and Procedures*, which are expressly incorporated into this document as Appendix B,<sup>2</sup> and the Chief Judge's Notices to the Public, which are available in Docket No. AD20-12-000.<sup>3</sup> These Hearing Rules do not modify the discretion of Presiding Judges to regulate practice consistent with the Commission's Rules of Practice and Procedure<sup>4</sup> and applicable law.

## Section 2. Discovery

These discovery rules supersede and replace the *Time Standards for Discovery* (issued Dec. 8, 1999).

### (a) *Schedule*

- (1) Discovery begins when the Presiding Judge is designated.
- (2) Discovery is conducted on a rolling schedule.
- (3) Responses shall be provided within 10 business days of the request.
- (4) All deadlines related to discovery requests are calculated from the service date of the request.

### (b) *Objections*

- (1) Must be served whenever the respondent does not intend to provide a full and timely response to each discovery request;
- (2) Shall be provided within 5 business days of the request; and
- (3) Shall be in writing and include:

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<sup>1</sup> Notice to the Public: Uniform Hearing Rules, Docket No. AD20-12-000 (Sept. 1, 2020) (authorizing and effectuating the Hearing Rules).

<sup>2</sup> Electronic Hearing Rules and Procedures, Docket No. AD20-12-000 (June 17, 2020), available at <https://www.ferc.gov/administrative-litigation-0>.

<sup>3</sup> In addition to the referenced docket, all governing Notices to the Public issued by the Chief Judge are posted to the Commission's Administrative Litigation webpage, available at <https://www.ferc.gov/administrative-litigation-0>.

<sup>4</sup> 18 C.F.R. pt. 385.

- (i) an explanation of what part(s) of the discovery request the respondent will and will not answer;
- (ii) a specific date or dates by which the respondent will provide any partial or complete response(s);
- (iii) all other information required in Rules 406(b)(5) and 410 of the Commission's Rules.

(c) *Meet and Confer Period*

- (1) Whenever an objection is raised under paragraph (b) above, all participants must employ diligent, good faith efforts to resolve discovery disputes among themselves.
  - (i) The Meet and Confer Period is 15 calendar days from the discovery request.
  - (ii) Participants must keep a log of all resolution efforts.
- (2) If a Participant determines that resolution efforts are unlikely to succeed by the end of the 15-day period, the Participant may provide a written notice to the other participants terminating the Meet and Confer Period early.

(d) *Motions to Compel*

- (1) Motions to compel shall be filed within 5 business days of the earlier of:
  - (i) the expiration or early termination of the Meet and Confer Period; or
  - (ii) the failure to fully and timely respond to the discovery request by the deadline established in paragraphs (a)(3) or (f)(1)(ii).
- (2) Motions to compel must:
  - (i) recite the full data request, followed by the objection;
  - (ii) explain the basis for requesting an answer and law supporting the request; and
  - (iii) summarize the efforts made to resolve the dispute.
- (3) Answers to motions to compel must be filed within 5 business days after the motion is filed, or if oral argument is scheduled, at least 2 business days before the oral argument.

(e) *Conclusion of Discovery*

All discovery shall be completed (all information exchanged and disputes submitted to the Presiding Judge) no later than 10 business days before the hearing start date.

(f) *Tolling*

- (1) Participants may by mutual agreement toll the following deadlines:
  - (i) Response to discovery requests (paragraph (a)(3));
  - (ii) Providing an objection (paragraph (b)).
- (2) Tolling of these deadlines will only be allowed to afford Participants an opportunity to resolve their discovery disputes within the Meet and Confer Period and before the filing of a motion to compel.

(g) *Subpoenas*

- (1) Participants shall request the issuance of subpoenas by providing the unsigned subpoena to the Presiding Judge.
- (2) All objections to subpoenas shall be filed as Motions to Quash, no later than 5 business days after the date the subpoena is served.

**Section 3. Duty to Confer (Non-Dispositive Motions)**

Participants must confer on all non-dispositive motions.

- (a) Before filing, movant must discuss anticipated non-dispositive motions with all opposing counsel to:
  - (1) Determine whether the requested relief is opposed; and
  - (2) Narrow areas of disagreement.
- (b) All filed motions shall state whether they are opposed or unopposed and, if opposed, the motion must explain the efforts made to resolve the dispute.

**Section 4. Privileged and Critical Energy/Electric Infrastructure Information (CEII) Designations**

(a) *Labels*

- (1) All exhibits, testimony, briefs, and other pleadings must be labeled consistent with the Commission's regulations governing

material that is Privileged<sup>5</sup> and/or Critical Energy/Electric Infrastructure Information (CEII),<sup>6</sup> and must be labeled consistent with the Commission Secretary's Notice to the Public addressing controlled unclassified information (CUI).<sup>7</sup>

- (2) Further information on Privileged and CEII treatment of documents isare found in the Electronic Hearing Rules *infra* App. B.

*(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 without the designation. This version must be labeled as revised.

*(c) Public Version*

Every Privileged or CEII exhibit must have a public redacted version clearly marked as public. If the entirety of an exhibit is Privileged or CEII, a one-page document with “[REDACTED - CONTAINS CUI//PRIV or CUI//CEII or CUI//CEII/PRIV]” must be admitted as the public version.

*(d) Designations Must Be Warranted*

Counsel must ensure that material designated as Privileged or CEII legitimately warrants the applicable designation. Blanket Privileged or CEII designations should not be used.

## **Section 5. Service and Courtesy Copies of Filings**

*(a) Service of Filings*

Each participant must serve copies of all pleadings, pre-filed exhibits, briefs, and any other filed documents to all other

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<sup>5</sup> 18 C.F.R. § 388.112.

<sup>6</sup> 18 C.F.R. § 388.113.

<sup>7</sup> *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff* (April 14, 2017), available at <https://www.ferc.gov/administrative-litigation-0>.

participants on the date the documents are filed. Unless a participant is listed on the official service list without an email address, these documents must be served electronically.

(b) *Electronic 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. These copies shall be delivered electronically through email or uploaded to the Presiding Judge's Courtesy Copy SharePoint site.

**Section 6. Hearing Conduct and Witness Examinations**

(a) *Witness Communications*

(1) Communications with a witness through concealed channels of communication are prohibited while the witness is providing testimony.

(2) Communications with a witness are allowed during breaks.

(b) *Proper Foundation*

Every exhibit must be properly authenticated and have a proper foundation for its admission into evidence.

(c) *Scope of Examinations:*

(1) Cross-examination is limited by the scope of the direct examination of the witness.

(2) Redirect examination is limited to matters brought out on cross-examination.

(3) All participants will be permitted to conduct follow-up examination concerning any question asked of a witness by the Presiding Judge.

(d) *Objections*

Counsel may object to questions put to a witness during cross-examination only if counsel is sponsoring that witness.

**Section 7. 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*

- (i) Participants must file a joint stipulation of issues.
- (ii) Each issue must be numbered seriatim.
- (iii) The issues must be stated in the form of a question or an objective summary statement.

(2) *Joint Witness List*

- (i) Participants must file a joint witness list.
- (ii) The list must provide:
  - (A) the anticipated order of witnesses; and
  - (B) estimated time of the examinations.

(3) *Initial Exhibit List*

- (i) Participants sponsoring exhibits must submit an initial index of all their pre-filed exhibits.
- (ii) 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 the hearing in accordance with the deadlines established in the procedural schedule:

(1) *Final Joint Exhibit List*

Participants must file a final joint exhibit list that includes every exhibit admitted or rejected during the hearing.

(2) *Transcript Corrections*

Participants must file a joint motion with proposed transcript corrections no later than 15 days before the initial post-hearing brief deadline.

(3) *Post-Hearing Briefs*

All briefs must address the issues in the joint statement of issues.

**Section 8. Violation of Rules**

- (a) Counsel shall identify any violation of these rules by making a timely objection.
- (b) Counsel's failure to make a timely objection shall constitute waiver of the right to object.

**Section 9. Public Comment on Uniform Hearing Rules**

Any person may submit written suggestions for amendments to these Hearing Rules. All suggestions should be directed to the Chief Judge's staff.

**Appendix A: Sample Joint Exhibit List**

[Caption Name]

Docket No[s].

Exhibit No. <sup>1</sup>	Description (100-character limit)	Electronic File Name (50-character limit)	Designation Category <sup>2</sup>	Date Identified	Date Admitted or Rejected	Admitted or Rejected (Transcript Page Reference)

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<sup>1</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>2</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 Exhibit List
	Joint List of Email Addresses to Receive Privileged Exhibits
Post-Hearing	Final Joint Exhibit List
	Transcript Corrections
	Post-Hearing Briefs
	Hyperlinked Briefs (optional)

**Appendix B:**  
**ELECTRONIC HEARING**  
**RULES AND PROCEDURES**  
**Office of Administrative Law Judges**



Last Updated: March 24, 2022

Federal Energy Regulatory Commission  
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Washington, DC 20426

**Section 1. Electronic Hearing Site.**

- (a) The Office of Administrative Law Judges (OALJ) conducts all hearings using a cloud-based Hearing Site created specifically for each case. The Hearing Site is hosted on Microsoft’s SharePoint Online (SharePoint) application, a platform that provides a secure place to store, organize, and share information.
- (b) The Hearing Site allows participants to upload their exhibits remotely and protects the confidentiality of those exhibits. When exhibits are introduced and identified on the record during a hearing, those exhibits will be accessible to those individuals who have access to the Hearing Site.
- (c) The Hearing Site is the sole mechanism for admitting exhibits into the evidentiary record.
- (d) The Hearing Site has two folder categories:
  - (1) Upload Test Folder; and
  - (2) Shared Folder.

**Section 2. Authorized Representatives.**

- (a) Six (6) weeks prior to the hearing start date, the Presiding Judge’s Law Clerk will email the participants to request, and the participants shall promptly provide, two lists:
  - (1) A list of the names and email addresses of individuals who will require access to the Hearing Site. These individuals will be the authorized representatives during the hearing for each respective participant that submits a list. This list typically includes counsel, paralegals, and witnesses who will access or upload exhibits during the hearing.
  - (2) One participant, on behalf of all participants, will submit a list of the individuals who have signed a non-disclosure certificate associated with any protective order that governs the proceeding. The other participants must be copied on this email.

- (b) Authorized representatives will be able to i) upload exhibits to the Shared Folder during the hearing and ii) use their own laptops to access the exhibits and materials that other participants move into the Shared Folder when questioning witnesses or seeking admission into the evidentiary record.
- (c) Prior to the hearing start date, a representative from FERC's Information Technology (IT) SharePoint team will email each of the authorized representatives, identified pursuant to Section 2(a)(1) above, a link to access the Hearing Site. If an authorized representative has not received this email within a week of the hearing's start date, they should contact the Presiding Judge's Law Clerk and Paralegal Specialist.

**Section 3. Upload Test Folder.**

- (a) The Hearing Site will contain an Upload Test Folder so that each participant who intends to introduce exhibits at the hearing can test both their access to the Hearing Site and ability to remotely upload exhibits. This folder is for testing purposes only and participants need not maintain this folder for other purposes.
- (b) At least five (5) business days prior to the hearing start date, one authorized representative for each participant who intends to introduce exhibits must remotely upload a blank test file to the Upload Test Folder with the participant's name in the file name. For example, an entity named Pipeline X would upload "Pipeline X Test.pdf."

**Section 4. The Shared Folder.**

- (a) During the hearing, authorized representatives will upload their exhibits into the Shared Folder or Privileged Materials Folder<sup>1</sup> using their own laptop. Once the exhibit is ruled on, the Law Clerk will move the exhibit from the Shared Folder or Privileged Materials Folder into the appropriate subfolder within the Shared Folder.
- (b) The following subfolders will be in the Shared Folder:

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<sup>1</sup> Depending on the different levels of privileged information in the proceeding (e.g., highly confidential, Section 15(13) information, or competitive duty personnel restrictions), additional privileged materials folders may be necessary (e.g., a Highly Confidential Privileged Materials Folder).

- (1) Admitted Privileged
  - (2) Admitted Public
  - (3) Rejected Privileged
  - (4) Rejected Public
  - (5) Privileged Materials Folder
- (c) The contents of the Admitted and Rejected subfolders within the Shared Folder will comprise the official evidentiary record of the hearing.
- (d) All participants' authorized representatives will be able to open and view exhibits in the Shared Folder's subfolders via their own laptop (except and to the extent the authorized representative's access to privileged material is limited), 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 Privileged subfolder.<sup>2</sup>
- (e) Only the IT SharePoint team, the Law Clerk, Paralegal Specialist, and designated OALJ personnel will be able to add, edit, delete, or move exhibits within the Admitted Public, Admitted Privileged, Rejected Public, or Rejected Privileged subfolder.

## **Section 5. Exhibits.**

- (a) **Exhibit Requirements.** All exhibits must comply with the following requirements:
- (1) **File Size.** Each exhibit must not exceed fifty (50) megabytes (MB).
  - (2) **Exhibit Numbering and Numbering of Individual Pages:**
    - (i) Each exhibit must be assigned an exhibit number in the form of an alphanumeric designation that indicates the sponsoring participant's name and a specific number. Examples of an appropriate exhibit number include FJT-0007 or S-0001.
    - (ii) This alphanumeric designation must not contain more than three (3) letter characters.

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<sup>2</sup> Witnesses should provide their own laptop to access the Hearing Site during examination. A separate witness stand monitor, provided by the Commission, will also allow witnesses to view what is being presented on the hearing room display screens.

- (iii) This alphanumeric 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’s first exhibit, where Trial Staff expects to introduce a maximum of 999 exhibits).
- (iv) The numerical digits must not be separated by commas.
- (v) The exhibit number must be listed in the upper-right corner of each page of the exhibit.
- (vi) Each page of an exhibit must be numbered consecutively unless a particular type of document cannot be numbered (e.g., a native excel document). It is preferable to place the exhibit page numbers in the upper-right corner near the exhibit number.

(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 incorporated directly into the exhibit number (e.g., S-0001 REV) and the exhibit electronic file name (e.g., S-0001 REV PRIV Jones Direct Testimony).
- (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 or uploaded to the Shared Folder during the hearing must comply with the following electronic file name 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.
  - (ii) **Prohibited Characters.** Exhibit electronic file names must not include special characters, except for hyphens, underscores, and parentheses.<sup>3</sup> 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”).
  - (iii) **Preliminary Text.** Exhibit electronic file names should start with the alphanumeric exhibit number and should not be preceded by the text “Ex.” or “Exhibit.”
- (b) **Identifying Exhibits on the Record.** When an exhibit is identified during the hearing, the participant must move the exhibit into the Shared Folder using their own laptop.
- (c) **Moving for Admission.** 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 exhibit requested for admission, the Law Clerk will move the exhibit into the appropriate subfolder of the Shared Folder.

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<sup>3</sup> Prohibited special characters include (but are not limited to): , # % & \* : > ? / {

(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 6. Evidentiary Record.**

(a) At the conclusion of the hearing, the evidentiary record will be closed. The Admitted and Rejected subfolders within the Shared Folder will constitute the official evidentiary record of the proceeding.

(b) 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, all participants must confirm, on the record, that the Admitted and Rejected subfolders within the Shared Folder are accurate and complete.

(2) For five (5) business days following the conclusion of the hearing, authorized representatives will continue to have access to the Shared Folder and will be able to view and download exhibits from its subfolders. After this deadline lapses, participants will no longer have access to the Hearing Site.

# Quick Reference Guide

<b>Deadline</b>	<b>Action</b>	<b>Citation</b>
6 weeks prior to hearing	The Presiding Judge’s Law Clerk will request two lists: (1) a list of the names and email addresses of individuals who will need access to the Hearing Site, and (2) a list of the individuals who signed a non-disclosure certificate.	Section 2(a)
2 weeks prior to hearing	A representative from FERC’s IT SharePoint team will email each of the authorized representatives a link to access the Hearing Site.	Section 2(c)
At least 5 business days prior to hearing	One authorized representative for each participant must remotely upload a test file to the Upload Test Folder with the participant’s name in the file name.	Section 3
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 issues with the accuracy of the record.	Section 6(b)
At the conclusion of the hearing	Participants must confirm, on the record, that the exhibits in the subfolders of the Shared Folder are accurate and complete before the close of the hearing.	Section 6(b)(1)
5 business days after conclusion of the hearing	For five (5) business days following the conclusion of the hearing, authorized representatives will have access to the Shared Folder and will be able to view and download exhibits from its subfolders remotely. After this deadline elapses, participants will no longer have access to the Hearing Site.	Section 6(b)(2)