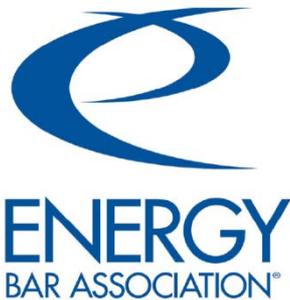




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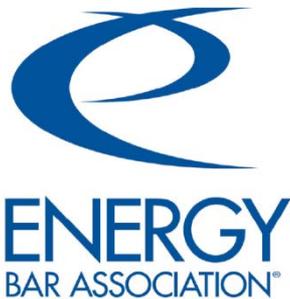
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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tuscarora Gas Transmission Company

Docket No. RP16-299-000

ORDER ESTABLISHING RULES FOR CONDUCT OF THE HEARING

(Issued February 11, 2016)

1. All matters before Judge Scholz shall be conducted in accordance with these rules. The rules are intended to ensure an orderly, courteous, and efficient proceeding.

I. JOINT STIPULATION OF ISSUES

2. The hearing shall be conducted in accordance with a Joint Stipulation of Issues. The participants shall establish a Joint Stipulation of Issues prior to the hearing commencement date in accordance with the Judge's Order Establishing Procedural Schedule. No later than two (2) weeks prior to the date scheduled for hearing, the participants shall submit through the FERC Online eFile website the Joint Stipulation of Issues. Each issue in the Joint Stipulation of Issues must include each participant's position on the issue and must also indicate the name of the supporting witnesses, the exhibit numbers relating to the testimony, the estimated money value of the issue (where applicable), and a brief statement of each witness' position. The issues specified in the Joint Stipulation of Issues must be numbered *seriatim* (e.g., I, II, III . . .), and each number shall be followed by an objective summary caption.

3. The hearing parameters shall be limited to the issues specified in the Joint Stipulation of Issues and any amendments to the Joint Stipulation of Issues adopted by the Judge. Amendments to the Joint Stipulation of Issues proposed by the participants shall be permitted only in compelling circumstances. The Judge's adoption of the Joint Stipulation of Issues on the first day of hearing shall be deemed an express acknowledgment by all participants that due process has been received with respect to the hearing/proceeding parameters specified in the Joint Stipulation of Issues. The Joint Stipulation of Issues format will be followed in the participants' briefs and in the Initial Decision.

II. DISCOVERY

4. Unless otherwise authorized by the Judge, the participants shall abide by the Discovery Time Standards available at <http://www.ferc.gov/legal/admin-lit/time-dis.asp>.

5. Discovery requests, discovery responses, and any objections to discovery requests shall not be provided to the Judge. The participants shall make **serious, good-faith** efforts to resolve discovery disputes prior to filing a motion to compel. Those efforts **must include a face-to-face meeting** of the disputing parties to confer on resolving the dispute, prior to filing a motion to compel. Participants shall relate those efforts in any motion to compel and answer thereto. A motion to compel shall attach the pertinent parts of the discovery request and objections.¹ If a dispute is still unresolved by further negotiations after a motion to compel is filed, an answer to such a motion shall be made at least two (2) business days prior to oral argument.

III. TESTIMONY AND EXHIBITS

6. All testimony and exhibits must be electronically filed in the Commission's e-Filing system.

7. All exhibits shall be marked with a permanent and participant-specific designation (*e.g.*, "S-1" for Trial Staff Exhibit #1), which shall not contain more than three (3) letter characters. Temporary exhibit numbers (referencing sponsoring witnesses' initials, *etc.*) shall not be used. Placeholder exhibit numbers (reserving exhibit numbers for future use) shall not be used. Intervenors shall not identify their exhibits with the letter "T" because a proceeding may involve multiple intervenors. Exhibit designation and exhibit-specific pagination (*i.e.*, "Exhibit S-1, page 1 of 12") shall be reflected in the upper right corner of each page of the exhibit. To avoid confusion, an exhibit's original source pagination (if any) shall not be referenced at hearing or in briefs.

A. Pre-Filed Testimony and Exhibits

8. **Electronic service.** Each participant will provide electronic copies of its pre-filed exhibits to every other participant on the date(s) the exhibits are filed. Any protected materials transmitted electronically to Commission email addresses must be encrypted. Pre-filed exhibits will be proffered to be marked for identification/admitted into evidence at hearing in electronic format.

9. **Hard copies of testimony.** Within one (1) week after e-Filing pre-filed testimony, the participants must submit one (1) hard copy to the Judge. Double-sided printing of all documents is highly encouraged. The hard copy exhibits must be in loose leaf form, three (3)-hole punched, numbered in series, individually paginated, edge-

¹ Once a party determines that negotiations regarding the production of a document are no longer productive, the withholding party shall promptly notify the requesting party—in writing—of its final decision not to produce the requested information. The time for filing a motion to compel under the Discovery Time Standards will begin to run only upon such written service.

tabbed for quick reference and organized in 3-ring binders with indicated capacities not exceeding three (3) inches. The edge-tabs must indicate the full letter, number, or alphanumeric exhibit designation for all exhibits (*e.g.*, “TS-1” for Trial Staff Exhibit #1). The binder spine must indicate only the range of exhibits included in the binder (*e.g.*, “Exhibits TS-1 through TS-13” for Trial Staff Exhibits #1 through #13).

10. **Testimony summaries.** The pre-filed testimony of each witness must be designated as an exhibit and must be prefaced by a summary of the testimony. The summary will be considered part of the testimony but will be separately paginated using Romanette (*i.e.*, i, ii, iii, iv . . .) numerals.

11. **Pre-hearing errata.** If an erratum to an exhibit is required, the preferred practice is for it to be filed as a new exhibit with a new exhibit number. Any errata must outline all changes in red-line and provide replacement pages affected by the changes. Replacement pages should be marked in the corner immediately below the pre-designated exhibit number with the words “Revised on [date].” Errata and replacement pages must be electronically filed prior to the hearing. The participant filing errata must provide copies of the errata with replacement pages to all parties and to the Judge.

12. **Acronym appendices.** The Judge expects clarity in pre-filed testimony, other exhibits, and briefs. Generally, participants should avoid acronyms. Where acronyms must be used, an appendix of acronyms or other abbreviations at the back of *each* document should be included. In the body of a document, participants should list out the phrase that forms the basis of every acronym when first used. If a participant uses a term only a few times in a document, it should be spelled out each time and the acronym omitted.

13. **Final pre-hearing exhibits.** At least one (1) week prior to the commencement of the hearing, each participant shall provide the Judge with a complete and final set of exhibits. Participants shall include an index with hyperlinks to all exhibits in the set.

B. Hearing Exhibits

14. **Submission of exhibits to the court reporter.** Participants will provide the court reporter one (1) copy of pre-filed testimony in DVD or CD format at the beginning of the hearing. Cross-examination and other exhibits must be emailed to the court reporter at the following address: info@acefederal.com. The court reporter will also have access to the Shared folder during the hearing.

15. **Admission of exhibits generally.** Any exhibit offered into evidence must be properly authenticated and have a proper foundation laid for its admission. Due to the possibility of objection to, rejection of, and changes to exhibits, pre-filed exhibits are not hearing exhibits nor considered part of the official hearing record. Therefore, pre-filed

exhibits must be authenticated and a proper foundation laid for them prior to their admission into evidence as well.

16. **Organization of electronic exhibits.** Participants will use a Commission-approved network for exhibits at the hearing. The network permits participants to upload exhibits during the hearing. It is separate from the Commission's network. Participants will place their exhibits onto the network before the hearing in their participant-specific folder. Exhibits shall be named according to the same alpha-numeric designation used to title each exhibit (*e.g.*, S-1.pdf). Once an exhibit is identified on the record, the participant identifying the exhibit will "drag and drop" a copy of the exhibit from the participant's folder to a Shared folder that creates the final administrative record. Participants will see only their respective individual folder and the Shared folder; the Judge can see all folders.

17. **Identification and admission/rejection of exhibits on the record.** Prior to an exhibit being mentioned or referenced for the first time during the hearing, it must be identified on the record. At the time the exhibit is identified, the participant is responsible for moving a copy of the exhibit from the participant-specific folder to the Shared folder on the network. It is the participants' responsibility to ensure exhibits are not marked or admitted more than once. It is the participants' responsibility to delete from the Shared folder any exhibits identified on the record which are later withdrawn. If an exhibit is rejected, the sponsoring participant must electronically mark the exhibit with the word "REJECTED" in red font at the top of the cover page and first page of the exhibit. The sponsoring party must also rename the file in the Shared folder adding the word "REJECTED" at the end of the title. There will be no exceptions to this rule. Participants must keep track of when their exhibits are identified and admitted into evidence. At the conclusion of the hearing, all participants must ensure that the Shared folder only contains admitted or rejected exhibits.

18. **Projection of electronic exhibits.** Any exhibit referenced to a witness at hearing will be projected onto a large screen and simultaneously displayed on both the witness' and Judge's computer screens. It is examining counsel's responsibility to ensure the screens precisely track the referenced material at all times. A dedicated computer terminal is provided for that purpose. Privileged or confidential versions of exhibits may only be projected when the hearing is in closed session. Participants wishing to project such images must request the closed session.

19. **Manipulation of exhibits.** If an exhibit is manipulated during the hearing and used as a demonstrative, upon its admission into evidence, a PDF version of any result of manipulating the demonstrative exhibit during the hearing will be saved in the Shared folder with a parenthetical numerical sub-designation of the exhibit number (*e.g.*, S-3(1).pdf).

20. **Errata filed during hearing.** If a participant moves to introduce an erratum and it is absolutely necessary to substitute pages for an entire exhibit already marked or admitted during the hearing, the moving party must obtain the originally marked or admitted exhibit from the court reporter and replace it with the substitute exhibit. This will require prior recording of the moving party's intent to substitute the exhibit, the reason for the substitution, agreement by all parties to the substitution, and approval from the Judge on the record. The court reporter will give notice to the Judge, and the transaction of swapping the old exhibit with the revised version will be done on the record.

C. Exhibits Containing Protected Information

21. **Designation.** Counsel must ensure that any material designated "privileged,"² or as containing Critical Energy Infrastructure Information (CEII) (as defined in Commission Order No. 630, 18 C.F.R. § 388.112) legitimately warrants that designation. Blanket designations shall not be used unless counsel has verified that all or substantially all of a document consists of such information. Any document containing privileged material or CEII shall so indicate prominently on the document cover page and at the top of each individual page containing such information. Be aware, any party wishing to proffer any restrictively designated material has an **EXTREMELY HEAVY BURDEN**. Such burden extends not only to proving relevance and materiality but also to showing an item is actually privileged or confidential, etc. Instead, participants should prepare a redacted version that maintains their arguments without including restricted material.

22. **Public version.** In the unlikely event that restrictively designated material must be admitted, every such exhibit shall be accompanied by a "public" version of the exhibit. If the exhibit in its entirety is restrictively designated material and a redacted public version cannot be provided, a sheet of paper so indicating must be admitted in place of a public version.

23. **Admission of privileged exhibits.** 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 Judge. Additionally, exhibits which are privileged or contain CEII shall include "PRIVILEGED" or "CEII" at the end of the electronic title (*e.g.*, S-1_PRIVILEGED.pdf). No additional descriptive

² 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 p. 31,747 (2012). However, the terms "protected," "confidential," and "privileged" are used interchangeably in these Rules in light of their use in the Model Protective Order.

language shall be included in document names once in the Shared folder, unless rejected (*see* P 16 above).

24. **Lifting privilege.** 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 participant as “PRIVILEGE LIFTED.”

25. **Copyrighted material.** If an exhibit contains copyrighted material, the party sponsoring the exhibit is responsible for obtaining permission from the copyright owner in advance. The permission must include the use and reproduction of the material in the proceeding and in all publications arising thereof, including the Initial Decision and Orders of the Commission. In the event that such permission is restricted, the exhibit shall 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 a 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 (2013).

IV. EXAMINATION OF WITNESSES

26. No later than one (1) week prior to the date scheduled for hearing, the participants shall provide the Judge with a Joint Witness List indicating the anticipated order that witnesses will be called to testify.

27. Participants are strongly discouraged from introducing discovery responses, including deposition transcripts, in lieu of cross-examination.

28. Examination of witnesses shall be limited to direct, cross, and re-direct. As a consequence, cross- and re-direct examination shall be strictly limited to the respective scopes of direct and cross-examination, and re-direct examination will be conducted immediately following each participant’s cross-examination of the testifying witness.

29. Succeeding cross-examiners will not be permitted to engage in repetitive cross-examination. Any counsel intending to cross-examine a witness, therefore, shall be present during all preceding cross-examination of the witness.

30. Friendly cross-examination will not be permitted. This rule applies to a participant’s own witnesses, as well as to other participants’ witnesses taking the same side of an issue.

31. Objections to cross-examination questions may be made only by counsel sponsoring the witness, except insofar as friendly cross-examination is the basis.

32. A request for clarification of a question may be made only by the witness or by the Judge.

33. Counsel will be permitted to conduct follow-up examination concerning any question asked of a witness by the Judge.

34. Witnesses will have access to a “presentation” laptop on the witness stand. The laptop will allow witnesses access to the Shared folder only. Counsel should direct witnesses to any exhibits they are referencing during examination so the witness can open the appropriate electronic exhibit on the presentation laptop. Participants may also provide witnesses with paper copies.

V. HEARING CONDUCT

35. Counsel and witnesses shall observe proper decorum at all times. Counsel will be expected to address witnesses and opposing counsel in a courteous and professional manner. Direct exchanges between opposing counsel are not permitted; statements addressed to opposing counsel shall be directed to the Judge. Non-disruptive consultation among counsel, co-counsel, and witnesses is permitted. Cell phones and similar devices (*e.g.*, tablets) must be turned off or set to silent notification.

36. Persons attending the hearing may come and go as they please provided that they do not disturb the proceedings. Persons answering cell phone calls must do so outside of the hearing room.

37. When a witness is being sworn, everyone in the hearing room shall be seated and quiet.

38. Counsel will be allowed reasonable time for argument on oral motions or objections before a ruling is made. Once a ruling is made, no further discussion of the matter will be entertained.

39. Any document which counsel wishes to show to a witness must first be shown to the Judge and opposing counsel. One (1) hard or electronic copy of any document offered by reference or for official notice purposes must be provided to the Judge. Subsequently, an electronic copy must be given an exhibit number and also be added to the Shared folder as an official exhibit during the hearing.

VI. HEARING ROOM PREPARATION REQUIREMENTS

40. Anyone requesting Commission facilities accommodations such as teleconference, video, trial preparation room use or extraordinary hearing room access must make such request(s) by contacting the Judge’s legal assistant or attorney advisor at least two (2) weeks in advance.

41. Parties must send Wi-Fi MAC addressees for the two (2) laptops they plan to use during the hearing to access the hearing network and their electronic exhibits at least two (2) weeks in advance. Only one (1) laptop will be required to upload exhibits, but the addresses for two (2) are needed in the event there are technical difficulties. Counsel shall provide a contact name, phone number, and email address with this information to serve as a point of contact for FERC's Information Technology (IT) department. This information should be sent via email to Wallica Brown at Wallica.Brown@ferc.gov with a courtesy copy sent to the Judge's legal assistant and attorney advisor. Network access credentials will be provided to counsel for the parties after they sign an Interconnection Service Agreement at an IT prehearing conference.

42. Guest Wi-Fi is available in the Commission hearing rooms upon request. Wi-Fi requests must be made at least two (2) weeks in advance of the start of the hearing and should be emailed to the Judge's legal assistant and attorney advisor. The request must include the requester's name, email address, and duration of access. If a participant will have more than one (1) person requiring guest Wi-Fi access, the participant should submit the required information for all requests in one (1) email. Requesters will be asked to sign a user agreement at the IT prehearing conference, at which time IT staff will provide requesters with their login credentials. FERC Trial Staff will be required to use the guest Wi-Fi in order to access the hearing network.

43. Participants should be prepared, in the event the technology fails, to continue the hearing without interruptions.

VII. POST-HEARING REQUIREMENTS

44. Within seven (7) days after the hearing ends, the participants will file (via e-Filing) a Joint Exhibit List in the format provided in Appendix A of the *Superseding Procedures for Handling Exhibits and Developing the Electronic Hearing Record*.³ The Joint Exhibit List will include for each exhibit: (i) the exhibit number (*e.g.*, "TS-1" for Trial Staff Exhibit #1); (ii) the final exhibit disposition (*e.g.*, admitted into evidence, rejected, withdrawn, etc.—including date of and transcript page reflecting final disposition); (iii) a brief exhibit description; (iv) the date the exhibit was marked for identification; and (v) any privileged/CEII designation. For any exhibit that is rejected in part, the Joint Exhibit List will specify the exhibit pages or portions that were admitted into evidence in the "Description" field. The Joint Exhibit List must specify the case name and docket number(s) in a caption on the first page and the docket number(s) in a header on each subsequent numbered page.

³ *Superseding Procedures for Handling Exhibits and Developing the Electronic Hearing Record* is available online at <http://www.ferc.gov/legal/admin-lit.asp>.

45. The participants will overnight mail courtesy copies of the Joint Exhibit List and admitted exhibits to the Judge on the same day they are e-Filed. These copies will be on compact discs and in searchable format. Privileged or CEII exhibits will be provided on a medium that is separate from the non-privileged or non-CEII exhibits and labeled accordingly. The Joint Exhibit List provided to the Judge will contain hyperlinks to the admitted exhibits.

46. No later than three (3) weeks after the conclusion of the hearing, the participants must e-File a Joint Statement of Transcript Corrections.

VIII. BRIEFS

47. Each participant must file (via e-Filing) a pre-hearing brief, either independently, or jointly with other like-interested parties, no later than two (2) weeks prior to hearing. The pre-hearing brief should conform to the outline of the Joint Stipulation of Issues and should concisely present a participant's case concerning each issue by providing: (i) a narrative of the party's arguments and position, (ii) a summary of what the testimony of each witness will show, (iii) references to supporting exhibits, and (iv) other relevant information. Pre-hearing briefs shall be limited to twenty (20) pages, not counting the Table of Contents.

48. Post-hearing briefs must reference each issue reflected in the Joint Stipulation of Issues in numerical order and by caption. A participant electing not to address a specific issue shall so indicate directly below the caption in lieu of providing narrative argument on the issue. Any proposed findings of fact/conclusions of law shall be stated immediately following the narrative argument on the specific issue to which the proposed findings of fact/conclusions of law pertain. This procedure is intended to facilitate a comprehensive comparison of the participants' arguments on an issue-specific basis. The Initial Decision will be prepared in accordance with the Joint Stipulation of Issues format. References to evidence must include exhibit number, page, line(s) or section(s), *and* descriptions. For instance, if referring to Ex. S-5 at 2(g), also include the description, *e.g.*, (X's Response to Y's Data Request #Y-X 4-19 of Oct. 12, 20--).

49. Post-hearing briefs shall be submitted with hyperlinked citations. The hyperlinked citations shall include pinpoint hyperlinks to any cited legal authorities (*e.g.*, statutes, regulations, court cases, Commission opinions/orders), exhibits admitted into evidence, and the official transcript.

50. Footnotes and citations must follow Bluebook format, must be accurate and relevant, and must support the proposition for which they are asserted. References to evidence must not be overly broad (*e.g.*, "Direct Testimony of X at pp. 27–39" should instead provide the exact page and line numbers to support the argument).

51. All briefs submitted in the proceeding shall be prefaced by a topical table of contents with corresponding page numbers.

IX. SUBMISSION OF DOCUMENTS

52. A courtesy copy of any pleading or other document submitted or filed with the Commission Secretary pursuant to 18 C.F.R. § 385.2001–2012 in a proceeding before Judge Scholz and copies of any other motions, briefs, or documents shall be provided directly to the Judge via e-mail at Dawn.Scholz@ferc.gov, her attorney advisor, Veronica Bradley at Veronica.Bradley@ferc.gov, and her legal assistant, John Colter at John@Colter@ferc.gov. Participants shall email these documents to the Judge, her attorney advisor, and her legal assistant prior by close of business on the same day the pleading or document is e-Filed. Any protected materials transmitted electronically must be encrypted.

53. The text of motions, briefs, testimony, and other documents must be provided in **Microsoft® Word format**; exhibits and/or other attachments may be provided in PDF or Microsoft® Excel format, as appropriate. Please contact Mr. Colter at 202-502-8319 or via the email address provided above and Ms. Bradley at 202-502-8107 or via the email address provided above with any questions.

X. ENFORCEMENT/WAIVER

54. It shall be counsel's responsibility to point out any violation or abrogation of these Rules by making a timely objection to the Judge. Counsel's failure to make such an objection shall constitute consent.

55. Any hearing before Judge Scholz shall be conducted in accordance with these Rules. Strict adherence to the Rules nevertheless may be waived by the Judge in appropriate circumstances or for good cause.

Dawn E.B. Scholz
Presiding Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

XXX

Docket Nos. XX

ORDER ESTABLISHING RULES FOR CONDUCT OF THE HEARING

(Issued XXX XX, 20XX)

1. These Rules for Conduct incorporate by reference all Notices to the Public issued by the Chief Administrative Law Judge.¹

I. DISCOVERY

2. Unless otherwise agreed by the participants and the Presiding Judge, the participants shall abide by the Discovery Time Standards posted at <http://www.ferc.gov/legal/admin-lit/time-dis.asp>.

3. Discovery requests, discovery responses, and any objections to discovery requests shall not be provided to the Presiding Judge.

4. Parties must make **serious** good-faith efforts to resolve discovery disputes. Those efforts **must include a face-to-face meeting** of the disputing parties to confer on resolving the dispute, prior to filing a motion to compel. All efforts to resolve differences must be delineated in any discovery motion and answer thereto.

5. Parties are strongly discouraged from introducing discovery responses, including deposition transcripts, in lieu of cross-examination.

6. Objections to discovery requests must be made within five (5) business days of the date of service of the discovery request.

7. Non-disclosure certificates shall not be provided to the Presiding Judge.

¹ Notices to the Public are available at <http://www.ferc.gov/legal/admin-lit.asp>. On September 30, 2015, the Chief Judge issued a Notice to the Public detailing procedures for handling exhibits and developing an electronic hearing record. The procedures and rules detailed in that Notice are adopted in this proceeding.

II. MOTIONS TO COMPEL

8. If a party determines negotiations regarding production of a document or other discovery are no longer fruitful, the withholding party shall promptly notify requesting party. Notification of withholding party's final decision not to produce the requested information shall be in writing. The time for filing a motion to compel under the Discovery Time Standards will begin to run only upon such written service.

9. A motion to compel shall attach the pertinent parts of the discovery request and objections. If a dispute is still unresolved by further negotiations after a motion to compel is filed, an answer to such motion shall be due. The answer and any oral argument shall be set in accordance with the Discovery Time Standards.

III. HANDLING OF EXHIBITS AND PRE-FILED TESTIMONY

10. All exhibits must have an alpha-numeric designation, indicating by no more than three (3) letters, the sponsor and the sequential number of that party's exhibits. All exhibits shall be marked with a permanent and party-specific designation (*e.g.*, "S-1" for Staff Exhibit #1). **Temporary exhibit numbers (referencing sponsoring witnesses' initials, etc.) shall not be used.** The parties shall not "reserve" numbers, but instead shall assign all numbers in consecutive sequence. The page number should include the total number of pages in the exhibit (*e.g.*, page 1 of 20) and must be located on the top right-hand side of each page of the exhibit. Intervenors should not identify their exhibits with the letter "I" since the proceeding may involve multiple intervenors. All pre-filed exhibits will conform to this numbering methodology.

11. The **pre-filed testimony** of each witness shall be marked as a separate exhibit and shall be prefaced with a summary of the main points and supporting exhibits. The summary will generally not become part of the evidentiary record. The offering party may, however, have it included with the evidentiary record by a statement to that effect. The correspondingly filed electronic versions of all documents must be searchable. *See* ¶ 64, *infra*.

12. Participants must pre-file testimony in electronic format through FERC's e-Filing system. Participants must include in their submission all supporting exhibits for the witness's pre-filed testimony. If an exhibit is more than 50 megabytes (MB), the sponsoring party must provide the exhibit on a CD or DVD. The CD or DVD may contain multiple voluminous exhibits. Additionally, one (1) hard courtesy copy of the pre-filed testimony, cross-examination exhibits, and other exhibits shall be provided. The courtesy copy must be individually tabbed on the right side and three-hole punched. The number of each exhibit must be marked on its tab. The pre-filed exhibits are to be

submitted in three-ring binders that must be *horizontally* labeled on the spine and cover.² Labels must identify which exhibit numbers are contained within the binder.

13. Participants will provide the court reporter one (1) copy of pre-filed testimony in DVD or CD format at the beginning of the hearing. Cross-examination and other hearing exhibits must be emailed to the court reporter at the following address: info@acefederal.com. The court reporter will also have access to the Shared folder (discussed below in ¶ 44–45).

14. **Provide Clarity in Pre-Filed Testimony and Other Documents.**

(a) **Acronyms.** Generally, you should avoid acronyms. Where you must use acronyms, include an **appendix** of acronyms or other abbreviations at the back of *each* document. In the body of a document, list out the phrase that forms the basis of every acronym when you first use it. If you (the witness or attorney) use a term only a few times in a document, spell it out each time and omit the acronym.

(b) **Short sentences and paragraphs.** *Sentences* must be restricted to *around 20 words*. *Paragraphs* must be limited to no more than *8 sentences*, ideally ranging between 3 and 8 sentences.

(c) **Be concise.** Your sentences should contain only one idea. Paragraphs should contain only one topic. Avoid double negatives. Avoid redundancy.

Anyone having difficulty following these guidelines should review my suggestions for persuasive-legal writing starting at page 7 of the following link: http://www.ebanet.org/sites/default/files/Summer%202014%20Newsletter_0.pdf.

15. If minor corrections to pre-filed testimony must be made, the participants are encouraged to make such corrections at the hearing using an *errata* sheet. That sheet should also be e-filed. If an *erratum* to an exhibit is required, it must be filed as a new exhibit with a new exhibit number. Below the exhibit number, the erratum will be marked with the words “Revised on [date]. Replaces Ex. No. [number] identified on [date].” If it is absolutely necessary to substitute pages for an entire exhibit already marked or admitted during the hearing, the following shall apply. The moving party must obtain the originally marked or admitted exhibit from the court reporter and replace it with the substitute exhibit. This will require prior recording of the moving party’s intent to substitute the exhibit and the reason for the substitution. It will also require agreement

² *I.e.*, the wording should appear perpendicular to the length of the binder so that the wording is horizontal when the binder stands upright.

by all parties for the substitution and approval from the Presiding Judge on the record. *Errata* must indicate all changes in red-line format. The party proffering the *errata* is responsible to see this procedure is followed.

16. **Procedures where substantial changes have been made since the time testimony was originally pre-filed.** All parties sponsoring such exhibits must provide the Presiding Judge with copies of their final set of exhibits in loose-leaf form. Those copies shall be serially numbered, individually paginated, three-hole punched, and submitted in three-ring binders at least **two (2) weeks** prior to hearing's commencement. Additional hard copies need not be provided at the hearing.

17. **At least one (1) week prior** to hearing commencement, parties sponsoring exhibits **must submit an initial index of all exhibits** to be offered through their own witnesses. They shall also provide copies to the other parties. The index should include seven columns. The first three columns should be filled in: (1) the exhibit number; (2) a brief description of the exhibit; and (3) the sponsoring party. The remaining four columns should be labelled as follows: (4) "Admitted, Rejected, or Withdrawn (& Transcript Page Reference)." (5) "Date Identified." (6) "Date Admitted or Rejected." and (7) "Privileged, Protected, CEII, or None." See *Appendix A* attached as an example. The initial index of all exhibits shall also include at least one page of blank table lines at the end of the parties' exhibit list for the Presiding Judge's use for cross-examination exhibits at hearing. It is the responsibility of the parties to keep their exhibit lists current and accurate.

18. To ensure every exhibit will be identified in the transcript **index**, the identification must contain an appropriate **title for the document**. This may be accomplished either through an identification statement by sponsoring counsel or by the Presiding Judge's own identifying statement.

19. Under no circumstances will an exhibit be moved into evidence that is marked as follows: "**protected**," "**privileged**," "**Critical Energy Infrastructure Information (CEII)**," or any other restrictively-designated material, unless the exhibit is so designated on the record.³ Once an exhibit is identified on the record as "protected," "privileged," "CEII," *etc.*, it must be approved by the Presiding Judge and admitted or rejected as such. *Caveat*: I am of the opinion that any party wishing to proffer "protected," "privileged," "CEII," or any other restrictively-designated material has an **EXTREMELY HEAVY BURDEN**. Such burden extends not only to proving relevance

³ 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).

and materiality, but showing an item is actually privileged or confidential, *etc.* (See *e.g.*, 18 C.F.R. § 388.112 and Commission Order No. 630.) Instead, I suggest preparing a redacted version that makes your point without including restricted matter.

20. If restrictively-designated material must be admitted, every such exhibit shall indicate the restriction on the cover page and at the top of each individual page of the exhibit. Each instance of restrictively-designated material must be noted by shading the text gray. Furthermore, the following designations in upper-case, boldface type must occur before and after the restricted information. **“START OF PROTECTED MATERIAL”** and **“END OF PROTECTED MATERIAL.”**

21. Exhibits containing “protected” or other restrictively-designated material shall also have a public, redacted version admitted that must be clearly marked as *“PUBLIC.”* Some exhibits might be “protected” in their entirety, precluding production of a public, redacted version. In these instances, a sheet of paper indicating such must be admitted in place of a public version.

22. The following applies to the *PUBLIC* version of an exhibit previously marked as “protected,” “privileged,” “CEII,” *etc.* in whole or in part. In such cases, every page of the exhibit that is so marked shall be stamped by the submitting party as *“PRIVILEGE LIFTED.”*

23. For exhibits that have not been filed prior to the hearing, counsel shall **provide an empty three-ring binder** to the Presiding Judge. This will facilitate exhibits used by that party during the course of cross examination to be placed in the binder. The binder should include pre-numbered tabs sufficient to separate all exhibits. Each binder must be labeled *horizontally* on its cover and spine with the Party’s name and docket number of the case. The label shall also identify the nature of the contents of the binder, *e.g.*, “Cross-Examination Exhibits of Party X -Volume 1 of 1.” All cross-examination exhibits shall be three-hole punched.

24. If an exhibit contains copyrighted material, the party sponsoring the exhibit is responsible for obtaining advanced permission of the copyright owner. If the copyright owner is a participant in this action, such permission shall be deemed granted. Permission shall include the right to use and reproduce that material in this proceeding. It shall also include permission to reproduce the material in all publications arising from this proceeding. These publications include the initial decision of the Presiding 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. The legend shall identify 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.” Such fair use shall be in accordance with 17 U.S.C. § 107 (2012) or permitted under an agreement the participant obtained with the copyright owner.

25. When the Presiding Judge is to rule on **late-filed exhibits** presented after the hearing is concluded, the following procedures are to be followed. The proffering participants will provide an electronic copy to the judge, his clerk, and his legal assistant and one (1) hard copy to the judge. A copy for the court reporter will be filed electronically via the email address provided in ¶ 13.

IV. MOTIONS TO STRIKE

26. Parties must file any Motion to Strike pre-filed testimony and exhibits no later than ten (10) business days prior to submission of responsive testimony. For rebuttal testimony, Motions to Strike must occur no later than ten (10) business days prior to the start of the hearing.

V. EXAMINATION OF WITNESSES

27. No later than one (1) week prior to hearing commencement, participants shall provide the Presiding Judge with a **Joint Witness List**. That list will indicate the anticipated order witnesses will be called to testify.

28. Except in extraordinary circumstances, no telephone appearances regarding any matter to be captured or reflected in the record of the hearing will be permitted. Circumstances will be deemed “extraordinary” only with the prior approval of the Presiding Judge.

29. Examination shall be strictly limited to the scope of prior relevant testimony. Direct testimony includes any rebuttal testimony by the witness.

30. Redirect examination shall be strictly limited to matters brought out on cross-examination.

31. Succeeding cross-examiners will not engage in repetitive cross-examination. Thus, counsel who intend to cross-examine a witness **must** be present in the hearing room during the entire preceding cross-examination of that witness.

32. Friendly cross-examination may be permitted in those instances where the Presiding Judge would find it useful in fully developing the evidence.

33. Counsel will be permitted to further examine a witness, within the scope of questions asked of that witness by the Presiding Judge.

34. Cross-examination shall not be used as a substitute for discovery. Questions during cross-examination used to educate a party about the substance of another party’s pre-filed testimony are prohibited. Also prohibited are any other questions posed to elicit information that could have been obtained in discovery.

35. Requests for clarification of a question may only come from the witness or the Presiding Judge.

36. Regarding exhibits a party seeks to introduce during cross-examination, counsel must establish proper foundation with the witness before it will be admitted into the record.

VI. BRIEFS AND JOINT STATEMENTS

37. No later than **two (2) weeks** prior to the date scheduled for hearing, the participants shall provide the Presiding Judge with a **Joint Statement of Issues**. The Joint Statement of Issues shall include a **synopsis of each participant's position** as to each individual issue. The issues to be tried are limited to those included in the Joint Statement and any amendments thereto permitted by the Presiding Judge. At this time the participants shall also submit a **Joint Statement of Stipulated Facts**. Furthermore, they shall submit a **Joint Statement of Contested Facts (with Explanations)**, if necessary. Every issue or fact in each of the respective Joint Statements shall be numbered *seriatim* (e.g., 1, 2, 3, etc.). For example, Joint Statement of Issues (JSI) 1 through 3; Joint Statement of Facts (JSF) 1 through 23, etc.

38. Also, no later than **two (2) weeks** prior to the date scheduled for hearing, each party will submit a **pre-hearing brief**. Pre-hearing briefs shall be a maximum of fifteen (15) pages. **All** briefs should address each issue listed in the Joint Statement of Issues, unless otherwise noted by a specific statement to that effect. All issues should be appropriately numbered and titled, and addressed in sequential order, thereby allowing for comparison of the issues. *I.e.*, briefing issues must mirror each of the stipulated issues. *See also*, guidelines for clarity in ¶14, *supra*.

39. Briefs will be filed in *Microsoft® Word* format on the due date (*see* ¶ 64) and use *Times New Roman* 13-point font, in the body and footnotes. Participants should submit hyperlink-formatted briefs that include hyperlinks to exhibits, transcripts, and cases. Participants who submit hyperlinked briefs must do so within the two (2) weeks after reply briefs are due. Both the initial and the reply briefs can be included in one CD containing the hyperlinked briefs. Briefs may be served on other participants through e-filing. In addition, a single-sided hard copy of each brief shall be provided to the Presiding Judge in accordance with ¶ 64, *infra*.

40. Footnotes and citations must be accurate and relevant and must support the proposition for which they are asserted. References to evidence must not be overly broad, such as: *Direct Testimony of X at pages 27 through 39*. Instead, provide exact page and line number(s) to support each point. References to evidence in **post-hearing briefs** must include exhibit number, page, line(s) or section(s), **and** descriptions. For instance, if referring to *Exh. S-5 at 2(g)*, also include the description; e.g., *X's Response to Y's Data Request #Y-X 4-19 of Oct. 12, 20--*.

VII. CONDUCT AT THE HEARING

41. Persons attending the hearing are free to come and go as they wish, provided the hearing is not disturbed. This rule is subject to the restrictions in ¶ 31, *supra*.
42. No reading of extraneous material will be permitted.
43. Cell phones and other mobile devices must be turned off or set to silent notification. Persons answering cell-phone calls must do so outside of the hearing room. In some instances, mobile devices may interfere with the audio system in the hearing room. If this occurs, attendees will be asked to turn them off completely.
44. Participants will use a Commission-approved network for exhibits at the hearing. The network permits participants to upload exhibits during the hearing. It is separate from the Commission's network. Prepared exhibits will be uploaded to the network the first day of the hearing with the assistance of the Commission IT staff. No special software is required; however, IT assistance can only be provided for Windows-based laptops.
45. Participants will place the exhibits they plan to introduce into the record in their participant-specific folder on the network before the hearing. Each exhibit must be uploaded as a separate file. Once an exhibit is identified on the record, the identifying participant will "drag and drop" a copy of the exhibit from the participant's folder to the Shared folder. Participants will have access only to their respective, participant folder and the Shared folder to view introduced or admitted exhibits. The Judge can see all folders.
46. Electronic exhibits identified on the record and dropped into the Shared folder shall be titled following the alpha-numeric designation as described in ¶ 10 only. The alpha-numeric designation shall also appear in the upper right-hand corner of each page of the exhibit. Electronic exhibits that are 50 MB or greater must also be provided to the Judge's legal assistant on a CD or DVD. More than one such exhibit may be placed on a single disk.
47. When an exhibit is referenced during the hearing, it is the examining attorney's responsibility to display that exhibit onto a projection screen. The attorney (or assistant) will project the portion(s) of the exhibit being referenced. A Commission-issued computer connected to a projector can be provided for this use. In lieu of using Commission-provided equipment, however, participants may bring their own equipment or agree to share another participant's equipment. Personal equipment will only be allowed with advanced approval of the Presiding Judge. Such approval may be conditioned on agreement to share the use of the equipment with other participants. If participants use their own equipment, it will be their responsibility to set it up, have it operational, and break it down at the hearing's conclusion. Participants must keep in mind that they are only allowed to connect two (2) computers to the network. The placement of flat screens, smart boards, or monitors shall not interfere with any

participant's use of the hearing room, disrupt seating arrangements, or hinder participants' ability to confer. Privileged or other restricted versions of exhibits shall only be projected when the hearing is in closed session. Participants wishing to project such images must request the closed session.

48. If an exhibit is withdrawn, it is the sponsoring party's responsibility to delete the electronic exhibit from the Shared folder before the end of the hearing. If the judge rejects an exhibit, it is the sponsoring party's responsibility to add "REJECTED" to the title of the document on the Shared folder (*e.g.*, S-1_REJECTED.pdf) and to add "REJECTED" in red font at the top of the first page of the document. At the conclusion of the hearing, all participants must ensure the Shared folder contains only those exhibits admitted into or rejected from evidence.

49. Guest wireless-internet access in the Commission's hearing rooms is available upon request for proceeding participants. Requests must be made at least two (2) weeks before the proceeding and should be directed to the Presiding Judge's law clerk via email. The request must identify the duration of the requested access (up to one [1] year) and include the requester's name, phone number, and email address. If a participant will have more than one person requiring WiFi access, the participant should submit the required information for all requests in one (1) email. Requesters will receive their WiFi credentials at the beginning of the hearing.

50. At least two (2) weeks before hearing, parties must provide WiFi Media Access Control (MAC) addressees for the two (2) laptops they will use during the hearing to access the hearing network. Parties are directed to email the MAC addresses to the Judge's legal assistant. Only one (1) laptop will be required to upload exhibits, but the addresses for two (2) are needed in the event there are technical difficulties. Parties will sign an Interconnection Service Agreement before connecting their laptops to the network.

51. Participants should be prepared, in the event the technology fails, to continue the hearing without interruptions. Parties should be prepared to introduce exhibits in hard copy.

52. Food and drinks, other than water, are not permitted in the hearing room.

53. No cross conversation between opposing counsel will be permitted. Rather, if counsel has anything to say to opposing counsel, such statement **must** be made through the Presiding Judge. Quiet consultation between co-counsel and assistants or their witnesses is allowed.

54. When a witness is sworn, everyone else in the hearing room must be seated and quiet.

55. Argument or objection may only be made by counsel prior to a ruling. Once a ruling is made, no further discussion of the matter will be permitted.

56. Requests for special accommodations, if necessary, should be made in advance of the hearing, when practically possible.

VIII. WAIVER

57. The hearing will be conducted in conformance with these rules. In the rare instance where inflexible adherence to the rules will result in an injustice, counsel may petition the Presiding Judge for relief. Alternatively, the Presiding Judge may grant relief *sua sponte*.

58. It is counsel's responsibility to make the Presiding Judge aware of infractions by making a timely objection. Failure to make a timely objection could result in waiver of the rule.

IX. FILING OF THE OFFICIAL RECORD

59. Within seven (7) 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 the following for each exhibit. (1) The exhibit number. (2) A brief description of the exhibit. (3) The sponsoring party. (4) Its status (admitted, rejected, or withdrawn, and containing transcript page references). (5) The date the exhibit was marked for identification. (6) The date admitted or rejected and (7) its protected, privileged, CEII, or no designation classification. The Joint Exhibit List will also include the docket number and case name in the header of the document.

60. If an exhibit is **partially rejected**, the pages, or portions that were admitted must be specified in the Joint Exhibit List for that exhibit.

61. Parties will provide one (1) joint courtesy copy of the official exhibits and the Joint Exhibit List to the Presiding Judge on a digital media in searchable format. Privileged, Protected or similarly-restricted exhibits will be provided on a medium that is separate from the non-protected exhibits and marked accordingly. The exhibit list should contain hyperlinks to the referenced exhibit. Exhibits containing *Microsoft® Excel* worksheets must be provided in native format.

X. SUBMISSION OF DOCUMENTS

62. One (1) hard courtesy copy of any document filed with the Commission Secretary pursuant to 18 C.F.R. §§ 385.2001–385.2012 in this proceeding should be provided to Judge Haubner. The courtesy copy should be sent to the Presiding Judge via overnight

mail delivery on the same day the document is filed with the Commission Secretary. Please note: **Courier deliveries are prohibited.**

63. Copies of all motions, briefs, and other documents (excluding testimony and exhibits) must also be provided directly to the Presiding Judge and his law clerk electronically at Michael.Haubner@ferc.gov and Veronica.Bradley@ferc.gov. All electronic documents must be in searchable format. Any protected materials transmitted electronically must be encrypted. The text of such motions, briefs, and other documents must be provided in *Microsoft® Word* format. Exhibits or other attachments may be provided in PDF or *Microsoft® Excel* format, as appropriate. **Submission** of all documents must occur **by 3:00 p.m.** on the due date.

64. If you have questions, please contact my legal assistant, Ms. Janine Leath at 202-502-8842 or via email at Janine.Leath@ferc.gov. Additionally, you may contact my law clerk, Ms. Veronica Bradley, at 202-502-8107 or via the email address provided above.

SO ORDERED.

Michael J. Haubner
Presiding Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ABC Pipeline

Docket No. RP16-0000-000

ORDER ESTABLISHING RULES OF CONDUCT FOR THE HEARING

(Issued __, 2016)

I. Discovery

1. Unless otherwise mutually agreed by the participants¹ (and if necessary, approved by the Presiding Judge), the participants shall abide by the Discovery Time Standards posted at <http://www.ferc.gov/legal/admin-lit/time-dis.asp> (*see* Appendix A).
2. Rule 26(f) of the Federal Rules of Civil Procedure is adopted for this proceeding and must be followed by the parties and Commission Trial Staff (Trial Staff), with the following exceptions: (i) the initial conference of the parties and Trial Staff shall occur as soon as practicable and (ii) any other orders from the Presiding Judge that the parties seek under their discovery plan shall be issued in accordance with the Commission's Rules.
3. All discovery requests and responses shall be served electronically to all participants in an agreed upon electronic format, such as Microsoft Word or searchable Adobe PDF format. Any responsive spreadsheet shall be provided in Microsoft Excel, with all links and formulas intact and included in the electronic copy unless an electronic version of the spreadsheet is unavailable. If an electronic version of the spreadsheet is not available, it shall be provided in searchable Adobe PDF format. To the extent electronic responses are impossible or impractical, responses shall be provided via fax, by hand, or express mail for next day delivery to each participant. For such exhibits or attachments, Trial Staff may satisfy this requirement by making material available for pickup at the Commission, if requested, and otherwise will serve materials by regular mail.
4. Discovery requests, discovery responses, objections to discovery requests, and copies of non-disclosure certificates should not be sent to the Presiding Judge.

II. Examination of Witnesses

5. Except in extraordinary circumstances, examination of witnesses shall be limited to direct, cross, and redirect.

¹ For purposes of this order, the undersigned uses the words party or parties, and participant or participants, interchangeably.

6. Cross-examination shall be strictly limited to the scope of direct testimony. (Direct testimony includes any rebuttal testimony by the witness.)
7. Redirect examination shall be strictly limited to matters brought out on cross-examination.
8. Succeeding cross-examiners will not engage in repetitive cross-examination. To avoid problems in this area, counsel who intend to cross-examine a witness must be present in the hearing room during the entire preceding cross-examination of the witness.
9. Counsel will be permitted to further examine a witness following questions asked of the witness by the Presiding Judge.
10. Cross-examination shall not be used as a substitute for discovery. Questions during cross-examination that are designed to educate a party about the substance of another party's pre-filed testimony or otherwise obtain information that could have been obtained in discovery will not be allowed.
11. Requests for clarification of a question only may come from the witness or the Presiding Judge.
12. Participants are strongly discouraged from introducing discovery responses, including deposition transcripts, in lieu of cross-examination.

III. Exhibits and Testimony

13. The participants should abide by the guidelines published at <http://www.ferc.gov/legal/admin-lit.asp> entitled "Superseding Procedures for Handling Exhibits and Developing the Electronic Hearing Record" issued on September 30, 2015 (September 30, 2015 Notice to the Public) by the Chief Judge (*see* Appendix B).
14. The hearing will be conducted using electronic media and protocols to the greatest possible extent. The Commission provides an electronic network for handling exhibits at hearing. The network accommodates both private and shared exhibit folders. It permits participants to upload exhibits to private folders and to transfer the uploaded exhibits to a shared (common) folder when the exhibits are marked for identification at hearing. Each individual participant will have exclusive access to a private folder. All participants and the Presiding Judge will have access to the shared folder. The witness will also have access to the shared folder on the witness stand. The Presiding Judge has access to all folders, including the private folders. The shared folder will have a subfolder for privileged documents.
15. At the conclusion of the hearing, all participants must ensure that the shared folder contains only those exhibits admitted into evidence or rejected. Exhibits that were marked for identification, but not admitted into evidence must be removed.

16. 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. All pre-filed exhibits marked for identification at hearing will be provided to the court reporter in separate files on a CD, DVD, flash drive, or similar medium. Any material presented for the first time at hearing must be pre-marked for identification at hearing as an exhibit. Exhibits presented for the first time at hearing may be e-mailed to the Court Reporter (separated into individual exhibit files) at info@acefederal.com.

17. Three weeks prior to the commencement of the hearing, counsel who intend to conduct cross-examination or offer pre-filed testimony shall email the Presiding Judge's law clerk the MAC address of two laptops they intend to use during the hearing for the purpose of conducting cross-examination or offering pre-filed testimony into the record. While only one laptop is required to upload exhibits, the addresses of two laptops are needed in the event of technical difficulties. Additionally, counsel, in the same email, shall provide the law clerk with his or her name, phone number, and email address in order to serve as the point of contact for FERC's Information Technology (IT) department.

18. Counsel serving as the primary point of contact are required to attend at least one IT training session prior to the commencement of the hearing. The purpose of such meeting is for IT to connect your laptop to the internal network, demonstrate how the network will be used during the hearing, and to answer any questions about conducting the hearing electronically. It is recommended that counsel have the exhibits that they intend to introduce into evidence at the hearing available to download to the electronic network at the time of the IT Tutorial.

19. In addition to being accessible in the shared folder, any exhibit referenced at hearing will be projected onto a large screen, and simultaneously displayed on both the witness and Presiding Judge computer screens. While FERC's IT department can assist with this process, it is ultimately the examining attorney's responsibility to ensure that the screens precisely track the referenced material at all times. A dedicated computer terminal can be provided for that purpose.

20. Prior to hearing commencement, each participant will appropriately designate and individually upload (as separate files) to the participant's private exhibit folder every exhibit the participant expects to (or reasonably might) introduce at hearing, including all cross-examination exhibits. All exhibits, including cross-examination exhibits, must be pre-marked with an exhibit number on each page of the exhibit, *i.e.* "Exhibit No. S-1 (Page 1 of 15)".

21. Accordingly, all participants shall file all pre-filed testimony, supporting exhibits, and any other exhibits in electronic format through FERC's eFiling system. All such testimony and exhibits shall also be served electronically to all participants and the Presiding Judge at the time they are filed. All testimony shall be submitted in Microsoft Word format, while exhibits shall be submitted in searchable format, including Microsoft Word, Microsoft Excel, or Adobe PDF. Workpapers shall be made available on the same date as the testimony or exhibits to which such workpapers relate. Exhibits or workpapers related to exhibits that are spreadsheets shall be provided upon request in Microsoft Excel format with all links and formulas intact and included in the electronic copy.

22. The Presiding Judge's preferred method of receiving electronic exhibits is on USB flash media (*i.e.*, thumb drive); however, an external USB hard drive, DVD or CD is acceptable. Such device should be labeled with the Docket No. and sponsoring party. If parties choose to send electronic copies via e-mail, all documents that include any protected information must be encrypted.

23. The Presiding Judge directs all parties to provide two (2) courtesy hard copies of all pre-filed testimony, supporting exhibits, and any other exhibits at the time they are served electronically. The Presiding Judge's copies shall be individually tabbed on the right side, three-hole punched, and should be printed double-sided. The number of each exhibit shall be marked on its tab. More than one (1) exhibit can be combined in a loose-leaf binder. Exhibits must not be bound in a permanent binder from which individual exhibits and pages thereof cannot easily be removed.

24. It should be noted that, as in all trials, in the absence of a stipulation, before an exhibit will be accepted into evidence, the exhibit must be properly authenticated and a proper foundation must be made. All documents that appear to be regular on their face shall be deemed authentic, unless it is shown by particularized evidence that the document is a forgery or is not what it purports to be.

25. All participants sponsoring exhibits at the hearing must submit to the Presiding Judge, on the date set forth in the procedural schedule, an electronic copy of an index of all of the exhibits each party expects to offer into evidence at the hearing (including exhibits that may be used during cross-examination), and shall provide copies to the other participants. The index should include five columns. In the first two columns, the party should include the number of the exhibit and a brief description of the exhibit. The last three columns should be labeled "Identified," "Received," and "Protected/CEII" and need only include sufficient space for a date. It is the responsibility of the participants to keep their exhibit lists current and accurate.

26. For those exhibits presented for the first time at hearing, participants will provide hard copies at the hearing to the Presiding Judge. The Presiding Judge's copies shall be individually tabbed on the right side, three-hole punched, and should be printed double-sided. The parties shall coordinate amongst themselves as to whether the witness shall be given hard copies or whether the screen showing the electronic copy will suffice. The parties are not required to provide hard copies to all other participants, the Presiding Judge's Attorney-Advisor, and the court reporter unless otherwise agreed upon by the parties.

IV. Protected Material

27. The terms "confidential" and "administratively confidential" should not be used to indicate that certain documents are not to be disclosed to the public because "confidential" is a term of art that properly applies only when classifying documents for national security purposes. *See* 18 C.F.R. § 3a.11(3) (2014). Instead, designate the document as "Privileged - Do Not Release" or "Protected Material – Do Not Release." The front page of the exhibit and every page on which protected material appears should be marked. Exhibit pages which do not contain any protected material should not be marked, unless it is the front page of the exhibit.

28. Critical Energy Infrastructure Information (CEII). The participants should abide by the guidelines set forth by the Commission's Orders, located at <http://www.ferc.gov/legal/maj-ord-reg/land-docs/ceii-rule.asp>. Filers must clearly mark CEII information as "Contains Critical Energy Infrastructure Information - Do Not Release."

29. A restrictively designated exhibit noted in the prior two paragraphs shall state the applicable restriction on its cover page and at the top of each individual page that contains such restricted information. Each segment of restrictively designated material shall be in **bold red text** or **highlighted** and encompassed within brackets (" [] ") and specify "**START OF PROTECTED MATERIAL**" and "**END OF PROTECTED MATERIAL**." Participants must also provide a public redacted version of each restrictively designated exhibit, which should clearly be marked as PUBLIC.

30. Restrictive designations shall be contained within each question-answer set. Restrictive designations shall not begin in one question-answer set and continue into a different question-answer set (i.e., a restrictive designation shall not carry from one question-answer set into another question-set). Rather, a new, separate restrictive designation shall be placed within each question-answer set.

V. Filing of the Official Record

31. Parties should refer to paragraphs 11-15 of the Chief Judge's "Notice to the Public – Superseding Procedures for Handling Exhibits and Developing the Electronic Hearing Record" issued on September 30, 2015 for guidance in the filing of the official record.

VI. Briefs, Joint Statement of Issues, and Joint Witness List

32. Briefs, Joint Statement of Issues. The participants shall provide the Presiding Judge with a Joint Statement of Issues. The issues to be tried are limited to those included in the Joint Statement of Issues and any amendments thereto permitted by the Presiding Judge. Each issue in the Joint Statement of Issues shall be numbered seriatim. Each issue in the Joint Statement of Issues shall also indicate the name of the supporting witness, the exhibit numbers relating to the testimony, the estimated money value of the issue (where applicable), and a brief statement of the witness' position.

33. Joint Witness List. The participants shall provide the Presiding Judge with a Joint Witness List indicating the anticipated order that witnesses will be called to testify. The Joint Witness List should identify the offering party, concisely identify the issue(s) that the testimony shall address, and include the estimated time of any supplemental live direct testimony, if necessary, and the estimated time of cross-examination by each party.

34. Pre-Hearing Brief. Each party shall submit a pre-hearing brief (either independently, or jointly with other like-interested parties). The pre-hearing brief should conform to the outline of the Joint Statement of Issues by the same number and caption and should concisely present a party's case concerning each issue by providing: (i) a narrative of the party's arguments and position, (ii) a summary of what the testimony of each witness will show, (iii) references to the record, (iv) specific precedent, if applicable, and (v) other relevant information.

35. Post-Hearing Brief. Each party shall submit post-hearing briefs (independently, or jointly with other like-interested parties) by the dates set forth in the procedural schedule. The post-hearing briefs should conform to the outline of the Joint Statement of Issues by the same number and caption. All briefs filed must contain all of the issues contained in the Joint Statement of Issues. If a specific issue is not addressed in a brief, a short statement to that effect should be included. To expedite the issuance of a decision, each issue must be numbered in the same manner as in the Joint Statement of Issues, which will allow for an easy comparison of the parties' arguments.

36. The Presiding Judge may prescribe a limit on the number of pages for any post-hearing initial briefs and reply briefs filed pursuant to Rule 706. In establishing the page limitation for briefs, the Presiding Judge will give due regard to the magnitude and complexity of the proceeding, the extent of the record, and the number of issues. The parties should keep in mind that briefs should be kept within reason and at a volume that can be readily comprehended. In addition, all post-hearing briefs shall be in 13-point font for the main body, and 12-point font for footnotes.

37. The use of acronyms is discouraged; however, if acronyms are used, a glossary must be included at the front of any document in which they are used.

38. Participants are encouraged to submit to the Presiding Judge hyperlink formatted post hearing briefs (iBriefs\eBriefs), which includes hyperlinks to exhibits, transcripts, and cases, in pdf or Word format. These hyperlinked briefs should be submitted two weeks after the date the initial and reply post hearing briefs are due, unless another date is set by the Presiding Judge. The preferred method of receiving these hyperlinked brief is on USB flash media (*i.e.*, thumb drive); however, a DVD or CD is acceptable. The hyperlinked briefs should not be filed on e-library.

VII. Conduct at the Hearing

39. The normal hearing hours will be 10:00 a.m. to 4:30 p.m., Monday through Friday with a one hour lunch recess, beginning at approximately 12:30 each day. Fifteen (15) minute breaks will also occur at approximately 11:15 a.m. and 3:00 p.m. each day.

40. Persons attending the hearing are free to come and go as they wish providing the hearing is not disturbed.

41. No reading of extraneous material will be permitted.

42. Cell phones must be turned off or set to silent notification. Persons answering cell phone calls must do so outside of the hearing room.

43. Guest wireless internet access in the Commission's hearing rooms is available upon request for proceeding participants. Requests must be made at least one week before the proceeding and should be directed to the Presiding Judge's law clerk via email. The request must identify the duration of the requested access and include the requester's: (1) name, (2) affiliation, (3) phone number, and (4) email address. Upon approval, the requester will receive an email including the necessary password information.

44. Food and drinks, other than water, are not permitted in the hearing room.

45. No cross conversation between opposing counsel will be permitted. Rather, if counsel has anything to say to opposing counsel, such statement must be made through the Presiding Judge. Quiet consultation between counsel and assistants or witnesses is allowed.
46. Any document which counsel wishes to show to a witness must first be shown to opposing counsel.
47. If counsel wishes official notice to be taken of a document, two (2) copies must be provided to the Presiding Judge.
48. When a witness is sworn, everyone in the hearing room must be seated and quiet.
49. Arguments or objections may only be made by counsel prior to a ruling. Once a ruling is made, no further discussion of the matter will be permitted.

VIII. Waiver

50. The hearing will be conducted in conformance with these Rules. In an extraordinary circumstance where inflexible adherence to these Rules will result in an injustice, the Presiding Judge will entertain requests from counsel for relief. Any requests for special accommodations, if necessary, should be made in advance of the hearing, when possible.

IX. Enforcement

51. It is counsel's responsibility to make the Presiding Judge aware of infractions by making a timely objection. Failure to make a timely objection will result in the conclusion that counsel consents to a waiver of the Rule.

X. Submission of Documents Electronically

52. Copies of all motions and briefs that are filed with the Commission, should be provided directly to the Presiding Judge electronically at Jennifer.Whang@ferc.gov and to her law clerk, Colin Francis, at Colin.Francis@ferc.gov on the same day the documents are filed with the Commission. The subject line of the email should include the Docket No. and a brief description of the document. It is requested that the text of such motions, briefs, testimony, and other documents be provided in Microsoft Word format; exhibits and/or other attachments may be provided in PDF or Microsoft Excel format, as appropriate. If a party sends an email with a document that includes any protected information, it must be encrypted.

XI. Questions

53. The parties should exercise caution to avoid any *ex parte* or appearance of *ex parte* contacts of a substantive nature with the undersigned's office. Questions of an administrative or procedural nature should be directed to the undersigned's law clerk, Colin Francis at (202) 502-8101 or Colin.Francis@ferc.gov, or the undersigned's legal technician, Janine Leath at (202) 502-8842 or via email at Janine.Leath@ferc.gov.

SO ORDERED.

Jennifer Whang
Presiding Administrative Law Judge

APPENDIX A: OFFICE OF ADMINISTRATIVE LAW JUDGES AND DISPUTE RESOLUTION DISCOVERY TIME STANDARDS

These discovery time standards are intended to align discovery process time frames with the new time standards for hearing cases. In some cases, particularly Track One proceedings, shorter periods for discovery events may be required. In other cases, there may be good reasons for providing more time for these discovery events. In either case, the judge will have the discretion to adjust these time frames as required to meet the needs of the case.

1. Discovery shall begin immediately after the Chief Judge's order designating the Presiding Judge and shall take place on a **rolling** schedule, with parties required to make their best efforts to respond fully within **ten business days** from date of service of the discovery request.
2. If the recipient of the discovery request is unable to respond fully within the designated period, the recipient must notify the requesting party within **five business days** of the date of service of the request, providing an explanatory statement and a date when the request will be answered.
3. **Objections to discovery** requests must be made within **five business days** of the date of service of the discovery request.
4. Parties are expected to attempt to resolve discovery disputes among themselves.
5. **Motions to compel** shall be filed within **five business days** of the date of service of the objections. Such motions should include only:
 1. a short statement supporting the motion, which identifies the issues and the movant's position,
 2. a copy of the pertinent data requests and the written objections to production; and
 3. a statement explaining the efforts made to resolve the dispute.
6. **Oral argument** (if required) will be scheduled to be held within **seven business days** of the receipt of the motion to compel. The time period provided in the rules of practice and procedure for **answers to motions** will be shortened so that answers (unless waived) will be due **five business days** after the motion is filed, or, if oral argument is set, **two business days** before the oral argument.
7. Discovery shall be completed no less than **five business days** before the date set for hearing.

APPENDIX B – OFFICE OF ADMINISTRATIVE LAW JUDGES AND DISPUTE RESOLUTION PROCEDURES FOR HANDLING EXHIBITS AND DEVELOPING THE ELECTRONIC HEARING RECORD

1. This Notice supersedes the Notice to the Public on Procedures for Handling Exhibits and Developing the Electronic Record, issued on December 12, 2014, and is mandatory and effective immediately. 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).

I. Pre-filed Testimony and Exhibits

2. Participants will file all pre-filed testimony and exhibits electronically. 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.¹ All pre-filed written testimony must be designated as a separate exhibit. The parties will not "reserve" numbers, but instead will assign all numbers in consecutive sequence.

3. 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 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 ensure 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.²

4. The Commission provides an electronic network for handling exhibits at the hearing. The network accommodates both private and shared exhibit folders. It permits participants to upload exhibits to private folders and to transfer the uploaded exhibits to a shared (common) folder when the exhibits are marked for identification at hearing. The common folder will contain two sub-folders—one for public exhibits and one for privileged or CEII exhibits. Each individual participant will have exclusive access to a private folder. All participants and the Presiding Judge will have access to the shared

¹ Additionally, intervenors will not identify their exhibits with the letter "I" since the proceeding may involve multiple intervenors.

² 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.

folder. The same numbering convention will apply to uploading exhibits in the folders (the party specific folder and the shared folder). Parties will start with the party specific designation (Trial Staff can use S or TS). The party specific designation shall not exceed three letters and start at number 1. For example, S-1, S-2 etc. Additionally, each exhibit uploaded into a folder will describe whether the exhibit is privileged or CEII. No additional descriptive language of exhibits is allowed in the folders. Cross examination exhibits will be uploaded into the party specific folder at the parties' convenience (no later than the start of the hearing) and will be transferred to the shared folder upon identification. Cross examination exhibits are not required to be pre-filed or disclosed to opposing counsel at any time before the hearing. As a result of this new system, one-day admission of all exhibits before the hearing is not feasible and will not be allowed.

5. In addition to being accessible in the shared folders, any exhibit referenced to a witness at hearing will be projected onto a large screen, and simultaneously displayed on both the witness' and Presiding Judge's computer screens. The examining attorney is required to ensure that the screens precisely track the referenced material at all times. A dedicated computer terminal will be provided for that purpose.

6. Counsel intending to conduct cross-examination or offer pre-filed testimony will email the Presiding Judge's law clerk the MAC address of the single laptop they intend to use during the hearing for the purpose of conducting cross-examination or offering pre-filed testimony into the record. Additionally, counsel will provide the law clerk with his or her name, phone number, and email address in order to serve as the point of contact for FERC's Information Technology (IT) department.

7. 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.

8. 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.

9. 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.

10. 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. Filing of the Exhibit List

11. 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.

12. 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.

III. Privileged Materials and Critical Energy Infrastructure Information

13. 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.”

14. 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.

15. 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.”

