



Virtual Evidentiary Hearing Policies and Procedures

The Public Service Commission of the District of Columbia (“Commission”) hereby establishes policies and procedures for virtual evidentiary hearings. These policies and procedures are not Commission rules and are subject to change from time to time. Pursuant to Commission Rule 120, the Commission may order a formal hearing in any proceeding in which it determines that a formal hearing is necessary. An “evidentiary hearing” may be held if it is determined that there are material issues of fact in dispute for which the Commission must make factual determinations based on evidence.

It is at the evidentiary hearing that evidence, in the form of testimony and exhibits, is admitted into the evidentiary record and witnesses are cross-examined about their pre-filed testimony. The Commission can only base its decisions on information in the evidentiary record. Evidentiary hearings conducted virtually will use WebEx as the official platform.

Virtual Evidentiary Hearing Site

1. WebEx will serve as the platform for conducting virtual evidentiary hearings.
2. Box platform ("Box") will be utilized by Commission Staff to manage, secure, share and govern all of the content provided by the Parties participating in an evidentiary hearing. In addition, Box will allow Parties to securely upload/share/serve exhibits amongst each other remotely to Parties' folders at least 1 week prior to the evidentiary hearing. Parties will be responsible for filing all conformed testimony and final cross-examination exhibits with the Commission, within 2 days of the close of the hearing, in accordance with Section 133.12 of the Commission’s Rules of Practice and Procedure.
3. The Evidentiary Hearing Site shall contain two categories of folders.
 - a. The first category will contain folders designated for the Commission and each Party. These folders will contain exhibits – accessible only by the Commission or the specific Party. Each Party must provide to the Commission Secretary a list of representatives who will have access to the



Party's folder for the purpose of managing the Party's folder to upload exhibits, move exhibits from the Party's folder to the Shared Folder during the hearing, and be able to review exhibits moved into the Shared Folder for witness questioning or seeking admission into the evidentiary record. The initial subfolders are designated as follows:

- i. Prefiled Public Testimony/Exhibits
 - ii. Prefiled Confidential Exhibits (mark pages, not the entire document)
 - iii. Cross-Examination Exhibits
 - iv. Rebuttal Exhibits
 - v. Surrebuttal Exhibits
- b. The second category contains a Shared Folder that serves as the repository for the Commission, Commission Secretary, and Parties' authorized representatives to move documents when questioning witnesses, or when seeking admission of evidence into the evidentiary record. The Shared Folder shall be viewable by all Parties. At the start of the evidentiary hearing, each Party's authorized representative shall be granted access to the Shared Folder for limited purposes to ADD or READ ONLY. Upon the ruling of a request to admit a document into evidence, the Party's authorized representative shall move the document to/from the appropriate subfolder. Parties shall be granted READ ONLY access to subfolders from previous days. The subfolders are designated as:
- i. Admitted Confidential
 - ii. Admitted Public

Equipment

Counsel and witnesses must have a desktop or laptop computer with audio and video capabilities, and reliable high-speed Internet service.

Pre-Evidentiary Hearing Preparation

Pre-hearing Statement/Joint Stipulation



1. The Commission requires the Parties to meet in conference and prepare a Joint Pre-hearing Statement or Joint Stipulation identifying the material issues of fact in dispute (if any) in advance of a hearing whose purpose is to make factual determinations based on evidence.

Witness List

2. Parties shall file a complete witness list 7 days prior to the start of the evidentiary hearing. After the identification of any material issues of fact in dispute, each Party shall file a list of its witnesses for appearance at the evidentiary hearing. The list should indicate the date a witness is scheduled to appear and identify the material and subject areas on which the witness is to be examined. A witness will only appear once and shall be prepared to provide his/her direct/rebuttal/surrebuttal testimony. Only one Counsel will be permitted to examine any one witness or address the Commission on any one matter without the permission of the Commission.

Exhibit list/Exhibits

3. All Parties are required to file an exhibit list with all Exhibits pre-marked. Exhibits shall be filed in each Party's respective folder at least 7 days prior to the start of the evidentiary hearing and shall send copies of such Exhibits to the other Parties. Any Commission Exhibits shall be pre-marked and uploaded to the Commission's folder for sharing at the appropriate time.

Cross Exhibits

4. Cross Exhibits shall be shared with Parties 24 hours prior to the witness taking the stand. The Exhibits list should be numbered sequentially. Each Exhibit shall be numbered at the top right-hand side of the page. Such numbering shall: identify the Exhibit number; identify witness/sponsor; provide a description of the Exhibit; provide date identified/submitted for Direct/Cross/Rebuttal/Surrebuttal; provide the date admitted; and provide the Exhibit number assigned at the time the Exhibit was admitted as evidence.



During the Evidentiary Hearing

Preliminary Matters

1. All Parties must ensure audio remains muted until requested to speak.
2. The Chairman or presiding Commissioner will ask the parties whether there are any preliminary matters to discuss before the hearing begins, such as availability of witnesses, last-minute scheduling issues, or whether any Party anticipates raising an objection or making a motion once the evidentiary hearing starts.
3. If any testimony or exhibits include confidential information, the Chairman or presiding Commissioner will ask whether the parties anticipate questioning witnesses about the confidential material. If so, there will be a discussion of the most efficient way to address the confidential material – e.g., at the end of each witness's testimony or grouping the confidential testimony of all witnesses together. This is because that portion of the evidentiary hearing will be closed to the public and any Parties not allowed to hear the confidential information. The Commission strongly prefers to keep as much information public as possible, and only closes hearings when it is necessary. Parties should therefore try to structure their testimony and questioning of witnesses to avoid raising confidential information whenever possible but without compromising their cases.

Introduction/Witness Availability for Cross Examination

4. The following process will occur: Introduction of Parties; Party calls first Witness; Witness is sworn in; Witness's pre-filed testimony and exhibits are admitted into the evidentiary record; Witness is made available for Direct Examination, Cross Examination, Rebuttal, Surrebuttal, and Rejoinder.

Admitting Evidence

5. When a Party seeks to have pre-filed testimony and exhibits admitted into the evidentiary record, the Party shall transfer the documents into the Shared Folder. The Commission Secretary shall have sole authority to move documents into the appropriate subfolder.



6. When a Party introduces an Exhibit, the Party shall transfer the Exhibit into the Shared Folder. Once examination of a witness is complete, a Party may move for the admission of any Exhibits into the record. After favorable ruling for the admission of an Exhibit, the Commission Secretary will move the document into the appropriate subfolder.

Objections

7. During Examination/Cross Examination, Rebuttal, Surrebuttal, or Rejoinder testimony, any party's counsel seeking to make an objection will have the ability to unmute their microphone to note an objection to a question. When an objection is made, the witness is to stop speaking and shall mute their microphone until the Chairman has acknowledged the objection and requests counsel to state their position. Should counsel or a witness continue speaking or not acknowledge the Chairman, the meeting host will manually mute any and all microphones until after the Chairman has considered the objection, asked for argument, or made a ruling.
8. Chair/Commissioner side bar with OGC the Commission will be using Microsoft Teams calling to assist the Commissioners and Staff with handling spontaneous issues that arise during the course of the hearing. Private groups will be established in advance to provide for a private group call meeting. There will be at least two groups: Group 1 - will include the Chair and General Counsel's Office; and, Group 2- will include the Commissioners, the General Counsel's Office and Office of Technical & Regulatory Analysis Team Leaders.
9. Transcripts will be made available through eDocket within 48 hours of each day's hearing.
10. A video recording of the hearing will be posted to the Commission's website and YouTube channel within 48 hours of each day's hearing.