

ATTACHMENT B
ESTABLISHING PROCEDURES FOR ELECTRONIC HEARING

A. Presentation of Exhibits Electronically During Evidentiary Hearing.

1. Because the hearing will accommodate remote participation by videoconference, all evidence must be presented electronically. This Attachment establishes procedures relating to the presentation of exhibits electronically during the evidentiary hearing.

2. If a pre-filed hearing exhibit marked for identification is offered into evidence, the electronic version in the Commission's file will be used during the hearing.

3. To facilitate the presentation of exhibits electronically during the evidentiary hearing, the Commission will provide a spreadsheet identifying each pre-filed hearing exhibit as it exists in the administrative record. The exhibit spreadsheet will include hyperlinks to the latest revision of filings in the administrative record.¹ The exhibit spreadsheet will be made available to the parties prior to the hearing and marked as a hearing exhibit. Commission staff will display pre-filed electronic filings during the hearing.² **All parties must review the exhibit spreadsheet upon distribution to confirm that it lists the latest version of all pre-filed exhibits that each respective party intends to offer into evidence.** Any party who identifies an error or omission in the exhibit spreadsheet shall notify Commission staff identified in footnote two as soon as possible.

4. Any document filed prior to issuance of this Attachment by a party that will be offered into evidence but was not already marked for identification in compliance with this

¹ Confidential and highly confidential exhibits will only be made available to staff of the Commission.

² Exhibits will be displayed electronically on the video-conference screen during the hearing. Should the parties have technical questions relating to the electronic presentation of exhibits, they may contact Ms. Casey Federico at Casey.Federico@state.co.us, Ms. Stephanie Kunkel at Stephanie.Kunkel@state.co.us, or Ms. April Crain at April.Crain@state.co.us.

Attachment must be revised to comply with this Attachment's requirements and re-filed within 14 days of the issue date of the Decision to which this Attachment is attached. As then marked and re-filed, such documents will be included in the hearing exhibit spreadsheet as the original versions of the hearing exhibits (*i.e.*, this re-filing will be treated as the original and not a revision contemplated by this Attachment).³

5. Any stipulations or settlement agreements, along with any associated testimony or exhibits must comply with the filing and identification requirements in this Attachment, including marking and filing them as exhibits.

6. Final revisions to any previously filed hearing exhibits (including attachments) must be filed **on or before** the fourth business day prior to the hearing,⁴ unless otherwise ordered, so that the exhibit spreadsheet may be timely prepared and distributed during the three business days prior to the hearing. Hyperlinks will not be included for exhibits (including attachments) containing confidential or highly confidential information. Any exhibits (including attachments) filed after this deadline will not be included in the spreadsheet of hyperlinked electronic exhibits. Additionally, any exhibits that have not been marked for identification in compliance with this Attachment or otherwise do not comply with this Attachment will not be included on the spreadsheet for admission by administrative notice.

³ Compliance with this Attachment may result in a change to pagination of prior versions of hearing exhibits. References in discovery requests and responses to prior versions of hearing exhibits will be construed to be amended to refer to the latest filed version of such testimony, unless otherwise specified. Although corresponding page and line references may reasonably be affected by such construction, corrected references will not be necessary (*i.e.*, no need to amend) so long as the reference remains in reasonable proximity to the referenced material.

⁴ A calculation of the fourth business day prior to hearing shall exclude the first day of the hearing and include each of the four business days preceding the hearing. For example, if the first day of the hearing falls on a Monday, then the fourth business day prior to hearing is Tuesday of the preceding week.

7. After the above deadline to file final versions of exhibits (including attachments), a party intending to present a document during the hearing that has not been pre-filed or that must be revised after the fourth business day prior to hearing (including corrections) must: (a) pre-mark such document with a new hearing exhibit number within the party's assigned exhibit number block if no prior version has been filed or as a new revision of a prior pre-filed version of a marked hearing exhibit, as required by this Attachment; and (b) upload such documents into the party's designated box.com folder before presenting them during the hearing.⁵ These requirements also apply to any documents that will be used during hearing that are not required to be pre-filed (*e.g.*, documents which may be used solely to impeach a witness's testimony, to refresh a witness's recollection, or on rebuttal).

8. The parties are responsible for ensuring that they and their witnesses have access to all pre-marked exhibits and can download and view documents from box.com *during the hearing*. On or before the second business day prior to the commencement of the evidentiary hearing, a party unable to access its Commission-designated folder shall notify Commission staff identified in footnote two.⁶ Failure to follow these procedures may, in the discretion of the presiding official, result in exclusion of the affected documents.

B. Identification and Filing Requirements for Hearing Exhibits Including Attachments.

9. In addition to following relevant requirements in the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1 (*e.g.*, Rule 1202

⁵ The Commission uses a web-based document sharing service, box.com to manage certain exhibits during a hearing. All parties must ensure they can access and use box.com. An email with more details will follow.

⁶ Footnote four explains how to calculate this deadline (*i.e.*, how to identify the second business day prior to the start of the evidentiary hearing).

regarding pre-filed testimony), the parties must comply with the identification and filing requirements for all hearing exhibits (including attachments) outlined in this Attachment.⁷

10. If a party wishes to offer written testimony into evidence, the party must mark written testimony as a hearing exhibit, consistent with the requirements in this Attachment. The Commission typically allows for the following types of written testimony: direct (by party initiating the proceeding); answer (by interveners); rebuttal (by party initiating proceeding, responding to answer testimony); and cross-answer testimony (by interveners, responding *only* to other interveners' answer testimony). Written testimony may also be allowed to address a settlement agreement.

11. Parties must mark *all* hearing exhibits, including attachments thereto, including those that are part of written testimony and those that are not, for identification in sequential order, using hearing exhibit numbers within their assigned hearing exhibit number block.

12. Each type of a witness's testimony, including any attachments, (*e.g.*, direct, answer, rebuttal, cross-answer, and settlement) must be marked with one hearing exhibit number.⁸ Even if comprised of multiple electronic documents, the testimony and attachments will be one hearing exhibit.⁹

13. **Parties need not, and should not, duplicate hearing exhibits or attachments previously filed by another party. A hearing exhibit or attachment filed by one party which**

⁷ To minimize the size and allow electronic text searches of the PDF files, versions filed in PDF format should be generated from the native executable electronic file format when possible.

⁸ Each type of testimony should be identified with a different hearing exhibit number. For example, John J. Doe's direct testimony may be Hearing Exhibit 100 and his rebuttal testimony may be Hearing Exhibit 105.

⁹ While marked for identification with one hearing exhibit number, the testimony and each attachment should be filed in compliance with Rule 1202 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, which provides that the primary document and each secondary document must be separately uploaded in the Commission's E-Filing system.

duplicates a hearing exhibit or attachment previously filed by another party may be rejected or stricken from the record. During any hearing, any party may sponsor an exhibit that was pre-filed by another party.

14. Each exhibit must be identified using its title (if any), and if none, must include a concise description of the exhibit. In the case of pre-filed testimony, the exhibit must be identified including the type of testimony and the name of the witness. For example, if Hearing Exhibit 100 is the direct testimony of witness John J. Doe, it must be titled and marked as: “Hearing Exhibit 100, Direct Testimony of John J. Doe.” Similarly, if Hearing Exhibit 100 is a map of a service territory, it must be titled and marked as “Hearing Exhibit 100, Map of Service Territory.”

15. Anything accompanying a **non-testimonial** hearing exhibit (*e.g.*, appendices, or attachments) must be marked as an “attachment” to the exhibit and marked using the designated hearing exhibit number, a numerical sequence, and its title (if any), and if none, a concise description of the attachment. If, for example, Hearing Exhibit 200 is not witness testimony and includes a map of a service territory as an attachment, the title of the attachment will be “Hearing Exhibit 200, Attachment 1, Map of Service Territory.”

16. Anything accompanying a **testimonial** hearing exhibit must be marked using the designated hearing exhibit number with the witness’ initials, a number sequence, and its title (if any), and if none, a concise description of the attachment. For example, if the party assigned exhibit block 300 files Albert B. Cooke’s answer testimony that includes a map of a service territory as an attachment, the title of the attachment will be “Hearing Exhibit 300, Attachment ABC-1, Map of Service Territory.”

17. **Attachments to hearing exhibits may not be marked or referred to as exhibits, appendices, or using “HE” as an acronym.**

18. When filing hearing exhibits (including attachments) in the Commission’s E-Filing System (“E-Filings”), parties must title the exhibits and attachments to match the title of the hearing exhibit and attachment, consistent with the above requirements, but may not use all uppercase format. All exhibit titles entered into E-Filings must start with “Hearing Exhibit XXX.” Building on the above examples, when filing exhibits in E-Filings, the party filing Albert B. Cooke’s answer testimony must enter this title into E-Filings: “Hearing Exhibit 300, Answer Testimony of Albert B. Cooke.” If the first attachment to the hearing exhibit is a map of service territory, it must be entered into E-Filings as “Hearing Exhibit 300, Attachment ABC-1, Map of Service Territory.” If Hearing Exhibit 100 is a map of a service territory, it must be entered into E-Filings as “Hearing Exhibit 100, Map of Service Territory.” Likewise, if Hearing Exhibit 200 is not witness testimony and includes a map of a service territory as its first attachment, the attachment must be entered into E-Filings as “Hearing Exhibit 200, Attachment 1, Map of Service Territory.”

19. For any exhibits that E-Filings cannot accept (*e.g.*, very large files, audio, video, and certain executable spreadsheet formats (.xlsb and .xlsm)), the sponsoring party must file or upload a slip sheet identifying the exhibit in accordance with the requirements in this Attachment. For example, prior to the corrections deadline, the slipsheet should be marked for identification with a hearing exhibit number, title, and a basic description of the hearing exhibit and e-filed. If a revision is necessary after the corrections deadline, the revised slipsheet must be uploaded to the party’s designated box.com folder.

20. Parties must also ensure a physical copy of any hearing exhibit that E-Filings cannot accept is filed at the Commission (via flash drive, CD, *etc.*) on or before the applicable filing

deadline. If intended to be used at hearing, the identical electronic record must **also** be uploaded to the sponsoring party's designated box.com folder.

21. During the evidentiary hearing, a party seeking to admit any exhibits from the party's designated box.com folder must offer the exhibit for admission.

C. Formatting Hearing Exhibits.

22. To ensure that electronic pagination matches the page numbers appearing on exhibits, including attachments, the first page of **each** hearing exhibit and attachment, regardless of content, must be numbered as page 1, with each additional page numbered in succession. For example, the cover page must be numbered page 1, and all following pages must be sequentially numbered, including blank pages, executive summaries, tables of contents, and lists of attachments. Page-numbering exhibits and attachments consistent with this requirement will facilitate electronic exhibit navigation during the hearing.

23. There may be only one page number shown on each page of all hearing exhibits and attachments. Page numbers should be included in the header of each page-numbered hearing exhibit (*e.g.*, placed at the top right corner of *each page* of the hearing exhibit and attachment, as demonstrated in this Attachment). The parties must ensure the page numbers in the header of the document match the number of pages that are in the document. The header must begin with the hearing exhibit number (and attachment number, if applicable), followed by the title of the document, the proceeding number, and the page number. For example, the top right corner of each page of the document should look like this (with each following page consecutively numbered):

Hearing Exhibit 300
Answer Testimony of Albert B. Cooke
Proceeding No. XXX-XXXX
Page 1 of 35

or

Hearing Exhibit 300, Attachment ABC-1
Map of Service Territory
Proceeding No. XXX-XXXX
Page 1 of 2

24. Parties may modify formatting options in revisions to filed exhibits and attachments thereto to minimize the resulting impact to page and line references (*e.g.*, widen a margin to insert a word without changing the line reference or page number where the modification appears).

D. Filing Executable Hearing Exhibits, Including Attachments.

25. Any spreadsheet filed as, or that is the basis for, an attachment to a hearing exhibit or a hearing exhibit, must be filed in both PDF format and in the native executable electronic file format.¹⁰ If E-Filings cannot accept a document's native executable file format, paragraphs 19 and 20 apply.

26. The title of the executable version will be the same title of the non-executable version however, the word "Executable" must be added after the hearing exhibit number. For example, an executable attachment to a hearing exhibit might be "Hearing Exhibit 300, Executable Attachment ABC-1, Workpaper" for the executable version and the PDF version would continue to be marked as "Hearing Exhibit 300, Attachment ABC-1, Workpaper." For an executable version

¹⁰ When the executable version is filed in native format, E-Filings will convert it into a PDF version and include it in the docket for the proceeding. The docket will then list the "Executable" version of the attachment but will link to the converted the PDF version of the native attachment. Any such PDF version titled as "Executable" (consistent with the naming convention set forth above) will be disregarded for all purposes. It should not be cited by the parties, will not be cited by the Commission, and will not be displayed during the hearing.

of a hearing exhibit, it might be “Hearing Exhibit 400, Executable Workpaper” for the executable version and the PDF version would continue to be marked as “Hearing Exhibit 400, Workpaper.”

27. Parties are not required to: (a) paginate executable exhibits or attachments; (b) file amended, modified, or corrected executable exhibits and attachments in redline/strikeout format; or (c) file a redacted executable version of executable spreadsheets that includes confidential or highly confidential information. This does not modify the separate requirement to file a public version in PDF format of a spreadsheet that redacts confidential or highly confidential information, as required in Commission rules and Section G of this Attachment.

E. Modifying, Amending, or Correcting a Previously Filed Hearing Exhibit on or Before Deadline for Corrections.

28. Should a party wish to modify, amend, or correct a previously identified hearing exhibit (including attachments) **on or before the earlier of** the ordered deadline for such changes or the fourth business day prior to hearing, the following procedures must be followed.

29. Parties must mark revised exhibits or attachments for identification with a revision number listed directly after the exhibit or attachment’s title, regardless of file format. For example, if Hearing Exhibit 100, Direct Testimony of John J. Doe is revised once, it must be marked for identification and filed as, “Hearing Exhibit 100, Direct Testimony of John J. Doe, Rev. 1.” If it is revised a second time, it must be marked for identification and filed as, “Hearing Exhibit 100, Direct Testimony of John J. Doe, Rev. 2.” If the first attachment to that exhibit is revised once, it must be marked and filed as “Hearing Exhibit 100, Attachment JJD-1, Map of Service Territory, Rev. 1.” **Parties may not identify or file any revised hearing exhibit or attachment as “corrected,” “modified,” or “amended,” even if the revision corrects, modifies, or amends a prior filing.**

30. A complete version of the revised document(s) including all changes in redline/strikeout format must be filed.¹¹ If revised more than once, all documents must contain all redlined modifications as compared to the original version (*i.e.*, Rev. 2 would be compared to the original version, not only to Rev. 1). If the revised document is a spreadsheet (*e.g.*, .xlsx, .ods, .gsheet), a complete version of the revised native executable electronic file must be filed, but the changes do *not* need to be reflected in redline/strikeout format.

31. A separate notice must be filed with the revision of a document that is part of a hearing exhibit identifying changes in the new revision compared to the original.

32. The most recent revision of a hearing exhibit (*e.g.* including testimony and any attachments thereto) will be the version used during the evidentiary hearing. References to obsolete versions of other exhibits or attachments will be construed to reference the latest filed revision of such document, unless otherwise specified. Although corresponding page and line references may reasonably be affected by such construction, corrected references will not be necessary (*i.e.*, no need to revise) so long as the reference remains in reasonable proximity to the referenced material.

F. Modifying, Amending, or Correcting a Previously Filed Hearing Exhibit After Deadline for Corrections.

33. Should a party wish to modify, amend, or correct a previously filed hearing exhibit or an attachment that is part of a hearing exhibit **after the earlier of the** ordered deadline for such changes or the fourth business day prior to hearing, the revised version and required notice shall be prepared in accordance with Section E and must be uploaded into the party's designated box.com folder rather than filing through E-Filings. This process does not imply that revisions will

¹¹ Filing a "clean" version is not necessary and is discouraged.

be permitted after the deadline. The presiding official retains discretion to accept or allow the same.

G. Procedures Regarding Confidentiality.

34. Any document (including hearing exhibits and attachments thereto) containing information claimed to be confidential or highly confidential must be filed in accordance with the Standards of Conduct in the Commission's Rules of Practice and Procedure, Rules 1100 through 1111, 4 CCR 723-1 ("Standards of Conduct") and the below requirements. **Both** a public version of the document and a confidential or highly confidential version of the document must be filed, as detailed below. When a hearing exhibit (including attachments) has information claimed to be **both** confidential **and** highly confidential, the filing party must file a public version, a confidential version, and a highly confidential version, as detailed below.

1. Process for Public Version

35. Parties must file a non-confidential and publicly accessible version of documents containing information claimed to be confidential and/or highly confidential with such information redacted or omitted. Parties may only redact or omit confidential and highly confidential information from the public version; the remainder of the document must be unredacted and public (*i.e.*, publicly viewable). **If, and only if**, the entire document is confidential or highly confidential, parties must file a slip sheet or cover page alone as the public version of a document.

36. The first page of the public version must state: "NOTICE OF CONFIDENTIALITY: A PORTION OF THIS DOCUMENT HAS BEEN FILED UNDER SEAL." The first page must also list each document filed under seal, list each page number of each document on which confidential or highly confidential material is found, and indicate the nature of the information filed under seal. For hearing exhibits and attachments thereto, the public version

must be marked as any other non-confidential hearing exhibit (including attachments), consistent with this Attachment's requirements. For example, the public version of Hearing Exhibit 100 will be marked and filed as "Hearing Exhibit 100, Direct Testimony of John J. Doe," with all confidential or highly confidential material redacted or omitted and the first page including the statement and information required above. The public version may not be marked as "Public" or any similar synonym.

2. Process for Documents with Confidential or Highly Confidential Information

37. When hearing exhibits (including attachments) include confidential *or* highly confidential information, the sponsoring party must file the document under seal, with the confidential or highly confidential information viewable, and marked for identification by the same hearing exhibit or attachment number as the public version, with the addition of a "C" (for confidential) or "HC" (for highly confidential) immediately following the hearing exhibit or attachment number. Building on the above example, the confidential version must be marked as "Hearing Exhibit 100C, Direct Testimony of John J. Doe" and the highly confidential version must be marked as "Hearing Exhibit 100HC, Direct Testimony of John J. Doe." Similarly, a confidential or highly confidential attachment to such exhibit must be marked "Hearing Exhibit 100, Attachment JJD-1C" (confidential version) or "Hearing Exhibit 100, Attachment JJD-1HC" (highly confidential version).

38. Each page of the hearing exhibit (including attachments) that includes confidential or highly confidential information must be clearly marked to identify the information claimed to be confidential or highly confidential. For example, the parties may highlight confidential or highly confidential information where it appears everywhere in the filing.

39. In addition, the first page of a hearing exhibit or attachment with information claimed to be confidential or highly confidential must explain how to identify the confidential or highly confidential information (*e.g.*, a statement that confidential or highly confidential information is highlighted in yellow). The first page must also identify each page number on which confidential or highly confidential material is found.

3. Process for Documents with *Both Confidential and Highly Confidential*

40. When a hearing exhibit (including attachments) includes ***both*** confidential and highly confidential information, the sponsoring party must file three versions of the document: a public version, a confidential version, and a highly confidential version.

a. **Public Version.** The public version must be marked and filed as described above.

b. **Confidential Version.** The confidential version must be marked and filed as described above ***and*** must redact or omit highly confidential information while leaving the confidential information viewable and unredacted. Each page of the confidential version must be clearly marked to identify the information claimed to be confidential (*e.g.*, highlight confidential information where it appears everywhere in the filing). In addition, the first page of the confidential version must explain how to identify confidential information (*e.g.*, a statement that confidential information is highlighted in yellow). The first page must also identify each page on which confidential and highly confidential material is found.

c. **Highly Confidential Version.** The highly confidential version must be marked and filed as described above, *and*, unless otherwise ordered,¹² must leave *both* the confidential and highly confidential information viewable and unredacted. Each page of the highly confidential version must be clearly marked to identify and distinguish the information claimed to be confidential *and* the information claimed to be highly confidential, so that it is clear which information is confidential and which information is highly confidential (*e.g.*, highlight confidential information in yellow and highly confidential information in blue). In addition, the first page of the highly confidential version must include information explaining how to identify and distinguish between the confidential and the highly confidential information (*e.g.*, a statement that confidential information is highlighted in yellow and highly confidential information is highlighted in blue). The first page must also identify each page number on which confidential and highly confidential material is found.

¹² This process is designed for the most common circumstances involving confidential or highly confidential filings, where individuals with access to highly confidential information per the relevant decision granting such protection also have access to confidential information, per the Standards of Conduct. If circumstances arise where this is not the case, the onus is on the party who seeks to protect the information to raise this issue via a timely motion.