

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

NERC Compliance and Certification Committee

Hearing Procedures for Use in Appeals of Certification Matters

CCC Monitoring Program — CCCPP-005-1

to ensure
the reliability of the
bulk power system

Version 1.0

116-390 Village Blvd., Princeton, NJ 08540
609.452.8060 | 609.452.9550 fax
www.nerc.com

NERC Compliance and Certification Committee		CCCPP-005-1
Title: Hearing Procedures for Use in Appeals of Certification Matters		
Version: 1.0	Revision Date: n/a	Effective Date: June 10, 2010

Summary

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in Section 504 of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities.

Revision History

Date	Version Number	Comments
03/03/09	1.0	Approved by CCC
05/06/09	1.0	Approved by the Board of Trustees

Table of Contents

1.	Hearing Procedures for Use in Appeals of Certification Matters	1
1.1	Applicability, Definitions and Interpretation.....	1
1.2	General Provisions including Filing, Service, Transcription and Participation.....	4
1.3	Initiation of the Hearing Process	9
1.4	General Hearing Procedure	10
1.5	Hearing Procedure.....	15

1. Hearing Procedures for Use in Appeals of Certification Matters

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in Section 504 and Appendix 5 of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities. Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Panel established by the CCC in accordance with Section 8.3 of the CCC Charter and Appendix 5A of the NERC ROP. The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Panel on any matter brought before it for decision.

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the entity seeking Certification.

1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer, as defined in Paragraph 1.1.5, or the Hearing Panel, for good cause shown, either upon the Hearing Officer’s or the Hearing Panel’s own motion or upon the motion of any Participant.

1.1.3 Standards for Discretion

The CCC’s discretion under these Hearing Procedures shall be exercised to accomplish the following goals:

- a) Integrity of the Fact-Finding Process — The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision or order.
- b) Fairness — Persons appearing in CCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant’s failure to act diligently and in good faith.
- c) Independence — The hearing process should be tailored to protect against undue influence from any Person, Participant or interest group.
- d) Balanced Decision-Making — Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the NERC’s conflict of interest policy.

- e) Impartiality — Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Respondents should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Expedition — Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

- a) These Hearing Procedures shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Paragraph 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.
- b) Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.
- c) To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

1.1.5 Definitions

Capitalized terms used in these Hearing Procedures shall have the definitions set forth in Appendix 2 of the Rules of Procedure. For convenience of reference, definitions of the following terms that are used in these Hearing Procedures are also set forth below:

“Bulk Power System,” for the purposes of these Hearing Procedures, means Bulk Electric System.

“Certification” means the process undertaken by NERC and a Regional Entity to verify that an entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator and/or Reliability Coordinator. Certification activities are further described in Section 500 and Appendix 5 of the NERC Rules of Procedure.

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing Critical Infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on Critical Infrastructure; and (iii) does not simply give the location of the Critical Infrastructure.

“Critical Infrastructure” means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

“Cyber Security Incident” means any malicious or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk Power System.

“Director of Compliance” means the Director of Compliance of NERC who is responsible for the management and supervision of the Compliance Staff, or his or her designee.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

“Electric Reliability Organization” or “ERO” means the organization that is certified by the Commission under Section 39.3 of its regulations, the purpose of which is to establish and enforce Reliability Standards for the Bulk Power System in the United States, subject to Commission review.

“FERC” means the United States Federal Energy Regulatory Commission.

“Hearing Officer” means (1) a CCC member or (2) an individual employed or contracted by NERC, as designated and approved by the CCC to preside over hearings conducted pursuant to these Hearing Procedures; the Hearing Officer shall not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Paragraph 1.1.1 above. Specifically, the CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the Hearing Panel shall be selected by vote of a valid quorum of the CCC. Voting members of the CCC at arm’s length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.

“Participant” means a Respondent and any other Person who is allowed or required by FERC to participate as an intervenor in a proceeding conducted pursuant to these Hearing Procedures, and as used herein shall include the members of the Certification Staff that participate in a proceeding.

“Person” means any individual, partnership, corporation, limited liability company, governmental body, association, joint stock company, public trust, organized group of persons, whether incorporated or not, or any other legal entity.

“Reliable Operation” means operating the Elements of the Bulk Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or Cascading failures of such system will not occur as a result of a sudden disturbance, including a Cyber Security Incident, or unanticipated failure of system Elements.

“Respondent” means the Registered Entity who is the subject of the Certification decision that is the basis for the proceeding.

“Certification Staff” or “Staff” means individuals employed or contracted by NERC who have the authority to make initial determinations of Certification of entities performing reliability functions.

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies NERC’s conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the Hearing Officer and/or the Hearing Panel.

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

All filings made with the CCC must contain:

- a) A caption that sets forth the title of the proceeding and the designated docket number or, if the filing initiates a proceeding, a space for the docket number;
- b) A heading that describes the filing and the Participant on whose behalf the filing is made;
- c) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
- d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record of the hearing, if available, or other documents; and
- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

1.2.2 Form of Filings

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.

- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

1.2.3 Submission of Documents

a) Where to File

Filings shall be made with the NERC Director of Compliance located at NERC's principal office. The office will be open from 8 a.m. to 5 p.m., Eastern, each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Panel. Filings will be considered made when they are date stamped received by the NERC Director of Compliance. To be timely, filings must be received no later than 5 p.m., Eastern, on the date specified.

c) How to File

Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made. Alternatively, filing by electronic means will be acceptable upon implementation of a suitable and secure system by the NERC Director of Compliance.

d) Number of Copies to File

One original and seven exact copies of any document shall be filed. The NERC Director of Compliance will provide the Hearing Officer, if any, and each member of the Hearing Panel with a copy of each filing.

e) Signature

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief.

f) Verification

The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer or the Hearing Panel. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be included

in or attached to the verification explaining why a person other than the signer is providing verification.

g) Certificate of Service

Filings shall be accompanied by a certificate of service stating the name of the individuals served, the Participants whose interests the served individuals represent, the date on which service is made, the method of service and the addresses to which service is made. The certificate shall be executed by the individual who caused the service to be made.

1.2.4 Service

a) Service List

For each proceeding, the NERC Director of Compliance shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, NERC Director of Compliance and the Respondent's designated agent for service as registered on the NERC Compliance Registry shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the NERC Director of Compliance.

b) By Participants

Any Participant filing a document in a proceeding must serve a copy of the document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

c) By the NERC Director of Compliance

The NERC Director of Compliance shall serve all issuances of the Hearing Officer and Hearing Panel upon the members of the Hearing Panel and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Hearing Panel shall ensure that the NERC Director of Compliance has a copy of the record of a proceeding at the time it issues a final order.

d) Effective Date of Service

Service by personal delivery or email is effective immediately. Service by mail or registered mail is effective upon mailing; service by a private express courier service is effective upon delivery to the private express courier service. Unless otherwise provided, whenever a Participant has the right or is required to do some act within a prescribed period after the service of a document upon the Participant, four (4) calendar days shall

be added to the prescribed period when the document is served upon the Participant by mail or registered mail.

1.2.5 Computation of Time

The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the NERC office is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the NERC office is closed.

1.2.6 Extensions of Time

Except as otherwise provided by law, the time by which a Participant is required or allowed to act may be extended by the Hearing Officer or Hearing Panel for good cause upon a motion made before the expiration of the period prescribed. If any motion for extension of time is made after the expiration of the period prescribed, the Hearing Officer or Hearing Panel may permit performance of the act if the movant shows circumstances sufficient to justify the failure to act in a timely manner.

1.2.7 Amendments

Amendments to any documents filed in a proceeding may be allowed by the Hearing Officer or the Hearing Panel upon motion made at any time on such terms and conditions as are deemed to be just and reasonable.

1.2.8 Transcripts

A full and complete record of all hearings, including any oral argument, shall be transcribed verbatim by a certified court reporter, except that the Hearing Officer or the Hearing Panel may allow off-the-record discussion of any matter provided the Hearing Officer or the Hearing Panel states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. Unless otherwise prescribed by the Hearing Officer or the Hearing Panel, a Participant may file and serve suggested corrections to any portion of the transcript within thirty-five (35) calendar days from the date on which the relevant portion of the transcript was taken, and any responses shall be filed within ten (10) calendar days after service of the suggested corrections. The Hearing Officer or the Hearing Panel shall determine what changes, if any, shall be made, and shall only allow changes that conform the transcript to the truth and ensure the accuracy of the record.

NERC will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for the Hearing Officer and the Hearing Panel. Any other Participant shall pay for its own copy of the transcript if it chooses to obtain one and, should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

1.2.9 Rulings, Notices, Orders and Other Issuances

Any action taken by the Hearing Officer or the Hearing Panel shall be recorded in a ruling, notice, order or other applicable issuance, or stated on the record for recordation in the transcript,

and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the Hearing Panel. All notices of hearings shall set forth the date, time and place of hearing.

1.2.10 Location of Hearings and Conferences

All hearings and oral arguments shall be held at NERC's principal office unless the Hearing Officer or the Hearing Panel designates a different location.

1.2.11 Participant Participation

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer or the Hearing Panel. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

1.2.12 Interventions Are Not Permitted

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC or another Applicable Governmental Authority (in the case of non-U.S.-related proceedings), no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

1.2.13 Proceedings Closed to the Public

No hearing, oral argument or meeting of the Hearing Panel shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or Hearing Panel, or any transcript, made in any proceeding shall be publicly released unless the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) determines that public release is appropriate. Only the members of the Hearing Panel, the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

1.2.14 Docketing System

The NERC Director of Compliance shall maintain a system for docketing proceedings to record appeals of Certification decisions. A docketed proceeding shall be created upon the issuance of a notice of an appeal of a Certification decision. Unless NERC provides a different docketing system that will be used, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "NERC", followed by a dash ("-"), followed by the letters "CERT" and a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

1.2.15 Hold Harmless

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the NERC and the CCC, including without limitation their Members, Board of Trustees, Compliance Committee, any other committees or subcommittees, Staff, contracted employees, Hearing Panel members, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This "hold harmless"

provision does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

1.3 Initiation of the Hearing Process

1.3.1 Respondent's Option to Request a Hearing

To appeal a Certification decision, a Respondent must file a statement with the NERC Director of Compliance requesting a Certification hearing within fourteen (14) calendar days after (i) the Certification report or finding is issued, or (ii) the final Regional Entity appeal process ruling is made. If the Respondent does not file a hearing request within the time period set forth in this Paragraph, then the Respondent will be deemed to have agreed and waived any objection to the Certification decision.

A hearing request shall include:

- a) A concise statement of the error or errors contained in the decision being appealed;
- b) A clear statement of the relief being sought;
- c) Argument in sufficient detail to justify such relief; and
- d) Attachments of the full text of the Certification decision being appealed and whichever of the following are applicable:
 - 1) the Respondent's statement explaining and supporting its disagreement with the Certification decision;
 - 2) all Documents, including affidavits, supporting its position; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.

1.3.2 Hearing Procedure

The Hearing Panel may utilize a Hearing Officer to preside over the hearing procedure in accordance with Paragraph 1.4.2. No evidentiary hearing will be held, and the Participants will not present witness testimony or file briefs, except as requested by the Hearing Officer and/or the Hearing Panel. Instead, the following events shall take place within the following periods:

- a) Within ten (10) calendar days after the notice of hearing is issued, the Staff shall file:
 - 1) initial comments stating Staff's position on all issues raised by Respondent and the rationale in support of Staff's position, including all factual and legal argument;
 - 2) all Documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- b) Within seven (7) calendar days of Staff's filing pursuant to Subparagraph (a), the Respondent shall file:

- 1) responsive comments stating the Respondent's position on all issues presented by Staff and the rationale in support of Respondent's position, including all factual and legal argument which respond to Staff's filing;
- 2) all Documents that the Respondent seeks to introduce in support of its position that have not already been submitted in the proceeding; and
- 3) a verification attesting to the truthfulness of the facts alleged in the filing.

The Hearing Officer or Hearing Panel may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Panel to issue the final order within twenty-nine (29) calendar days of the notice of hearing.

1.4 General Hearing Procedure

1.4.1 Notice of Hearing

Within seven (7) calendar days of a Respondent requesting a hearing pursuant to Paragraph 1.3, the NERC Director of Compliance shall issue a notice of hearing in the docket. The notice of hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place of the hearing, which should occur no less than twenty-one (21) calendar days and no later than twenty-eight (28) calendar days after the notice of hearing is issued.

1.4.2 Hearing Officer

The CCC may utilize a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the Hearing Panel as set forth in Paragraph 1.4.3. Members of the Hearing Panel may attend any aspect of the hearing.

The Hearing Panel may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing through the issuance of the opinion and any administrative hearing functions thereafter. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- a) To administer oaths and affirmations;
- b) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- c) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- d) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- e) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;

- f) To issue protective orders pursuant to Paragraph 1.4.10; and
- g) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

If the Hearing Panel uses a Hearing Officer to preside over a hearing, the Hearing Panel shall disclose the identity, employment history and professional affiliations of the Hearing Officer within two (2) calendar days of the Hearing Officer's assignment to the proceeding, and Participants to the hearing may raise objections to the Hearing Officer's participation in accordance with Paragraph 1.4.4.

1.4.3 Hearing Panel

The Hearing Panel is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:

- a) The Hearing Panel shall receive all filings in a hearing.
- b) The Hearing Panel or any individual member thereof may, but is not required to, submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- c) The Hearing Panel shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; or (ii) present oral argument on an issue. To this end, the Hearing Panel shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- d) To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
- e) The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order.

1.4.4 Disqualification

A Hearing Officer, Technical Advisor or member of the Hearing Panel shall recuse himself or herself from a proceeding if participation would violate the NERC's applicable conflict of interest policy.

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Panel from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Paragraph 1.4.6, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within five (5) business days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

The Hearing Officer shall issue a proposed ruling for the Hearing Panel's consideration upon the filing of a motion for disqualification unless the Hearing Officer is the subject of the motion. The Hearing Panel, without the participation of any member who is the subject of the motion, shall issue a final ruling on the motion. If the Hearing Officer is recused or disqualified, the Hearing Panel will appoint a replacement Hearing Officer. To ensure fairness to the Participants and expedite completion of the proceeding when a replacement Hearing Officer is appointed after a hearing has commenced, the replacement Hearing Officer may recall any witness or may certify familiarity with any part or all of the record.

If a quorum (as defined in Paragraph 1.5.15) of the Hearing Panel does not remain after any recusals and rulings on motions for disqualification, then the CCC shall appoint a new member(s) to the Hearing Panel to create a quorum, which new member(s) shall serve on the Hearing Panel through the conclusion of the proceeding but not thereafter. The CCC shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Panel shall be subject to the provisions applicable herein to all Hearing Panel members.

1.4.5 Technical Advisor

The Hearing Officer and/or the Hearing Panel may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to the proceeding in which technical advice would be rendered, and shall not be a member of Staff participating in the proceeding on which such technical advice would be rendered.

If the Hearing Officer or Hearing Panel uses a Technical Advisor to assist in any hearing, the Hearing Officer or Hearing Panel shall disclose the identity, employment history and professional affiliations of the Technical Advisor within two (2) calendar days of the Technical Advisor's assignment to the proceeding, and Participants to the hearing may raise objections to the Technical Advisor's participation in accordance with Paragraph 1.4.4.

1.4.6 No Ex Parte Communications

- a) Once a Respondent requests a hearing pursuant to Paragraph 1.3:
 - 1) neither the Hearing Panel, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that
 - 2) the Hearing Panel, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
 - A) in writing if the writing is simultaneously provided to all Participants; or
 - B) orally if a representative for every Participant is present in person or by telephone;

- C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Certification Staff from communicating with the Respondent, and representatives, agents or employees thereof on any topic, provided that any member of the Certification Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the Hearing Panel, the Hearing Officer and any Technical Advisor.
- d) Any member of the Hearing Panel, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) calendar days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

1.4.7 Appearances

Participants shall file written appearances within seven (7) calendar days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

A Participant's written appearance shall state, with respect to each individual that the Participant identifies for service, the individual's name, address, telephone number, and facsimile number and email address, if available, where service shall be made.

A Participant may withdraw any individual from the Participant's representation or otherwise change the identity of individuals authorized to represent the Participant in a proceeding by filing a notice of a change in service list.

Any attorney appearing on behalf of a Participant shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia or of another Applicable Governmental Authority (in the case of non-U.S.-related proceedings).

Individuals representing Participants in any hearing also shall enter their appearances at the beginning of the hearing by stating their names, addresses, telephone numbers and email addresses orally on the record.

1.4.8 Failure to Appear or Exercise Diligence

The failure of any Participant to appear during any hearing without good cause and without notification may be grounds for dismissal or deciding against the interests of such Participant.

1.4.9 Experts

A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that unauthorized public disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited. The Participant employing the expert shall propose the agreement for approval via a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

1.4.10 Protective Orders

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of a non-Participant ordered to produce Documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection through a protective order: (i) Confidential Business and Market Information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) Critical Energy Infrastructure Information; (iii) information related to a Cyber Security Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of Staff, any Regional Entity or any federal, state or foreign regulatory authority.
- c) A motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, Documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the

- proceeding to review the protected information while maintaining its proprietary status.
- d) A Document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that Document or statement and a ruling on such a motion by the Hearing Officer.
 - e) The protective order shall identify the data, Documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.
 - f) A public redacted version of each Document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
 - g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

1.5 Hearing Procedure

1.5.1 Order of Argument

In all proceedings Respondent shall open and close.

1.5.2 Right of Participant to Present Evidence

Subject to compliance with the requirements of these Hearing Procedures concerning the timing of submission of written testimony and other evidence, a Participant has the right to present such evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

1.5.3 Exhibits

All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide Documents, information or testimony, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. Except for exhibits created for demonstrative purposes, only Documents (including affidavits) previously filed in the matter may be presented as exhibits. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence and must provide copies to the Participants and the Hearing Panel.

1.5.4 Witness Attendance at Hearing

Each witness shall attend the hearing in person only if a Participant has been informed in advance of the hearing that the witness needs to be present at the hearing. All testimony offered at the hearing is to be under oath or affirmation.

1.5.5 Admission of Evidence

Respondent shall offer its exhibits into evidence first and the Certification Staff second, unless the Participants agree otherwise.

If witnesses are required to attend the hearing, the Participants shall call each such witness in turn. Following the witness's swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the NERC Director of Compliance and provide corrected copies to the Hearing Officer and other Participant.

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness's testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness's testimony, or any part thereof, as set forth in Paragraph 1.5.8. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph 1.5.11, and then for redirect examination in accordance with Paragraph 1.5.12. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide Documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify during the hearing unless a Participant has served the witness's written testimony in advance of the hearing in accordance with Paragraph 1.3.1. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the CCC's policy to discourage witness testimony at a hearing when a Participant has not served the witness's written testimony in advance of the hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

1.5.6 Evidence that is Part of a Book, Paper or Document

When relevant and material matter offered in evidence is embraced in a book, paper or Document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or Document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or

material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or Document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

1.5.7 Stipulations

The Participants may stipulate to any relevant fact or the authenticity of any relevant Document. Stipulations may be made in writing or entered orally in the record. Notwithstanding stipulation, the Hearing Officer may require evidence of the facts stipulated in order to provide a complete evidentiary record on which to base the final order.

1.5.8 Official Notice

Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:

- a) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of NERC and Regional Entities.
- b) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of NERC and Regional Entities.
- c) State, provincial and federal statutes and municipal and local ordinances.
- d) The decisions of state, provincial and federal courts.
- e) Generally recognized scientific or technical facts within the specialized knowledge of the NERC.
- f) All other matters of which the courts of the United States may take judicial notice.

All requests to take official notice shall be submitted as part of the filings made pursuant to Paragraph 1.3.1. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested. An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

1.5.9 Admissibility of Evidence

Any evidence offered shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.

Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

1.5.10 Offer of Proof

Any Participant who has had evidence excluded may make an offer of proof on the record. The offer of proof may consist of a statement made on the record of the substance of the evidence that the Participant claims would have been adduced, or any written or documentary exhibit that the Participant sought to introduce. Any such exhibit shall be retained as part of the record.

1.5.11 Evidentiary Ruling

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made.

1.5.12 Cross-Examination

Any witness personally attending the hearing shall be tendered for cross-examination subsequent to the admission of the witness's testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the witness's cross-examination by the other Participant, and prior to the witness's redirect examination pursuant to Paragraph 1.5.12. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.5.13 Redirect Examination

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Panel. Any redirect examination shall be limited in scope to the witness's cross-examination and questions of the Hearing Officer and members of the Hearing Panel. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.5.14 Close of the Evidentiary Record

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

1.5.15 Closing Statements

At the close of the hearing, Participants shall present oral closing statements. The Hearing Officer may establish reasonable time limitations applicable to closing statements.

1.5.16 Hearing Panel Final Order

Following the hearing, the Hearing Panel shall issue its final order. Issuance of a final order shall require (i) a quorum of the Hearing Panel, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (which number of members voting shall

not be less than a quorum). The Hearing Panel shall issue its final order within one (1) day following the close of the hearing. The final order shall note if the subject of the proceeding has been deemed to involve a Cyber Security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The Hearing Panel shall direct the NERC Director of Compliance to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights pursuant to Section 400 of the Rules of Procedure.

1.5.17 The Record

The NERC Director of Compliance shall maintain the record for all dockets. The record shall include all filings made in the matter, a transcript of the hearing, including all exhibits presented, the final order and any other written correspondence or communications between the Participants and either the Hearing Officer or the Hearing Panel.

1.5.18 Appeal

A final order of the Hearing Panel may be appealed to NERC in accordance with the NERC Organization Registration and Certification Manual, Section VI, Paragraph 4 of Appendix 5 to the NERC ROP.