

# NERC

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

## Appendix 4E

### Compliance and Certification Committee Hearing Procedures, Hearing Procedures for Use in Appeals, and Mediation Procedures

Effective: March 1, 2019

**NERC**

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

# NERC Compliance and Certification Committee Mediation Procedures

CCC Monitoring Program – CCCPP-006-2  
Effective: March 1, 2019, Version 2.0

**RELIABILITY | ACCOUNTABILITY**



3353 Peachtree Road NE  
Suite 600, North Tower  
Atlanta, GA 30326  
404-446-2560 | [www.nerc.com](http://www.nerc.com)

# TABLE OF CONTENTS

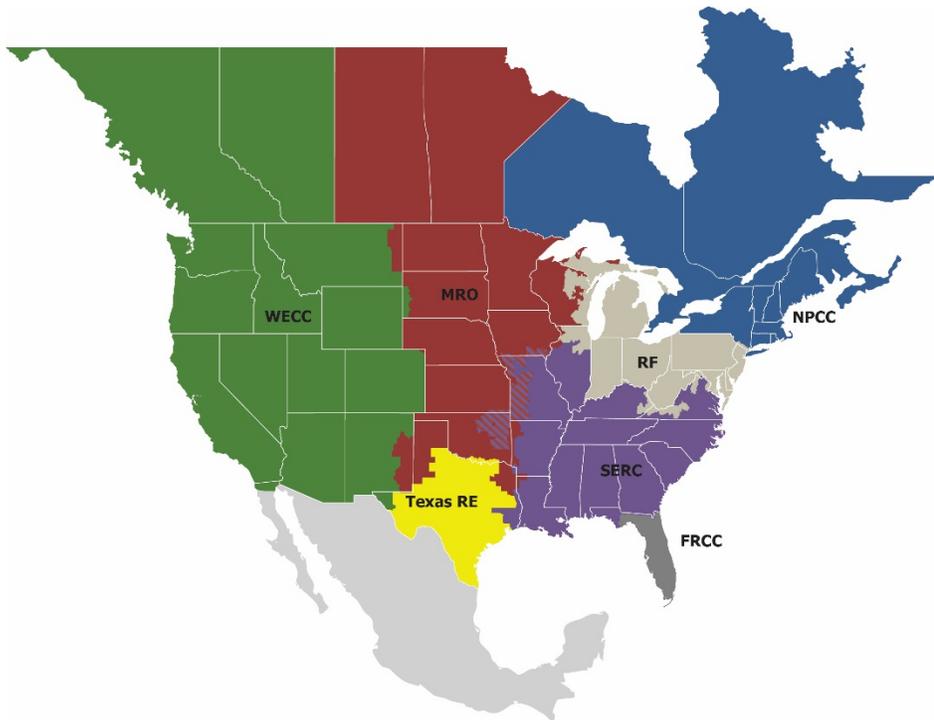
Preface .....	i
Introduction.....	ii
Chapter 1: Mediators.....	1
Chapter 2: Mediation Process .....	2
Introductory Remarks .....	2
Statements of the Issue (s) by the Parties .....	3
Information Gathering .....	3
Issue Identification .....	3
Determination and Discussion of Options.....	3
Written Mediation Settlement Agreement.....	3
Chapter 3: Revision History.....	5

## Preface

---

The vision for the Electric Reliability Organization (ERO) Enterprise, which is comprised of the North American Electric Reliability Corporation (NERC) and the seven Regional Entities, is a highly reliable and secure North American bulk power system (BPS). Our mission is to assure the effective and efficient reduction of risks to the reliability and security of the grid.

The North American BPS is divided into seven Regional Entity boundaries as shown in the map and corresponding table below. The multicolored area denotes overlap as some load-serving entities participate in one Region while associated Transmission Owners/Operators participate in another.



<b>FRCC</b>	Florida Reliability Coordinating Council
<b>MRO</b>	Midwest Reliability Organization
<b>NPCC</b>	Northeast Power Coordinating Council
<b>RF</b>	ReliabilityFirst
<b>SERC</b>	SERC Reliability Corporation
<b>Texas RE</b>	Texas Reliability Entity
<b>WECC</b>	Western Electricity Coordinating Council

---

## Introduction

---

The NERC Compliance and Certification Committee (CCC) Mediation Program is designed as an informal, voluntary process in which a CCC mediation panel assists NERC and a Regional Entity (NERC and the Regional Entity individually a Party, collectively, the Parties) to understand and work through disagreements or disputes concerning NERC performance audits of a Regional Entity's Compliance Monitoring and Enforcement Program. Mediation is the intervention into a dispute or negotiation of an acceptable, impartial, and neutral third party panel that has no decision-making authority. The objective of the neutral third-party is to assist the Parties in voluntarily reaching an acceptable resolution of the issues in dispute. The mediation process is voluntary and does not eliminate other dispute resolution options. Also, the mediation process is confidential, whether or not it results in settlement.

This alternative dispute resolution mechanism is intended to be a more collaborative, less adversarial method to attain a mutually agreeable resolution to the dispute, consistent with the NERC Rules of Procedure and without formal hearing proceedings.

The Parties in mediation are not obligated to reach agreement. If they do not reach a consensus, either Party may elect to proceed with other more "traditional" methods of resolving the dispute. In those instances where consensus is reached and memorialized in a written Mediation Settlement Agreement, the agreements of the Parties as expressed therein will be binding and enforceable.

---

## Chapter 1: Mediators

---

The program follows a model of team mediation, having three mediators facilitate the mediation, in order to ensure a broad spectrum of perspectives and approaches to problem solving.

Once NERC and a Regional Entity have decided to pursue a resolution of their dispute through mediation, each Party will provide the chair of the CCC with introductory information (*i.e.*, brief statements of the nature and history of the dispute, participants' names, and contact information). Each Party must be represented by participants who will have the authority to enter into an agreement to resolve the matter in dispute, if the Parties are able to reach an agreement. The chair then provides the introductory information to three impartial and independent third party neutral members of the CCC to whom the chair assigns to serve as mediators and who are acceptable to both Parties. Subject to the consent of both Parties, the chair may appoint in addition to the CCC members a disinterested professional mediator who is acceptable to both Parties, with the cost of the professional mediator shared equally between the Parties. The mediators may choose, but are not required, to select one of their number as the Lead Mediator to coordinate the process and serve as their primary contact with the Parties; if a professional mediator is appointed by the chair, then that person will serve as the Lead Mediator. After reviewing the information provided by the Parties, the Lead Mediator, if any, or the mediators will communicate with the Parties to arrange an agreeable time and location for the mediation to be held.

Mediation is an informal process and is only successful when a mutually agreeable resolution occurs; however there is no single correct procedure required for mediators to follow. In any specific matter, one or more mediators may elect to discuss individual issues and concerns with one or more of the Parties prior to the session, or one or more mediators may elect to wait until the mediation session to hold any discussion. Both approaches are acceptable.

The materials provided as introductory information and all communications made during or in connection with mediation will be kept confidential by the mediators and both Parties. Statements made by the Parties during mediation may not be used against them in later proceedings. The sole exception to this rule of confidentiality would be any written Mediation Settlement Agreement entered into by the Parties, as discussed below. Should the mediation be unsuccessful, no one who participated as a mediator will serve in any capacity in connection with any subsequent legal, regulatory, administrative, or grievance proceeding regarding the subject of the mediation.

Mediators will not provide legal advice or counsel. Mediators also may not be called to testify in any legal, regulatory, administrative, or grievance proceedings concerning the mediation or its subject, nor may they be requested to provide documentation, records, *etc.*, concerning the mediation.

Once the mediation process begins, Parties may discuss their interests and concerns with the mediators (and particularly with the Lead Mediator, if any) at any time.

## Chapter 2: Mediation Process

---

Mediators will focus on helping the Parties clearly identify their basic concerns and issues, and use this information to develop a mutually agreeable resolution. To succeed, this approach must encourage and require open communication, cooperation, and participation.

Although no single process needs to apply to all mediations, generally a successful mediation will involve six elements:

- Introductory remarks;
- Statements of the issue(s) by the Parties;
- Information gathering;
- Issue identification;
- Determination and discussion of options; and
- A written Mediation Settlement Agreement.

Once the mediation process begins, Parties may discuss their interests and concerns with the mediators (and particularly with the Lead Mediator, if any) at any time.

In some cases, the Parties and mediators may agree that the mediation will adjourn and reconvene at a later agreed upon time and place. All participants should give the mediation every chance to resolve the dispute. Because mediation is a voluntary process, at any time, any participant may comment on any aspect of the process or propose changes. Also at any time, either Party or the mediators have the authority to terminate the mediation for any reason. If the mediation terminates without a written Mediation Settlement Agreement, either Party is free to pursue all other available legal, regulatory, administrative or grievance procedures.

### Introductory Remarks

Early in the mediation, at a time when all participants are present, the mediators will introduce themselves and ask the participants to do likewise. Some mediators may make comments about what they see as the nature of the dispute and seek to confirm or clarify some of the factual data from the introductory information.

The mediators or Lead Mediator may describe ground rules intended to help the mediation move smoothly. Ground rules may include such things as turning off beepers and cell phones, appropriate conduct, mutual respect, note taking, and any other special instructions concerning the mediation. The mediators shall remind the Parties that the mediation process is confidential, whether or not it results in settlement.

From time to time during the mediation, the mediators may ask each Party's participants to meet separately from the other Party, or to "caucus," in order to discuss aspects of the dispute and possible resolution among themselves or with some or all of the mediators. Throughout the process, Parties should try not to interrupt each other; the mediators will give each Party the opportunity to fully share their side.

## Statements of the Issue (s) by the Parties

The mediators will allow each Party the opportunity to explain, without interruption, its position and perception of the dispute. This statement is not necessarily a recital of the facts, but it is to give each Party an opportunity to frame the issues and to give the mediator more information on the Party's position. If a Party's attorney(ies) make the initial statement, the mediators may also invite the Party's other participants to supplement the statement. The intent is for each Party and the mediators to better understand the other Party's position or point of view.

## Information Gathering

The mediators may ask one or both Parties questions, repeat back key ideas to the Parties, and summarize their understandings. This helps the mediators and Parties build rapport and ensure common understanding. Mediators will attempt to identify common agreements on the facts and to steer the discussion increasingly towards the future rather than merely reiterating the past.

## Issue Identification

The mediators will try to identify the Parties' goals and interests in order to reach agreement on the nature of the issues that must be addressed in any resolution and the relationships between those issues. For example, a particular resolution of one issue may necessarily require a certain approach to another issue, or one issue must be resolved prior to another issue being resolved or even meaningfully discussed. It is possible that at some point the Parties may conclude that one or more of their issues cannot be resolved through the mediation, but nonetheless decide to set those aside for later proceedings and move on to resolve through the mediation their other disputed issues.

## Determination and Discussion of Options

Methods for developing options may include caucuses, group processes, discussion groups or sub-groups, developing hypothetical plausible scenarios, or a mediator's proposal where the mediator puts a proposal on the table and the Parties take turns modifying it. If a caucus is held, discussions in the caucus are confidential and the mediators will not share those discussions with the other Party unless the Party in the caucus specifically asks them to do so.

To better explore potential solutions, the mediators may propose one or more brainstorming sessions by the Parties together or separately in caucus. This can lead to a final agreement, which diffuses the conflict and provides a new basis for future relations. The goal is to find some common ground by exploring lots of options, and to create possible solutions for the Parties to consider. Especially when meeting separately in caucus, through this process a Party may be able to entertain alternative solutions without committing to them as concessions.

## Written Mediation Settlement Agreement

Mediation may be terminated at any time by either Party or by the mediators, but mediation has only successfully resolved the subject dispute when the Parties have executed a written Mediation Settlement Agreement.

As the Parties reach a sense that they may be able to agree on all or some of the issues being mediated, the Parties and mediators can begin crafting language to address resolutions of the issues comprising the dispute. This language must be satisfactory to both Parties. The elements and wording of the

agreement must be those of the Parties, and need to be specific enough that the Parties' intentions will be clear to others who may read it and to each participant at a later time.

It is important that each element of the Mediation Settlement Agreement be listed separately and be specific, measurable, achievable, realistic, and set to a timetable.

The draft Mediation Settlement Agreement probably will be reviewed and revised repeatedly by each Party and will continue to be edited, expanded, condensed, and rewritten as necessary until both Parties reach an acceptable settlement. Only after final agreement is reached on all its parts, and a final version memorialized in writing, will the Parties be asked to sign the Mediation Settlement Agreement to indicate their understanding of and agreement to the Mediation Settlement Agreement and their willingness to abide by its provisions.

The Parties' mutual execution of the Mediation Settlement Agreement resolves the dispute (or at least those aspects of the dispute addressed in the Mediation Settlement Agreement if they decided to set aside any specific issues for later proceedings). An executed Mediation Settlement Agreement is enforceable between the Parties in accordance with federal and state law.

## Chapter 3: Revision History

---

Date Version	Number	Comments
December 08, 2008	1.0	Approved by the Compliance and Certification Committee
May 06, 2009	1.0	Approved by the Board of Trustees
November 29, 2017	2.0	Approved by Compliance and Certification Committee
August 16, 2018	2.0	Approved by the Board of Trustees

**NERC**

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

# NERC Compliance and Certification Committee Hearing Procedures

CCCPP-004-2

Effective: March 1, 2019, Version 2.0

**RELIABILITY | ACCOUNTABILITY**



3353 Peachtree Road NE  
Suite 600, North Tower  
Atlanta, GA 30326  
404-446-2560 | [www.nerc.com](http://www.nerc.com)

# Table of Contents

---

Preface .....	v
Hearing Procedures.....	1
1.1    Applicability, Definitions and Interpretation .....	1
1.1.1    Procedure Governed .....	1
1.1.2    Deviation .....	1
1.1.3    Standards for Discretion.....	1
1.1.4    Interpretation.....	2
1.1.5    Definitions .....	2
1.2    General Provisions including Filing, Service, Transcription and Participation .....	3
1.2.1    Contents of Filings .....	3
1.2.2    Form of Filings .....	3
1.2.3    Submission of Documents.....	4
1.2.4    Service .....	4
1.2.5    Computation of Time .....	5
1.2.6    Extensions of Time .....	5
1.2.7    Amendments.....	5
1.2.8    Transcripts.....	5
1.2.9    Rulings, Notices, Orders and Other Issuances .....	6
1.2.10    Location of Hearings and Conferences .....	6
1.2.11    Participant Participation.....	6
1.2.12    Interventions .....	6
1.2.13    Proceedings Closed to the Public .....	7
1.2.14    Docketing System .....	7
1.2.15    Representations Deemed to be made in All Pleadings .....	8
1.2.16    Hold Harmless .....	8
1.3    Initiation of the Hearing Process.....	9
1.3.1    Registered Entity’s Option to Request a Hearing.....	9
1.3.2    Staff’s Response to Request for Hearing.....	10
1.3.3    Notice of Hearing .....	10
1.3.4    Shortened Hearing Procedure.....	10
1.4    General Hearing Procedure.....	13
1.4.1    [Intentionally Left Blank].....	13
1.4.2    Hearing Officer .....	13

1.4.3	Hearing Panel .....	14
1.4.4	Interlocutory Review .....	14
1.4.5	Disqualification.....	15
1.4.6	Technical Advisor .....	16
1.4.7	No Ex Parte Communications.....	16
1.4.8	Appearances.....	17
1.4.9	Failure to Appear or Exercise Diligence .....	17
1.4.10	Consolidation of Proceedings.....	18
1.5	Prehearing Procedure .....	0
1.5.1	[Intentionally Left Blank].....	0
1.5.2	Prehearing Conference.....	0
1.5.3	Summary Disposition .....	0
1.5.4	Status Hearings.....	1
1.5.5	Motions and Responses .....	1
1.5.6	Experts.....	1
1.5.7	Inspection and Copying of Documents in Possession of Staff .....	2
1.5.8	Other Discovery Procedures .....	4
1.5.9	Pre-Evidentiary Hearing Submission of Testimony and Evidence.....	5
1.5.10	Protective Orders .....	6
1.5.11	Pre-Evidentiary Hearing Memorandum .....	7
1.5.12	Certification of Questions to the NERC Board of Trustees Compliance Committee.....	7
1.6	Procedure at Evidentiary Hearing .....	9
1.6.1	Purpose of Evidentiary Hearing.....	9
1.6.2	Order of Receiving Evidence .....	9
1.6.3	Opening and Closing Statements .....	9
1.6.4	Right of Participant to Present Evidence.....	9
1.6.5	Exhibits .....	9
1.6.6	Witness Attendance at Testimonial Hearing.....	9
1.6.7	Admission of Evidence .....	10
1.6.8	Evidence that is Part of a Book, Paper or Document.....	10
1.6.9	Stipulations.....	10
1.6.10	Official Notice.....	11
1.6.11	Admissibility of Evidence.....	11
1.6.12	Offer of Proof .....	11
1.6.13	Reservation of Evidentiary Ruling .....	11

1.6.14 Cross-Examination..... 12

1.6.15 Redirect Examination ..... 12

1.6.16 Examination of Adverse Participant..... 12

1.6.17 Close of the Evidentiary Record ..... 12

1.7 Post Evidentiary Hearing Procedure ..... 13

1.7.1 Briefs..... 13

1.7.2 Other Pleadings ..... 13

1.7.3 Draft Initial Opinions ..... 13

1.7.4 Hearing Officer’s Initial Opinion ..... 13

1.7.5 Exceptions ..... 13

1.7.6 Oral Argument..... 14

1.7.7 Additional Hearings ..... 14

1.7.8 Hearing Panel Final Order ..... 15

1.7.9 The Record ..... 15

1.7.10 Appeal ..... 16

1.8 Settlement..... 17

1.9 Remedial Action Directives ..... 18

1.9.1 Initiation of Remedial Action Directive Hearing..... 18

1.9.2 Remedial Action Directive Hearing Procedure..... 18

<b>NERC Compliance and Certification Committee</b>		<b>CCCPP-004-2</b>
<b>Title:</b> Hearing Procedures		
<b>Version: 2.0</b>	<b>Revision Date: March 21, 2018</b>	<b>Effective Date: [proposed date]</b>

**Revision History**

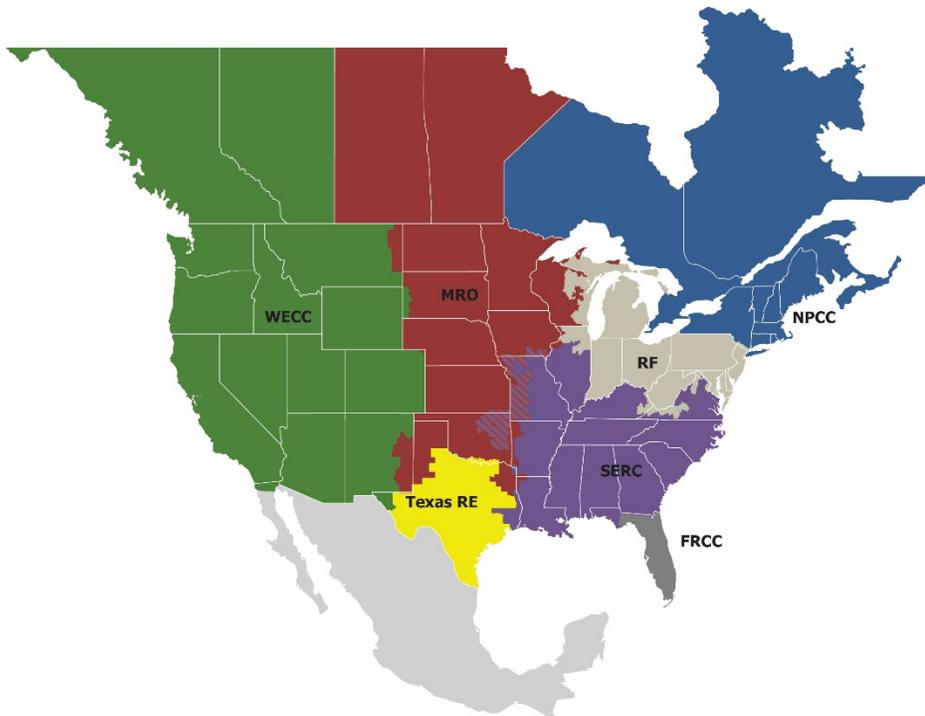
<b>Date</b>	<b>Version Number</b>	<b>Comments</b>
03/03/09	1.0	Approved by CCC
05/06/09	1.0	Approved by the Board of Trustees
03/21/18	2.0	Approved by CCC
08/16/18	2.0	Approved by the Board of Trustees

## Preface

---

The vision for the Electric Reliability Organization (ERO) Enterprise, which is comprised of the North American Electric Reliability Corporation (NERC) and the seven Regional Entities (REs), is a highly reliable and secure North American bulk power system (BPS). Our mission is to assure the effective and efficient reduction of risks to the reliability and security of the grid.

The North American BPS is divided into seven Regional Entity boundaries as shown in the map and corresponding table below. The multicolored area denotes overlap as some load-serving entities participate in one Region while associated Transmission Owners/Operators participate in another.



<b>FRCC</b>	Florida Reliability Coordinating Council
<b>MRO</b>	Midwest Reliability Organization
<b>NPCC</b>	Northeast Power Coordinating Council
<b>RF</b>	ReliabilityFirst
<b>SERC</b>	SERC Reliability Corporation
<b>Texas RE</b>	Texas Reliability Entity
<b>WECC</b>	Western Electricity Coordinating Council

# Hearing Procedures

---

## 1.1 Applicability, Definitions and Interpretation

### 1.1.1 Procedure Governed

The provisions set forth in this Attachment (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (CCC) in hearings in the United States, provided, that Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions, as described in the NERC ROP Section 404. Specifically, as directed by the NERC Board of Trustees, the CCC serves as the hearing body for any contest regarding findings of penalties or sanctions for violation(s) of Reliability Standard(s) where NERC is acting as the Compliance Enforcement Authority (CEA) and is directly monitoring the Registered Entity for compliance with those Reliability Standards (Registered Entity by agreement with a Regional Entity or absent a delegation agreement; the Regional Entity itself where approved Reliability Standards are applicable to the Regional Entity).

The CCC shall determine: (i) whether such Registered Entities have violated Reliability Standards, and if so, the appropriate Mitigation Plan or Mitigating Activities as well as any Remedial Action Directives, Penalties and/or sanctions in accordance with the NERC *Sanction Guidelines* and other applicable Penalty guidelines approved by FERC pursuant to 18 C.F.R. § 39.7(g)(2); or (ii) a challenge by a Regional Entity regarding a Regional Entity Compliance Audit finding by NERC.

Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Officer and a Hearing Panel established by the CCC. Where the Hearing Panel is comprised, in whole or in part, of industry stakeholders, the composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry sectors may control, and no single industry sector may veto, any decision by the Hearing Panel on any matter brought before it for decision. Where the Hearing Panel is comprised solely of independent members and an independent Hearing Officer, decisions shall require a majority vote.

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 Staff alleging noncompliance with a Reliability Standard, proposing a Penalty, opposing a Registered Entity’s Mitigation Plan or Mitigating Activities, or requiring compliance with a Remedial Action Directive.

If a final order has been entered by the Hearing Panel, or the Hearing Panel has issued a ruling determining that there are no issues to be decided regarding the Alleged Violation, proposed Penalty amount, proposed Mitigation Plan or Mitigating Activities, or proposed Remedial Action Directive, or the Registered Entity and the CEA have entered into a settlement agreement resolving the matters that are the subject of the hearing, the hearing shall be terminated by the Hearing Panel and no further proceedings shall be conducted before the Hearing Panel.

### 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 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 NERC's conflict of interest policy.
- (e) Impartiality - Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Registered Entities 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 Section 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**

Unless otherwise defined below, capitalized terms used in these Hearing Procedures shall have the meanings set forth in Appendix 2 of the NERC Rules of Procedure.

"Clerk" shall mean an individual assigned by the CCC to perform administrative tasks relating to the conduct of hearings as described in these Hearing Procedures.

"Compliance Enforcement Authority" or (CEA) means NERC in its respective role of monitoring and enforcing compliance with the NERC Reliability Standards.

"Days", as used within these Hearing Procedures, means calendar days.

"Director of Enforcement" means the Director of Enforcement of the CEA, as applicable, or other individual designated by the CEA, who is responsible for the management and supervision of Enforcement Staff, or his or her designee.

"Hearing Officer" means, solely for hearings conducted pursuant to Appendix 4E, (A) a CCC member or (B) an individual employed or contracted by NERC, as designated and approved by the CCC to preside over hearings conducted pursuant to the Hearing Procedures in Appendix E; 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 Section 1.1.1 above.

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

“Staff” means individuals employed or contracted by NERC who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties, Mitigation Plans or Mitigating Activities.

## **1.2 General Provisions including Filing, Service, Transcription and Participation**

### **1.2.1 Contents of Filings**

All filings made with the Hearing Panel 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 evidence; 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 Enforcement located at **NERC's Washington, DC** office. The office will be open during NERC's regular business hours 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 when received by the NERC Director of Enforcement. To be timely, filings must be received no later than 5:00 p.m., local time 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.
- (d) **Number of Copies to File:** One original and five exact copies of any document shall be filed. The Clerk will provide 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 Clerk 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 Enforcement and the Registered Entity's compliance contact as registered with the CEA, 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 Clerk.

- (b) **By Participants:** Subject to the provisions of Section 1.5.10, 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, and 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 Clerk:** The Clerk 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, or deposit in the United States mail properly addressed with first class postage prepaid, or 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 Clerk shall transmit a copy of the record of a proceeding to the CEA at the time the CCC transmits to the CEA either (1) a Notice of Penalty, or (2) a Hearing Panel final order that includes a Notice of Penalty.
- (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) 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 office of the CEA 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 office of the CEA 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) 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 may allow off-the-record discussion of any matter provided the Hearing Officer states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. The court reporter shall file a copy of each transcript with the Clerk. Upon receipt of a transcript from the court reporter, the Clerk shall send notice to the Participants stating that a transcript has been filed by the court reporter, the date or dates of the hearing that the transcript records, and the date the transcript was filed with the Clerk.
- (b) Unless otherwise prescribed by the Hearing Officer, a Participant may file and serve suggested corrections to any portion of a transcript within fourteen (14) days from the date of the Clerk's notice that the transcript has been filed with the Clerk, and any responses shall be filed within ten (10) days after service of the suggested corrections. The Hearing Officer shall determine what changes, if any, shall be made, and shall only

allow changes that conform the transcript to the statements being transcribed and ensure the accuracy of the record.

- (c) The CEA will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. 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 the principal office of the CEA unless the Hearing Officer or 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 and, in the event of oral argument, the Hearing Panel, except as required by Section 1.6.6. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

### **1.2.12 Interventions**

- (a) The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by the Hearing Panel or by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.
- (b) The Hearing Panel may allow a Person to intervene only if the Hearing Panel determines that the Person seeking intervention has a direct and substantial interest in the outcome of the Alleged Violation, proposed Penalty or sanction, proposed Mitigation Plan or Mitigating Activities, or Remedial Action Directive that is the subject of the proceeding. Examples of a direct and substantial interest in the outcome shall include that the person seeking intervention:
  - (1) has received a Notice of Alleged Violation or a Remedial Action Directive involving the same Reliability Standard requirement(s) and arising out of the same event or occurrence as the existing Respondent(s) that is the subject of the proceeding, or
  - (2) will or may be contractually or legally liable to the original Respondent(s) for payment of all or a portion of the proposed Penalty or sanction that is the subject of the proceeding, provided, that after the Person seeking intervention sufficiently demonstrates it will or may be contractually or legally liable for payment of all or a portion of the proposed Penalty or sanction to be granted intervention, the Person granted intervention and the existing Respondents will not be allowed to litigate in the proceeding whether the Person granted intervention is contractually or legally liable for payment of all or a portion of the proposed Penalty or sanction or the amount of the proposed Penalty or Sanction for which the Person granted intervention is or may be liable.

That the Person seeking intervention has received a Notice of Alleged Violation for the same Reliability Standard Requirement(s) as the original Respondent(s) but arising out of a different event or occurrence; or seeks to intervene to advocate an interpretation of the Reliability Standard

Requirement(s) or provision(s) of the Sanction Guidelines, that are at issue in the proceeding, without more, shall not constitute a direct and substantial interest in the outcome and shall not be grounds on which the Hearing Panel may allow the Person to intervene.

- (c) A Person seeking intervention shall do so by filing a motion to intervene with the Clerk. The motion shall state the Person's interest in sufficient factual detail to demonstrate that the Person should be allowed to intervene pursuant to Section 1.2.12(b). The motion to intervene shall also state the Person's agreement to maintain the confidential and non-public nature of the hearing, including all pleadings and other documents filed or exchanged in connection with the request for intervention. Any facts alleged in, or offers of proof made in, the motion to intervene shall be supported by affidavit or verification.
- (d) The Clerk shall promptly provide copies of the motion to intervene to the Hearing Officer and the Participants. The Hearing Officer shall promptly set a response period, not to exceed seven days, within which the Participants may file responses to the motion to intervene. Within seven (7) days following the end of the response period, the Hearing Officer shall issue a recommendation to the Hearing Panel as to whether or not the motion to intervene should be granted.
- (e) The Hearing Panel may, within seven (7) days following the date of the Hearing Officer's recommendation, issue a decision granting or denying the motion to intervene. If the Hearing Panel does not issue a decision granting or denying the motion to intervene within seven (7) days following the date of the Hearing Officer's recommendation, the Hearing Officer's recommendation shall become the decision of the Hearing Panel and the motion to intervene shall be deemed granted or denied by the Hearing Panel in accordance with the Hearing Officer's recommendation.
- (f) The Hearing Officer, on motion of a Participant or on his or her own motion, or the Hearing Panel, on recommendation by the Hearing Officer or its own motion, may stay or suspend the proceeding while a request to intervene, including a request to intervene filed directly with FERC, and including any appeal of the grant or denial of the request to intervene, is being resolved.
- (g) A Person allowed to intervene and become a Participant to a proceeding shall be designated as a Respondent and deemed to be aligned with the existing Respondent(s), unless the Hearing Panel, in the decision granting intervention, states that the Person allowed to intervene shall be deemed to be aligned with another Participant to the proceeding.
- (h) A Person may appeal a decision of the Hearing Panel denying the Person's motion to intervene, and the Staff, the Respondent or any other Participant may appeal a decision granting or denying a motion to intervene, in accordance with Section 414 of the NERC Rules of Procedure. A notice of appeal shall be filed with the NERC Director of Enforcement no later than seven (7) days following the date of the decision of the Hearing Panel granting or denying the motion to intervene.

### **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 Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the filing of a request for a hearing. Unless NERC provides a different docketing system that will be used uniformly, 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 "[RE]", followed by a dash ("-"), followed by 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 Representations Deemed to be made in All Pleadings**

A Participant presenting any pleading to the Hearing Officer or Hearing Panel shall be deemed to certify that to the best of the Participant's knowledge, information and belief, formed after and based on an inquiry that is reasonable under the circumstances, that:

- (a) the factual allegations set forth in the pleading have or will have support in the evidence or the Participant believes they will have support in the evidence after reasonable opportunity for further investigation or discovery;
- (b) the denials in the pleading of factual allegations made by another Participant are warranted by or will be warranted by the evidence or, if specifically so identified, are reasonably based on belief or on a lack of information;
- (c) the claims, defenses and other contentions set forth in the pleading are warranted based on the applicable Reliability Standard Requirement(s) or Rules of Procedure provisions; and
- (d) the pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the hearing or the cost incurred by any Participant.

### **1.2.16 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the CEA and CCC, including without limitation its Members, Board of Directors or 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 Registered Entity's Option to Request a Hearing

- (a) Except when contesting a Remedial Action Directive pursuant to Section 1.9 of these Hearing Procedures, a Registered Entity may file a statement, in accordance with Section 1.3.1(e), with the CCC requesting a hearing if either:
- (1) the Registered Entity files a response to a Notice of Alleged Violation that contests either the Alleged Violation, the proposed Penalty, or both; or
  - (2) the Staff submits to the Registered Entity a statement rejecting the Registered Entity's proposed revised Mitigation Plan or Mitigating Activities submitted after Staff rejected the Registered Entity's initial proposed Mitigation Plan or Mitigating Activities.
- (b) A Registered Entity must file its hearing request within forty (40) days after:
- (1) the Registered Entity files its response to the Notice of Alleged Violation; or
  - (2) the Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity's proposed Mitigation Plan or Mitigating Activities, whichever is applicable.
- (c) If the Registered Entity does not file a hearing request within the period set forth in this Section, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the Alleged Violation or the Staff's rejection of the revised Mitigation Plan or Mitigating Activities, whichever is applicable.
- (d) In accordance with Section 5.3 of the CMEP, a Notice of Alleged Violation issued to a Registered Entity or a CEA Staff statement setting forth its rejection of a Registered Entity's proposed revised Mitigation Plan or Mitigating Activities shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Staff's rejection of the proposed revised Mitigation Plan or Mitigating Activities, using either the shortened hearing procedure pursuant to Section 1.3.4 or the general hearing procedure described in Sections 1.4 to 1.7.
- (e) The Registered Entity's statement requesting a hearing shall:
- (1) contain a plain and concise statement of the facts and arguments supporting the Registered Entity's position, as applicable, that it did not violate the Reliability Standard Requirement(s) set forth in the Notice of Alleged Violation, that the proposed Penalty or sanction is too high and should be reduced, or that the Registered Entity's proposed Mitigation Plan or Mitigating Activities should be approved;
  - (2) state the relief that the Registered Entity requests the Hearing Panel to grant; and
  - (3) state whether the Registered Entity requests the shortened hearing procedure or the general hearing procedure.

The Registered Entity's statement may set forth two or more alternative grounds on which the Registered Entity bases its position, as applicable, that it did not violate the Reliability Standard Requirement(s) set forth in the Notice of Alleged Violation, that the proposed Penalty or sanction is too high and should be reduced, or that the Registered Entity's proposed Mitigation Plan or Mitigating Activities should be approved.

- (f) If the Registered Entity (or any Respondent if there are more than one Respondent) requests the general hearing procedure, the general hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Staff and any other Participants shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or another

Participant makes a filing requesting the general hearing procedure, then the general hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or entities shall be used. Once either the general or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

**(g) A Registered Entity shall attach to its request for hearing** whichever of the following are applicable:

- (1)** The Registered Entity's Self-Report of a violation;
- (2)** The Notice of Alleged Violation and the Registered Entity's response thereto; and/or
- (3)** The Registered Entity's proposed revised Mitigation Plan or Mitigating Activities and the Staff's statement rejecting the proposed revised Mitigation Plan or Mitigating Activities.

### **1.3.2 Staff's Response to Request for Hearing**

- (a)** If the Registered Entity requests that the shortened hearing procedure be used, the Staff shall file a response stating whether it agrees to the use of the shortened hearing procedure.
- (b)** If the Registered Entity requests that its proposed revised Mitigation Plan or Mitigating Activities should be approved, the Staff shall file a response stating the Staff's position as to why the Registered Entity's proposed revised Mitigation Plan or Mitigating Activities should not be approved and setting forth any additional terms that the Staff believes should be included in the Mitigation Plan or Mitigating Activities.
- (c)** If the Registered Entity does not request that the shortened hearing procedure be used and does not request that the Registered Entity's proposed revised Mitigation Plan or Mitigating Activities should be approved, the Staff may, but is not required to, file a response stating, as applicable, the basis for the Staff's position that the Registered Entity violated the Reliability Standard Requirement(s) specified in the Notice of Alleged Violation or that the proposed Penalty or sanction is appropriate under the Sanction Guidelines and should not be reduced.
- (d)** Any response by the Staff required or permitted by this Section shall be filed within fifteen (15) days after the date the request for hearing was filed, unless the Hearing Officer or Hearing Panel allows a longer time to file the response.

### **1.3.3 Notice of Hearing**

- (a)** The Clerk shall issue a notice of hearing not less than sixteen (16) days, and not more than twenty-one (21) days, after the Registered Entity files its request for hearing.
- (b)** The notice of hearing shall state whether the shortened hearing procedure or the general hearing procedure will be used.
- (c)** The notice of hearing shall identify the Hearing Officer and the date, time and place for the initial prehearing conference.
  - (1)** If the shortened hearing procedure is to be used, the initial prehearing conference shall be set for a date within seven (7) days following the date of the notice of hearing.
  - (2)** If the general hearing procedure is to be used, the initial prehearing conference shall be set for a date within fourteen (14) days following the date of the notice of hearing.

### **1.3.4 Shortened Hearing Procedure**

The shortened hearing procedure shall be as set forth in this Section. The rules applicable to the general hearing procedure shall apply to the shortened hearing procedure unless the context of such a rule is inconsistent with the

procedure set forth in this Section or otherwise renders it inapplicable to the shortened hearing procedure. The rules concerning ex parte communications in Section 1.4.7 are hereby expressly made applicable to the shortened hearing procedure under this Section.

The Hearing Panel shall use a Hearing Officer to preside over the shortened hearing procedure in accordance with Section 1.4.2. No testimonial hearing will be held in the shortened hearing procedure and the Participants will not present witness testimony or file briefs, except that briefs on exceptions and briefs in reply to exceptions may be allowed pursuant to subsection (g). Instead, the following events shall take place within the following periods:

- (a)** The initial prehearing conference shall be held within seven (7) days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Section 1.5.2 that may apply, the initial prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with subsections (c) through (e).
- (b)** Within ten (10) days after the date on which the notice of hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Section 1.5.7.
- (c)** Within twenty-one (21) days after the initial prehearing conference, the Staff shall file:
  - (1)** initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal arguments;
  - (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.
- (d)** Within fourteen (14) days of Staff's initial comment filing pursuant to subsection (c), the Registered Entity shall file:
  - (1)** responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal arguments, which also may respond to Staff's initial comments;
  - (2)** all Documents that the Registered Entity 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.
- (e)** Within seven (7) days after the Registered Entity's responsive comment filing, Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional Documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional Documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional Documents in support of its position that are responsive to the additional Documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
- (f)** The Hearing Officer shall issue an initial opinion within twenty-one (21) days after the Staff's reply comments filing or any additional filing by the Registered Entity pursuant to subsection (e).
- (g)** If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Section 1.7.5 and within seven (7) days thereafter, a reply brief designated "brief in reply to exceptions."

- (h) The Hearing Panel shall strive, but is not required, to issue a final order within one hundred twenty (120) days of the notice of hearing. The Hearing Panel may extend this deadline for good cause and shall provide written notice of any extension to all Participants.

The Hearing Officer or Hearing Panel may modify any 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 one hundred twenty (120) days of the notice of hearing.

## 1.4 General Hearing Procedure

### 1.4.1 [Intentionally Left Blank]

[Blank.]

### 1.4.2 Hearing Officer

- (a) The CCC shall use 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 Section 1.4.3. Members of the Hearing Panel may attend any aspect of the hearing.
- (b) The Hearing Officer is responsible for the conduct of the hearing, including administering the hearing from the initial prehearing conference through the issuance of the Hearing Officer's initial opinion, any administrative hearing functions thereafter, and submission of the matter to the Hearing Panel for final decision through the presentation to the Hearing Panel of an initial opinion. 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:
  - (1) To administer oaths and affirmations;
  - (2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
  - (3) 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;
  - (4) 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;
  - (5) To supervise and issue orders concerning discovery;
  - (6) To conduct prehearing conferences, status hearings, and evidentiary hearings;
  - (7) To hear argument on all objections, motions and other requests, and to rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
  - (8) To rule on and receive evidence;
  - (9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
  - (10) To issue protective orders pursuant to Section 1.5.10;
  - (11) To issue initial opinions; and
  - (12) 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.

The CCC shall disclose the employment history and professional affiliations of the Hearing Officer within two (2) 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 Section 1.4.5.

### 1.4.3 Hearing Panel

- (a) 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.
- (b) The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry sectors may control, and no single industry sector may veto, any decision of the Hearing Panel on any matter brought before it for decision. "Hearing Panel" means the five person Hearing Panel 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 Section 1.1.1 above.
- (c) The Hearing Panel is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:
- (1) Upon receiving a filing by a Participant, the Clerk shall promptly send a notice to the members of the Hearing Panel identifying the date of the filing and the Participant making the filing and briefly describing the nature of the filing. Any member of the Hearing Panel may request of, and shall receive from, the Clerk, a copy of any filing by a Participant. The Hearing Panel shall not receive Documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such Documents are placed into the record pursuant to Section 1.6.7.
  - (2) The Clerk shall send all issuances of the Hearing Officer to the members of the Hearing Panel.
  - (3) The Hearing Panel or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any hearing. At any prehearing conference or hearing attended by a member of the Hearing Panel, any member of the Hearing Panel may ask questions directly of any Participant or witness.
  - (4) 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; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any 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.
  - (5) **To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Section 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.** The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the Hearing Panel shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify, or approve the initial opinion in whole or in part.

### 1.4.4 Interlocutory Review

- (a) A Participant shall be allowed to seek interlocutory review by the Hearing Panel of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance

which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall not operate as a waiver of any objection to such ruling.

- (b) Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the Hearing Panel, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by references to the record, or by affidavit if based on facts that do not appear in the record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses shall be allowed.
- (c) The Hearing Officer shall file a report to the Hearing Panel within fourteen (14) days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the Hearing Panel.
- (d) On review of a Hearing Officer's ruling, the Hearing Panel may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The Hearing Panel may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments.
- (e) Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Section 1.7.8) of the Hearing Panel, and (ii) a majority vote of the members of the Hearing Panel voting on the final order (in which the number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Panel's action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any other scheduled dates in the proceeding except as authorized by the Hearing Officer or the Hearing Panel based on a finding of exceptional circumstances.
- (f) A non-Participant that has been ordered by the Hearing Officer pursuant to Section 1.5.8 to produce or provide Documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the Hearing Panel of the Hearing Officer's order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to Section 1.5.8, and (ii) the reasonableness of the Hearing Officer's order to produce or provide Documents, information or testimony.

#### **1.4.5 Disqualification**

- (a) A Hearing Officer, Technical Advisor or member of the Hearing Panel shall recuse himself or herself from a proceeding if participation would violate NERC's applicable conflict of interest policy.
- (b) 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 Section 1.4.7, 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 fifteen (15) 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.

- (c) 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 recuses himself or herself or is 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 take other steps necessary to ensure familiarity with any part or all of the record.
- (d) If a quorum (as defined in Section 1.7.8) of the Hearing Panel does not remain after any recusals and rulings on motions for disqualification, then the CCC shall appoint at least the number of new members to the Hearing Panel necessary to create a quorum. The new member(s) shall serve on the Hearing Panel through the conclusion of the proceeding but not thereafter. Any new member of the Hearing Panel shall be subject to the provisions applicable herein to all Hearing Panel members.

#### **1.4.6 Technical Advisor**

- (a) 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 any Staff investigation, determination of a Possible Violation, Alleged Violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan or Mitigating Activities that resulted in 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.
- (b) 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) 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 Section 1.4.5.

#### **1.4.7 No Ex Parte Communications**

- (a) **Once a Registered Entity requests a hearing pursuant to Section 1.3.1:**
  - (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:
    - i. in writing if the writing is simultaneously provided to all Participants;
    - ii. orally if a representative for every Participant is present in person or by telephone; or
    - iii. 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) Exceptions

- (1) The proscription in subsection (a)(1) does not prohibit members of the Staff from communicating with the Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the 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.
  - (2) The proscription in subsection (a)(1) does not prohibit communications between or among members of the Hearing Panel, the Hearing Officer, and any Technical Advisor.
  - (3) The proscription in subsection (a)(1) does not prohibit communications between the Hearing Officer or members of the Hearing Panel to the Clerk for the purpose of transmitting documents, giving instructions to the Clerk, or discussing scheduling and other procedural matters relating to the proceeding.
  - (4) The proscription in subsection (a)(1) does not prohibit communications between or among the Clerk, the Hearing Panel and representatives of the CEA for purposes of establishing the hearing forum.
- (c) Any member of the Hearing Panel, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly allows a communication prohibited by this Section shall, within seven (7) 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.

#### **1.4.8 Appearances**

- (a) Participants shall file written appearances within seven (7) 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.
- (b) 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.
- (c) 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.
- (d) Any attorney appearing on behalf of a Participant shall be licensed to practice law 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. All representatives appearing before the Hearing Panel or Hearing Officer shall conform to the standards of ethical conduct required of practitioners before the courts of the United States.
- (e) 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.

#### **1.4.9 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.

#### **1.4.10 Consolidation of Proceedings**

- (a)** In the event that more than one Registered Entity receives a Notice of Alleged Violation for the same event or occurrence, and each Registered Entity selects the general hearing procedure described in Sections 1.4 to 1.7, the Hearing Panel on its own motion or on motion of a Participant may exercise its discretion to examine the actions of all such Registered Entities in a single proceeding as long as an initial opinion has not been rendered by the Hearing Officer pursuant to Section 1.7.4 in any proceeding to be consolidated.
- (b)** A Participant may file a motion to consolidate into a single proceeding alleged violations of different Reliability Standards against a single Respondent, and related contests of Penalties, Mitigation Plan or Mitigating Activities, arising out of the same event or occurrence. Such consolidation may be allowed in the discretion of the Hearing Officer or Hearing Panel, as applicable.

## 1.5 Prehearing Procedure

### 1.5.1 [Intentionally Left Blank]

[Blank.]

### 1.5.2 Prehearing Conference

- (a) The Hearing Officer shall hold at least one prehearing conference, which may be the initial prehearing conference or a subsequently scheduled prehearing conference, in order to:
- (1) Preliminarily identify the issues and discuss the anticipated form of the hearing;
  - (2) Discuss a schedule for any discovery to be conducted and address any discovery issues that are raised at that time;
  - (3) Explore the possibility of obtaining admissions of fact and of the authenticity of documents that would avoid unnecessary proof;
  - (4) Develop a schedule for the preparation and submission of evidence and witness testimony, including the disclosure of witnesses and exhibits and whether the use of pre-filed testimony may not be appropriate, in advance of the evidentiary hearing;
  - (5) Develop a schedule or schedules for any anticipated motions;
  - (6) Schedule a date(s) for the evidentiary hearing, which shall be within ninety (90) days of the prehearing conference described in this subsection, unless a different date or dates is specified by the Hearing Officer or the Hearing Panel and with the consent of all Participants or for good cause shown; and
  - (7) Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.
- (b) The Hearing Officer shall also hold a final prehearing conference prior to the evidentiary hearing, for the purpose of discussing:
- (1) the anticipated duration of the hearing;
  - (2) the scheduling of witnesses' appearances to testify;
  - (3) the issues anticipated to be presented at the hearing;
  - (4) whether prehearing memoranda should be filed and if so, the schedule; and
  - (5) any other matters identified by the Hearing Officer for the management of the evidentiary hearing.

Participants may submit to the Hearing Officer, at least ten (10) days prior to the scheduled date of the final prehearing conference, a proposed list or lists of matters to be discussed at the final prehearing conference.

### 1.5.3 Summary Disposition

- (a) **Availability:** A Hearing Officer, on the Hearing Officer's own motion or on the motion of a Participant, may issue an initial opinion granting, in whole or in part, summary disposition if it appears that there are no issues of material fact and a Participant is entitled to issuance of a final order in its favor.

#### (b) Motion for Summary Disposition and Responses

- (1) A Participant moving for summary disposition must clearly identify the material facts that are not in dispute, demonstrate that there are no other material facts in dispute, and demonstrate that on the basis of the undisputed material facts, the Participant is entitled to issuance of a final order in its favor.
  - (2) A Participant opposing a motion for summary disposition must clearly identify in its response to the motion the material facts that the Participant contends remain in dispute, and/or explain why the moving Participant is not entitled to issuance of a final order in its favor even though there are no disputed issues of material fact.
- (c) **Summary Disposition on the Hearing Officer's Own Motion:** If the Hearing Officer is considering summary disposition in the absence of a Participant motion, the Hearing Officer shall request the Participants to identify in writing any issues of material fact and to comment on the proposed disposition. Factual information in the Participants' comments shall be supported by affidavit. Following review of the Participants' comments, if it still appears to the Hearing Officer that there are no genuine issues of material fact, the Hearing Officer may proceed without an evidentiary hearing. The Hearing Officer shall, however, allow the Participants the opportunity to file briefs.
- (d) **Hearing Officer's Initial Opinion Granting Summary Disposition:** When the Hearing Officer issues an initial opinion granting summary disposition in whole or in part, the ruling shall set forth the rationale for the grant. An initial opinion of the Hearing Officer granting summary disposition shall be confirmed, rejected, or modified in a final order issued by the Hearing Panel.

#### 1.5.4 Status Hearings

Any Participant may request, and the Hearing Officer may call, a status hearing at any time subsequent to the initial prehearing conference to address issues that have arisen between the Participants or other matters relevant to the conduct of the hearing. Such issues may include, but are not limited to, discovery disputes and scheduling matters. A Participant requesting a status hearing to resolve a dispute shall include in its request a certification that it has made a good faith effort to resolve the dispute with the other Participant(s) before requesting the status hearing. The Hearing Officer shall direct the Clerk to issue a notice of status hearing that sets forth the date, time, and place for the hearing, and that identifies the matters to be addressed at the hearing.

#### 1.5.5 Motions and Responses

- (a) Unless otherwise provided in these Hearing Procedures or by the procedural schedule established by the Hearing Officer or Hearing Panel, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless the Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear on the record shall be supported by affidavit.
- (b) Unless otherwise specified by the Hearing Officer or Hearing Panel, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses. A Hearing Officer or Hearing Panel may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer or Hearing Panel, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

#### 1.5.6 Experts

- (a) 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.

- (b) The Participant employing the expert shall propose the agreement for approval by 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.

### 1.5.7 Inspection and Copying of Documents in Possession of Staff

#### (a) Documents to be Available for Inspection and Copying

- (1) Within twenty-five (25) days after the date the request for hearing is filed, Staff shall make available for inspection and copying by the other Participants, all Documents prepared or obtained by Staff through or in connection with any compliance monitoring processes that led to the institution of proceedings. Such Documents shall include but are not limited to:
- i. requests for information to the Respondent;
  - ii. every written request, including e-mail, directed to persons not employed by the CEA to provide information or documents or to be interviewed;
  - iii. the Documents provided in response to any such requests described in (i) and (ii) above;
  - iv. all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;
  - v. all other Documents obtained from the Respondent; and
  - vi. all other Documents obtained from persons not employed by the CEA.

The sole grounds on which Staff is authorized to withhold Documents from inspection and copying are the bases set forth in Section 1.5.7(b); provided, however, that the Documents made available for inspection and copying need not include (i) exact copies of Documents the Respondent previously provided to Staff, and (ii) any Documents provided to the Respondent with or as part of the Notice of Alleged Violation, Notice of Penalty, assessment of proposed Mitigation Plan or Mitigating Activities or Remedial Action Directive.

- (2) Where there are Participants in a proceeding in addition to a single Respondent and Staff, the Hearing Officer or Hearing Panel shall oversee the Staff's designation of Documents to be produced to such other Participants and the development, execution and enforcement of any protective order deemed necessary.
- (3) Staff shall promptly inform the Hearing Officer and each other Participant if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives Documents pursuant to a request for information after Staff has made Documents available for inspection and copying as set forth in subsection (a)(1), the additional Documents shall be made available to the Participants not later than fourteen (14) days after Staff receives such Documents. If a date for the evidentiary hearing has been scheduled, Staff shall make the additional Documents available to the other Participants not less than ten (10) days before the evidentiary hearing. If Staff receives such Documents ten or fewer days before the evidentiary hearing is scheduled to begin or after the evidentiary hearing begins, Staff shall make the additional Documents available immediately to the other Participants.
- (4) Nothing in subsection (a)(1) shall limit the discretion of the CCC to make any other Document available to the Participants or the authority of the Hearing Officer to order the production of any other Documents or information by any Participant.

**(b) Documents That May Be Withheld by Staff**

- (1) Staff may withhold a Document from inspection and copying by a Participant if:<sup>1</sup>
- i. the Document is privileged to the CEA or constitutes attorney work product of counsel for the CEA (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent or other Participant);
  - ii. the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that will not be offered in evidence or otherwise relied on by Staff in the hearing;
  - iii. the Document would disclose:
    - (1) an examination, investigatory or enforcement technique or guideline not otherwise made public of the CEA, a federal, state, or foreign regulatory authority, or a self-regulatory organization;
    - (2) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization, that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action;
    - (3) or an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the CEA, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or
  - iv. the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

Provided, that where a Document contains information of the type listed in subsections (i), (ii), (iii) or (iv) that is capable of being redacted, Staff shall make the Document available for inspection and copying by the other Participants in redacted form.

- (c) Withheld Document List:** At the time it is required to make Documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which Documents are being made available, a list of Documents withheld by Staff pursuant to those elements listed above, with a statement of the grounds that support withholding the Document. Upon review, for good cause shown, the Hearing Officer may order Staff to make any Document withheld, other than a Document that is subject to the attorney-client privilege, available to the other Participants for inspection and copying.
- (d) Timing of Inspection and Copying:** Except as set forth in this Section, the Hearing Officer shall determine the schedule of production of Documents for inspection and copying, provided that the Hearing Officer may modify any period for production set forth in this Section as warranted by the circumstances.
- (e) Place and Time of Inspection and Copying:** Documents subject to inspection and copying pursuant to this Section shall be made available to the Respondent and other Participants for inspection and copying at the CEA office where the Documents are ordinarily maintained, or at such other office as the Hearing Officer, in his or her discretion, shall designate, or as the Participants otherwise agree. A Participant shall be given access to the Documents at the CEA's offices during normal business hours. A Participant shall not be given custody

---

<sup>1</sup> Nothing in these subsections authorizes Staff to withhold a Document, or a part thereof, that contains exculpatory evidence. Nothing in these subsections requires Staff to withhold a Document from disclosure.

of the Documents or be permitted to remove the Documents from the CEA's offices, other than copies of Documents made available by the CEA for that purpose.

- (f) Copying Costs:** A Participant may obtain a photocopy of all Documents made available for inspection. A Participant shall be responsible for the cost of photocopying. Unless otherwise ordered by the Hearing Officer, charges for copies made at the request of a Participant shall be at a rate to be established by the CEA.
- (g) Failure to Make Documents Available — Harmless Error:** In the event that a Document required to be made available to a Participant pursuant to this Section is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to make the Document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff to produce a Document, the burden shall be on Staff to show that such failure was harmless error. The Hearing Officer, or, upon review, the Hearing Panel shall determine whether the failure to make the Document available was harmless error.

### 1.5.8 Other Discovery Procedures

- (a)** In addition to the production of Documents by Staff for inspection and copying by Respondent and other Participants pursuant to Section 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. § 385.402 through 385.409, including data requests, written interrogatories and requests for production of Documents or things, depositions by oral examination, requests for inspection of Documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce Documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing.
- (b)** Unless otherwise directed by the Hearing Officer or Hearing Panel upon motion by a Participant, or by the Hearing Officer, or by the Hearing Panel on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §§ 385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:
  - (1)** The provisions of subsections (d), (e) and (f) of Section 1.5.7 shall apply to any such discovery.
  - (2)** Rule 403(b)(2) (18 C.F.R. § 385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. § 385.410(d)(2)) shall not be applicable.
  - (3)** The Hearing Officer and the Hearing Panel have the authority to issue orders to compel the appearance by or production of Documents or information by, only a Person that (i) is a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the Hearing Panel do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide Documents, information or testimony.
  - (4)** References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide Documents, information or testimony.
  - (5)** References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows:
    - i.** the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the Hearing Panel.

- ii. the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Staff, and
    - iii. the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or Hearing Panel.
  - (6) Unless otherwise ordered by the Hearing Officer or Hearing Panel, a data request, set of interrogatories, request for production of Documents or things, request for inspection of Documents or other property, request for admissions, or order to produce or provide Documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.
  - (7) A list of withheld Documents, if any, shall be provided by any Participant required to produce Documents, at the time the Documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the Documents. Upon review, for good cause shown, the Hearing Officer may order the Participant to make any Document withheld available to any other Participant or Participants for inspection and copying.
  - (8) In the event a Document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the Document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a Document or information, the burden shall be on the Participant that failed to produce or provide the Document or information to show that such failure was harmless error. The Hearing Officer or, upon review, the Hearing Panel shall determine whether the failure to make the Document available was harmless error.
  - (9) Unless otherwise ordered by the Hearing Officer or Hearing Panel, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date the request for hearing was filed.
  - (10) Notwithstanding subsections (b) (6) and (b) (9), however, if the shortened hearing procedure in Section 1.3.4 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.
- (c) The Hearing Officer’s ruling on all motions relating to disputes concerning such discovery shall consider the following objectives:
- (1) full disclosure of all relevant Documents and information; and
  - (2) the exercise of due diligence in the conduct of discovery by a Participant; and disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

### **1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence**

- (a) Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to Section 1.6.16 and (ii) the testimony and documents of a non- Participant provided pursuant to an order to produce or provide Documents, information or testimony, all witness direct testimony to be submitted in an evidentiary hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a Document

or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than Documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce Documents), the Participant intending to use such Document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at a testimonial hearing.

- (b)** Staff shall file the Documents it intends to offer into evidence as its direct case, including the written testimony of its witnesses along with exhibits, schedules, and attachments thereto, first. The Registered Entity shall file the Documents it intends to offer into evidence as its direct case, which also may be responsive to Staff's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, second. Staff shall file as its rebuttal case the Documents it intends to offer into evidence in response to the Registered Entity's direct case, including the written testimony of its witnesses along with exhibits, schedules, and attachments thereto, third.
- (c)** If appropriate due to the number and/or complexity of the issues, the Hearing Officer may allow for the Registered Entity to submit a rebuttal case that responds to Staff's rebuttal case, in which event the Hearing Officer shall also allow Staff to submit a rebuttal case that responds to the Registered Entity's rebuttal case.
- (d)** Each round of evidence shall be limited in scope to responding to the preceding round of evidence, except that the Registered Entity's direct case may exceed the scope of Staff's direct case if necessary for the Registered Entity to set forth its direct case fully.
- (e)** The Participants shall file the Documents they intend to offer into evidence in accordance with the Hearing Officer's schedule, as it may be amended. Such filings of written testimony and other evidence in advance of the evidentiary hearing shall not entitle the Documents to be admitted into the evidentiary record. The Participants must offer their witnesses' testimony and other proposed evidence for admission into the evidentiary record during the evidentiary hearing.
- (f)** Any Participant who fails, without good cause shown, to comply with the Hearing Officer's schedule for the filing of written testimony and other evidence in advance of the evidentiary hearing may be limited in the presentation of its evidence during the evidentiary hearing or have its participation in the evidentiary hearing otherwise restricted by the Hearing Officer to avoid undue prejudice and delay.

### **1.5.10 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 any 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:
  - (1)** Confidential Business and Market Information, including information that is proprietary, commercially valuable, or competitively sensitive;
  - (2)** Critical Energy Infrastructure Information;
  - (3)** information related to a Cyber Security Incident;

- (4) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information;
- (5) audit work papers; or
- (6) investigative files or Documents that would disclose investigative techniques of Staff, any CEA, the ERO or any federal, state or foreign regulatory authority.

Nothing in this subsection 1.5.10(b) shall require Staff to produce any Documents it is entitled to withhold under subsection 1.5.7(b).

- (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 Section 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 or hear the proprietary information in accordance with the protective order.

#### **1.5.11 Pre-Evidentiary Hearing Memorandum**

- (a) The Hearing Officer or the Hearing Panel may request the submission of memoranda prior to the evidentiary hearing that set forth each Participant's position on the issue(s) in dispute, the key facts and arguments, the applicable Reliability Standard, rules, orders or other authority, and such other matters as may be directed by the Hearing Officer or the Hearing Panel.
- (b) The purpose of such memoranda will be to aid the Hearing Officer and Hearing Panel in preparation for the evidentiary hearing. A Participant will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-evidentiary hearing memorandum.
- (c) The Hearing Officer may establish word limitations on such submissions.

#### **1.5.12 Certification of Questions to the NERC Board of Trustees Compliance Committee**

- (a) Should a hearing present a significant question of law, policy or procedure the resolution of which may be determinative of the issues in the proceeding in whole or in part, and as to which there are other extraordinary circumstances that make prompt consideration of the question by the NERC Board of Trustees Compliance Committee appropriate, the Hearing Officer, on his or her own motion or on motion of a

Participant, may recommend to the Hearing Panel that it certify, or the Hearing Panel on its own motion may decide to certify, the question to the Board of Trustees Compliance Committee for determination pursuant to Section 412 of the Rules of Procedure.

- (b)** If the Hearing Officer, on his or her own motion, or the Hearing Panel, on its own motion, wishes to present a question to the Hearing Panel for certification to the NERC Board of Trustees Compliance Committee, the Hearing Officer shall first provide the Participants the opportunity to submit memoranda addressing whether the question should be certified and the precise terms of the question to be certified.
- (c)** If a Participant files a motion requesting, or the Hearing Officer determines on his or her own motion, that a question should be certified to the Board of Trustees Compliance Committee, the Hearing Officer shall submit a written recommendation on the matter to the Hearing Panel. If the request for certification is based on the motion of a Participant, the Hearing Officer shall also submit to the Hearing Panel the motion and any answers to the motion that were filed. If the request for certification is on the Hearing Officer's own motion, the Hearing Officer shall also submit to the Hearing Panel the Participants' memoranda that were filed pursuant to subsection (b).
- (d)** Questions of fact presented by the particular matter in dispute in a hearing shall not be the subject of a certification to the Board of Trustees Compliance Committee.
- (e)** The Hearing Panel shall determine, based on the criteria specified in subsection (a), whether the proposed question shall be certified to the Board of Trustees Compliance Committee for determination. To certify the proposed question, the Hearing Panel must determine that the question is a significant question of law, policy or procedure the resolution of which may be determinative of the issues in the proceeding, in whole or in part, and that there are extraordinary circumstances that make prompt consideration of the question by the Board of Trustees Compliance Committee appropriate. If the Hearing Panel determines that the proposed question should be certified to the Board of Trustees Compliance Committee, the Hearing Panel shall also determine whether the hearing should be suspended, in whole or in part, while the question is pending before the Board of Trustees for determination.
- (f)** As provided in Rule of Procedure Section 412, the Board of Trustees Compliance Committee may decide to reject a proposed certification from a Hearing Panel.
- (g)** If the Board of Trustees Compliance Committee accepts certification of a question and issues a determination on the question, the hearing shall proceed following the determination in accordance with the Board of Trustees Compliance Committee's decision.

## **1.6 Procedure at Evidentiary Hearing**

### **1.6.1 Purpose of Evidentiary Hearing**

The purpose of the evidentiary hearing shall be to admit the Participants' evidence into the record, and for each Participant to have the opportunity to cross-examine the other Participant's witnesses. A schedule for briefs, unless waived by the Participants, shall be set at the conclusion of the evidentiary hearing.

### **1.6.2 Order of Receiving Evidence**

In all proceedings Staff shall open and close.

### **1.6.3 Opening and Closing Statements**

Opening and closing statements will not be made during the evidentiary hearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be required when requested by the Hearing Officer or the Hearing Panel. Any Participant's request for such statements, or a Hearing Officer or Hearing Panel notice requiring such statements, shall be made at least ten (10) days in advance of the start of the evidentiary hearing.

### **1.6.4 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.

### **1.6.5 Exhibits**

- (a) 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.
- (b) Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Participants and the Hearing Officer.

### **1.6.6 Witness Attendance at Testimonial Hearing**

- (a) Each witness shall attend the testimonial hearing in person unless a Participant has been informed in advance of the testimonial hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the Hearing Panel have any questions for the witness, in which event the witness does need not be present at the testimonial hearing.
- (b) A person compelled to appear, voluntarily testifying, or making a statement may be accompanied, represented, and advised by an attorney.
- (c) All testimony offered at a testimonial hearing is to be under oath or affirmation. If a witness is not required to attend the testimonial hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### 1.6.7 Admission of Evidence

- (a) Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise.
- (b) Except for witnesses who are not required to attend the testimonial hearing, the Participants shall call each witness in turn. Following the witness' 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 Clerk and provide corrected copies to the Hearing Officer and other Participant.
- (c) 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' testimony, including all exhibits, schedules, and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Section 1.6.11. 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 Section 1.6.14, and then for redirect examination in accordance with Section 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.
- (d) 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 unless a Participant has served the witness' written testimony in advance of the testimonial hearing in accordance with the schedule established by the Hearing Officer. 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 testimonial hearing when a Participant has not served the witness' written testimony in advance of the testimonial 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.

### 1.6.8 Evidence that is Part of a Book, Paper or Document

- (a) 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.
- (b) 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.
- (c) 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.

### 1.6.9 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.

### **1.6.10 Official Notice**

- (a) 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:
  - (1) Rules, regulations, administrative rulings, and orders, written policies of governmental bodies, and rulings and orders of other CEAs.
  - (2) The orders, transcripts, exhibits, pleadings, or any other matter contained in the record of other docketed proceedings of the CEA.
  - (3) State, provincial and federal statutes and municipal and local ordinances.
  - (4) The decisions of state, provincial, and federal courts.
  - (5) Generally recognized scientific or technical facts within the specialized knowledge of the CEA.
  - (6) All other matters of which the courts of the United States may take judicial notice.
- (b) All requests to take official notice shall be submitted in advance of the evidentiary hearing in accordance with a schedule established by the Hearing Officer. 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.
- (c) 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.

### **1.6.11 Admissibility of Evidence**

- (a) Any evidence offered, including that included in a book, paper, or Document pursuant to Section 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.
- (b) 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.
- (c) Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

### **1.6.12 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.

### **1.6.13 Reservation of Evidentiary Ruling**

- (a) The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made; provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto.

- (b) If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full, complete, and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

#### **1.6.14 Cross-Examination**

- (a) Each witness shall be tendered for cross-examination subsequent to the admission of the witness' 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. Leading questions are permitted on cross-examination.
- (b) The credibility of a witness may be attacked by any Participant, including the Participant calling the witness.
- (c) The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Section 1.6.15.

#### **1.6.15 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' cross-examination and questions of the Hearing Officer and members of the Hearing Panel.

#### **1.6.16 Examination of Adverse Participant**

- (a) Any Participant may call any adverse Participant, or any employee or agent thereof, during the testimonial hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination.
- (b) If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) days in advance of the testimonial hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) days in advance of the testimonial hearing.
- (c) Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide Documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.

#### **1.6.17 Close of the Evidentiary Record**

- (a) The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the evidentiary hearing.
- (b) Evidence may not be added to the evidentiary record after it is closed, provided that, prior to issuance of the Hearing Panel's final order, the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant. For the purpose of reopening the evidentiary record, newly discovered evidence that is material to the issues in dispute and could not, by due diligence, have been discovered prior to or during the evidentiary hearing, shall constitute good cause.

## 1.7 Post Evidentiary Hearing Procedure

### 1.7.1 Briefs

- (a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.
- (b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.
- (c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.
- (d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- (e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- (f) The Hearing Officer may allow oral closing statements to be made on the record in lieu of briefs.
- (g) The Hearing Officer may establish reasonable word limitations applicable to briefs.

### 1.7.2 Other Pleadings

Post-hearing pleadings other than briefs are permitted, but, absent good cause shown, such pleadings may not seek to introduce additional evidence into the record.

### 1.7.3 Draft Initial Opinions

The Hearing Officer may permit or require Participants to file draft initial opinions that set forth the Participants' proposed findings of fact and conclusions.

### 1.7.4 Hearing Officer's Initial Opinion

- (a) At the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Panel's review and consideration.
- (b) The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Mitigating Activities, or Remedial Action Directive that the Hearing Officer proposes the Hearing Panel require.
- (c) The initial opinion 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 pursuant to Section 1.5.10.

### 1.7.5 Exceptions

- (a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "brief on exceptions" and, within fourteen (14) days after the time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."
- (b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each exception,

the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other evidence and arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other designated "Exceptions," containing the suggested replacement language.

- (c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- (d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
- (e) Statements of fact should be supported by citation to the record.
- (f) The Hearing Officer may establish reasonable word limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such word limitations shall not apply to a Participant's proposed replacement language.
- (g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion, the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

#### **1.7.6 Oral Argument**

- (a) The Hearing Panel may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues.
- (b) If oral argument is held where briefs have been filed, argument may be limited to issues identified by the Hearing Panel. The Hearing Panel will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.
- (c) The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and contain accurate citations to the record. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than forty-eight (48) hours prior to the time and date of oral argument.

#### **1.7.7 Additional Hearings**

After the evidentiary record has been closed but before issuance of the Hearing Panel's final order, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the Hearing Panel's own motion if there is reason to believe that reopening is warranted by any changes in conditions, or by the need to compile a complete evidentiary record on which to base the final order. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes in conditions or the identification of additional evidence that should be included in the record, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously cited as evidence.

### **1.7.8 Hearing Panel Final Order**

- (a)** Following the receipt of the initial opinion, any exceptions, and replies thereto, and oral argument, if any, the Hearing Panel shall issue its final order.
- (b)** 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 (in which the number of members voting shall not be less than a quorum).
- (c)** The Hearing Panel shall issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions, replies thereto, or oral argument. The Hearing Panel may extend this deadline for good cause and shall provide written notice of any extension to all Participants. The final order may adopt, modify, amend, or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues presented on the record.
- (d)** The Hearing Panel will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Remedial Action Directive, Mitigation Plan or Mitigating Activities required.
- (e)** 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 Section 1.5.10.
- (f)** The service of the final order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

### **1.7.9 The Record**

- (a)** The Clerk shall maintain the record for all dockets. The record shall include any of the following, including all attachments thereto and Documents filed therewith, that exist in any docket:
  - (1)** Notice of Alleged Violation and Registered Entity's response thereto;
  - (2)** Registered Entity's proposed Mitigation Plan or Mitigating Activities and Staff's statement identifying its disagreement(s) therewith;
  - (3)** Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
  - (4)** Registered Entity's request for a hearing;
  - (5)** Participant filings, motions, and responses;
  - (6)** Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Panel;
  - (7)** Transcripts;
  - (8)** Evidence received;
  - (9)** Written comments submitted in lieu of written testimony;
  - (10)** Matters officially noticed;
  - (11)** Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
  - (12)** Pre-evidentiary hearing memorandums, briefs, and draft opinions;
  - (13)** Post-hearing pleadings other than briefs;

- (14) The Hearing Officer's initial opinion;
- (15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- (16) The Hearing Panel's final order and the Clerk's notice transmitting the final order to the Participants;
- (17) All notices of ex parte communications; and
- (18) Any notifications of recusal and motions for disqualification of a member of the Hearing Panel or Hearing Officer or Technical Advisor and any responses or replies thereto.

#### **1.7.10 Appeal**

A Participant or a Regional Entity acting as the CEA, may appeal a final order of the Hearing Panel to NERC in accordance with Rules of Procedure Section 409.

## 1.8 Settlement

Settlements may be entered into at any time pursuant to Section 5.6 of the NERC Compliance Monitoring and Enforcement Program and the CEA's settlement procedures, provided, that (i) the CEA may decline to engage in or continue settlement negotiations after a Possible Violation or Alleged Violation becomes a Confirmed Violation, and (ii) the CEA, the Registered Entity or any other Participant may terminate settlement negotiations at any time.

## 1.9 Remedial Action Directives

### 1.9.1 Initiation of Remedial Action Directive Hearing

- (a) Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an Alleged Violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program.
- (b) The Registered Entity may contest the Remedial Action Directive by filing a written notice with the NERC Director of Enforcement that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Registered Entity does not give written notice within the required period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.
- (c) The Clerk shall assign a docket number, and issue a notice of hearing that sets forth the date, time, and place at which the hearing will convene.

### 1.9.2 Remedial Action Directive Hearing Procedure

- (a) Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Section. The general hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Section.
- (b) The Remedial Action Directive hearing shall be presided over by a Hearing Officer and will be conducted according to the following guidelines:
  - (1) The Hearing Officer or the Hearing Panel will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
  - (2) A testimonial hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
  - (3) At the testimonial hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
  - (4) At the testimonial hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
  - (5) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the Hearing Panel. Oral argument shall not be held.
- (c) The Hearing Panel shall issue a summary written decision within ten (10) days following submission of the last brief, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that the Hearing Panel finds appropriate. Upon issuance of the summary written decision, the Registered Entity is required to comply with the Remedial Action Directive as specified in the summary written decision.

- (d) Within thirty (30) days following issuance of its summary written decision, the Hearing Panel shall issue a full written decision. The written decision shall state the conclusions of the Hearing Panel with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Panel's conclusions.