

# NERC

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

## ~~NERC Compliance and Certification Committee Hearing Procedures for Use in Appeals of Certification Matters~~

~~CCC Monitoring Program — CCCPP 005 1~~

to ensure  
the reliability of the  
bulk power system

~~Version 1.0~~

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

### **Summary**

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

### **Chapter 1: Revision History**

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<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

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**NERC**

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

# NERC Compliance and Certification Committee Hearing Procedures for Use in Appeals of Certifications Matters

CCC Procedure – CCCPP – 005 - 2

DATE TBD

RELIABILITY | RESILIENCE | SECURITY



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# ~~1. Hearing Procedures for Use in Appeals of Certification Matters~~

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## ~~Chapter 2:~~ Chapter 1: Applicability, Definitions, and Interpretation

### 1.1 Procedure Governed

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in Section 504 and Appendix 55A of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities. Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Panel established by the CCC in accordance with ~~Section 8.3~~ Chapter 7 of the CCC Charter and Appendix 5A of the NERC ROP. ~~The~~

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 ~~segments~~ sectors may control, and no single industry ~~segment~~ 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 entity seeking Certification.

If the Hearing Panel enters a final decision, or the Hearing Panel issues a ruling determining there are no issues to be decided regarding the Certification matter, 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 and the Hearing Panel shall not conduct further proceedings.

### 1.2 Deviation

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

### 1.3 Standards for Discretion

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

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

- e. Impartiality — Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. ~~Respondents~~Participants 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.

## **1.4 Interpretation**

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

## **1.5 Definitions**

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

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

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

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

~~Certification activities are further described in Section 500 and Appendix 5 of the NERC Rules of Procedure.~~

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

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

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



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

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

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

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

~~“Hearing Officer” means (1, solely for hearings conducted pursuant to Appendix 4E, (A) a CCC member or (2B) an individual employed or contracted by NERC, as designated and approved by the CCC to preside over hearings conducted pursuant to these Hearing Procedures; the Hearing Officer shall not be a member of the Hearing Panel.~~

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

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

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

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

“Respondent” means the ~~Registered Entity~~ [registered entity](#) who is the subject of the Certification decision that is the basis for the proceeding.

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

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

## ~~Chapter 3:~~ Chapter 2: General Provisions including Filing, Service, Transcription, and Participation

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### 2.1 Contents of Filings

All filings made with the CCC must contain:

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

### 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 ~~8 1/2~~8 1/2 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 ~~1/2~~1/2 inch. Line numbers, if any, shall have a left-hand margin of not less than ~~1/2~~1/2 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.

## 2.3 Submission of Documents

### a. Where to File

Filings After initiation of the Hearing in accordance with Appendix 5A, filings shall be made with the ~~NERC Director of Compliance located at NERC's principal office.~~Clerk. The Clerk's office will be open from 8 a.m. to 5 p.m., Eastern, 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 received by the ~~NERC Director of Compliance.~~Clerk. To be timely, filings must be received no later than 5 p.m., Eastern 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 ~~by the NERC Director of Compliance.~~

### d. Number of Copies to File

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

### e. Signature

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either: i) by an attorney of the Participant; or ii) by the individual if the Participant is an individual, ; iii) by an officer of the Participant if the Participant is not an individual, ; or iv) 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.

## 2.4 Service

a. **Service List**

For each proceeding, the ~~NERC Director of Compliance~~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 Compliance and Certification, and the ~~Respondent's designated agent for service~~Registered Entity's compliance contact as registered onwith the ~~NERC Compliance Registry~~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 ~~NERC Director of Compliance~~.Clerk.

b. **By Participants**

AnySubject to provisions of Section 5.11, 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 ~~NERC Director of Compliance~~Clerk**

The ~~NERC Director of Compliance~~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 Hearing PanelClerk shall ~~ensure that the NERC Director of Compliance~~ hastransmit a copy of the record of a proceeding to the Regional Entity at the time it issues a final order.

d. **Effective Date of Service**

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

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

## **2.5 Computation of Time**

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

## **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.

## **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.

## **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 ~~or the Hearing Panel~~ may allow off-the-record discussion of any matter provided the Hearing Officer ~~or the Hearing Panel~~ states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. [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.](#)
- a.b. Unless otherwise prescribed by the Hearing Officer ~~or the Hearing Panel~~, a Participant may file and serve suggested corrections to any portion of the transcript within ~~thirty five (35) calendar~~ [fourteen \(14\)](#) days from the date ~~on which the relevant portion~~ of the [Clerk's notice that the transcript was taken](#) ~~was taken~~ [has been filed with the Clerk](#), and any responses shall be filed within ten (10) calendar days after service of the suggested corrections. The Hearing Officer ~~or the Hearing Panel~~ shall determine what changes, if any, shall be made, and shall only allow changes that conform the transcript to the truth and ensure the accuracy of the record.
- b.c. NERC will pay for transcription services, for a copy of the transcript for the record, and for a copy of the transcript for the Hearing Officer and the Hearing Panel. Any other Participant shall pay for its own copy of the transcript if it chooses to obtain one and, should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

## **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.

## **2.10 Location of Hearings and Conferences**

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

## **2.11 Participant Participation**

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer or the Hearing Panel. except as required by Section 6.6. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

## **2.12 Interventions ~~Are Not Permitted~~**

- a. The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by ~~FERC or another Applicable Governmental Authority (in the case of non-U.S.-related proceedings),~~ 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 Certification.
- 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 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 time period, not to exceed seven (7) 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 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 allowed to intervene and become a Participant to a proceeding is required to take the record and the procedural status of the proceeding as it stands on the date the Person's motion to intervene is granted by the Hearing Panel.
- i. A Person may appeal a decision of the Hearing Panel denying the Person's motion to intervene, and Staff, the Respondent or any other Participant may appeal a decision granting or denying a motion to intervene. A notice of appeal shall be filed with the Clerk no later than seven (7) days following the date of the decision of the Hearing Panel granting or denying the motion to intervene.

### **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.

### **2.14 Docketing System**

The ~~NERC Director of Compliance~~ Clerk shall maintain a system for docketing proceedings ~~to record appeals of Certification decisions~~. A docketed proceeding shall be created upon the issuance of a notice of an appeal of a Certification decision. Unless NERC provides a different docketing system that will be used 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 "NERCCERT", followed by a dash ("-"), ~~followed by the letters "CERT"~~ and a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **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.

### **2.16 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that NERC, the NERC Regional Entity, and the CCC, including without limitation their Members, Board of Directors or Trustees, Compliance Committee, any other committees or subcommittees, Staff, ~~Compliance and Certification Committee Hearing Procedures for Use in Appeals of Certification Matters~~  
April 2009; Version 1.0



contracted employees, Hearing Panel members, Hearing Officers, and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, 1 or a) any action or inaction arising out of, 2 the hearing process, 1 or of b) any agreement reached in resolution of a dispute; or 3) 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 a breach of confidentiality.

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

## ~~Chapter 4:~~ Chapter 3: Initiation of the Hearing Process

### 3.1 Respondent's Option to Request a Hearing

To appeal a Certification decision, a Respondent must file a statement with ~~the NERC Director of Compliance~~ requesting a Certification hearing within ~~fourteen (14) calendar~~ twenty-one (21) days after (i) the Certification report or finding is issued, or (ii) the final Regional Entity appeal process ruling is made. If the Respondent does not file a hearing request within the time period set forth in this Paragraph, then the Respondent will be deemed to have agreed and waived any objection to the Certification decision.

A hearing request shall include:

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

### 3.2 Staff's Response to Request for Hearing ~~Procedure~~

~~The Hearing Panel may utilize a Hearing Officer to preside over the hearing procedure in accordance with Paragraph 1.4.2. No evidentiary hearing will be held, and the Participants will not present witness testimony or file briefs, except as requested by the Hearing Officer and/or the Hearing Panel. Instead, the following events shall take place within the following periods: Within ten (10) calendar days after the~~ 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.

### 3.3 Notice of Hearing

- a) ~~The Clerk shall issue a~~ notice of hearing is issued, the Staff shall file:
  - 1) ~~initial comments stating Staff's position on all issues raised by Respondent and the rationale in support of Staff's position, including all factual and legal argument;~~
  - 2) ~~all Documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and~~
  - 3) ~~a verification attesting to the truthfulness of the facts alleged in the filing.~~
- b) ~~Within seven (7) calendar~~ not less than sixteen (16) days of Staff's filing pursuant to Subparagraph (a), the Respondent shall file:

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

~~The Hearing Officer or Hearing Panel may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Panel to issue the final order within, and not more than~~ twenty-nine (29) calendar ~~one (21) days of the notice of,~~ after the Registered Entity files its request for hearing.

The notice of hearing shall identify the Hearing Officer and the date, time, and place for the initial prehearing conference. The initial prehearing conference shall be set for a date within fourteen (14) days following the date of the notice of hearing.

## ~~Chapter 5:~~ Chapter 4: General Hearing Procedure

### ~~1.1.2 Notice of Hearing~~

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

### ~~1.1.3 Hearing Officer~~

## 4.1 Hearing Officer

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

The Hearing ~~Panel may delegate to the Hearing Officer authority over~~ 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 ~~and~~, 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:

- e. To administer oaths and affirmations;
- f. To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone, or adjourn a hearing;
- g. 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;
- h. 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;
- ~~i. To supervise and issue orders concerning discovery;~~
- j. To conduct prehearing conferences, status hearings, and Evidentiary Hearings;
- ~~i.~~ k. 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;

l. To rule on and receive evidence;

m. To call upon a Participant to produce further evidence that is material and relevant to any issue;

j.n. To issue protective orders pursuant to ~~Paragraph 1.4.10;~~ and Section 5.5;

o. To issue initial opinions; and

~~k.p.~~ To ensure that hearings are conducted in a full, fair, and impartial manner, that order is maintained, and that unnecessary delay is avoided in the disposition of the proceedings.

~~If the Hearing Panel uses a Hearing Officer to preside over a hearing, the Hearing Panel~~

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

## **4.2 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 CCC quorum. 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.

a. 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 above.

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

~~a) — The Hearing Panel shall receive all filings in a hearing.~~

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 6.7.

2. The Clerk shall send all issuances of the Hearing Officer to the members of the Hearing Panel.

~~1.3.~~ 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 such 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.

- ~~2.4.~~ 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)~~ (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.
- ~~3.5.~~ 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 4.3, 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.

### 4.3 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 6.8) 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.

A non-Participant that has been ordered by the Hearing Officer pursuant to Section 5.3 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 5.3, and (ii) the reasonableness of the Hearing Officer's order to produce or provide Documents, information or testimony.

~~b) 4.4 The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order.~~

## 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 the 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 Paragraph 1.4.6, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within ~~five (5) business~~ 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.



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.

- c. The Hearing Panel, without the participation of any member who is the subject of the motion, shall issue a final ruling on the motion. If the Hearing Officer is recused or disqualified, the Hearing Panel will appoint a replacement Hearing Officer. To ensure fairness to the Participants and expedite completion of the proceeding when a replacement Hearing Officer is appointed after a hearing has commenced, the replacement Hearing Officer may recall any witness or may certify familiarity with any part or all of the record.
- d. If a quorum (as defined in Paragraph ~~1.5.15~~6.8) of the Hearing Panel does not remain after any recusals and rulings on motions for disqualification, then the CCC shall appoint a new member(s) to the Hearing Panel to create a quorum, which new member(s) shall serve on the Hearing Panel through the conclusion of the proceeding but not thereafter. The CCC shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Panel shall be subject to the provisions applicable herein to all Hearing Panel members.

## 4.5 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 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) ~~calendar~~ days of the Technical Advisor's assignment to the proceeding, and Participants to the hearing may raise objections to the Technical Advisor's participation in accordance with Paragraph ~~1.4.4~~.

## 4.6 No Ex Parte Communications

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

- c) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.

b. Exceptions:

1. The proscription in ~~Subparagraph~~subsection (a)(1) does not prohibit members of the ~~Certification~~Staff from communicating with the ~~Respondent~~Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the ~~Certification~~ Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
  2. The proscription in ~~Subparagraph~~subsection (a)(1) ~~also~~ 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.
- ~~b.c.~~ Any member of the Hearing Panel, the Hearing Officer, or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) calendar days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth: i) the date, time, and place of communication, ; ii) a summary of the substance and nature of the communication and all responses thereto, ; and iii) 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.

## 4.7 Appearances

- a. Participants shall file written appearances within seven (7) ~~calendar~~ days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership, or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.
- 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 and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States, or the District of Columbia, or of another Applicable Governmental Authority (in the case of non-U.S.-related proceedings).

- 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.

## 4.8 Failure to Appear or Exercise Diligence

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

## 4.9 Experts

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

### 1.1.4 ~~Protective Orders~~

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

- ~~e) — 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.~~
- ~~d) — 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. A public redacted version of each Document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.~~

~~g.a. Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.~~

## ~~Chapter 6:~~ Chapter 5: Hearing Procedure

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### 5.1 Order of Argument

In all proceedings, Respondent shall open and close.

### 5.2 Right of Participant to Present Evidence

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

### 5.3 Exhibits

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

## 5.4 Witness Attendance at Hearing

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

## 5.5 Protective Orders

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

- f. A public redacted version of each Document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Participant for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.
- g. Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall, while the information is being addressed, close the hearing to all individuals other than those entitled to view the proprietary information in accordance with the protective order.

## 5.6 Admission of Evidence

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

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness's testimony, including all exhibits, schedules, and attachments thereto, into evidence. Other Participants may object to the introduction of the witness's testimony, or any part thereof, as set forth in Paragraph ~~4-5.8.~~

10. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph ~~4-5.11~~ 13, and then for redirect examination in accordance with Paragraph ~~4-5.12.~~

- c. 14. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal, or surrebuttal) when they first take the witness stand.

Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide Documents, information, or testimony issued to a non-Participant, no witness shall be allowed to testify during the hearing unless a Participant has served the witness's written testimony in advance of the hearing in accordance with Paragraph

- d. ~~4-3.1.~~ Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the CCC's policy to discourage witness testimony at a hearing when a Participant has not served the witness's written testimony in advance of the hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.



## **5.7 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.

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

b. 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.

~~a.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.

## **5.8 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.

## **5.9 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 NERC and Regional Entities.
2. The orders, transcripts, exhibits, pleadings, or any other matter contained in the record of other docketed proceedings of NERC and Regional Entities.
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 NERC.
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 as part of ~~the~~ a Participant's filings made pursuant to Paragraph ~~1~~3.1. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested.

~~b.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.

## **5.10 Admissibility of Evidence**

a. Any evidence offered, including that included in a book, paper, or Document pursuant to Section 5.7, 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.

## **5.11 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.

## **5.12 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.

## **5.13 Cross-Examination**

- a. ~~Any~~ Each witness ~~personally attending the hearing~~ shall be tendered for cross-examination subsequent to the admission of the ~~witness's~~ 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.

~~a-c.~~ The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the ~~witness's~~ witness' cross-examination by the other Participant, and prior to the ~~witness's~~ witness' redirect examination pursuant to ~~Paragraph~~ Section 5.14.

~~1.5.12. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.~~

## **5.14 Redirect Examination**

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

## **5.15 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 hearing. ~~Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.~~ Evidentiary Hearing.

### ~~1.1.5 Closing Statements~~

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.

## **Chapter 6: Post-Evidentiary Hearing Procedure**

### **6.1 Briefs**

- a. At the close of the ~~hearing~~Evidentiary Hearing, Participants ~~shall present~~ 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 ~~time~~word limitations applicable to ~~closing~~briefs.

### **6.2 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.

### **6.3 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.

### **6.4 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 registration or certification actions that the Hearing Officer proposes the Hearing Panel require.
- a.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 Critical Electric Infrastructure Information or if any information in the proceeding is the subject of a protective order pursuant to Section 5.5.

## 6.5 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."
- a.b. Exceptions and replies thereto with respect to statements, findings of fact, or conclusions 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.
- b.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.

## 6.6 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.

## **6.7 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 of the reason such evidence was not previously cited as evidence.

## **6.8 Hearing Panel Final Order**

- a. Following the ~~hearing~~receipt of the initial opinion, any exceptions, and replies thereto, and oral argument, if any, the Hearing Panel shall issue its final order.
- ~~e.~~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. ~~not be less than a quorum).~~ The Hearing Panel shall issue its final order within ~~one (1) day~~ thirty (30) days following the ~~close~~ last to occur of the ~~hearing.~~ initial opinion, exceptions, and 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 registration or certification actions 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 Critical Electric Infrastructure Information or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1. Section 5.10. ~~The Hearing Panel shall direct the NERC Director of Compliance to serve the final order on the Participants.~~ 5.
- d.f. The service of the final order shall include a notice informing the Participants of their appeal rights pursuant to Section 400 of the Rules of Procedure. ~~ERO or to FERC, as applicable.~~

## 6.9 The Record

The ~~NERC Director of Compliance~~ 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. Registered entity's request for a hearing;
2. Participant filings ~~made in the matter, a transcript,~~ motions, and responses;
3. Notices, rulings, orders, and other issuances of the Hearing Officer and Hearing Panel;
4. Transcripts;
5. Evidence received;
6. Written comments submitted in lieu of written testimony;
7. Matters officially noticed;
8. Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
9. Pre-Evidentiary Hearing memorandums, briefs, and draft opinions;
10. Post-hearing, ~~including all exhibits presented,~~ pleadings other than briefs;
11. The Hearing Officer's initial opinion;
12. Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 1.13. The Hearing Panel's final order and ~~any other written correspondence or communications between~~ the Clerk's notice transmitting the final order to the Participants ~~and either the Hearing Officer or the Hearing Panel;~~
14. All notices of ex parte communications; and
15. 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.

## **6.10 Appeal**

A [Participant, or the Regional Entity acting as the CEA, may appeal a](#) final order of the Hearing Panel ~~may be appealed~~ to ~~NERC~~[the BOTCC](#) in accordance with ~~the NERC Organization Registration and Certification Manual, Section VI, Paragraph 4 of Rules of Procedure~~ [Appendix 5A](#).

## **Chapter 7: Settlement**

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The Parties may agree to resolve the appeal at any time.

## Chapter 8: Revision History

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NERC-ROP.

<u>Date</u>	<u>Version Number</u>	<u>Comments</u>
<a href="#"><u>03/03/2009</u></a>	<a href="#"><u>1.0</u></a>	<a href="#"><u>Approved by the Compliance and Certification Committee</u></a>
<a href="#"><u>05/06/2009</u></a>	<a href="#"><u>1.0</u></a>	<a href="#"><u>Approved by the Board of Trustees</u></a>