

# Proposed Revisions to Appendix 4E of the NERC Rules of Procedure

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

### Introduction

The North American Electric Reliability Corporation (“NERC”) is proposing revisions to Appendix 4E (Compliance and Certification Committee (“CCC”) Hearing Procedures, Hearing Procedures for Use in Appeals of Certification Matters, and Mediation Procedures) of NERC’s Rules of Procedure (“ROP”). The purpose of the proposed revisions is to align the CCC hearing and mediation procedures with updates to the ROP provisions administering the Compliance Monitoring and Enforcement Program (“CMEP”) that became effective in May 2022, reflecting dissolution of Southwest Power Pool Regional Entity and the Florida Reliability Coordinating Council Regional Entity, and other hearing procedures in Attachment 2 to Appendix 4C of the ROP. The proposed revisions are relatively non-substantive but help to ensure Appendix 4E is consistent and up to date with other provisions of the ROP.

NERC coordinated with the CCC in reviewing the procedures and developing revisions. The CCC approved the procedures for ROP posting at its April 26, 2023 meeting. NERC will also coordinate with the CCC on reviewing and responding to comments received from industry stakeholders on the proposed revisions.

In the United States, NERC proposes to request that these revisions become effective upon approval of the Federal Energy Regulatory Commission (“FERC”).

Consistent with Article XI, Section 2 of the NERC Amended and Restated Bylaws, NERC requests public comment on the proposed revisions to the NERC ROP, Appendix 4E. The 45-day comment period begins on April 30, 2024 and ends on June 14, 2024.

### Overview of Revisions

The proposed revisions to Appendix 4E include the following procedures developed as part of the CCC’s role to act as a hearing body in matters where NERC is the sole Compliance and Enforcement Authority (“CEA”) and as part of the Certification Appeals process and, as directed by the NERC Board, to serve as a mediator in disagreements or disputes between NERC and the Regional Entities concerning NERC performance audits of Regional Entities’ compliance programs:

- CCCPP-004-3 – NERC CCC Hearing Procedures;
- CCCPP-005-2 – NERC CCC Hearing Procedures for Use in Appeals of Certification Matters; and
- CCCPP-006-3 – NERC CCC Mediation Procedures.

Each section below describes the purpose of the procedure and the proposed revisions in more detail. This posting includes clean and redline versions of the procedures. Some formatting changes (e.g., new NERC templates) may not appear in the redline for ease of reading, but changes to language are indicated in red and strikethrough.

**CCCPP-004-3 NERC CCC Hearing Procedures**

Under Section 404 of the ROP and the CCC Charter, the CCC serves as a hearing body in matters when NERC, acting as the CEA when there is not a delegation agreement in effect with a Regional Entity for a geographic area, directly monitors Bulk Power System owners, operators, and users for compliance with Reliability Standards. In such cases, the CCC hears appeals of those Registered Entities wishing to challenge a finding of noncompliance and the imposition of a Penalty for a compliance measure directly administered by NERC. The procedures in CCCPP-004-3 govern those hearing proceedings and are modeled after the hearing procedures in Attachment 2 to Appendix 4C of the ROP.

The proposed revisions in CCCPP-004-3 include the following:

- References to challenges brought by Regional Entities were removed. In addition, the term “CEA” was changed to “NERC” throughout the procedure. With the dissolution of Southwest Power Pool Regional Entity and the Florida Reliability Coordinating Council as a Regional Entity, there are no longer any Regional Entities complying with NERC Reliability Standards. As such, the only instances where the CCC would hear a challenge are from a Registered Entity monitored directly by NERC.
- Citations to relevant FERC orders and NERC filings were added.
- A provision was added clarifying that a Hearing Officer, Technical Advisor, or member of the Hearing Panel shall disclose potential conflicts of interest relevant to the proceedings.
- Terms were updated to align with current nomenclature, such as “Potential Noncompliance” instead of “Possible Violation” and adding “Critical Electric Infrastructure Information” in addition to “Critical Energy Infrastructure Information.”
- The following were capitalized throughout the document consistent with other ROP hearing procedures:
  - Evidentiary Hearing
  - Testimonial Hearing
  - Alleged Violation
- Other minor, clarifying changes for readability or conformance with other ROP hearing procedures were made.

**CCCPP-005-2 NERC CCC Hearing Procedures for Use in Appeals of Certification Matters**

Pursuant to Appendix 5A of the NERC ROP, the CCC serves as a hearing body in appeals for an Organization Certification finding. The procedures in CCCPP-005-2 are incorporated by reference into Appendix 5A of the NERC ROP and govern the appeals process of certification matters before the CCC. Similar to CCCPP-004-3, the procedures are modeled after those in Attachment 2 to Appendix 4C of the ROP. Given the incorporation by reference, the proposed revisions add CCCPP-005-2 in full to Appendix 4E, which had inadvertently omitted CCCPP-005-1 during its last revision in 2019.

The proposed revisions include the following:

- As the last version of CCCPP-005 was from 2010, NERC updated the template of the procedure.
- A majority of the proposed revisions align the certification appeals procedure with CCCP-004-3 and the hearing procedures in Attachment 2 to Appendix 4C to help ensure consistency across hearing procedures. As there have been revisions to both CCCPP-004 and the Attachment 2 hearing procedures since CCCPP-005-1 was approved in 2010, there are a significant number of proposed revisions.
- A provision was added clarifying that a Hearing Officer, Technical Advisor, or member of the Hearing Panel shall disclose potential conflicts of interest relevant to the proceedings.
- Terms were updated to align with current nomenclature and definitions, such as adding “Critical Electric Infrastructure Information” in addition to “Critical Energy Infrastructure Information.” To align with other hearing procedures in the ROP, terms that were duplicative of Appendix 2 to the ROP were removed.
- The following were capitalized throughout the document consistent with other ROP hearing procedures:
  - Evidentiary Hearing
  - Testimonial Hearing
- Other minor, clarifying changes for readability or conformance with other ROP hearing procedures were made.

### **CCCPP-006-3 NERC CCC Mediation Procedures**

As directed by the NERC Board, the CCC may serve as the mediator for any disagreements or disputes between NERC and the Regional Entities concerning NERC performance audits of Regional Entity’s compliance programs (e.g., audits conducted pursuant to NERC Rules of Procedure Appendix 4A). The procedures in CCCPP-006-3 govern such mediation.

The proposed revisions include the following:

- Updates to the introduction language to clarify the CCC’s role in mediation.
- Additional detail was added regarding providing mediator training to CCC members serving as mediators and what CCC members are eligible to serve as mediators:
  - Disinterested parties;
  - Not registered in the Regional Entity subject to the dispute; and
  - Has no other conflict that would prohibit the CCC member from acting as a mediator.
- Other minor, clarifying changes and updates for readability or conformance with other ROP hearing procedures were made.