



**North American Electric Reliability Corporation**

**Compliance Monitoring and Enforcement Program**

**APPENDIX 4C TO THE RULES OF PROCEDURE**

**Effective: May 4, 2016**

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## **Compliance Monitoring and Enforcement Program**

### **COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

#### **1.0 INTRODUCTION**

This Compliance Monitoring and Enforcement Program (“Compliance Program”) is the program to be used by the North American Electric Reliability Corporation (“NERC”) and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States. Compliance Monitoring and Enforcement Programs also will be implemented in Canada consistent with Canadian laws and agreements.

##### **1.1 Definitions**

Capitalized terms used in this Compliance Program shall have the meanings set forth in Appendix 2 of the NERC Rules of Procedure.

#### **2.0 IDENTIFICATION OF ORGANIZATIONS RESPONSIBLE FOR COMPLYING WITH RELIABILITY STANDARDS**

NERC shall register the organizations responsible for complying with Reliability Standards, in accordance with Section 500 of the NERC Rules of Procedure and Appendix 5B, *Statement of Compliance Registry Criteria*. Organizations are responsible to register and to comply with Reliability Standards if they are owners, operators, and users of the Bulk Power System, perform a function listed in the functional types identified in Section II of Appendix 5B, and are material to the Reliable Operation of the Bulk Power System as defined by the criteria and notes in Appendix 5B. Regional Entities shall (i) develop and provide to NERC information to assist NERC to register organizations responsible for complying with Reliability Standards, and (ii) in the event of a Registration appeal to NERC or an Applicable Governmental Authority, provide information requested by NERC concerning how the Registered Entity meets the Registration criteria or is otherwise material to the reliability of the Bulk Power System.

NERC shall notify organizations of their inclusion on the NERC Compliance Registry and shall maintain the NERC Compliance Registry on its web site. NERC shall inform each Registered Entity at the time of Registration of the Reliability Standards that are applicable to reliability functions for which the Registered Entity is registered. Each Registered Entity shall inform NERC or the applicable Regional Entity promptly of changes to the Registered Entity’s Registration information including planned or completed changes in ownership of Bulk Power System Facilities, Registration status, address and other contact information, and name of designated compliance contact. NERC will provide FERC and Applicable Governmental Authorities monthly updates to the NERC Compliance Registry.

NERC and each Regional Entity will designate a contact person(s) and require each Registered Entity to designate a contact person(s) responsible for sending and receiving all necessary information and communications concerning compliance matters. NERC and the applicable Regional Entity will designate where Registered Entities are to send information, data, Mitigation Plans, or any other compliance-related correspondence.

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NERC shall maintain on its website a current listing of Reliability Standards that are applicable to all Registered Entities.

As provided for herein, during the course of compliance monitoring and enforcement activities relating to U.S. entities, NERC may obtain information that it will provide to FERC and, if the information pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such provision of information to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure.

### **3.0 COMPLIANCE MONITORING PROCESSES**

NERC, with input from the Regional Entities, stakeholders, and regulators, shall at least annually identify risk elements and related NERC Reliability Standards and Requirements to be considered in the annual NERC Compliance Monitoring and Enforcement Program Implementation Plan (Implementation Plan). NERC identifies the risk elements using data including, but not limited to: compliance findings; event analysis experience; data analysis; and the expert judgment of NERC and Regional Entity staff, committees, and subcommittees. NERC uses these risk elements to identify and prioritize continent-wide risks to the reliability of the Bulk Power System. These identified risks represent the focus for oversight activities in the upcoming year, and become inputs for developing oversight plans for individual Registered Entities.

The Compliance Enforcement Authority will monitor Registered Entities' compliance with Reliability Standards using the compliance monitoring processes described in this Section. A Compliance Enforcement Authority will determine the type and frequency of application of the compliance monitoring tools appropriate for a particular Registered Entity based on the Registered Entity's specific risks to the reliability of the Bulk Power System.

If a compliance monitoring process described in this Section reveals a potential noncompliance with a Reliability Standard, the Compliance Enforcement Authority will conduct a Preliminary Screen of the potential noncompliance in accordance with Section 3.8. In addition, if the Compliance Enforcement Authority obtains evidence or information of a potential noncompliance with a Reliability Standard through any other means, including but not limited to an Exception Report or other report of noncompliance that a Registered Entity is required to submit in accordance with the terms of a Reliability Standard, the Compliance Enforcement Authority will conduct a Preliminary Screen of the information in accordance with Section 3.8. If the Preliminary Screen results in an affirmative determination with respect to the Preliminary Screen criteria, a Possible Violation exists and the Compliance Enforcement Authority will proceed in accordance with Section 5.0, Enforcement Actions, except as otherwise authorized in these Rules of Procedure.

Registered Entities found in violation of a Reliability Standard will be required to mitigate the violation regardless of any enforcement actions taken.

The compliance monitoring processes in this Section require timely information, reports and data from Registered Entities to effectively monitor compliance with Reliability Standards. The

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Compliance Enforcement Authority has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting copies of Documents, data and information to be made and removing those copies from the Registered Entity's location in accordance with appropriate security procedures conforming to Section 1500 of the Rules of Procedure and other safeguards as appropriate in the circumstances to maintain the confidential or other protected status of the Documents, data and information, such as information held by a governmental entity that is subject to an exemption from disclosure under the United States Freedom of Information Act, or a comparable state or provincial law, that would be lost of the information were placed into the public domain. If Documents, data, information or other reports to determine compliance requested from a Registered Entity are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data.**

Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a Registered Entity believes that a request for Documents, data or information is unreasonable, the Registered Entity may request a written determination from the NERC general counsel.

Any report or other submission of information by a Registered Entity required by the Compliance Program shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity. Electronic signatures are permitted in accordance with processes established by NERC and the Regional Entity. NERC or the Compliance Enforcement Authority may require the signer to provide a statement of the basis of his or her authority to sign on behalf of the Registered Entity.

### **3.1 Compliance Audits**

All Registered Entities are subject to audit for compliance with all Reliability Standards applicable to the functions for which the Registered Entity is registered. Compliance Audits are conducted on the Registered Entity's site to the extent required by NERC Rule of Procedure 403.11.2. Compliance Audit processes for Compliance Audits conducted in the United States shall be based on professional auditing standards recognized in the U.S., which may include for example Generally Accepted Auditing Standards, Generally Accepted Government Auditing Standards and standards sanctioned by the Institute of Internal Auditors. Compliance Audit processes for Compliance Audits conducted outside the U.S. may be based on Canadian or other international standards. All Compliance Audits shall be conducted in accordance with audit guides established for the Reliability Standards included in the Compliance Audit, consistent with accepted auditing guidelines as approved by NERC. The audit guides will be posted on NERC's website.

#### **3.1.1 Compliance Audit Process Steps**

The process steps for a Compliance Audit are as follows:

- The Compliance Enforcement Authority posts the Annual Audit Plan (developed in coordination with NERC). The Compliance Enforcement Authority provides additional information to the Compliance Audit Participants, including Compliance Audit materials,

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coordinating agendas and changes to the Compliance Audit schedule as required. NERC or the Regional Entity provides the Compliance Audit schedules to FERC and to any other Applicable Governmental Authority based upon the agreements in place with the other Applicable Governmental Authority.

- At least ninety (90) days prior to commencement of a regularly scheduled Compliance Audit, the Compliance Enforcement Authority notifies the Registered Entity of the Compliance Audit and the Reliability Standards to be evaluated, identifies the Compliance Audit team members and their recent employment history, and requests data, including a completed NERC pre-Compliance Audit questionnaire. If the Compliance Audit team members change from the time of the original notification, the Compliance Enforcement Authority will promptly notify the Registered Entity of the change and will allow time for the Registered Entity to object to the new Compliance Audit team member(s) (see Section 3.1.5.4).
- The Registered Entity provides to the Compliance Enforcement Authority the required information in the format and by the Required Date specified in the request.
- The Compliance Audit team reviews the submitted information for conformance with the Requirements of the Reliability Standards.
- The Compliance Audit team conducts an exit briefing with the Registered Entity, provides for a review of the Compliance Audit report with the Registered Entity before it is finalized, and completes a Compliance Audit report in accordance with Section 3.1.6.
- If the Compliance Audit Team identifies evidence of a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.

### **3.1.2 Compliance Enforcement Authority Annual Audit Plan and Schedule**

The Compliance Enforcement Authority shall develop an Annual Audit Plan. The Annual Audit Plan of Regional Entities will be included in the Regional Implementation Plans submitted to NERC for review and approval (see Section 4.2). NERC or the Regional Entity provides the Annual Audit Plans to FERC and to any other Applicable Governmental Authority consistent with the agreements in place with the Applicable Governmental Authority.

Prior to October 1 of the year preceding the year covered by the Annual Audit Plan, the Compliance Enforcement Authority shall notify Registered Entities subject to Compliance Audits during the upcoming year of the Compliance Audit schedule. The Compliance Enforcement Authority will give due consideration to any schedule changes requested by Registered Entities for reasonable cause.

Revisions and additions to a Regional Entity Annual Audit Plan shall be communicated to and approved by NERC, and shall be communicated to the Registered Entity in a timely manner

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(normally sixty (60) days in advance) of changes or revisions to scheduled Compliance Audit dates.

### **3.1.3 Frequency of Compliance Audits**

The Compliance Enforcement Authority will perform comprehensive Compliance Audits as required by the NERC Rules of Procedure and based on criteria established by NERC. In addition to scheduled Compliance Audits, the Compliance Enforcement Authority (i) may initiate an unscheduled Compliance Audit of any Registered Entity at any time if the Compliance Enforcement Authority reasonably determines it to be necessary to ensure the Registered Entity's compliance with Reliability Standards, and (ii) shall initiate an unscheduled Compliance Audit if directed by FERC. The Compliance Enforcement Authority shall notify NERC and FERC prior to or on the same date it notifies the Registered Entity that an unscheduled Compliance Audit is being initiated. If NERC initiates the unscheduled Compliance Audit, it shall notify the appropriate Regional Entity or Entities. The Compliance Enforcement Authority shall provide at least ten (10) business days advance notice to the Registered Entity that an unscheduled Compliance Audit is being initiated, which notice shall include identification of the members of the Compliance Audit team.

### **3.1.4 Scope of Compliance Audits**

#### **3.1.4.1 Reliability Standards**

A Compliance Audit shall include those Reliability Standards applicable to the Registered Entity that are determined through the NERC approved risk-based processes described herein, and may include other Reliability Standards applicable to the Registered Entity whether or not they are identified in the Regional Entity's Regional Implementation Plan for the current year.

Regional Entities will tailor the final scope of any Compliance Audit based on the results of the Registered Entity's Inherent Risk Assessment and, if applicable, taking into consideration the results of an Internal Controls Evaluation. Except as otherwise required in the Rules of Procedure, the Compliance Enforcement Authority may use any process herein, in addition to, or in lieu of a Compliance Audit to monitor compliance with Reliability Standards.

#### **3.1.4.2 Period Covered**

The Registered Entity's data and information must show compliance with the Reliability Standards that are the subject of the Compliance Audit for the entire period covered by the Compliance Audit. The Compliance Enforcement Authority will indicate the beginning and End Date of the audit period in its notice of the Compliance Audit. The audit period begins the day after the End Date of the prior Compliance Audit by the Compliance Enforcement Authority (or the later of June 18, 2007 or the date the Registered Entity became subject to Reliability Standards if the Registered Entity has not previously been subject to a Compliance Audit). The audit period will not begin prior to the End Date of the previous Compliance Audit. The Compliance Enforcement Authority may modify the beginning date of the audit period for any given Reliability Standard Requirement based on an intervening compliance monitoring process. The End Date should be a specified date prior to the scheduled start of the Compliance Audit,



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such as the date of the notification issued to the Registered Entity pursuant to Section 3.1.1 or the date that is thirty (30) days following the date of the notification.

The Registered Entity will be expected to demonstrate compliance for the entire period described above. If a Reliability Standard specifies a document retention period that does not cover the entire period described above, the Registered Entity will not be found in noncompliance solely on the basis of the lack of specific information that has rightfully not been retained based on the retention period specified in the Reliability Standard. However, in such cases, the Compliance Enforcement Authority will require the Registered Entity to demonstrate compliance through other means. In addition, if the Compliance Audit team discovers a potential noncompliance occurring subsequent to the End Date, the potential noncompliance will be subject to a Preliminary Screen pursuant to Section 3.8.

### **3.1.4.3 Review of Mitigating Activities**

The Compliance Audit may include a review of any Mitigating Activities which the Registered Entity has not yet completed, for the purpose of determining whether the Registered Entity is making adequate progress towards completion of the Mitigating Activities.

## **3.1.5 Conduct of Compliance Audits**

### **3.1.5.1 Composition of Compliance Audit Teams**

The Compliance Audit team shall be comprised of members whom the Compliance Enforcement Authority has determined have the requisite knowledge, training and skills to conduct the Compliance Audit. The Compliance Audit team may include (i) contractors and industry subject matter experts, (ii) NERC staff members (which may include contractors to NERC), (iii) compliance staff members of other Regional Entities, and (iv) representatives of FERC and other Applicable Governmental Authorities so long as the Registered Entity is subject to the Applicable Governmental Authority's reliability jurisdiction. The Compliance Audit team leader shall be a staff member from the Compliance Enforcement Authority and is responsible for the conduct of the Compliance Audit and preparation of the Compliance Audit report.

### **3.1.5.2 Requirements for Compliance Audit Team Members**

Each Compliance Audit team member must:

- Be free of conflicts of interests in accordance with the Compliance Enforcement Authority policies. Employees or contractors of the Registered Entity being audited shall not be allowed to participate as auditors in the Compliance Audit of the Registered Entity.
- Comply with the NERC Antitrust Compliance Guidelines and shall have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the Compliance Enforcement Authority is applicable.
- Successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the Compliance Audit.

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- Prior to the Compliance Audit, the Compliance Enforcement Authority shall provide confirmation to the Registered Entity that all Compliance Audit team members have executed confidentiality agreements or acknowledgements.

### **3.1.5.3 Compliance Audit Observers and Other Attendees**

In any Regional Entity Compliance Audit of a Registered Entity, in addition to the Compliance Audit team members, the following may participate as observers: (i) NERC Staff (which may include contractors to NERC); (ii) other members of the Regional Entity's Compliance Staff; (iii) with the permission of the Regional Entity, Compliance Staff members of other Regional Entities; and (iv) representatives of FERC and of other Applicable Governmental Authorities so long as the Registered Entity is subject to the Applicable Governmental Authority's reliability jurisdiction. Any members of NERC staff, Regional Entity Compliance Staff, or Compliance Staffs of other Regional Entities or representatives of FERC or other Applicable Governmental Authorities who are not Compliance Audit team members identified pursuant to Section 3.1.1 are observers.

In addition, at the request of the Registered Entity being audited, the Regional Entity may allow attendance at the Compliance Audit by: (1) representatives of corporate affiliates of the Registered Entity being audited that are Registered Entities or that provide compliance services, support or oversight to the Registered Entity being audited, and (2) representatives of Registered Entities whose compliance activities are conducted by the Registered Entity being audited or by the same corporate entity that conducts the compliance activities of the Registered Entity being audited (e.g., representatives of other members of a Joint Registration Organization or of participants in a Coordinated Functional Registration pursuant to Section 500 of the Rules of Procedure). Each such additional attendee must execute a confidentiality agreement approved by the Regional Entity.

Compliance Audit observers and attendees are not Compliance Audit team members and do not participate in conducting the Compliance Audit or in making Compliance Audit findings and determinations.

The Compliance Audit team leader or other staff of the Regional Entity conducting the Compliance Audit will communicate in advance with any observers or other attendees to ensure there are no undue disruptions to the Compliance Audit, such as space limitations, no conflicts of interest, and no other considerations that in the judgment of the Compliance Audit team leader may be detrimental to the conduct and quality of the Compliance Audit. If the Compliance Audit team leader identifies any such issues, he/she shall work with the proposed observers or attendees to facilitate observation in a less disruptive manner; or, alternatively, the Regional Entity Compliance staff will work with the proposed observers or attendees to schedule their participation in, observation of, or attendance at a different Compliance Audit in which such issues are not presented.

### **3.1.5.4 Registered Entity Objections to Compliance Audit Team**

A Registered Entity subject to a Compliance Audit may object to any member of the Compliance Audit team on grounds of a conflict of interest or the existence of other circumstances that could

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interfere with the team member's impartial performance of his or her duties. Any such objections must be provided in writing to the Compliance Enforcement Authority no later than fifteen (15) days prior to the start of on-site Compliance Audit work. This fifteen (15) day requirement shall not apply where a Compliance Audit team member has been appointed less than twenty (20) days prior to the start of on-site Compliance Audit work, in which case the Registered Entity must provide any objections to the Compliance Enforcement Authority within five (5) business days after receiving notice of the appointment of the Compliance Audit team member.

In the case of an unscheduled Compliance Audit pursuant to Section 3.1.3, the Registered Entity must provide any objections to the Compliance Enforcement Authority at least five (5) business days prior to the start of on-site Compliance Audit work for the unscheduled Compliance Audit.

The Compliance Enforcement Authority will make a final determination on whether the member will participate in the Compliance Audit of the Registered Entity. Nothing in Section 3.1 shall be read to limit the participation of NERC staff in the Compliance Audit or to limit the participation of FERC staff in a Compliance Audit of a Registered Entity, or involving a portion of the Bulk Power System, over which FERC has jurisdiction.

### **3.1.6 Compliance Audit Reports**

The Compliance Audit team shall develop a draft Compliance Audit report that shall include a description of the objective, scope, and methodology of the Compliance Audit; identify any evidence of potential noncompliance with Reliability Standards by the Registered Entity found by the Compliance Audit team; identify any Remedial Action Directives, Mitigation Plans or other Mitigating Activities which have been completed or pending in the year of the Compliance Audit; and identify if any Confidential Information has been redacted. The report may also state areas of concern and recommendations identified by the Compliance Audit team. The draft report will be provided to the Registered Entity for comment.

The Compliance Audit team considers corrections based on comments of the Registered Entity, finalizes the Compliance Audit report, and provides the Registered Entity with a copy of the final report on or before the date the final report is provided to NERC. The Compliance Enforcement Authority provides the final report to NERC, which in turn provides the report to FERC if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which the other Applicable Governmental Authority has jurisdiction. The provision of the final Compliance Audit report to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure. Work papers and other documentation associated with the Compliance Audit shall be maintained by the Compliance Enforcement Authority in accordance with NERC or Regional Entity requirements.

NERC will not publicly post the final Compliance Audit report for at least five (5) business days following receipt. If the Compliance Audit report identifies any Possible Violations of one or more Reliability Standards, the final Compliance Audit report, or pertinent part thereof identifying the Possible Violations, shall not be released to the public by NERC until (i) the Possible Violation is dismissed prior to becoming a Confirmed Violation, or (ii) NERC submits a

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Notice of Penalty to FERC or other Applicable Governmental Authority, or (iii) the Registered Entity executes a settlement agreement with the Compliance Enforcement Authority pursuant to Section 5.6.

Information deemed by a Compliance Enforcement Authority or the Registered Entity as Critical Energy Infrastructure Information or Confidential Information shall be redacted from any public reports.

### **3.2 Self-Certifications**

The Compliance Enforcement Authority may require Registered Entities to self-certify their compliance with Reliability Standards.

#### **3.2.1 Self-Certification Process Steps**

The process steps for the Self-Certification process are as follows:

- The Compliance Enforcement Authority posts and updates the reporting schedule containing the applicable reporting periods and informs Registered Entities. The Compliance Enforcement Authority and NERC will ensure that the appropriate Reliability Standards, compliance procedures, and required submittal forms for the Reliability Standards being evaluated are maintained and available.
- The Compliance Enforcement Authority requests the Registered Entity to make a Self-Certification within the advance notice period specified by the Reliability Standard. If the Reliability Standard does not specify the advance notice period, this request will be issued in a timely manner (normally thirty (30) days advance notice).
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the form and manner, and by the Required Date, specified by the Compliance Enforcement Authority. The Self-Certification response may state that (i) the Registered Entity is in compliance with the Reliability Standard Requirement, (ii) the Registered Entity is not in compliance with the Reliability Standard Requirement, (iii) the Registered Entity does not own Facilities that are subject to the Reliability Standard Requirement, or (iv) the Reliability Standard requirement is not applicable to the Registered Entity.
- At a minimum, the Compliance Enforcement Authority reviews Self-Certifications of non-compliance and Self-Certifications in which the Registered Entity has responded that it does not own Facilities that are subject to the Reliability Standard Requirement or that the Reliability Standard Requirement is not applicable to the Registered Entity and the Compliance Enforcement Authority may request additional data and/or information if necessary.
- If the Compliance Enforcement Authority's review of the Self-Certification indicates a potential noncompliance with a Reliability Standard by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.

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Receipt of a Self-Certification by the Compliance Enforcement Authority shall not be construed as a finding by the Compliance Enforcement Authority that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement.

### **3.3 Spot Checks**

Spot Checks will be conducted by the Compliance Enforcement Authority. Spot Checks may be initiated at the discretion of the Compliance Enforcement Authority or as directed by NERC at any time to verify or confirm Self-Certifications, Self-Reports, and Periodic Data Submittals. Spot Checks may also be random or may be initiated in response to events, as described in the Reliability Standards, or to operating problems, or system events.

#### **3.3.1 Spot Check Process Steps**

The process steps for Spot Checking are as follows:

- The Compliance Enforcement Authority shall issue a notification letter to the Registered Entity that a Spot Check will be performed, the reason for the Spot Check, and the scope of the Spot Check including the Reliability Standard Requirements that will be covered, in accordance with the advance notice period specified by the Reliability Standard. If the Reliability Standard Requirement does not specify an advance notice period, any information submittal request made by the Compliance Enforcement Authority will allow at least twenty (20) days for the Registered Entity to submit the information or make it available for review.
- The Compliance Enforcement Authority, as part of the notification package, shall provide the Registered Entity with the names and employment histories of the persons who will be conducting the Spot Check. The Compliance Enforcement Authority shall provide confirmation to the Registered Entity that the members of the Spot Check team have executed confidentiality agreements or acknowledgements. The Registered Entity may object to inclusion of any individual on the Spot Check team on the grounds specified in Section 3.1.5.4. Any such objections must be submitted to the Compliance Enforcement Authority by the later of (i) five (5) business days before the information being requested by the Compliance Enforcement Authority is submitted and (ii) five (5) business days after the Registered Entity is notified of the persons on the Spot Check team. Nothing in Section 3.1 shall be read to limit the participation of NERC staff in a Spot Check or to limit the participation of FERC staff in a Spot Check of a Registered Entity, or involving a portion of the Bulk Power System, over which FERC has jurisdiction.
- The Spot Check may require submission of data, documentation, and information and an on-site review.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Date specified in the request.

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- The Spot Check Team conducts a review of the information submitted to determine compliance with the Reliability Standards Requirements and may request additional data and/or information if necessary.
- If the Spot Check team's review of the information submitted indicates a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, the Compliance Enforcement Authority conducts a Preliminary Screen pursuant to Section 3.8.
- The Spot Check team prepares a draft Spot Check report and provides the Registered Entity ten (10) business days to comment on the draft report.
- The Spot Check team considers any corrections based on the Registered Entity's comments, finalizes the Spot Check report and provides it to the Registered Entity and to NERC.
- If the Compliance Enforcement Authority is a Regional Entity, the Regional Entity provides the final report to NERC. NERC provides the report to FERC if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the Bulk Power System over which the other Applicable Governmental Authority has jurisdiction. The provision of the report to FERC or to another Applicable Governmental Authority shall be in accordance with Section 8.0, Reporting and Disclosure.
- The report will not be publicly posted, or otherwise made publicly available, by the Regional Entity or by NERC.

### **3.4 Compliance Investigations**

A Compliance Investigation may be initiated at any time by the Compliance Enforcement Authority or NERC in response to a system disturbance, Complaint, or any potential noncompliance with a Reliability Standard identified by any other means.

Compliance Investigations will generally be led by the Regional Entity's staff. NERC reserves the right to assume the leadership of a Compliance Investigation.<sup>1</sup> The Regional Entity shall not be entitled to appeal NERC's decision to lead a Compliance Investigation.

Compliance Investigations are confidential, unless FERC directs that a Compliance Investigation should be public or that certain information obtained in the Compliance Investigation should be

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<sup>1</sup>Examples of situations in which NERC may decide to lead a Compliance Investigation include: (i) to assure consistency in investigative processes, (ii) to coordinate Compliance Investigations into matters that may cross Regional Entity boundaries, (iii) where the potential noncompliance is related to the Regional Entity or one of its affiliates, divisions, committees or subordinate structures, or (iv) where the Regional Entity determines it cannot conduct the Compliance Investigation.

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publicly disclosed. Confirmed Violations resulting from a Compliance Investigation will be made public.

FERC or another Applicable Governmental Authority may initiate an investigation at any time in response to a system disturbance, Complaint, or potential noncompliance with a Reliability Standard identified by any other means, or for any other purpose authorized by law. Investigations initiated by FERC or another Applicable Governmental Authority shall be governed by and conducted pursuant to the statutory authority and rules of the Applicable Governmental Authority and not the procedures set forth herein. If an Applicable Governmental Authority other than FERC initiates an investigation of a U.S.-related matter, NERC shall provide notice to FERC of the investigation prior to disclosure of any non-public U.S.-related compliance information regarding the matter to be investigated to the other Applicable Governmental Authority. NERC's notice to FERC shall identify the other Applicable Governmental Authority, shall describe the nature of the proposed disclosures to the other Applicable Governmental Authority, and shall state the procedures NERC will utilize in connection with the Compliance Investigation to ensure compliance with the requirements of 18 C.F.R. §39.7(b)(4) concerning nondisclosure of violations and Alleged Violations.

If FERC initiates an investigation of a non-U.S.-related matter, NERC shall provide notice of the investigation to the Applicable Governmental Authority having jurisdiction over the Registered Entity or the portion of the Bulk Power System that is the subject of the investigation prior to disclosure to FERC of any non-public non-U.S.-related compliance information regarding the matter to be investigated. NERC's notice to the other Applicable Governmental Authority shall describe the nature of the proposed disclosures to FERC and shall state the procedures NERC will utilize in connection with the investigation to ensure compliance with regulations of the other Applicable Governmental Authority or other law of the applicable jurisdiction concerning disclosure of non-public compliance information.

### **3.4.1 Compliance Investigation Process Steps**

The process steps for a Compliance Investigation are as follows:

- The Compliance Enforcement Authority becomes aware of circumstances indicating a Reliability Standard may have been or is being violated and determines whether a Compliance Investigation is warranted. Within three (3) business days of the decision to initiate a Compliance Investigation, the Compliance Enforcement Authority: (i) notifies the Registered Entity of the initiation and initial scope of the Compliance Investigation, (ii) instructs the Registered Entity to preserve all records and information relevant to the Compliance Investigation, and (iii) provides a copy of the notice to NERC. The Compliance Investigation may be expanded beyond the initial scope based on information obtained by the Compliance Enforcement Authority after initiation of the Compliance Investigation.
- NERC assigns a NERC staff member to the Compliance Investigation as an observer or team member and to serve as a single point of contact for communications with NERC, and notifies the Registered Entity as to whether the NERC staff member is acting as an observer or as a team member. Within three (3) business days after NERC receives notice of the decision to initiate a Compliance Investigation, NERC will notify FERC and

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each other Applicable Governmental Authority having jurisdiction over a Registered Entity or a portion of the Bulk Power System to which the Compliance Investigation relates. Any such notice to FERC or to another Applicable Governmental Authority will be provided in accordance with Section 8.0, Reporting and Disclosure.

The Compliance Enforcement Authority requests data or documentation and provides a list of individuals on the Compliance Investigation team and their recent employment history. Within ten (10) business days of receiving the notification of a Compliance Investigation, a Registered Entity subject to a Compliance Investigation may object to any individual member of the Compliance Investigation team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties; however, the Registered Entity may not object to participation by NERC, by FERC staff or by staff of another Applicable Governmental Authority having reliability jurisdiction over the Registered Entity in the Compliance Investigation. Such objections must be provided in writing to the Compliance Enforcement Authority within such ten (10) business day period. The Compliance Enforcement Authority will make a final determination as to whether the individual will participate in the Compliance Investigation of the Registered Entity.

- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Date as specified in the request. If information is not received in the time and format requested, the Compliance Enforcement Authority may initiate the steps in **Process for Non-Submittal of Requested Data in Attachment 1**.
- If necessary, the Compliance Investigation may include an on-site visit with interviews of the appropriate personnel and review of data.
- The Compliance Enforcement Authority may require the Registered Entity to (i) provide a verification under oath by an officer, employee, attorney or other authorized representative of the Registered Entity attesting to the accuracy, completeness and truth of the Registered Entity's responses to the Compliance Enforcement Authority's requests for information; and (ii) produce one or more officers, employees or other authorized representatives of the Registered Entity who are familiar with the matter(s) that are the subject of the Compliance Investigation, to be interviewed or to provide testimony under oath concerning such matters. The Compliance Enforcement Authority shall determine in each case (i) whether representatives of the Registered Entity shall be allowed to be present when an interview is taking place or testimony is being taken, and (ii) whether, and by what method, the interview or testimony shall be recorded; provided, that counsel for the person being interviewed or giving testimony may be present when the interview is being conducted or testimony is being taken (regardless of whether such counsel also represents the Registered Entity).
- The Compliance Enforcement Authority reviews information to determine compliance with the Reliability Standards. The Compliance Enforcement Authority may request additional data and/or information, if necessary.



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- The Compliance Enforcement Authority completes the assessment of compliance with the Reliability Standard, which may include review of a Mitigation Plan or Mitigating Activities, and provides a report of the Compliance Investigation to NERC and the Registered Entity.
- If the Compliance Enforcement Authority, at any time during the Compliance Investigation, identifies a potential noncompliance with a Reliability Standard Requirement by a Registered Entity, the Compliance Enforcement Authority shall conduct a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.
- If the Compliance Enforcement Authority determines that no violation occurred, it shall send the Registered Entity and NERC a notice that the Compliance Investigation has been completed. NERC will in turn notify FERC and, if the Compliance Investigation pertained to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, will also notify such other Applicable Governmental Authority. Any such notice to FERC or to another Applicable Governmental Authority shall be provided in accordance with Section 8.0, Reporting and Disclosure.

### **3.5 Self-Reports**

Self-Reports are encouraged at the time a Registered Entity becomes aware (i) that it has, or may have, violated a Reliability Standard, or (ii) the Violation Severity Level of a previously reported violation has changed. Self-Reports of a violation of a Reliability Standard are encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule in the Compliance Program or whether the violation is determined outside the pre-defined reporting schedule. If possible, and without delaying the Self-Report, a Self-Report may include the actions that have been taken or will be taken to resolve the violation.

#### **3.5.1 Self-Report Process Steps**

The process steps for Self-Reports are as follows:

- The Compliance Enforcement Authority posts the Self-Report submittal forms and ensures they are maintained and available.
- The Registered Entity provides the Self-Report information to the Compliance Enforcement Authority.
- The Compliance Enforcement Authority reviews the information to evaluate compliance with the Reliability Standards and may request that the Registered Entity provide clarification or additional data and/or information.
- The Compliance Enforcement Authority conducts a Preliminary Screen of the Self-Report information in accordance with Section 3.8.

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### **3.5A Self-Logging**

Registered Entities found by the Compliance Enforcement Authority to be eligible, after a formal review of internal controls, pursuant to procedures adopted by NERC and the Regional Entities and provided to Applicable Governmental Authorities, may be granted approval by the Compliance Enforcement Authority to log noncompliance for subsequent review in lieu of submitting a Self-Report. The log shall be limited to noncompliance posing a minimal risk to the reliability of the Bulk Power System unless otherwise authorized by an Applicable Governmental Authority. Approved Registered Entities shall maintain a log with a detailed description of the noncompliance, the risk assessment, and the mitigating activities completed or to be completed. There is a rebuttable presumption that noncompliance logged in this manner will be resolved as a Compliance Exception. The Compliance Enforcement Authority will review the logs at least every three (3) months, with the possibility of extending the review period to six (6) months, and will make the logs available for review, upon request, by NERC and Applicable Governmental Authorities.

### **3.6 Periodic Data Submittals**

The Compliance Enforcement Authority requires Periodic Data Submittals in accordance with the schedule stated in the applicable Reliability Standard, or as established by the Compliance Enforcement Authority, or on an as-needed basis. The Compliance Enforcement Authority shall issue requests for Periodic Data Submittals to Registered Entities within at least the minimum advance notice period specified by the applicable Reliability Standard. If the Reliability Standard does not specify an advance notice period, the Compliance Enforcement Authority will normally issue this request with no less than twenty (20) days advance notice.

#### **3.6.1 Periodic Data Submittals Process Steps**

The process steps for Periodic Data Submittal are as follows:

- The Compliance Enforcement Authority posts the current data reporting schedule on its website and informs Registered Entities of changes and/or updates. The Compliance Enforcement Authority ensures that the required submittal forms for the Reliability Standards being evaluated are maintained and available.
- The Compliance Enforcement Authority makes a request for a Periodic Data Submittal.
- The Registered Entity provides the required information to the Compliance Enforcement Authority in the format and by the Required Date specified in the request.
- The Compliance Enforcement Authority reviews the data submittal to determine compliance with the Reliability Standards and may request additional data and/or information if necessary.
- If the Compliance Enforcement Authority's review of the data submittal indicates a potential noncompliance with a Reliability Standard Requirement by the Registered Entity, the Compliance Enforcement Authority performs a Preliminary Screen of the potential noncompliance in accordance with Section 3.8.

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Receipt of a Periodic Data Submittal by the Compliance Enforcement Authority shall not be construed as a finding by the Compliance Enforcement Authority that the Registered Entity is compliant with, not compliant with, subject to, or not subject to, the Reliability Standard Requirement.

### **3.7 Complaints**

Either NERC or Regional Entities may receive Complaints alleging violations of a Reliability Standard. The Compliance Enforcement Authority will conduct a review of each Complaint it receives to determine if the Complaint provides sufficient basis for initiating another compliance monitoring or enforcement process, except that NERC will review any Complaint where the Compliance Enforcement Authority determines it cannot conduct the review, or if the complainant wishes to remain anonymous or specifically requests NERC to conduct the review of the Complaint.

If the Complaint is submitted to NERC, NERC will forward the information to the Regional Entity, as appropriate.

All anonymous Complaints will be reviewed and any resulting compliance monitoring or enforcement processes conducted by NERC will be conducted in accordance with Section 3.7.2 to prevent disclosure of the identity of the complainant.

The Compliance Enforcement Authority conducting the review will determine if the Complaint may be closed as a result of the initial review and assessment or if it provides sufficient basis for initiating another compliance monitoring or enforcement process. The Compliance Enforcement Authority will report the results of its review of the Complaint to NERC. If, as a result of the initial review of the Complaint, the Compliance Enforcement Authority determines that initiating another compliance monitoring or enforcement process is warranted, the Compliance Enforcement Authority shall conduct that compliance monitoring or enforcement process in accordance with the applicable provisions of Section 3.0.

#### **3.7.1 Complaint Process Steps**

The detailed process steps for the Complaint process are as follows:

- The complainant notifies NERC or a Regional Entity using the NERC compliance hotline, submitting a NERC Complaint reporting form, or by other means. NERC and the Regional Entity shall post a link to the Complaint reporting form on their respective websites. The Complaint should include sufficient information to enable NERC or the Regional Entity to make an assessment regarding whether the initiation of another compliance monitoring or enforcement process is warranted. NERC or the Regional Entity may not act on a Complaint if the Complaint is incomplete and does not include sufficient information.
- If the Compliance Enforcement Authority determines that initiation of another compliance monitoring or enforcement process is warranted, it initiates the compliance monitoring or enforcement process in accordance with the applicable provisions of Section 3.0 or Section 5.0; otherwise it takes no further action. The Compliance

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Enforcement Authority notifies the complainant, the Registered Entity, and NERC of the initiation of the compliance monitoring or enforcement process. If the Compliance Enforcement Authority determines that initiation of another compliance monitoring or enforcement process is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

- The Compliance Enforcement Authority fully documents the Complaint and the Complaint review, and whether another compliance monitoring or enforcement process is warranted.

### **3.7.2 Anonymous Complainant Notification Procedure**

A complainant who believes, or has information indicating, there has been a violation of a Reliability Standard, and wishes to remain anonymous, can report the information and request that the complainant's identity not be disclosed.<sup>2</sup> All Complaints lodged by a person or entity requesting that the complainant's identity not be disclosed shall be investigated by NERC following the procedural steps described in Section 3.7.1. Anonymous Complaints received by a Regional Entity will either be directed to NERC or the Regional Entity will collect and forward the information to NERC, at the Regional Entity's discretion. Neither NERC nor the Regional Entity shall disclose the identity of any person or entity reporting information indicating violations of Reliability Standards to NERC or to a Regional Entity that requests that his/her/its identity not be revealed. The identity of the complainant will only be known by NERC and in the case where a Regional Entity collects the information, by NERC and the Regional Entity. If the Compliance Enforcement Authority determines that initiation of another compliance monitoring and enforcement process is not warranted, it will notify the complainant, NERC, and the Registered Entity that no further action will be taken.

### **3.8 Preliminary Screen**

If the Compliance Enforcement Authority obtains information, through one of the compliance monitoring processes described in this Section 3.0 or by any other means, that indicates a potential noncompliance with a Reliability Standard Requirement, the Compliance Enforcement Authority shall conduct a Preliminary Screen of the potential noncompliance. The Preliminary Screen shall be conducted within five (5) business days after the Compliance Enforcement Authority identifies the potential noncompliance, except that (i) if the Compliance Enforcement Authority identifies the potential noncompliance during a Compliance Audit, the Preliminary Screen shall be conducted immediately following the exit briefing of the Registered Entity, and (ii) if the Compliance Enforcement Authority identifies the potential noncompliance during a Compliance Investigation, the Preliminary Screen shall be conducted immediately after the Registered Entity is first notified of the potential noncompliance identified by the Compliance Investigation.

A Preliminary Screen shall be limited to determining whether:

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<sup>2</sup>NERC has established a Compliance Hotline that may be used for the submission of Complaints by persons or entities that do not want his/her/its identity disclosed (see [www.nerc.com](http://www.nerc.com) for additional information).

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- (1) the entity allegedly involved in the potential noncompliance is a Registered Entity;
- (2) the Reliability Standard Requirement to which the evidence of potential noncompliance relates is applicable to the entity, has been approved by the Applicable Governmental Authority, and is in effect at the time of the potential noncompliance; and
- (3) if known, the potential noncompliance is not a duplicate of a Possible Violation or Alleged Violation that is currently being processed.

If the Preliminary Screen results in an affirmative determination with respect to the above criteria, a Possible Violation exists and the Compliance Enforcement Authority shall proceed in accordance with Section 5.0, unless the Compliance Exception Process is used in accordance with Section 3A.1.

The Compliance Enforcement authority shall maintain records of all Preliminary Screens.

### **3A.0 ENFORCEMENT DISCRETION**

Not all instances of noncompliance with Reliability Standards require the same type of processing and documentation. Noncompliance that does not pose a serious or substantial risk to the reliability of the Bulk Power System may be resolved through streamlined processes, when appropriate, consistent with processes approved by NERC and Applicable Governmental Authorities.

Absolute adherence to the enforcement process set out in section 5.0 may not be the most appropriate, efficient, or desirable means by which to achieve the overall objectives of the Compliance Program for NERC, the Compliance Enforcement Authority, and the Registered Entity.

The Find, Fix, Track and Report and the Compliance Exception processes are alternatives to the process outlined in section 5.0.

#### **3A.1 Compliance Exception Process**

The Compliance Exception process may be used to address noncompliance posing a minimal risk to the reliability of the Bulk Power System, unless an Applicable Governmental Authority authorizes expansion of the program. Compliance Exceptions are not included in a Registered Entity's compliance history for penalty purposes. However, a Compliance Enforcement Authority must (a) consider a history of Compliance Exceptions where the failure to fully remediate the underlying compliance matter contributes to a subsequent serious or substantial noncompliance and (b) assess subsequent noncompliance to determine whether a Registered Entity should continue to qualify for Compliance Exception treatment.

The Compliance Exception process requires that:

- (1) The Registered Entity mitigates the noncompliance; and

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- (2) The facts and circumstances of the noncompliance, including those associated with the determination of the level of risk and the related mitigation, are available for review by NERC and Applicable Governmental Authorities; and
- (3) The noncompliance is tracked and analyzed as necessary and appropriate to identify emerging risks and other pertinent trends; and
- (4) The Registered Entity is provided the opportunity to object to the use of the Compliance Exception Process to resolution of the noncompliance.

Changes to the processes and principles articulated in this section must be approved by Applicable Governmental Authorities.

### **4.0 ANNUAL IMPLEMENTATION PLANS**

#### **4.1 NERC Compliance Monitoring and Enforcement Program Implementation Plan**

NERC will maintain and update the NERC Implementation Plan, to be carried out by Compliance Enforcement Authorities in the performance of their responsibilities and duties in implementing the NERC Compliance Monitoring and Enforcement Program. The NERC Implementation Plan will be provided to the Regional Entities on or about September 1 of each year and will identify risk elements related to the Reliability Standards to be considered for compliance oversight by the Compliance Enforcement Authority. The NERC Implementation Plan will be posted on the NERC website. NERC may update and revise the NERC Implementation Plan during the course of the year as necessary. Regional Entities have discretion to make modifications to the NERC Implementation Plan with respect to individual Registered Entities.

#### **4.2 Regional Implementation Plan**

By on or about October 1 of each year, each Regional Entity will submit a Regional Implementation Plan for the following calendar year to NERC for review and approval. The Regional Implementation Plan and the Regional Entity's other relevant Compliance Program documents shall be posted on the Regional Entity's website. The Regional Entity may update and revise the Regional Entity Implementation Plan during the course of the year as necessary, with NERC approval, or as required by NERC. Regional Entities have discretion to make modifications to the Regional Entity Implementation Plan with respect to individual Registered Entities.

### **5.0 ENFORCEMENT ACTIONS**

The Compliance Enforcement Authority shall determine (i) whether there have been violations of Reliability Standards by Registered Entities within the Compliance Enforcement Authority's Area of Responsibility, and (ii) if so, the appropriate Mitigating Activities, and Penalties and sanctions, as prescribed in the NERC *Sanction Guidelines* (Appendix 4B to the NERC Rules of Procedure). NERC will work to achieve consistency in the application of the *Sanction*

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*Guidelines* by Regional Entities by direct oversight and review of Penalties and sanctions, and each Regional Entity shall provide to NERC such information as is requested by NERC concerning any Penalty, sanction, or Mitigating Activities imposed by the Regional Entity.

The imposition and acceptance of Penalties and sanctions shall not be considered an acceptable alternative to any Registered Entity's continuing obligation to comply with the Reliability Standards.

The Compliance Enforcement Authority has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting copies be made of Documents, data and information and removing those copies from the Registered Entity's location in accordance with appropriate security procedures conforming to Section 1500 of the Rules of Procedure and other safeguards as appropriate in the circumstances to maintain the confidential or other protected status of the Documents, data and information, such as information held by a governmental entity that is subject to an exemption from disclosure under the United States Freedom of Information Act, or a comparable state or provincial law, that would be lost if the information were placed into the public domain. Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section's process requirements. If a Registered Entity believes that a request for Documents, data or information is unreasonable, the Registered Entity may request a written determination from the NERC general counsel. If Documents, data or information requested from a Registered Entity in connection with an enforcement process are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data**.

The following enforcement process is undertaken by the Compliance Enforcement Authority following identification of a Possible Violation of a Reliability Standard Requirement by a Registered Entity. However, under the circumstances presented by some Possible Violations, Alleged Violations or Confirmed Violations, absolute adherence to the following enforcement process, to the exclusion of other approaches, may not be the most appropriate, efficient or desirable means by which to achieve the overall objectives of the Compliance Program for NERC, the Compliance Enforcement Authority and the Registered Entity. In such circumstances, other approaches may be considered and employed. The Registered Entity shall be entitled to object to the use of any such other approach.

### **5.1 Notice of Possible Violation**

If a Preliminary Screen conducted in accordance with Section 3.8 results in an affirmative determination with respect to the Preliminary Screen criteria, a Possible Violation exists. Unless the Compliance Exception process in Section 3A.1 is used to address the Possible Violation, the Compliance Enforcement Authority shall issue a Notice of Possible Violation to the Registered Entity. The Notice of Possible Violation shall:

- (i) state that a Possible Violation by the Registered Entity has been identified;
- (ii) provide a brief description of the Possible Violation, including the Reliability Standard requirement(s) and, if known, the date(s) involved; and

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- (iii) instruct the Registered Entity to retain and preserve all data and records relating to the Possible Violation.

Upon issuing a Notice of Possible Violation or receiving information on a Compliance Exception (whether resulting from Self-Logging or not), the Compliance Enforcement Authority reports the Possible Violation to NERC. NERC reports the Possible Violation to the Board of Trustees Compliance Committee and submits a Notice of Possible Violation, or information on a Compliance Exception (whether resulting from Self-Logging or not), on a confidential basis, to FERC and to other Applicable Governmental Authorities, as applicable. Any such notice to FERC or to other Applicable Governmental Authorities shall be provided in accordance with Section 8.0, Reporting and Disclosure.

### **5.2 Assessment of Possible Violation**

After issuing a Notice of Possible Violation, the Compliance Enforcement Authority shall conduct an assessment of the facts and circumstances surrounding the Possible Violation to determine whether evidence exists to indicate the Registered Entity has violated the Reliability Standard Requirement(s) identified in the Notice of Possible Violation, or whether the Possible Violation should be dismissed. The Compliance Enforcement Authority may consider any additional information to demonstrate that the Possible Violation should be dismissed or modified or resolved through the Find, Fix, Track and Report process in section 5.2A.

#### **5.2A FFT Process**

The Find, Fix, Track and Report process may be used to address noncompliance posing a minimal or moderate risk to the reliability of the Bulk Power System.

The FFT process requires that:

- (1) The Registered Entity mitigates the noncompliance; and
- (2) The facts and circumstances of the noncompliance, including those associated with the determination of the level of risk and the related mitigation, are available for review by NERC and Applicable Governmental Authorities; and
- (3) FFTs are tracked and analyzed as necessary by NERC as appropriate to identify emerging risks and other pertinent trends; and
- (4) The Registered Entity is provided the opportunity to object to the use of the FFT process to resolution of the noncompliance.

### **5.3 Notification to Registered Entity of Alleged Violation**

If the Compliance Enforcement Authority determines, based on an assessment of the facts and circumstances surrounding a Possible Violation, that evidence exists to indicate a Registered Entity has violated a Reliability Standard, the Compliance Enforcement Authority shall notify the Registered Entity of the determination of the Alleged Violation, through issuance of a Notice of Alleged Violation and Proposed Penalty or Sanction or similar notification, and shall report the Alleged Violation to NERC. The notification of Alleged Violation shall be transmitted by



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the Compliance Enforcement Authority to the Registered Entity by electronic mail and shall be effective as of the date of the electronic mail message from the Compliance Enforcement Authority transmitting the notification. The notification of Alleged Violation shall include, at a minimum:

- (i) the Reliability Standard and Requirement(s) thereof the Registered Entity has allegedly violated,
- (ii) the date and time the Alleged Violation occurred (or is occurring),
- (iii) the facts the Compliance Enforcement Authority believes demonstrate or constitute the Alleged Violation,
- (iv) the proposed Penalty or sanction, if any, determined by the Compliance Enforcement Authority to be applicable to the Alleged Violation in accordance with the NERC *Sanction Guidelines*, including an explanation of the basis on which the particular Penalty or sanction was determined to be applicable,
- (v) notice that the Registered Entity shall, within thirty (30) days, elect one of the following options or the Compliance Enforcement Authority will deem the Registered Entity to have accepted the determination of violation and proposed Penalty or sanction:
  - 1. agree with the Alleged Violation and proposed Penalty or sanction, and agree to submit and implement a Mitigation Plan or other Mitigating Activities to correct the violation and its underlying causes, and may provide a response in accordance with Section 5.4, or
  - 2. agree with the Alleged Violation and agree to submit and implement a Mitigation Plan or other Mitigating Activities to eliminate the violation and its underlying causes, but contest the proposed Penalty or sanction, and may provide a response in accordance with Section 5.4, or
  - 3. contest both the Alleged Violation and proposed Penalty or sanction,
- (vi) notice that the Registered Entity may elect to submit a Mitigation Plan while contesting the Alleged Violation and/or the proposed Penalty or sanction, and that submission of a Mitigation Plan will not waive the Registered Entity's right to contest the Alleged Violation and/or the proposed Penalty or sanction;
- (vii) notice that if the Registered Entity elects to contest the Alleged Violation and/or the proposed Penalty or sanction, the Registered Entity may elect to have a hearing conducted pursuant to either (i) the short-form procedure in Section 1.3.4, or (ii) the general hearing procedure, in **Attachment 2, Hearing Procedures**, and
- (viii) required procedures to submit the Registered Entity's Mitigation Plan.

NERC shall notify FERC of the Alleged Violation and, if the Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable

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Governmental Authority has jurisdiction, shall notify such other Applicable Governmental Authority of the Alleged Violation, within two (2) business days of receipt from the Compliance Enforcement Authority. Any such notice to FERC or to another Applicable Governmental Authority shall be provided in accordance with Section 8.0, Reporting and Disclosure.

### **5.4 Registered Entity Response**

If the Registered Entity agrees with, does not contest, or does not respond to the notification of Alleged Violation within thirty (30) days following the date of the notification of Alleged Violation by electronic mail, it shall be deemed to have accepted the Compliance Enforcement Authority's determination of violation and Penalty or sanction, and the Compliance Enforcement Authority shall issue a Notice of Confirmed Violation or similar notification to the Registered Entity and shall report the Confirmed Violation to NERC. At the time of notifying the Registered Entity of the Confirmed Violation, the Compliance Enforcement Authority shall also provide notice to the Registered Entity that it may provide a written explanatory statement to accompany the filing with FERC and public posting of the Confirmed Violation. The Registered Entity's statement must include the name, title, and signature of an officer, employee, attorney or other authorized representative of the Registered Entity.

If the Registered Entity contests the Alleged Violation or the proposed Penalty or sanction, the Registered Entity shall submit to the Compliance Enforcement Authority, within thirty (30) days following the date of the notification of the Alleged Violation, a response explaining its position, signed by an officer, employee, attorney or other authorized representative together with any supporting information and documents. The Compliance Enforcement Authority shall schedule a conference with the Registered Entity within ten (10) business days after receipt of the response. If the Compliance Enforcement Authority and the Registered Entity are unable to resolve all issues within forty (40) days after the Registered Entity's response, the Registered Entity may request a hearing. The Compliance Enforcement Authority and the Registered Entity may agree in writing to extend the forty (40) day period. If no hearing request is made prior to the end of the forty (40) day period, the violation will become a Confirmed Violation.

If a hearing is requested the Compliance Enforcement Authority shall initiate the hearing process in accordance with **Attachment 2, Hearing Procedures**.

### **5.5 Hearing Process for Compliance Hearings**

The Compliance Enforcement Authority hearing process is set forth in **Attachment 2**.

### **5.6 Settlement Process**

The Registered Entity can request settlement negotiations at any time, including prior to the issuance of notification of an Alleged Violation; however, the Compliance Enforcement Authority may decline to engage in or to continue settlement negotiations after a Possible Violation or Alleged Violation becomes a Confirmed Violation in accordance with Section 5.4. The Registered Entity or the Compliance Enforcement Authority may terminate settlement negotiations at any time. Where the Compliance Enforcement Authority has agreed to engage in settlement negotiations, the running of the time period specified in Section 5.4 for the Registered Entity to respond to the notification of Alleged Violation is suspended until

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settlement negotiations are concluded or terminate. NERC shall be notified of all settlement negotiations and may participate in any settlement negotiations. All settlement negotiations will be confidential until such time as the settlement is approved by NERC. For all settlement discussions, the Compliance Enforcement Authority shall require the Registered Entity to designate an individual(s) authorized to negotiate on its behalf.

The Compliance Enforcement Authority may consider all relevant facts in settlement negotiations. A settlement agreement must ensure that the reliability of the Bulk Power System will not be compromised by the settlement and that a violation of a Reliability Standard will not occur as a result of the settlement. All settlement agreements must provide, if the settlement is approved, for waiver of the Registered Entity's right to further hearings and appeal.

The Compliance Enforcement Authority and the Registered Entity will execute a settlement agreement setting forth the final settlement terms including all Penalties, sanctions and mitigation requirements provided for in the final settlement.

The Compliance Enforcement Authority shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. The Registered Entity may submit an explanatory statement, conforming to the requirements of Section 5.4, to be included in the settlement agreement and which shall be subject to consent of the Compliance Enforcement Authority as part of the settlement agreement. The settlement agreement may state that the Registered Entity (i) admits the Alleged Violation, or (ii) does not contest the Alleged Violation, or (iii) neither admits nor denies the Alleged Violation, but may not state that the Registered Entity denies the Alleged Violation. Based on this review, NERC will either approve the settlement or reject the settlement and notify the Compliance Enforcement Authority of any changes to the settlement that would result in approval, and within five (5) business days the Compliance Enforcement Authority will in turn notify the Registered Entity. If NERC rejects the settlement, the Compliance Enforcement Authority will attempt to negotiate a revised settlement agreement with the Registered Entity including any changes to the settlement specified by NERC.

NERC will report the approved settlement of the violation to FERC and, if the settlement relates to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority. Any such report shall be provided in accordance with Section 8.0, Reporting and Disclosure. NERC will also publicly post the violation settled (regardless of whether the settlement includes or does not include an admission of a violation) and the resulting Penalty or sanction provided for in the settlement. This posting shall include a copy of the settlement or a description of the terms of the settlement, and a copy of any Mitigation Plan that is agreed to as part of the settlement, with any Critical Energy Infrastructure Information and Confidential Information redacted. The Compliance Enforcement Authority will issue a letter setting forth the final settlement terms including all Penalties, sanctions and mitigation requirements provided for in the final settlement. Postings of Notices of Confirmed Violations are addressed in Section 8.0.

### **5.7 NERC Appeal Process**

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A Registered Entity or the Compliance Enforcement Authority may appeal the decision of a Regional Entity Hearing Body to NERC, as provided for in NERC Rules of Procedure, Section 409.

On appeal, NERC shall either affirm the decision or remand to the Compliance Enforcement Authority with reasons for its remand, which may include a direction to the Compliance Enforcement Authority to revise the decision. If NERC affirms the decision, the Compliance Enforcement Authority shall issue a Notice of Confirmed Violation to the Registered Entity. If NERC directs the Compliance Enforcement Authority to revise the decision, a Registered Entity that was the subject of the decision or the Compliance Enforcement Authority may reopen the proceeding on any issue whose resolution is affected by NERC's directive, irrespective of whether the issue was previously litigated, settled or unopposed.

### **5.8 Notification of Confirmed Violation**

A Notice or other notification of Confirmed Violation issued to a Registered Entity pursuant to Sections 5.4 or 5.7 shall include a detailed record of the enforcement action, including the facts and circumstances analyzed and the information on which the Compliance Enforcement Authority relied in proposing a Penalty or sanction.

After NERC receives a notification of Confirmed Violation from the Compliance Enforcement Authority, NERC shall review the notification of Confirmed Violation and utilize the information therein to prepare a Notice of Penalty. NERC shall advise the Compliance Enforcement Authority of any additional detail or further development of the factual findings that NERC deems necessary before the Notice of Penalty can be issued.

NERC may direct the Compliance Enforcement Authority to revise a Penalty determination, in which case the Registered Entity subject to the Penalty, or the Compliance Enforcement Authority, as applicable, may reopen the proceedings on any issue on which the Penalty was based, irrespective of whether the issue was previously litigated, settled or unopposed.

### **5.9 Notice of Penalty**

If (i) the Registered Entity accepts the Notice of Alleged Violation and Proposed Penalty or Sanction or other notification of enforcement action from the Compliance Enforcement Authority, or (ii) a decision has been entered affirming an Alleged Violation and all appeals have been concluded, or (iii) a settlement agreement has been reached addressing the Possible Violation or Alleged Violation, NERC shall submit a Notice of Penalty to the Applicable Governmental Authority and provide a copy to the Compliance Enforcement Authority. The Compliance Enforcement Authority shall inform the Registered Entity that a Notice of Penalty is pending public filing, at least five (5) business days prior to the public filing and posting. NERC will file the Notice of Penalty with FERC and any other Applicable Governmental Authority no sooner than five (5) business days after NERC approves the Notice of Confirmed Violation or settlement agreement.

NERC shall file the Notice of Penalty with FERC and, if the Possible Violation or Alleged Violation pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable

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Governmental Authority. Any such filing with FERC or with another Applicable Governmental Authority shall be made in accordance with Section 8.0, Reporting and Disclosure. NERC will include with the Notice of Penalty any statement provided by the Registered Entity as set forth in Sections 5.4 or 5.6.

The Penalty or sanction will be effective upon expiration of the thirty (30) day period following filing with FERC of the Notice of Penalty (or such longer period as ordered by FERC) or, if FERC decides to review the Penalty or sanction, upon final determination by FERC.

### **5.10 Completion of Enforcement Action**

Following FERC approval of, or expiration of the period for action by FERC on, a Notice of Penalty filed by NERC, the Compliance Enforcement Authority shall issue a payment due notice and invoice to the Registered Entity. The payment due notice and invoice shall state the payment due date which shall be thirty (30) days from the date of the payment due notice and invoice. Upon payment of all monetary Penalties by the Registered Entity, the Compliance Enforcement Authority shall issue a notice confirming payment to the Registered Entity, and provide a copy of the notice confirming payment to NERC. Following the completion by the Registered Entity of all requirements set forth in the Notice of Penalty and any settlement agreement, the Compliance Enforcement Authority shall issue the Registered Entity a Notice of Completion of Enforcement Action.

If the Compliance Enforcement Authority dismisses or disposes of a Possible Violation or Alleged Violation that does not become a Confirmed Violation, the Compliance Enforcement Authority shall issue a Notice of Completion of Enforcement Action to the Registered Entity.

A copy of the Notice of Completion of Enforcement Action shall also be provided to NERC by the Compliance Enforcement Authority.

The Notice of Completion of Enforcement Action shall include a release of any data retention directives that were previously issued to the Registered Entity in connection with the matter. Upon issuance of a Notice of Completion of Enforcement Action, tracking of the violation is completed, and the enforcement action shall be closed.

### **5.11 Special Procedures for an Enforcement Action Against an ISO/RTO Where the Monetary Penalty May be Allocated by the ISO/RTO to Other Entities**

A Registered Entity that is an ISO/RTO may have authority to allocate, pursuant to a proceeding under section 205 of the Federal Power Act, some or all of a monetary Penalty imposed on the ISO/RTO for violation of a Reliability Standard, to another entity(ies) that the Compliance Enforcement Authority, NERC or FERC determines was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation of the Reliability Standard. This section sets forth the procedures to be followed when an ISO/RTO that has received a Notice of Possible Violation requests a determination by the Compliance Enforcement Authority that another entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation (if confirmed) identified in the Notice of Possible Violation.

The procedures in this section apply only where an ISO/RTO requests a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that

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caused or contributed to the violation (if confirmed) identified in a Notice of Possible Violation issued to the ISO/RTO, and shall not apply where the ISO/RTO anticipates or is entitled to allocate or assign a monetary Penalty among all, or an identified segment of, its members, customers or users, pursuant to general cost recovery provisions in the ISO/RTO's tariffs, agreements or governance documents and regardless of actual fault or responsibility of the entities to whom the monetary Penalty is issued for the violation.

### **5.11.1 ISO/RTO's Request for Determination and Notice to Other Entity(ies)**

In order to request the Compliance Enforcement Authority to make a determination in an enforcement action that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to a violation (if confirmed) of a Reliability Standard for which the ISO/RTO has received a Notice of Possible Violation, the ISO/RTO shall, no later than ten (10) business days after receiving the Notice of Possible Violation or such additional period as the Compliance Enforcement Authority may permit for good cause shown (i) submit a written request to the Compliance Enforcement Authority and (ii) issue a notice to the specified other entity(ies), each conforming to the requirements of the following two paragraphs of this section.

The ISO/RTO's written request to the Compliance Enforcement Authority shall contain:

- (1) the Compliance Enforcement Authority's identification number for the Notice of Possible Violation;
- (2) a statement that the ISO/RTO is requesting that the Compliance Enforcement Authority make a determination that a specified other entity(ies) was responsible, in whole or in part, for actions and omissions that caused or contributed to the violation (if confirmed) identified in the Notice of Possible Violation;
- (3) the name(s) of, and contact information for, the specified other entity(ies), including name(s) and address(es) of the entity(ies) and name(s), telephone number(s) and e-mail address(es) of the contact person(s) for the other entity(ies);
- (4) a statement that the ISO/RTO has authority to allocate some or all of the monetary Penalty to the specified other entity(ies), including citations to any supporting tariffs, agreements, orders, or governance documents, and a brief explanation to show that the specified other entity(ies) are subject to the tariffs, agreements, orders and/or other governance documents; and
- (5) a brief statement of the factual basis on which the ISO/RTO contends in good faith that the specified other entity(ies) was responsible for actions or omissions that caused or contributed to the violation (if confirmed) identified in the Notice of Possible Violation. As the enforcement action proceeds, the ISO/RTO may supplement, expand or modify this explanation as additional information becomes available during the course of the enforcement action.

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The ISO/RTO's notice to the specified other entity(ies) shall contain the following information:

- (1) The name of the specified other entity, and the name, telephone number and e-mail address of the specified other entity's contact person (person to whom the notice is being sent);
- (2) A statement that the ISO/RTO has received a Notice of Possible Violation from the Compliance Enforcement Authority, the Compliance Enforcement Authority's identification number for the Notice of Possible Violation, and contact information for the Compliance Enforcement Authority;
- (3) A statement that the ISO/RTO has requested the Compliance Enforcement Authority to determine that the specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation identified in the Notice of Possible Violation, and that the ISO/RTO intends to seek to allocate to the specified other entity all or a portion of any monetary Penalty that is imposed on the ISO/RTO for the violation (if confirmed), if the Compliance Enforcement Authority determines the specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation identified in the Notice of Possible Violation.
- (4) A statement that the specified other entity should promptly contact the Compliance Enforcement Authority for further information and to request to participate in the enforcement action relating to the Notice of Possible Violation.

The ISO/RTO shall cause its notice to the specified other entity(ies) to be delivered to the other entity(ies) by next-business-day delivery using a delivery service that provides verification of delivery. The ISO/RTO shall provide the Compliance Enforcement Authority with (i) a copy of the notice sent to each specified other entity, and (ii) a copy of the delivery service's verification of delivery of the notice to each specified other entity.

### **5.11.2 Responses of the Compliance Enforcement Authority and the Specified Other Entity(ies) to ISO/RTO's Request for Determination and Notice**

If (i) the ISO/RTO's written request meets the requirements of Section 5.11.1, the Compliance Enforcement Authority shall provide the specified other entity(ies) with a copy of a non-disclosure agreement (which shall include the specified other entity's agreement to comply with the confidentiality requirements of the Compliance Program and of Section 1500 of the NERC Rules of Procedure) that must be executed to obtain a copy of the Notice of Possible Violation and a copy of the ISO/RTO's written request to the Compliance Enforcement Authority for a determination that the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation (if confirmed) identified in the Notice of Possible Violation. In addition, the Compliance Enforcement Authority shall advise the specified other entity(ies) that: (i) the specified other entity(ies) may elect not to participate in the enforcement action, and may submit a written statement to the Compliance Enforcement Authority stating why the specified other entity is not participating and providing any facts or

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information the other entity wishes to provide concerning the occurrence(s) that are the subject of the Notice of Possible Violation, and (ii) whether or not the specified other entity elects to participate in the enforcement action, the Compliance Enforcement Authority may determine that the specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation identified in the Notice of Possible Violation.

If the ISO/RTO's written request meets the requirements of Section 5.11.1, then the specified other entity(ies) shall be permitted to participate in the enforcement action concerning the Notice of Possible Violation if the other entity(ies) submits a written request to participate to the Compliance Enforcement Authority and executes a non-disclosure agreement in the form provided by the Compliance Enforcement Authority. The specified other entity must submit its written request to participate prior to, as applicable (i) the date of execution of a settlement agreement between the Compliance Enforcement Authority and the ISO/RTO, or (ii) the date that the Compliance Enforcement Authority issues a Notice of Confirmed Violation to the ISO/RTO. The Compliance Enforcement Authority is not required to suspend or delay the enforcement process pending receipt of a request to participate from the specified other entity(ies), nor to revisit or redo any aspect of the enforcement process that has already occurred prior to receipt of the specified other entity(ies)'s written request to participate; however, upon receipt of a written request to participate and executed nondisclosure agreement from the specified other entity(ies), the Compliance Enforcement Authority shall suspend activity in the enforcement action until it has acted on the request to participate.

Upon receiving the specified other entity's written request to participate in the enforcement action and the other entity's executed nondisclosure agreement, the Compliance Enforcement Authority shall issue a notice to the ISO/RTO and to the specified other entity stating that the specified other entity is allowed to participate in the enforcement action. The Compliance Enforcement Authority's notice that the specified other entity is allowed to participate in the enforcement action shall include a copy of the Notice of Possible Violation originally issued to the ISO/RTO and, if a Notice of Alleged Violation and Proposed Penalty or Sanction or similar notification has been issued to the ISO/RTO, a copy of the latter Notice or notification. Upon receiving notice from the Compliance Enforcement Authority that it is allowed to participate in the enforcement action, the specified other entity may participate in the same manner as the ISO/RTO and shall be subject to all applicable requirements and deadlines specified in the NERC Compliance Program.

If the ISO/RO fails to meet the requirements of Section 5.11.1, the Compliance Enforcement Authority shall issue a notice to the ISO/RTO and to the specified other entity(ies) stating that the Compliance Enforcement Authority will not make the determination requested by the ISO/RTO and therefore the specified other entity will not be allowed to participate in the enforcement action relating to the Notice of Possible Violation.

### **5.11.3 Compliance Enforcement Authority's Notices to NERC**

(a) Within five (5) business days after receiving an ISO/RTO's written request for a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to a violation identified in the Notice of Possible Violation issued to the ISO/RTO, the Compliance Enforcement Authority shall provide to NERC (i) a copy



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of the ISO/RTO's written request for a determination that a specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation identified in the Notice of Possible Violation, and (ii) the ISO/RTO's notice to the specified other entity(ies).

(b) On the same day that the Compliance Enforcement Authority issues a notice pursuant to Section 5.11.2 stating, as applicable, that (i) it will or will not make the determination requested by the ISO/RTO or (ii) the specified other entity(ies) are or are not allowed to participate in the enforcement action, the Compliance Enforcement Authority shall provide a copy of the notice to NERC and shall send a copy of the notice to any other entities that have been allowed to participate in the enforcement action.

### **5.11.4 Compliance Enforcement Authority's Determination**

After issuing a notice pursuant to Section 5.11.3 that it will make a determination as to whether the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation that is the subject of the Notice of Possible Violation issued to the ISO/RTO, then, if the enforcement action is not resolved by a settlement agreement stating whether or not the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation identified in the Notice of Possible Violation, the Compliance Enforcement Authority shall make, and include in its proposed Notice of Penalty, its determination of whether or not the specified other entity(ies) were responsible, in whole or in part, for actions or omissions that caused or contributed to the violation. The Compliance Enforcement Authority's determination shall only address whether or not the specified other entity(ies) was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation, and shall not address whether all or a part of any monetary Penalty imposed on the ISO/RTO for the violation should be allocated or assigned to the specified other entity(ies).

The specified other entity(ies) shall be entitled to request a hearing on the Compliance Enforcement Authority's determination pursuant to Section 1.3.1 of Attachment 2 of this Appendix 4C, and to appeal the Hearing Body's decision pursuant to Section 1.7.10 of Attachment 2 to this Appendix 4C, as though the specified other entity(ies) were a Registered Entity(ies).

### **5.11.5 Procedure Where ISO/RTO Members Are Allowed to Directly Assign Monetary Penalties for Violations of Reliability Standards to the ISO/RTO**

If an ISO/RTO's tariffs, agreement or other relevant governance documents establish procedures that allow members of the ISO/RTO to directly assign to the ISO/RTO monetary Penalties imposed on the ISO/RTO member(s) for violations of Reliability Standards, then the ISO/RTO members may follow the same requirements of Sections 5.11.1 and 5.11.2 as are applicable to an ISO/RTO under those sections, and the ISO/RTO shall be afforded the same rights to participate in the enforcement action as a specified other entity under Sections 5.11.1, 5.11.2, and 5.11.4, subject to the same requirements and conditions specified in those sections. In such

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circumstances, the ISO/RTO shall be deemed to be a “specified other entity” for purposes of this Section.

### **5.11.6 Obligation to Pay Monetary Penalty**

(a) The ISO/RTO shall be obligated and responsible to pay any monetary Penalty imposed by the Compliance Enforcement Authority on the ISO/RTO for violation of a Reliability Standard, in accordance with Section 5.10, (i) regardless of whether the Compliance Enforcement Authority has made a determination that a specified other entity was responsible, in whole or in part, for actions or omissions that caused or contributed to the violation, (ii) without regard to the timing of any separate proceeding(s) in which the ISO/RTO seeks to allocate some or all of the monetary Penalty to a specified other entity(ies), and (iii) without regard to whether or when the ISO/RTO receives payment from the specified other entity(ies).

(b) In an enforcement action subject to Section 5.11.5, the ISO/RTO member(s) shall be obligated and responsible to pay any monetary Penalty imposed by the Compliance Enforcement Authority on the ISO/RTO member(s) for violation of a Reliability Standard, regardless of whether or when the ISO/RTO members receive payment or reimbursement from the ISO/RTO.

## **6.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS**

The Compliance Enforcement Authority has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting copies be made of Documents, data and information and removing those copies from the Registered Entity’s location in accordance with appropriate security procedures conforming to Section 1500 of the Rules of Procedure and other safeguards as appropriate in the circumstances to maintain the confidential or other protected status of the Documents, data and information, such as information held by a governmental entity that is subject to an exemption from disclosure under the United States Freedom of Information Act, or a comparable state or provincial law, that would be lost if the information were placed into the public domain. Parties engaged in the process described in this section should consult with each other on the data and information that would be appropriate for effectively addressing this section’s process requirements. If a Registered Entity believes that a request for Documents, data or information is unreasonable, the Registered Entity may request a written determination from the NERC general counsel. If Documents, data, information or other reports requested from a Registered Entity in connection with development of a Mitigation Plan or other Mitigating Activities are not received by the Required Date, the Compliance Enforcement Authority may execute the steps described in **Attachment 1, Process for Non-submittal of Requested Data.**

### **6.1 Requirement for Submission of Mitigation Plans**

A Registered Entity found to be in violation of a Reliability Standard shall file with the Compliance Enforcement Authority (i) a proposed Mitigation Plan to correct the violation, or (ii) a description of how the violation has been mitigated, and any requests for extensions of Mitigation Plans or a report of completed mitigation. A Registered Entity may also submit a proposed Mitigation Plan at any other time, including with a Self-Report, or, without admitting it

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has committed a violation, in response to a Notice of Possible Violation or notification of Alleged Violation.

### **6.2 Contents of Mitigation Plans**

A Mitigation Plan shall include the following information:

- The Registered Entity's point of contact for the Mitigation Plan, who shall be a person (i) responsible for filing the Mitigation Plan, (ii) technically knowledgeable regarding the Mitigation Plan, and (iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan. This person may be the Registered Entity's point of contact described in Section 2.0.
- The Possible, Alleged or Confirmed Violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the Possible, Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the Possible, Alleged or Confirmed Violation(s).
- The Registered Entity's action plan to correct the cause of the Possible, Alleged or Confirmed Violation.
- The Registered Entity's action plan to prevent recurrence of the Possible, Alleged or Confirmed Violation(s).
- The anticipated impact of the Mitigation Plan on the Bulk Power System reliability and an action plan to mitigate any increased risk to the reliability of the Bulk Power System while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the Possible, Alleged or Confirmed Violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate.

The Mitigation Plan shall be signed by an officer, employee, attorney or other authorized representative of the Registered Entity.

### **6.3 Timetable for Completion of Mitigation Plans**

The Mitigation Plan shall be completed in accordance with its terms. At the Compliance Enforcement Authority's discretion, the completion deadline may be extended for good cause

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including, but not limited to: (i) operational issues such as the inability to schedule an outage to complete Mitigating Activities, and (ii) construction requirements in the Mitigation Plan that require longer to complete than originally anticipated. If the Mitigation Plan extends beyond the next applicable reporting/assessment period, sanctions for any violation of the applicable Reliability Standard(s) occurring during the implementation period will be held in abeyance and will be waived if the Mitigation Plan is satisfactorily completed.

Any violations assessed during the period of time the accepted Mitigation Plan is being implemented will be recorded by the Compliance Enforcement Authority with associated sanctions or Penalties. Regional Entities will report any findings of violations recorded during this time period to NERC with the notation that the Registered Entity is working under an accepted Mitigation Plan with an extended completion date with Penalties and sanctions held in abeyance until completion of the Mitigation Plan. Upon completion of the accepted Mitigation Plan in accordance with Section 6.6, the Compliance Enforcement Authority will notify the Registered Entity that any findings of violations of the applicable Reliability Standard during the period that the accepted Mitigation Plan was being implemented have been waived and no Penalties or sanctions will apply. Regional Entities will also notify NERC of any such waivers of violations of Reliability Standards.

A request for an extension of any milestone or the completion date of the accepted Mitigation Plan by a Registered Entity must be received by the Compliance Enforcement Authority at least five (5) business days before the original milestone or completion date. The Compliance Enforcement Authority may accept a request for an extension or modification of a Mitigation Plan if the Compliance Enforcement Authority determines the request is justified, and shall notify NERC of the extension or modification within five (5) business days.

If a Mitigation Plan submitted by a Registered Entity is rejected by the Regional Entity acting as Compliance Enforcement Authority or the Hearing Body in accordance with Section 6.5, the Registered Entity shall be subject to any findings of violation of the applicable Reliability Standards during the period the Mitigation Plan was under consideration and to imposition of any Penalties or sanctions imposed for such violations.

### **6.4 Submission of Mitigation Plans**

A Mitigation Plan may be submitted at any time but shall have been submitted by the Registered Entity within thirty (30) days after being served the notification of Alleged Violation, if the Registered Entity does not contest the Alleged Violation and Penalty or sanction, or shall be reflected in a settlement agreement or Notice of Penalty. If the Registered Entity disputes the Alleged Violation or the Penalty or sanction, the Registered Entity shall submit its Mitigation Plan within ten (10) business days following issuance of the written decision of the Hearing Body, unless the Registered Entity elects to appeal the Hearing Body's determination to NERC. The Registered Entity may choose to submit a Mitigation Plan while it contests an Alleged Violation or Penalty or sanction or in response to a Notice of Possible Violation; such submission shall not be deemed an admission of a violation or the appropriateness of a Penalty or sanction. If the Registered Entity has not yet submitted a Mitigation Plan, or the Registered Entity submits a Mitigation Plan but it is rejected by the Regional Entity acting as Compliance Enforcement Authority or the Hearing Body in accordance with Section 6.5, any subsequent violations of the Reliability Standard identified by the Compliance Enforcement Authority

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before the Hearing Body renders its decision will not be held in abeyance and will be considered as repeat violations of the Reliability Standard.

### **6.5 Review and Acceptance or Rejection of Proposed Mitigation Plans**

Unless the time period is extended by the Compliance Enforcement Authority, it will complete its review of the Mitigation Plan, and will issue a written statement accepting or rejecting the Mitigation Plan, within thirty (30) days of receipt; otherwise the Mitigation Plan will be deemed accepted. In order to extend the initial or an extended period for review of the Mitigation Plan, the Compliance Enforcement Authority shall, within the initial or extended review period, notify the Registered Entity (and NERC if NERC is not the Compliance Enforcement Authority) that the review period is being extended and identify the date by which the Compliance Enforcement Authority will complete its review of the Mitigation Plan. The Compliance Enforcement Authority's extension notice shall also state that if the Compliance Enforcement Authority has not issued a notice by the end of the extended review period either stating that the Compliance Enforcement Authority accepts or rejects the proposed Mitigation Plan or further extending the Compliance Enforcement Authority's period for review of the Mitigation Plan, the Mitigation Plan will be deemed accepted.

If the Compliance Enforcement Authority rejects a Mitigation Plan, the Compliance Enforcement Authority will provide the Registered Entity with a written statement describing the reasons for the rejection, and will require the Registered Entity to submit a revised Mitigation Plan by the Required Date. The Compliance Enforcement Authority will notify the Registered Entity within ten (10) business days after receipt of a revised Mitigation Plan whether the Compliance Enforcement Authority will accept or reject the revised Mitigation Plan and provide a written statement describing the reasons for rejection and the Required Date for the second revised Mitigation Plan. If the second review results in rejection of the Mitigation Plan, the Registered Entity may request a hearing in accordance with the Hearing Procedures, by submitting to the Compliance Enforcement Authority a written request for hearing including an explanation of why the Mitigation Plan should be accepted. After the hearing is completed, the Compliance Enforcement Authority will issue a written statement accepting a Mitigation Plan it deems as appropriate.

Within five (5) business days after a Regional Entity accepts a Mitigation Plan, the Regional Entity (i) will notify NERC and the Registered Entity of the acceptance of the Mitigation Plan and (ii) will provide the accepted Mitigation Plan to NERC. NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from the Regional Entity, will notify the Regional Entity and the Registered Entity, on a contemporaneous basis, as to whether the Mitigation Plan is approved or disapproved by NERC. If NERC disapproves a Mitigation Plan that was accepted by the Regional Entity, NERC shall state its reasons for the rejection, and may state the changes to the Mitigation Plan that would result in approval by NERC. The Registered Entity shall not be subject to findings of violations of the specific Requirements of Reliability Standards that are the subject of the Mitigation Plan or to imposition of Penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.

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If a Registered Entity submits a Mitigation Plan prior to issuance of a notification of Confirmed Violation or entry into a settlement, such as with a Self-Report or in response to a Notice of Possible Violation, the Regional Entity may provisionally accept the proposed Mitigation Plan. If the Regional Entity subsequently determines, upon completing its assessment of the Possible Violation, that the facts and circumstances are different than those on which the accepted Mitigation Plan was based, the Regional Entity may, by notice to the Registered Entity and to NERC, require the Registered Entity to submit a revised Mitigation Plan that fully addresses the facts and circumstances of the violation. The Regional Entity's notice shall state the additional or different facts and circumstances that need to be addressed in the revised Mitigation Plan. The Registered Entity shall submit a revised Mitigation Plan in response to the notice within thirty (30) days following the date of the notice, unless the Regional Entity specifies or allows a longer time period. The Registered Entity's revised Mitigation Plan shall be subject to review and acceptance or rejection by the Regional Entity and by NERC in accordance with this Section 6.5. If the Regional Entity issues a notification of Confirmed Violation or enters into a settlement with the Registered Entity and does not identify a need to request modifications to the provisionally-accepted Mitigation Plan based on additional or different facts and circumstances, the Regional Entity shall issue a notice to the Registered Entity, with a copy to NERC, stating that the "provisional" nature of the acceptance is terminated and the acceptance is final. The Regional Entity shall issue such notice within five (5) business days of issuance of the Notice of Confirmed Violation or entry into the settlement.

NERC will submit to FERC, as non-public information, an approved Mitigation Plan relating to violations of Reliability Standards within seven (7) business days after NERC approves the Mitigation Plan. NERC shall publicly post the approved Mitigation Plan as part of the public posting of the related Notice of Penalty in accordance with Section 8.0 or settlement in accordance with Section 5.6.

### **6.6 Completion/Confirmation of Implementation of Mitigation Plans**

The Registered Entity shall provide updates at least quarterly to the Compliance Enforcement Authority on the progress of the Mitigation Plan. The Compliance Enforcement Authority will track the Mitigation Plan to completion and may conduct on-site visits and review status during Compliance Audit to monitor Mitigation Plan implementation.

Upon completion of the Mitigation Plan, the Registered Entity shall provide to the Compliance Enforcement Authority certification, signed by an officer, employee, attorney or other authorized representative of the Registered Entity, that all required actions described in the Mitigation Plan have been completed and shall include data or information sufficient for the Compliance Enforcement Authority to verify completion. The Compliance Enforcement Authority shall request such data or information and conduct follow-up assessments, on-site or other Spot Checks, or Compliance Audits as it deems necessary to verify that all required actions in the Mitigation Plan have been completed.

In the event all required actions in the Mitigation Plan are not completed within the applicable deadline including any extensions of the original deadline granted under Section 6.3, any violation(s) of a Reliability Standard subject to the Mitigation Plan that occurred during the originally scheduled time period for completion will be enforced immediately and a new Mitigation Plan must be submitted for acceptance by the Compliance Enforcement Authority. In

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addition, the Compliance Enforcement Authority may conduct a Compliance Audit of, or issue a Remedial Action Directive to, the Registered Entity.

Upon request by NERC, the Regional Entity will provide to NERC the quarterly status reports and such other information as NERC requests. The Regional Entity will notify NERC when each Mitigation Plan is verified to have been completed.

### **6.7 Recordkeeping**

The Compliance Enforcement Authority will maintain a record containing the following information for each Mitigation Plan:

- Name of Registered Entity.
- The date of the violation.
- Monitoring method by which the violation was detected, i.e., Self-Certification, Self-Report, Compliance Audit, Compliance Investigation, Complaint, etc.
- Date(s) of Notice of Possible Violation and notification of Alleged Violation (if applicable).
- Expected and actual completion date of the Mitigation Plan and major milestones.
- Expected and actual completion date for each required action.
- Accepted changes to milestones, completion dates, or scope of Mitigation Plan.
- Registered Entity's completion notice and data submitted as evidence of completion.

## **7.0 REMEDIAL ACTION DIRECTIVES**

The Compliance Enforcement Authority may issue a Remedial Action Directive when such action is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat. A Remedial Action Directive may include, but is not limited to, any of the following: specifying operating or planning criteria, limits, or limitations; requiring specific system studies; defining operating practices or guidelines; requiring confirmation of data, practices, or procedures through inspection testing or other methods; requiring specific training for personnel; requiring development of specific operating plans; directing a Registered Entity to develop and comply with a plan to remediate a violation; imposing increased auditing or additional training requirements; and requiring a Registered Entity to cease an activity that may constitute a violation of a Reliability Standard.

A Remedial Action Directive may be issued to a Registered Entity at any time, including during any procedures relating to a Possible Violation or an Alleged Violation of a Reliability Standard. The Compliance Enforcement Authority will specify whether a Remedial Action Directive obviates the need for a Mitigation Plan.

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Prior to issuing a Remedial Action Directive, the Compliance Enforcement Authority shall consult the Reliability Coordinator for the Registered Entity.

Any Remedial Action Directive must be provided in a notice to the Registered Entity and shall include: (i) a list of the Possible Violation(s) or Alleged Violation(s) of Reliability Standards that are the basis for issuance of the Remedial Action Directive; (ii) a discussion of the factual basis for the Remedial Action Directive; (iii) the requirements the Compliance Enforcement Authority is imposing to remove the imminent or actual threat to the reliability of the Bulk Power System; (iv) a deadline for compliance and a schedule for specific periodic updates to the Compliance Enforcement Authority; and (v) notice to the Registered Entity that failure to comply with the directive by the Required Date may result in further Remedial Action Directives or significantly increased sanctions.

The Compliance Enforcement Authority will cause the notice of the Remedial Action Directive to be delivered to the Registered Entity by (i) electronic mail to the Registered Entity's CEO or equivalent and copied to the Registered Entity's designated contact person for reliability matters and (ii) by a recognized express courier service that provides tracking and verification of delivery to the recipient. The notice will be deemed received on the earlier of the actual date of receipt of the electronic submission or receipt of the express courier delivery as specified by the express courier service's verification of delivery. The Compliance Enforcement Authority will monitor implementation of Remedial Action Directives as necessary to verify compliance.

The Compliance Enforcement Authority will notify NERC within two (2) business days after issuing a Remedial Action Directive and will copy NERC on all correspondence sent to the Registered Entity.

Once the Compliance Enforcement Authority has given the Registered Entity notice of the Remedial Action Directive, the Registered Entity may contest the Remedial Action Directive by giving written notice to the Compliance Enforcement Authority within two (2) business days following the date of actual receipt of notice of the Remedial Action Directive. Due to the urgency of resolving any objections to a Remedial Action Directive, the hearing shall be conducted under the expedited hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures**. Notice to contest the Remedial Action Directive and participation in the hearing process set forth in Section 1.9 of **Attachment 2, Hearing Procedures** shall constitute the Registered Entity's right to appeal the Remedial Action Directive. The Registered Entity may elect not to implement the Remedial Action Directive until the hearing process is completed, or may proceed with implementing the Remedial Action Directive even if it is contesting the Remedial Action Directive.

## **8.0 REPORTING AND DISCLOSURE**

### **8.1 Information to be Reported**

Regional Entities shall promptly submit to NERC electronic reports containing current information concerning the information listed below. NERC will work with Regional Entities to specify form, content, timing, and method of submitting reports and notices.



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- (1) The status of the review and assessment of all Possible Violations, Alleged Violations and Confirmed Violations of Reliability Standards by Registered Entities,
- (2) The potential impact of any Alleged Violation or Confirmed Violation on the reliability of the Bulk Power System,
- (3) Sanctions and Penalties,
- (4) Remedial Action Directives imposed,
- (5) Mitigation Plans, and
- (6) The name of a Regional Entity staff person knowledgeable about the information to serve as a point of contact.

### **8.2 Reporting to Applicable Governmental Authorities and Public Disclosure**

Within two (2) business days of receiving a report from a Regional Entity of a Possible Violation, Alleged Violation, or Confirmed Violation, NERC shall notify FERC of the Possible Violation, Alleged Violation or Confirmed Violation.

Where the report pertains to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, NERC shall notify such other Applicable Governmental Authority, within two (2) business days of receiving a report of a Possible Violation, Alleged Violation or Confirmed Violation from the Regional Entity; provided, that NERC will not disclose any non-public U.S. compliance information that is subject to 18 C.F.R. §39.7(b)(4) to an Applicable Governmental Authority other than FERC without first obtaining permission from FERC for such disclosure and subject to any limitations placed by FERC on such disclosure. Likewise, NERC will not disclose non-public non-U.S. compliance information to an Applicable Governmental Authority (including FERC) without first obtaining permission from the Applicable Governmental Authority that has jurisdiction over the Registered Entity or portion of the Bulk Power System to which the non-public information pertains and subject to any limitations placed on such disclosure by such Applicable Governmental Authority or by other law of the applicable jurisdiction.

In any notice to, and request for permission to disclose compliance information from, FERC or another Applicable Governmental Authority pursuant to any provision of this Compliance Program, NERC will identify each Applicable Governmental Authority to which it proposes to disclose the information and the specific procedures that will be used for protecting from public disclosure any non-public compliance information that will be transferred to the other Applicable Governmental Authority or Authorities. The provisions of this paragraph do not apply to the provision by NERC to an Applicable Governmental Authority of information that is not directly related to a specific Registered Entity's compliance with a requirement of a Reliability Standard. NERC will publicly post on its website each Notice of Penalty, with any Critical Energy Infrastructure Information or other Confidential Information redacted (unless posting of the Critical Energy Infrastructure Information or Confidential Information has been determined to be permissible in accordance with Section 1500 of the Rules of Procedure), with the identity of the

## **Compliance Monitoring and Enforcement Program**

violator, together with any statement submitted by the Registered Entity, when NERC files the Notice of Penalty with FERC pursuant to Section 5.9.

NERC will provide reports quarterly to FERC and, where a report contains information pertaining to a Registered Entity or to a portion of the Bulk Power System over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority, on the status of all Possible, Alleged and Confirmed Violations for which mitigation activities have not been completed. All such reports to FERC and to other Applicable Governmental Authorities shall be provided in accordance with this Section.

### **9.0 DATA RETENTION AND CONFIDENTIALITY**

#### **9.1 Records Management**

The Compliance Enforcement Authority records management policy shall provide for a routine and orderly process for the retention and disposal of electronic and paper records related to the Compliance Program, ensure verification of compliance with appropriate business, regulatory, and legal requirements and at a minimum conform to the data retention requirements of the Reliability Standards. The policy shall allow for the maintenance of records as required to implement the Compliance Program.

#### **9.2 Retention Requirements**

The Compliance Enforcement Authority records management policy will require that information and data generated or received pursuant to CMEP activities, including but not limited to, Self-Logging, Compliance Audits, Self-Certifications, Spot Checks, Compliance Investigations, Self-Reports, Periodic Data Submittals, Exception Reporting, and Complaints, as well as a hearing process, will be retained for the longer of (i) five (5) years or (ii) any retention period specified in a Reliability Standard or by FERC or another Applicable Governmental Authority. The obligation to retain information and data commences upon the initiation of the Compliance Program activity that produces the data or information. If the information or data is material to the resolution of a controversy, the retention period for such data shall not commence until after the controversy is resolved.

Upon request from NERC, Regional Entities will provide to NERC copies of such information and data. NERC will retain the information and data in order to maintain a record of activity under the Compliance Program. In providing the information and data to NERC, the Regional Entity shall preserve any mark of confidentiality.

#### **9.3 Confidentiality and Critical Energy Infrastructure Information**

##### **9.3.1 Definitions**

Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure. The terms “Confidential Information,” “Confidential Business and Market Information,” “Critical Energy Infrastructure Information,” and “Critical Infrastructure” shall have the meanings stated in Appendix 2 to the NERC Rules of Procedure.

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### **9.3.2 Protection of Confidential Information**

The Compliance Enforcement Authority personnel (including any contractors, consultants and industry subject matter experts) and committee members, and participants in Compliance Program activities shall be informed of, and agree to comply with, Section 1500 of the NERC Rules of Procedure concerning Confidential Information.

### **9.3.3 Critical Energy Infrastructure Information**

The Compliance Enforcement Authority will keep confidential all Critical Energy Infrastructure Information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be Critical Energy Infrastructure Information shall be redacted, in accordance with Section 1500 of the NERC Rules of Procedure, and shall not be released publicly.

## Compliance Monitoring and Enforcement Program

### ATTACHMENT 1

#### PROCESS FOR NON-SUBMITTAL OF REQUESTED DATA

FERC's regulations at 18 C.F.R §39.2(d) provide that each user, owner or operator of the Bulk Power System within the United States (other than Alaska and Hawaii) shall provide FERC, the ERO and the applicable Regional Entity such information as is necessary to implement section 215 of the Federal Power Act as determined by FERC and set out in the rules of the ERO and each Regional Entity. In order to enforce this requirement, if data, information, or other reports (including Mitigation Plans) requested from a Registered Entity in connection with a compliance monitoring process or enforcement process are not received by the Required Date, the Compliance Enforcement Authority may sequentially execute the following steps for each Reliability Standard Requirement for which the Compliance Enforcement Authority has requested data, information, or other reports. However, upon a request from the Registered Entity submitted prior to the Required Date stating in reasonable detail the basis for the Registered Entity's need for additional time, the Compliance Enforcement Authority may afford the Registered Entity reasonable additional time to submit the data, information or report due to the scope or difficulty of the request or requirement for data, information or reports, the amount of the data, information or reports requested or required, or the form in which the data, information, or other reports has been requested or is required to be provided.

Step 1: The Compliance Enforcement Authority will issue a notification to the Registered Entity's designated contact for reliability matters, identifying the data, information or report that were requested or required and the Required Date and stating that the Required Date has passed and the Registered Entity should, within five (5) business days, either provide the data, information or report, or contact the Compliance Enforcement Authority with a proposed date by which the Registered Entity will provide the data, information or report. If the Compliance Enforcement Authority agrees with the Registered Entity on a revised date by which the Registered Entity will provide the data, information or report, the agreed revised date shall become the Revised Required Date.

Step2: If the Registered Entity does not provide a response to the notification in, and in accordance with, Step 1, within five (5) business days, or by a revised date as agreed to in Step 1, the Compliance Enforcement Authority will issue a notification to the Registered Entity's designated contact for reliability matters, with a copy to the Registered Entity's chief executive officer or equivalent, stating that if the data, information or report is not received within ten (10) business days, the Compliance Enforcement Authority may (i) implement a compliance monitoring process directed to the Registered Entity, or (ii) issue a Notice or other notification of Alleged Violation and Proposed Penalty or Sanction at the Severe Violation Severity Level to the Registered Entity for the Reliability Standard Requirement to which the requested or required

## **Compliance Monitoring and Enforcement Program**

data, information or report relates.

- Step 3: If the Registered Entity fails to produce the requested or required data, information or report in response to the notification in Step 2 within the ten (10) business day cure period set forth in the Step 2 notification, the Compliance Enforcement Authority may take any action of which the Registered Entity was notified in the Step 2 notification, including issuing a Notice or other notification of Alleged Violation and Proposed Penalty or Sanction at the Severe Violation Severity Level for the Reliability Standard Requirement to which the requested or required data, information or report relates.

The process described in this Attachment 1 is intended to be applied where a Registered Entity does not respond by the Required Date to an initial request for data, information or reports in connection with a compliance monitoring and enforcement process and does not respond to subsequent requests (Steps 1 and 2 above) by the stated deadline. This process is not intended to apply where the Registered Entity responds, prior to the Required Date, to the initial request or requirement for data, information or reports with requests for clarification, definition of scope, or similar questions concerning the request or requirement for data, information or reports, or requests, prior to the Required Date, additional time to respond based on the scope or difficulty of the request or requirement for data, information or reports, the amount or extent of the data, information or reports requested or required, or the form in which the data, information or report is to be provided, and works with the Compliance Enforcement Authority in good faith to respond to the request or requirement for data, information or reports, as modified if appropriate by the Compliance Enforcement Authority based on questions raised by the Registered Entity.

**ATTACHMENT 2 - HEARING PROCEDURES**

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## ATTACHMENT 2 - HEARING PROCEDURES

### 1.1 Applicability, Definitions and Interpretation

#### 1.1.1 Procedure Governed

- (a) The provisions set forth in this **Attachment 2** (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance Enforcement Authority in hearings in the United States conducted into:
- (1) whether Registered Entities within the Compliance Enforcement Authority’s Area of Responsibility have violated Reliability Standards, and
  - (2) if so, to determine the appropriate Mitigation Plans as well as any Remedial Action Directives, Penalties and/or sanctions in accordance with the NERC *Sanction Guidelines* and other applicable Penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2).
- (b) Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Officer and a Hearing Body established by the Compliance Enforcement Authority. Where the Hearing Body is comprised, in whole or in part, of industry stakeholders, the composition of the Hearing Body, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Body on any matter brought before it for decision. Where the Hearing Body is comprised solely of independent members and an independent hearing Officer, decisions shall require a majority vote.
- (c) 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 Compliance Staff alleging noncompliance with a Reliability Standard, proposing a Penalty, opposing a Registered Entity’s Mitigation Plan, or requiring compliance with a Remedial Action Directive.
- (d) If a final order has been entered by the Hearing Body, or the Hearing Body has issued a ruling determining that there are no issues to be decided regarding the Alleged Violation, proposed Penalty amount, proposed Mitigation Plan or proposed Remedial Action Directive, or the Registered Entity and the Compliance Enforcement Authority have entered into a settlement agreement resolving the matters that are the subject of the hearing, the hearing shall be terminated by the Hearing Body and no further proceedings shall be conducted before the Hearing Body.

#### 1.1.2 Deviation

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



### **1.1.3 Standards for Discretion**

The Compliance Enforcement Authority'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 Compliance Enforcement Authority 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 Compliance Enforcement Authority's conflict of interest policy.
- (e) Impartiality - Persons appearing before the Hearing Body should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- (f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

### **1.1.4 Interpretation**

- (a) These Hearing Procedures shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in Section 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.
- (b) Any ruling, order or decision of the Hearing Officer referenced in these Hearing Procedures shall be made by the Hearing Body where the composition of the Hearing Body consists of independent members and an independent Hearing Officer.
- (c) 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.
- (d) To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

### 1.1.5 Definitions

Unless otherwise defined, as used in these Hearing Procedures, definitions in Appendix 2 of the NERC Rules of Procedure shall apply. For ease of reference, the following defined terms used in these Hearing Procedures are also set forth below:

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

“Compliance Enforcement Authority’s Area of Responsibility” means the Compliance Enforcement Authority’s Region. If a Regional Entity is the Compliance Enforcement Authority, the Compliance Enforcement Authority’s Area of Responsibility is shown in Exhibit A to the delegation agreement between the Regional Entity and NERC.

“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 act 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 or of the Compliance Enforcement Authority, as applicable, or other individual designated by the Compliance Enforcement Authority, who is responsible for the management and supervision of 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.

“ERO” or “Electric Reliability Organization” 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. The organization may also have received recognition by Applicable Governmental Authorities in Canada and Mexico to establish and enforce Reliability Standards for the Bulk Power Systems of the respective countries.

“Evidentiary Hearing” means a hearing at which one or more Participants submits evidence for the record. A Testimonial Hearing is an Evidentiary Hearing, but an Evidentiary Hearing does not necessarily include the presentation of testimony by witnesses in person.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Body” means the body established or designated by the Compliance Enforcement Authority to conduct hearings and issue decisions concerning disputed compliance matters in accordance with these Hearing Procedures.

“Hearing Officer” means an individual employed or contracted by the Compliance Enforcement Authority and designated by the Compliance Enforcement Authority to preside over hearings conducted pursuant to these Hearing Procedures.

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

“Penalty” means and includes all penalties and sanctions, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity or Respondent to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC *Sanction Guidelines* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered Entity’s or Respondent’s violation and take into consideration any timely efforts made by the Registered Entity or Respondent to remedy the violation.

“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.

“Respondent” means the Registered Entity who is the subject of the Notice of Alleged Violation, contested Mitigation Plan or contested Remedial Action Directive that is the basis for the proceeding, whichever is applicable.

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

“Technical Advisor” means any Staff member, third-party contractor, or industry stakeholder who satisfies the Compliance Enforcement Authority’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 Body.

“Testimonial Hearing” means an Evidentiary Hearing at which the witness or witnesses on behalf of one or more Participants appears in person to present testimony and be subject to cross-examination.

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

### **1.2.1 Contents of Filings**

All filings made with the Hearing Body must contain:

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

### **1.2.2 Form of Filings**

- (a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- (b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- (c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- (d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- (e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log,

graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### **1.2.3 Submission of Documents**

#### **(a) Where to File**

Filings shall be made with the Clerk of the Compliance Enforcement Authority located at its principal office. The office will be open during the Compliance Enforcement Authority's regular business hours each day except Saturday, Sunday, legal holidays and any other day declared by the Compliance Enforcement Authority.

#### **(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 Body. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later 5:00 P.M. local time on the date specified.

#### **(c) How to File**

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

#### **(d) Number of Copies to File**

One original and five exact copies of any document shall be filed. The Clerk will provide each member of the Hearing Body with a copy of each filing.

#### **(e) Signature**

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff.

#### **(f) Verification**

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

**(g) Certificate of Service**

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

**1.2.4 Service**

**(a) Service List**

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

**b) By Participants**

Subject to the provisions of Section 1.5.10, any Participant filing a Document in a proceeding must serve a copy of the Document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

**(c) By the Clerk**

The Clerk shall serve all issuances of the Hearing Officer and Hearing Body upon the members of the Hearing Body and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Clerk shall transmit a copy of the record of a proceeding to the ERO at the time the Compliance Enforcement Authority transmits to the ERO either (1) a Notice of Penalty, or (2) a Hearing Body final order that includes a Notice of Penalty.

**(d) Effective Date of Service**

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

of a document upon the Participant, four (4) days shall be added to the prescribed period when the document is served upon the Participant by mail or registered mail.

### **1.2.5 Computation of Time**

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

### **1.2.6 Extensions of Time**

Except as otherwise provided by law, the time by which a Participant is required or allowed to act may be extended by the Hearing Officer or Hearing Body 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 Body may permit performance of the act if the movant shows circumstances sufficient to justify the failure to act in a timely manner.

### **1.2.7 Amendments**

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

### **1.2.8 Transcripts**

- (a) A full and complete record of all hearings, including any oral argument, shall be transcribed verbatim by a certified court reporter, except that the Hearing Officer may allow off-the-record discussion of any matter provided the Hearing Officer states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. The court reporter shall file a copy of each transcript with the Clerk. Upon receipt of a transcript from the court reporter, the Clerk shall send notice to the Participants stating that a transcript has been filed by the court reporter, the date or dates of the hearing that the transcript records, and the date the transcript was filed with the Clerk.
- (b) Unless otherwise prescribed by the Hearing Officer, a Participant may file and serve suggested corrections to any portion of a transcript within fourteen (14) days from the date of the Clerk's notice that the transcript has been filed with the Clerk, and any responses shall be filed within ten (10) days after service of the suggested corrections. The Hearing Officer shall determine what changes, if any, shall be made, and shall only allow changes that conform the transcript to the statements being transcribed and ensure the accuracy of the record.

- (c) The Compliance Enforcement Authority will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. Any other Participant shall pay for its own copy of the transcript if it chooses to obtain one and, should any Participant seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.

### **1.2.9 Rulings, Notices, Orders and Other Issuances**

Any action taken by the Hearing Officer or the Hearing Body 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 Body. All notices of hearings shall set forth the date, time and place of hearing.

### **1.2.10 Location of Hearings and Conferences**

All hearings and oral arguments shall be held at the principal office of the Compliance Enforcement Authority unless the Hearing Officer or Hearing Body designates a different location.

### **1.2.11 Participant Participation**

Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the Hearing Body, except as required by Section 1.6.6. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

### **1.2.12 Interventions**

(a) The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by the Hearing Body or by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

(b) The Hearing Body may allow a Person to intervene only if the Hearing Body determines that the Person seeking intervention has a direct and substantial interest in the outcome of the Alleged Violation, proposed Penalty or sanction, Mitigation Plan, or Remedial Action Directive that is the subject of the proceeding. Examples of a direct and substantial interest in the outcome shall include

- (1) that the Person seeking intervention has received a Notice of Alleged Violation or a Remedial Action Directive involving the same Reliability Standard requirement(s) and arising out of the same event or occurrence as the existing Respondent(s) that is the subject of the proceeding, or
- (2) that the Person seeking intervention will or may be contractually or legally liable to the original Respondent(s) for payment of all or a portion of the proposed Penalty or sanction that is the subject of the proceeding, provided, that after the Person seeking intervention sufficiently demonstrates it will or may be contractually or legally liable for payment of all or a portion of the proposed Penalty or sanction to be granted intervention, the Person granted intervention and



the existing Respondents will not be allowed to litigate in the proceeding whether the Person granted intervention is contractually or legally liable for payment of all or a portion of the proposed Penalty or sanction or the amount of the proposed Penalty or Sanction for which the Person granted intervention is or may be liable.

That the Person seeking intervention has received a Notice of Alleged Violation for the same Reliability Standard Requirement(s) as the original Respondent(s) but arising out of a different event or occurrence; or seeks to intervene to advocate an interpretation of the Reliability Standard Requirement(s) or provision(s) of the *Sanction Guidelines*, that are at issue in the proceeding, without more, shall not constitute a direct and substantial interest in the outcome and shall not be grounds on which the Hearing Body may allow the Person to intervene.

(c) A Person seeking intervention shall do so by filing a motion to intervene with the Clerk. The motion shall state the Person's interest in sufficient factual detail to demonstrate that the Person should be allowed to intervene pursuant to Section 1.2.12(b). The motion to intervene shall also state the Person's agreement to maintain the confidential and non-public nature of the hearing, including all pleadings and other Documents filed or exchanged in connection with the request for intervention. Any facts alleged in, or offers of proof made in, the motion to intervene shall be supported by affidavit or verification.

(d) The Clerk shall promptly provide copies of the motion to intervene to the Hearing Officer and the Participants. The Hearing Officer shall promptly set a 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 Body as to whether or not the motion to intervene should be granted.

(e) The Hearing Body 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 Body 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 Body and the motion to intervene shall be deemed granted or denied by the Hearing Body 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 Body, on recommendation by the Hearing Officer or its own motion, may stay or suspend the proceeding while a request to intervene, including a request to intervene filed directly with FERC, and including any appeal of the grant or denial of the request to intervene, is being resolved.

(g) A Person allowed to intervene and become a Participant to a proceeding shall be designated as a Respondent and deemed to be aligned with the existing Respondent(s), unless the Hearing Body, 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 Body.

(i) A Person may appeal a decision of the Hearing Body denying the Person's motion to intervene, and the Compliance Staff, the Respondent or any other Participant may appeal a decision granting or denying a motion to intervene, in accordance with Section 414 of the NERC Rules of Procedure. A notice of appeal shall be filed with the NERC director of enforcement no later than seven (7) days following the date of the decision of the Hearing Body granting or denying the motion to intervene.

### **1.2.13 Proceedings Closed to the Public**

No hearing, oral argument or meeting of the Hearing Body shall be open to the public, and no notice, ruling, order or any other issuance of the Hearing Officer or Hearing Body, 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) determine that public release is appropriate. Only the members of the Hearing Body, the Participants, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding.

### **1.2.14 Docketing System**

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the filing of a request for a hearing. Unless NERC provides a different docketing system that will be used uniformly by the Compliance Enforcement Authorities, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "[RE]", followed by a dash ("-"), followed by a four digit number that will be "0001" on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **1.2.15 Representations Deemed to be Made in All Pleadings**

A Participant presenting any pleading to the Hearing Officer or Hearing Body 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:

- (a) the factual allegations set forth in the pleading have or will have support in the evidence or the Participant believes they will have support in the evidence after reasonable opportunity for further investigation or discovery;
- (b) the denials in the pleading of factual allegations made by another Participant are warranted by or will be warranted by the evidence or, if specifically so identified, are reasonably based on belief or on a lack of information;

- (c) the claims, defenses and other contentions set forth in the pleading are warranted based on the applicable Reliability Standard Requirement(s) or Rules of Procedure provisions; and
- (d) the pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the hearing or the cost incurred by any Participant.

#### **1.2.16 Hold Harmless**

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the Compliance Enforcement Authority, including without limitation its members, board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, Hearing Body members, Hearing Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This “hold harmless” provision does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

### **1.3 Initiation of the Hearing Process**

#### **1.3.1 Registered Entity’s Option to Request a Hearing**

- (a) Except when contesting a Remedial Action Directive pursuant to Section 1.9 of these Hearing Procedures, a Registered Entity may file a statement, in accordance with Section 1.3.1(e), with the Compliance Enforcement Authority requesting a hearing if either:
  - (1) The Registered Entity files a response to a Notice of Alleged Violation that contests either the Alleged Violation, the proposed Penalty, or both; or
  - (2) The Compliance Staff submits to the Registered Entity a statement rejecting the Registered Entity’s proposed revised Mitigation Plan submitted after Compliance Staff rejected the Registered Entity’s initial proposed Mitigation Plan.
- (b) A Registered Entity must file its hearing request within forty (40) days after
  - (1) the Registered Entity files its response to the Notice of Alleged Violation; or
  - (2) the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity’s proposed Mitigation Plan, whichever is applicable.
- (c) If the Registered Entity does not file a hearing request within the time period set forth in this Section, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the Alleged Violation or the Compliance Staff’s rejection of the revised Mitigation Plan, whichever is applicable.

(d) In accordance with Section 5.3 of the Compliance Program, a Notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its rejection of a Registered Entity's proposed revised Mitigation Plan shall clearly state that the Registered Entity has the option to contest the Alleged Violation, proposed Penalty, or both, or the Compliance Staff's rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Section 1.3.4 or the general hearing procedure described in Sections 1.4 to 1.7.

(e) The Registered Entity's statement requesting a hearing shall:

- (1) contain a plain and concise statement of the facts and arguments supporting the Registered Entity's position, as applicable, that it did not violate the Reliability Standard Requirement(s) set forth in the Notice of Alleged Violation, that the proposed Penalty or sanction is too high and should be reduced, or that the Registered Entity's proposed Mitigation Plan should be approved;
- (2) state the relief that the Registered Entity requests the Hearing Body to grant; and
- (3) state whether the Registered Entity requests the shortened hearing procedure or the general hearing procedure.

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

(f) If the Registered Entity (or any Respondent if there are more than one Respondent) requests the general hearing procedure, the general hearing procedure shall apply. If the Registered Entity (or all Respondents if there are more than one Respondent) requests the shortened hearing procedure, Compliance Staff and any other Participants shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or another Participant makes a filing requesting the general hearing procedure, then the general hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Registered Entity or Entities shall be used. Once either the general or shortened hearing procedure has been selected, the Participants shall not be allowed to revert to the non-selected hearing procedure unless the Participants mutually agree.

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

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

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

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

### **1.3.3 Notice of Hearing**

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

### **1.3.4 Shortened Hearing Procedure**

The shortened hearing procedure shall be as set forth in this Section. The rules applicable to the general hearing procedure shall apply to the shortened hearing procedure unless the context of such a rule is inconsistent with the procedure set forth in this Section or otherwise renders it inapplicable to the shortened hearing procedure. The rules concerning ex parte communications

in Section 1.4.7 are hereby expressly made applicable to the shortened hearing procedure under this Section.

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

- (a) The initial prehearing conference shall be held within seven (7) days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Section 1.5.2 that may apply, the initial prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with subsections (c) through (e).
- (b) Within ten (10) days after the date on which the notice of hearing is issued, Staff shall make Documents available to the Registered Entity for inspection and copying pursuant to Section 1.5.7.
- (c) Within twenty-one (21) days after the initial prehearing conference, the Staff shall file:
  - (1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal 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.
- (d) Within fourteen (14) days of Staff's initial comment filing pursuant to subsection (c), the Registered Entity shall file:
  - (1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
  - (2) all Documents that the Registered Entity seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - (3) a verification attesting to the truthfulness of the facts alleged in the filing.
- (e) Within seven (7) days after the Registered Entity's responsive comment filing pursuant to subsection (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional Documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional Documents in support of its position based upon such a

motion, the Registered Entity shall have the right to file additional Documents in support of its position that are responsive to the additional Documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.

- (f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days after the Staff's reply comments filing or any additional filing by the Registered Entity pursuant to subsection (e).
- (g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Section 1.7.5 and within seven (7) days thereafter, a reply brief designated "brief in reply to exceptions."
- (h) The Hearing Body shall strive, but is not required, to issue a final order within one hundred twenty (120) days of the notice of hearing.

The Hearing Officer or Hearing Body may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Body to issue the final order within one hundred twenty (120) days of the notice of hearing.

#### **1.4 General Hearing Procedure**

##### **1.4.1 [Intentionally Left Blank]**

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##### **1.4.2 Hearing Officer**

(a) The Compliance Enforcement Authority shall 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 Body as set forth in Section 1.4.3. Members of the Hearing Body may attend any aspect of the hearing.

(b) The Hearing Officer is responsible for the conduct of the hearing, including administering the hearing from the initial prehearing conference through the issuance of the Hearing Officer's initial opinion, any administrative hearing functions thereafter, and submission of the matter to the Hearing Body for final decision through the presentation to the Hearing Body of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- (1) To administer oaths and affirmations;
- (2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;

- (3) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- (4) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- (5) To supervise and issue orders concerning discovery;
- (6) To conduct prehearing conferences, status hearings and Evidentiary Hearings;
- (7) To hear argument on all objections, motions and other requests, and to rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- (8) To rule on and receive evidence;
- (9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- (10) To issue protective orders pursuant to Section 1.5.10;
- (11) To issue initial opinions; and
- (12) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

(c) The Compliance Enforcement Authority shall disclose the employment history and professional affiliations of the Hearing Officer within two (2) days of the Hearing Officer's assignment to the proceeding, and Participants to the hearing may raise objections to the Hearing Officer's participation in accordance with Section 1.4.5.

### **1.4.3 Hearing Body**

(a) The composition of the Hearing Body, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision of the Hearing Body on any matter brought before it for decision.

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

- (1) Upon receiving a filing by a Participant, the Clerk shall promptly send a notice to the members of the Hearing Body 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 Body may request of, and shall receive from, the Clerk, a



copy of any filing by a Participant. The Hearing Body shall not receive Documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such Documents are placed into the record pursuant to Section 1.6.7.

- (2) The Clerk shall send all issuances of the Hearing Officer to the members of the Hearing Body.
- (3) The Hearing Body or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or Evidentiary Hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any hearing. At any prehearing conference or hearing attended by a member of the Hearing Body, any member of the Hearing Body may ask questions directly of any Participant or witness.
- (4) The Hearing Body shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-Evidentiary Hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Body shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- (5) To the extent that the Hearing Body disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Section 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
- (6) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the Hearing Body shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

#### **1.4.4 Interlocutory Review**

(a) A Participant shall be allowed to seek interlocutory review by the Hearing Body 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 Body, 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 Body 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 Body.

(d) On review of a Hearing Officer's ruling, the Hearing Body 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 Body may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments.

(e) Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Section 1.7.8) of the Hearing Body, and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Body'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 Body based on a finding of exceptional circumstances.

(f) A non-Participant that has been ordered by the Hearing Officer pursuant to Section 1.5.8 to produce or provide Documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the Hearing Body of the Hearing Officer's order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to Section 1.5.8, and (ii) the reasonableness of the Hearing Officer's order to produce or provide Documents, information or testimony.

#### **1.4.5 Disqualification**

(a) A Hearing Officer, Technical Advisor or member of the Hearing Body shall recuse himself or herself from a proceeding if participation would violate the Compliance Enforcement Authority'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 Body from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A

motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

(d) If a quorum (as defined in Section 1.7.8) of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, then the Compliance Enforcement Authority shall appoint at least the number of new members to the Hearing Body necessary to create a quorum. The new member(s) shall serve on the Hearing Body through the conclusion of the proceeding but not thereafter. Any new member of the Hearing Body shall be subject to the provisions applicable herein to all Hearing Body members.

#### **1.4.6 Technical Advisor**

(a) The Hearing Officer and/or the Hearing Body may elect to use one or more Technical Advisors to assist in any proceeding. Such an election may be made at any time during the course of a proceeding. Any Staff member who serves as a Technical Advisor shall not have been involved in or consulted at any time in regard to any Compliance Staff investigation, determination of a Possible Violation, Alleged Violation or Penalty, or assessment of a Registered Entity's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered, and shall not be a member of Staff participating in the proceeding on which such technical advice would be rendered.

(b) If the Hearing Officer or Hearing Body uses a Technical Advisor to assist in any hearing, the Hearing Officer or Hearing Body shall disclose the identity, employment history and professional affiliations of the Technical Advisor within two (2) days of the Technical Advisor's assignment to the proceeding, and Participants to the hearing may raise objections to the Technical Advisor's participation in accordance with Section 1.4.5.

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

(a) Once a Registered Entity requests a hearing pursuant to Section 1.3.1:

- (1) neither the Hearing Body, 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 Body, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
  - (A) in writing if the writing is simultaneously provided to all Participants; or
  - (B) orally if a representative for every Participant is present in person or by telephone;
  - (C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- (b) Exceptions
  - (1) The proscription in subsection (a)(1) does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
  - (2) The proscription in subsection (a)(1) does not prohibit communications between or among members of the Hearing Body, 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 Body 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 Body and representatives of the Compliance Enforcement Authority for purposes of establishing the hearing forum.
- (c) Any member of the Hearing Body, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly allows a communication prohibited by this Section shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

#### **1.4.8 Appearances**

- (a) Participants shall file written appearances within seven (7) days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each

individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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.

(c) Any attorney appearing on behalf of a Participant shall be licensed to practice law and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia. All representatives appearing before the Hearing Body or Hearing Officer shall conform to the standards of ethical conduct required of practitioners before the courts of the United States.

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

#### **1.4.9 Failure to Appear or Exercise Diligence**

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

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

(a) In the event that more than one Registered Entity receives a Notice of Alleged Violation for the same event or occurrence, and each Registered Entity selects the general hearing procedure described in Sections 1.4 to 1.7, the Hearing Body on its own motion or on motion of a Participant may exercise its discretion to examine the actions of all such Registered Entities in a single proceeding as long as an initial opinion has not been rendered by the Hearing Officer pursuant to Section 1.7.4 in any proceeding to be consolidated.

(b) A Participant may file a motion to consolidate into a single proceeding Alleged Violations of different Reliability Standards against a single Respondent, and related contests of Penalties or Mitigation Plans, arising out of the same event or occurrence. Such consolidation may be allowed in the discretion of the Hearing Officer or Hearing Body, as applicable.

### **1.5 Prehearing Procedure**

#### **1.5.1 [Intentionally left blank]**

### **1.5.2 Prehearing Conference**

(a) The Hearing Officer shall hold at least one prehearing conference, which may be the initial prehearing conference or a subsequently scheduled prehearing conference, for the following purposes:

- (1) Preliminarily identify the issues and discuss the anticipated form of the hearing;
- (2) Discuss a schedule for any discovery to be conducted and address any discovery issues that are raised at that time;
- (3) Explore the possibility of obtaining admissions of fact and of the authenticity of Documents that would avoid unnecessary proof;
- (4) Develop a schedule for the preparation and submission of evidence and witness testimony, including the disclosure of witnesses and exhibits and whether the use of pre-filed testimony may not be appropriate, in advance of the Evidentiary Hearing;
- (5) Develop a schedule or schedules for any anticipated motions;
- (6) Schedule a date(s) for the Evidentiary Hearing, which shall be within ninety (90) days of the prehearing conference described in this subsection, unless a different date or dates is specified by the Hearing Officer or the Hearing Body and with the consent of all Participants or for good cause shown; and
- (7) Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

(b) The Hearing Officer shall also hold a final prehearing conference prior to the Evidentiary Hearing, for the purpose of discussing:

- (1) the anticipated duration of the hearing;
- (2) the scheduling of witnesses' appearances to testify;
- (3) the issues anticipated to be presented at the hearing;
- (4) whether prehearing memoranda should be filed and if so, the schedule; and
- (5) any other matters identified by the Hearing Officer for the management of the Evidentiary Hearing.

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

### **1.5.3 Summary Disposition**

#### **(a) Availability**

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

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

- (1) A Participant moving for summary disposition must clearly identify the material facts that are not in dispute, demonstrate that there are no other material facts in dispute, and demonstrate that on the basis of the undisputed material facts, the Participant is entitled to issuance of a final order in its favor.
- (2) A Participant opposing a motion for summary disposition must clearly identify in its response to the motion the material facts that the Participant contends remain in dispute, and/or explain why the moving Participant is not entitled to issuance of a final order in its favor even though there are no disputed issues of material fact.

#### **(c) Summary Disposition on the Hearing Officer's Own Motion**

If the Hearing Officer is considering summary disposition in the absence of a Participant motion, the Hearing Officer shall request the Participants to identify in writing any issues of material fact and to comment on the proposed disposition. Factual information in the Participants' comments shall be supported by affidavit. Following review of the Participants' comments, if it still appears to the Hearing Officer that there are no genuine issues of material fact, the Hearing Officer may proceed without an Evidentiary Hearing. The Hearing Officer shall, however, allow the Participants the opportunity to file briefs.

#### **(d) Hearing Officer's Initial Opinion Granting Summary Disposition**

When the Hearing Officer issues an initial opinion granting summary disposition in whole or in part, the ruling shall set forth the rationale for the grant. An initial opinion of the Hearing Officer granting summary disposition shall be confirmed, rejected or modified in a final order issued by the Hearing Body.

### **1.5.4 Status Hearings**

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

### **1.5.5 Motions and Responses**

(a) Unless otherwise provided in these Hearing Procedures or by the procedural schedule established by the Hearing Officer or Hearing Body, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless the Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit.

(b) Unless otherwise specified by the Hearing Officer or Hearing Body, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses. A Hearing Officer or Hearing Body may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer or Hearing Body, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

### **1.5.6 Experts**

(a) A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign an agreement evidencing the expert's understanding and acknowledgement of the non-public nature of the proceeding and that unauthorized public disclosure of information obtained in connection with the expert's participation in the proceeding is prohibited.

(b) The Participant employing the expert shall propose the agreement for approval by a motion, and its approval shall be subject, in addition to consideration of any objections by other Participants, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.

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

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

(1) Within twenty-five (25) days after the date the request for hearing is filed, Staff shall make available for inspection and copying by the other Participants, all Documents prepared or obtained by Staff through or in connection with any compliance monitoring processes that led to the institution of proceedings. Such Documents shall include but are not limited to:

- (A) requests for information to the Respondent;
- (B) every written request, including e-mail, directed to persons not employed by the Compliance Enforcement Authority to provide information or Documents or to be interviewed;
- (C) the Documents provided in response to any such requests described in (A) and (B) above;



- (D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;
- (E) all other Documents obtained from the Respondent; and
- (F) all other Documents obtained from persons not employed by the Compliance Enforcement Authority.

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

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

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

- (1) Staff may withhold a Document from inspection and copying by a Participant if:
  - (A) the Document is privileged to the Compliance Enforcement Authority or constitutes attorney work product of counsel for the Compliance

Enforcement Authority (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent or other Participant);

- (B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that will not be offered in evidence or otherwise relied on by Staff in the hearing;
- (C) the Document would disclose
  - (i) an examination, investigatory or enforcement technique or guideline not otherwise made public of the Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization;
  - (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization, that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or
  - (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the Compliance Enforcement Authority, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or
- (D) the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

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

- (2) Nothing in subsections (b)(1)(B), (C) or (D) authorizes Staff to withhold a Document, or a part thereof, that contains exculpatory evidence. Nothing in subsection (b)(1) requires Staff to withhold a Document from disclosure.

**(c) Withheld Document List**

At the time it is required to make Documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which Documents are being made available, a list of Documents withheld by Staff pursuant to

subsection (b)(1), with a statement of the grounds that support withholding the Document. Upon review, for good cause shown, the Hearing Officer may order Staff to make any Document withheld, other than a Document that is subject to the attorney-client privilege, available to the other Participants for inspection and copying.

**(d) Timing of Inspection and Copying**

Except as set forth in this Section, the Hearing Officer shall determine the schedule of production of Documents for inspection and copying, provided that the Hearing Officer may modify any time period for production set forth in this Section as warranted by the circumstances.

**(e) Place and Time of Inspection and Copying**

Documents subject to inspection and copying pursuant to this Section shall be made available to the Respondent and other Participants for inspection and copying at the Compliance Enforcement Authority office where the Documents are ordinarily maintained, or at such other office as the Hearing Officer, in his or her discretion, shall designate, or as the Participants otherwise agree. A Participant shall be given access to the Documents at the Compliance Enforcement Authority's offices during normal business hours. A Participant shall not be given custody of the Documents or be permitted to remove the Documents from the Compliance Enforcement Authority's offices, other than copies of Documents made available by the Compliance Enforcement Authority for that purpose.

**(f) Copying Costs**

A Participant may obtain a photocopy of all Documents made available for inspection. A Participant shall be responsible for the cost of photocopying. Unless otherwise ordered by the Hearing Officer, charges for copies made at the request of a Participant shall be at a rate to be established by the Compliance Enforcement Authority.

**(g) Failure to Make Documents Available — Harmless Error**

In the event that a Document required to be made available to a Participant pursuant to this Section is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to make the Document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff to produce a Document, the burden shall be on Staff to show that such failure was harmless error. The Hearing Officer, or, upon review, the Hearing Body shall determine whether the failure to make the Document available was harmless error.

**1.5.8 Other Discovery Procedures**

(a) In addition to the production of Documents by Staff for inspection and copying by Respondent and other Participants pursuant to Section 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of Documents or things, depositions by oral

examination, requests for inspection of Documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce Documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing.

(b) Unless otherwise directed by the Hearing Officer or Hearing Body upon motion by a Participant, or by the Hearing Officer, or by the Hearing Body on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- (1) The provisions of subsections (d), (e) and (f) of Section 1.5.7 shall apply to any such discovery.
- (2) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(d)(2)) shall not be applicable.
- (3) The Hearing Officer and the Hearing Body have the authority to issue orders to compel the appearance by or production of Documents or information by, only a Person that (i) is a Participant or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the Hearing Body do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide Documents, information or testimony.
- (4) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide Documents, information or testimony.
- (5) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows:
  - (i) the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the Hearing Body,
  - (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and
  - (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or Hearing Body.
- (6) Unless otherwise ordered by the Hearing Officer or Hearing Body, a data request, set of interrogatories, request for production of Documents or things, request for inspection of Documents or other property, request for admissions, or order to

produce or provide Documents, information or testimony, shall not specify a due date or response date that is fewer than 21 days from the date of service of the request or date of the order.

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

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

- (a) Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to Section 1.6.16 and (ii) the testimony and Documents of a non-Participant provided pursuant to an order to produce or provide Documents, information or testimony, all witness direct testimony to be submitted in an Evidentiary Hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the Evidentiary Hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended.
- (b) Where a Participant intends to use a Document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than Documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce Documents), the Participant intending to use such Document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at a Testimonial Hearing.
- (c) Compliance Staff shall file the Documents it intends to offer into evidence as its direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, first. The Registered Entity shall file the Documents it intends to offer into evidence as its direct case, which also may be responsive to Staff's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, second. Staff shall file as its rebuttal case the Documents it intends to offer into evidence in response to the Registered Entity's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, third.
- (d) If appropriate due to the number and/or complexity of the issues, the Hearing Officer may allow for the Registered Entity to submit a rebuttal case that responds to Staff's rebuttal case, in which event the Hearing Officer shall also allow Staff to submit a surrebuttal case that responds to the Registered Entity's rebuttal case.
- (e) Each round of evidence shall be limited in scope to responding to the preceding round of evidence, except that the Registered Entity's direct case may exceed the scope of Staff's direct case if necessary for the Registered Entity to set forth its direct case fully.
- (f) The Participants shall file the Documents they intend to offer into evidence in accordance with the Hearing Officer's schedule, as it may be amended. Such filings of written testimony and other evidence in advance of the Evidentiary Hearing shall not entitle the Documents to be admitted into the evidentiary record. The Participants must offer their witnesses' testimony and other proposed evidence for admission into the evidentiary record during the Evidentiary Hearing.
- (g) Any Participant who fails, without good cause shown, to comply with the Hearing Officer's schedule for the filing of written testimony and other evidence in advance of the Evidentiary Hearing may be limited in the presentation of its evidence during the Evidentiary Hearing or have its participation in the Evidentiary Hearing otherwise restricted by the Hearing Officer to avoid undue prejudice and delay.

### **1.5.10 Protective Orders**

(a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of any non-Participant ordered to produce Documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.

(b) The following types of information will be considered entitled to protection through a protective order:

- (1) Confidential Business and Market Information, including information that is proprietary, commercially valuable, or competitively sensitive;
- (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 Compliance Enforcement Authority, the ERO or any federal, state or foreign regulatory authority.

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

(c) A motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, Documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information while maintaining its proprietary status.

(d) A Document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely submission of a motion to protect the confidential, proprietary or trade secret nature of that Document or statement and a ruling on such a motion by the Hearing Officer.

(e) The protective order shall identify the data, Documents or information that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.

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

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

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

(a) The Hearing Officer or the Hearing Body may request the submission of memoranda prior to the Evidentiary Hearing that set forth each Participant's position on the issue(s) in dispute, the key facts and arguments, the applicable Reliability Standard, rules, orders or other authority, and such other matters as may be directed by the Hearing Officer or the Hearing Body.

(b) The purpose of such memoranda will be to aid the Hearing Officer and Hearing Body in preparation for the Evidentiary Hearing. A Participant will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-Evidentiary Hearing memorandum.

(c) The Hearing Officer may establish word limitations on such submissions.

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

(a) Should a hearing present a significant question of law, policy or procedure the resolution of which may be determinative of the issues in the proceeding in whole or in part, and as to which there are other extraordinary circumstances that make prompt consideration of the question by the NERC Board of Trustees appropriate, the Hearing Officer, on his or her own motion or on motion of a Participant, may recommend to the Hearing Body that it certify, or the Hearing Body on its own motion may decide to certify, the question to the Board of Trustees for determination pursuant to Section 412 of the Rules of Procedure.

(b) If the Hearing Officer, on his or her own motion, or the Hearing Body, on its own motion, wishes to present a question to the Hearing Body for certification to the NERC Board of Trustees, the Hearing Officer shall first provide the Participants the opportunity to submit memoranda addressing whether the question should be certified and the precise terms of the question to be certified.

(c) If a Participant files a motion requesting, or the Hearing Officer determines on his or her own motion, that a question should be certified to the Board of Trustees, the Hearing Officer shall submit a written recommendation on the matter to the Hearing Body. If the request for certification is based on the motion of a Participant, the Hearing Officer shall also submit to the Hearing Body the motion and any answers to the motion that were filed. If the request for



certification is on the Hearing Officer's own motion, the Hearing Officer shall also submit to the Hearing Body the Participants' memoranda that were filed pursuant to subsection (b).

(d) Questions of fact presented by the particular matter in dispute in a hearing shall not be the subject of a certification to the Board of Trustees.

(e) The Hearing Body shall determine, based on the criteria specified in subsection (a), whether the proposed question shall be certified to the Board of Trustees for determination. To certify the proposed question, the Hearing Body must determine that the question is a significant question of law, policy or procedure the resolution of which may be determinative of the issues in the proceeding, in whole or in part, and that there are extraordinary circumstances that make prompt consideration of the question by the Board of Trustees appropriate. If the Hearing Body determines that the proposed question should be certified to the Board of Trustees, the Hearing Body shall also determine whether the hearing should be suspended, in whole or in part, while the question is pending before the Board of Trustees for determination.

(f) As provided in Rule of Procedure Section 412, the Board of Trustees may decide to reject a proposed certification from a Hearing Body.

(f) If the Board of Trustees accepts certification of a question and issues a determination on the question, the hearing shall proceed following the determination in accordance with the Board of Trustees' decision.

## **1.6 Procedure at Evidentiary Hearing**

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

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

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

In all proceedings Compliance Staff shall open and close.

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

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

### **1.6.4 Right of Participant to Present Evidence**

Subject to compliance with the requirements of these Hearing Procedures concerning the timing of submission of written testimony and other evidence, a Participant has the right to present such

evidence, to make such objections and arguments, and to conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts.

### **1.6.5 Exhibits**

(a) All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide Documents, information or testimony, shall be offered in the form of an exhibit.

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

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

(a) Each witness shall attend the Testimonial Hearing in person unless a Participant has been informed in advance of the Testimonial Hearing that all other Participants waive cross-examination of the witness and neither the Hearing Officer nor the members of the Hearing Body have any questions for the witness, in which event the witness does need not be present at the Testimonial Hearing.

(b) A person compelled to appear, voluntarily testifying, or making a statement may be accompanied, represented and advised by an attorney.

(c) All testimony offered at a Testimonial Hearing is to be under oath or affirmation. If a witness is not required to attend the Testimonial Hearing, then the Participant on whose behalf the witness prepared testimony shall submit an affidavit of the witness attesting to the veracity of the witness' testimony, and the Participant shall be allowed to introduce the witness' testimony, and the exhibits, schedules and attachments thereto, into the evidentiary record based on such affidavit.

### **1.6.7 Admission of Evidence**

(a) Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise.

(b) Except for witnesses who are not required to attend the Testimonial Hearing, the Participants shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the Clerk and provide corrected copies to the Hearing Officer and other Participant.

(c) Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony,

including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Section 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence.

(d) 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 Body, in accordance with Section 1.6.14, and then for redirect examination in accordance with Section 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

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

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

(a) When relevant and material matter offered in evidence is embraced in a book, paper or Document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable.

(b) If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or Document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit.

(c) All other Participants shall be afforded an opportunity to examine the book, paper or Document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

#### **1.6.9 Stipulations**

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

### **1.6.10 Official Notice**

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

- (1) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.
- (2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of the Compliance Enforcement Authority.
- (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 Compliance Enforcement Authority.
- (6) All other matters of which the courts of the United States may take judicial notice.

(b) All requests to take official notice shall be submitted in advance of the Evidentiary Hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested.

(c) An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

### **1.6.11 Admissibility of Evidence**

(a) Any evidence offered, including that included in a book, paper or Document pursuant to Section 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

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

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

### **1.6.12 Offer of Proof**

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

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

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

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

### **1.6.14 Cross-Examination**

(a) Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. Leading questions are permitted on cross-examination.

(b) The credibility of a witness may be attacked by any Participant, including the Participant calling the witness.

(c) The Hearing Officer and any member of the Hearing Body may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Section 1.6.15.

### **1.6.15 Redirect Examination**

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Body. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the Hearing Body.

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

(a) Any Participant may call any adverse Participant, or any employee or agent thereof, during the Testimonial Hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination.

(b) If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) days in advance of the Testimonial Hearing, and the Participant who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) days in advance of the Testimonial Hearing.

(c) Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide Documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.

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

(a) The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the Evidentiary Hearing.

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

## **1.7 Post- Evidentiary Hearing Procedure**

### **1.7.1 Briefs**

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

### **1.7.2 Other Pleadings**

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

### **1.7.3 Draft Initial Opinions**

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

#### **1.7.4 Hearing Officer's Initial Opinion**

- (a) At the conclusion of the Evidentiary Hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Body'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 Remedial Action Directive that the Hearing Officer proposes the Hearing Body require.
- (c) The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cyber Security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Section 1.5.10.

#### **1.7.5 Exceptions**

- (a) Within twenty-one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Participant may file exceptions to the initial opinion in a brief designated "brief on exceptions" and, within fourteen (14) days after the time for filing briefs on exceptions or such other time as is set by the Hearing Officer, any Participant may file as a reply, a "brief in reply to exceptions."
- (b) Exceptions and replies thereto with respect to statements, findings of fact or conclusion in the initial opinion must be specific and must be stated and numbered separately in the brief. With regard to each exception, the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other evidence and arguments in support of the Participant's position. Suggested replacement language for all statements to which exception is taken must be provided. Exceptions and arguments may be filed (1) together in one brief; or (2) in two separate documents, one designated as the brief containing arguments, and the other designated "Exceptions," containing the suggested replacement language.
- (c) Arguments in briefs on exceptions and replies thereto shall be concise and, if in excess of twenty (20) pages, shall contain a table of contents.
- (d) Participants shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Participant's brief on exceptions.
- (e) Statements of fact should be supported by citation to the record.
- (f) The Hearing Officer may establish reasonable word limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such word limitations shall not apply to a Participant's proposed replacement language.
- (g) Unless good cause is shown, if a Participant does not file a brief on exceptions, or if a Participant filed a brief on exceptions that does not object to a part of the initial opinion,

the Participant shall be deemed to have waived any objection to the initial opinion in its entirety, or to the part of the initial opinion to which the Participant did not object, whichever applies. This provision shall not prohibit the Participant, in its brief in reply to exceptions, from responding to another Participant's exceptions to such part of the initial opinion or from proposing alternative replacement language to the replacement language proposed by the other Participant for such part of the initial opinion.

#### **1.7.6 Oral Argument**

(a) The Hearing Body 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 Body. The Hearing Body will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

(c) The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record, and contain accurate citations to the record. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than forty-eight (48) hours prior to the time and date of oral argument.

#### **1.7.7 Additional Hearings**

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

#### **1.7.8 Hearing Body Final Order**

(a) Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Body shall issue its final order.

(b) Issuance of a final order shall require (i) a quorum of the Hearing Body, 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 Body, and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum).



(c) The Hearing Body shall strive, but shall not be required, to issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. 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 Body 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 or Mitigation Plan required.

(e) The final order shall note if the subject of the proceeding has been deemed to involve a Cyber security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Section 1.5.10.

(f) The service of the final order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

### **1.7.9 The Record**

The Clerk shall maintain the record for all dockets. The record shall include any of the following, including all attachments thereto and Documents filed therewith, that exist in any docket:

- (1) Notice of Alleged Violation and Registered Entity's response thereto;
- (2) Registered Entity's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- (3) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- (4) Registered Entity's request for a hearing;
- (5) Participant filings, motions, and responses;
- (6) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Body;
- (7) Transcripts;
- (8) Evidence received;
- (9) Written comments submitted in lieu of written testimony;
- (10) Matters officially noticed;
- (11) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;

- (12) Pre-Evidentiary Hearing memorandums, briefs, and draft opinions;
- (13) Post-hearing pleadings other than briefs;
- (14) The Hearing Officer's initial opinion;
- (15) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- (16) The Hearing Body's final order and the Clerk's notice transmitting the final order to the Participants;
- (17) All notices of ex parte communications; and
- (18) Any notifications of recusal and motions for disqualification of a member of the Hearing Body or Hearing Officer or Technical Advisor and any responses or replies thereto.

#### **1.7.10 Appeal**

A Participant or a Regional Entity acting as the Compliance Enforcement Authority, may appeal a final order of the Hearing Body to NERC in accordance with Rule of Procedure Section 409.

### **1.8 Settlement**

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

### **1.9 Remedial Action Directives**

#### **1.9.1 Initiation of Remedial Action Directive Hearing**

(a) Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an Alleged Violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Registered Entity in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program. The Compliance Enforcement Authority will notify NERC within two (2) business days after its Staff issues a Remedial Action Directive.

(b) The Registered Entity may contest the Remedial Action Directive by filing a written notice with the Clerk of the Compliance Enforcement Authority that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the

Registered Entity does not give written notice to the Compliance Enforcement Authority within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

(c) The Clerk shall assign a docket number, and issue a notice of hearing that sets forth the date, time and place at which the hearing will convene.

### **1.9.2 Remedial Action Directive Hearing Procedure**

(a) Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Section 1.9.2. The general hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Section.

(b) The Remedial Action Directive hearing shall be presided over by a Hearing Officer and will be conducted according to the following guidelines:

- (1) The Hearing Officer or the Hearing Body will hold a prehearing conference within two (2) business days after receipt of the Registered Entity's request for a hearing.
- (2) A Testimonial Hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- (3) At the Testimonial Hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- (4) At the Testimonial Hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.
- (5) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the Hearing Body. Oral argument shall not be held.

(c) The Hearing Body shall issue a summary written decision within ten (10) days following submission of the last brief, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that the Hearing Body finds appropriate. Upon issuance of the summary written decision, the Registered Entity is required to comply with the Remedial Action Directive as specified in the summary written decision.

(d) Within thirty (30) days following issuance of its summary written decision, the Hearing Body shall issue a full written decision. The written decision shall state the conclusions of the

Hearing Body with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Body's conclusions.