

Agenda Compliance and Certification Committee (CCC) Meeting

April 26, 2023 | 2:00 p.m. – 5:00 p.m. Central
April 27, 2023 | 9:00 a.m. – 12:00 p.m. Central

Hybrid Meeting
ERCOT
8000 Metropolis Drive, Building E, Suite 100
Austin, TX 78745

[Meeting Registration Day 1](#) - * Please register to receive dial-in information*
[Meeting Registration Day 2](#) - * Please register to receive dial-in information*

Welcome – Chad Thompson, Director – Compliance Analysis, ERCOT

Introduction and Chair’s Remarks

[NERC Antitrust Compliance Guidelines](#), [Public Announcement](#), and [Participant Conduct Policy](#)

Agenda Items

1. **Administrative Items – Yvette Landin, Secretary**
 - a. Announcement of Quorum
2. **[CCC February Meeting Minutes*](#) – (Approve) – Scott Tomashefsky**
3. **CCC Action Items and Work Plan Status* – (Discuss) – Silvia Parada Mitchell**
4. **Committee Assignments* – (Update) – Scott Tomashefsky**
 - a. Internal Audit Observers
 - b. Standards Quality Review
 - c. Standards Grading Task Force
5. **CCCEC Consistency Reporting Tool Working Group – (Approve) – Ellen Watkins**
6. **Stakeholder Perception Feedback Report* – (Approve) – Scott Tomashefsky**
7. **[CCC Feedback on 2022 CMEP and ORCP Annual Report](#) – (Discuss) – Lonnie Ratliff and Teresina Stasko**
8. **[Practice Guide, Using the Work of Others](#) – (Discuss) – Scott Tomashefsky**

9. Q1 Focused Discussion: Evaluate the [Framework to Address Known and Emerging Reliability Risks*](#) – (Discuss) – Scott Tomashefsky

10. Subcommittee Reports

- a. Nominating Subcommittee – Jennifer Flandermeyer
 - i. Membership Slate*
- b. EROMS – Leigh Mulholland
 - i. CCCPP-004 – Compliance and Certification Committee Hearing Procedures* - (Approval)
 - ii. CCCPP-005 – Hearing Procedures for Use in Appeals for Certification Matters* - (Approval)
- c. ORCS – Greg Campoli
- d. CCC Executive Committee and Program Alignment – Silvia Parada Mitchell

11. NERC Standing Committee Coordination Group (SCCG) Meeting – (Update) – Scott Tomashefsky

12. NERC Board of Trustees (Board) and Members Representatives Committee (MRC)* – (Update) – Silvia Parada Mitchell

13. Enterprise-wide Risk Committee (EWRC) – (Update) – Scott Tomashefsky

14. Reliability Issues Steering Committee (RISC)* – (Update) – Silvia Parada Mitchell

15. Review of Action Items – (Review) – Silvia Parada Mitchell

16. Future Meeting Dates

- a. July 18-20, 2023: St. Paul, MN – Midwest Reliability Organization (MRO) – Joint Meeting w/Standards
- b. October 10-12, 2023: Phoenix, AZ – APS

CCC Action Item List - April 2023

#	Date	Workplan Project Name	Workplan Project #	Workplan Deliverable #	Activity	Responsible Parties	Due Date	Status	Comments and Next Steps
Activities Completed During 2023									
25	Jan-23	Links to CCC extranet and 2023 ERO Enterprise CMEP Implementation Plan	New activity from Q1 2023 mtg		Provide links to all CCC members	NERC Staff	Feb-23	Closed	
26	Jan-23	Form pool of CCC volunteers to participate as IA observers or Standards Quality Review	New activity from Q1 2023 mtg	3, 6	Support IA Standards Process audit	CCC Chair	Mar-23	Closed	Volunteers selected and will be shared at Q2 meeting
27	Jan-23	Form a Working Group to address Consistency Tool use/concerns	New activity from Q1 2023 mtg	5	Work with NERC staff/industry on use of Consistency Tool and overall Alignment process	CCC Chair	Mar-23	Closed	Working group formed, Ellen Watkins leading the effort
Activities to be Completed During 2023									
1	Dec-22	Enhancing CCC Program Efficiencies	Strategic Planning - 2	1	Support ERO 102 Training development	ORCS	Q4-2023	Open	
2	Dec-22	Enhancing CCC Program Efficiencies	Strategic Planning - 2	1	Consider potential efficiencies regarding registration and certification. Work with NERC staff to review and update, if needed, registration criteria	ORCS	Q4-2023	Open	May involve updates related to Inverter Based Resources (IBR)
3	Dec-22	Enhancing CCC Program Efficiencies	Strategic Planning - 2	1	Support review of Practice Guides and work with ERO staff on intended use across regions	CCC Executive Committee	Q1-Q4 2023	Open	
4	Dec-22	Enhancing CCC Program Efficiencies	Strategic Planning - 2	1	In partnership with ERO Staff, review current practices and processes related to Implementation Guidance and make adjustments where needed	CCC Executive Committee	Q1-Q4 2023	Open	
5	Dec-22	Enhancing CCC Program Efficiencies	Strategic Planning - 2	1	Update to the CCC new member training materials and review and effect changes to the CCC webpage on NERC.com	Nominating Committee	Q4-2023	Open	
6	Dec-22	Review and Update of CMEP and CCC Programs and Procedures	Ongoing Responsibilities - 1	2	Review all CCC procedures and update as needed per EROMS schedule	EROMS	Q4-2023	Open	Included hearing, mediation and regional review criteria procedures
7	Dec-22	Review and Update of CMEP and CCC Programs and Procedures	Ongoing Responsibilities - 1	2	Review CCC Charter, EROMS and ORCS scopes and update as needed	CCC, EROMS, ORCS	Q4-2023	Open	
8	Dec-22	Review and Update of CMEP and CCC Programs and Procedures	Ongoing Responsibilities - 1	2	Review and document understanding of governance and clarify role of the CCC with respect to Canada	CCC	Q4-2023	Open	
9	Dec-22	ERO Regional Entity CMEP Audits	Ongoing Responsibilities - 5	3	Support NERC Internal Audit's review of the six regional entities, in accordance with CCCPP-012, as needed, including any follow-up from 2022 audits. This will include finalizing the scope and audit procedures, and the use of CCC members as audit observers.	CCC	Q4-2023	Open	
14	Dec-22	Enterprise-Wide Risk Committee Collaboration	Ongoing Responsibilities - 6	4	Quarterly Updates to EWRC Regarding CCC Activities	CCC Chair	Q1-Q4 2023	Open	Ongoing participation by Chair and Vice-Chair, attend Q1 meeting
15	Dec-22	Enterprise-Wide Risk Committee Collaboration	Ongoing Responsibilities - 6	4	Annual Stakeholder Perceptions Report to EWRC	CCC Chair	Q2-2023	Open	Chair will be presenting 2022 report at May meeting
16	Dec-22	ERO Enterprise Program Alignment	Ongoing Responsibilities - 8	5	Provide periodic reports regarding the effectiveness of the ERO Program Alignment Initiative and Reporting Tool (with NERC management)	CCC Executive Committee	Q2 and Q4 2023	Open	

Compliance and Certification Committee Member Appointments

Action

Information

Background

CCC Chair Scott Tomashefsky appoints the following CCC members to participate as observers of the 2023

NERC Internal Audit, Standards Development Quality Review Team, Consistency Reporting Tool activities, and Standards Grading Task Force.

- Consistency Reporting Tool:
 - Ellen Watkins
 - Jody Green
 - Steve McElhaney
- Standard Quality Review:
 - Devon Tremont
 - Robert Hirchak
 - Alice Ireland
- 2023 NERC Internal Audit Observers:
 - Devon Tremont
 - Jennifer Flandermeyer
 - Silvia Parada-Mitchell
 - Leigh Mulholland
- Standard Grading Task Force:
 - Devon Tremont
 - Robert Hirchak
 - Jennifer Flandermeyer
 - Scott Tomashefsky

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

Stakeholder Perception Feedback Report

Compliance and Certification Committee

April 2023 – Final (Pending CCC Approval)

RELIABILITY | RESILIENCE | SECURITY



**3353 Peachtree Road NE
Suite 600, North Tower
Atlanta, GA 30326
404-446-2560 | www.nerc.com**

Table of Contents

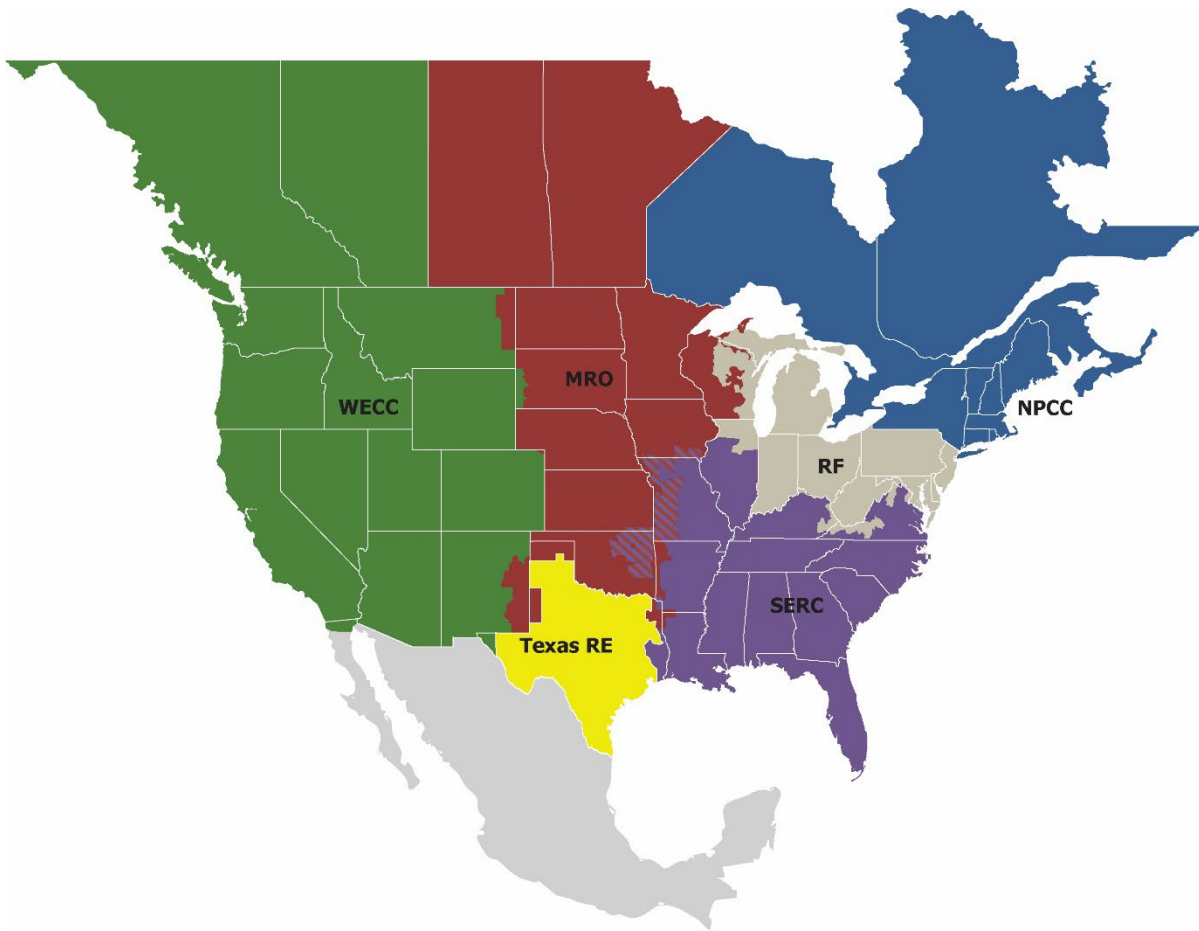
Preface	iii
Executive Summary.....	iv
Introduction	vi
Chapter 1: Compliance Guidance Policy	1
Successes and Opportunities.....	2
Chapter 2: Compliance Oversight Plans & COVID-19 Impacts.....	5
Successes and Opportunities.....	5
Chapter 3: Align Release 3	8
Successes and Opportunities.....	8
Chapter 4: Other Feedback.....	9
NERC Internal Audit.....	9
Other	9
Chapter 5: Conclusion	11
Appendix A: Stakeholder Feedback Questions.....	13
2022 Focused Discussion Questions.....	13
2nd Quarter	13
3rd Quarter	14
4th Quarter	15
Appendix B: Align Release 3 Feedback.....	17

Preface

Electricity is a key component of the fabric of modern society and the Electric Reliability Organization (ERO) Enterprise serves to strengthen that fabric. The vision for the ERO Enterprise, which is comprised of NERC and the six Regional Entities, is a highly reliable, resilient, and secure North American bulk power system (BPS). Our mission is to assure the effective and efficient reduction of risks to the reliability and security of the grid.

Reliability | Resilience | Security
Because nearly 400 million citizens in North America are counting on us

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



MRO	Midwest Reliability Organization
NPCC	Northeast Power Coordinating Council
RF	ReliabilityFirst
SERC	SERC Reliability Corporation
Texas RE	Texas Reliability Entity
WECC	WECC

Executive Summary

In 2022, the CCC executed the Stakeholder Perception Feedback Program (“Program”). The Program areas were focused on those topics that presented the greatest risk, the most opportunity for improvement or had experienced the greatest change. The elements of the Program are presented as follows:

2022 Plan to Assess Stakeholder Perceptions

1) *We will solicit feedback and discuss the following topics at the quarterly NERC Compliance Certification Committee meetings:*

- Q1 2022 – Finalize Stakeholder Perceptions Report and Feedback
- Q2 2022 – Compliance Guidance Policy
- Q3 2022 – Compliance Oversight Plans & COVID-19 Impact
- Q4 2022 – Align Release 3

2) *We will partner with industry stakeholders to gather additional input*

In general, for 2022, the Stakeholder Perception Feedback and comments illustrated positive trends in evaluations, indicating industry’s view of continued enhancements to the ERO Enterprise Programs, Efficiency and Effectiveness.

Industry feedback of strengths:

- Risk-based programs continue to develop and hold opportunities.
- Generally positive comments on the Align software with specific areas for improvement.
- The industry can gain insight from the CMEP Practice guides and Implementation guidance providing clarity of expectations for compliance engagements and may help strengthen reliability and security of the grid.

Industry feedback for improvement included the themes:

- The Align user experience can be improved by making a variety of enhancements.
- Revisiting the Compliance Guidance Policy to determine what improvements are needed.
- Including an entities’ culture of compliance as a factor in the Compliance Oversight Plans could inform risk assessment and compliance resource deployment.

In the spirit of collaboration and support for ERO Enterprise success, the CCC respectfully submits the following recommendations:

Align User Experience

- The Align Users Group is formally starting its meetings in 2023 and the CCC is pleased to have an active participation role. The CCC recommends working together to determine ways for the industry participants to be more helpful and involved to support success.

Compliance Guidance Policy

- The CCC recommends a review of the Compliance Guidance Policy, implemented program and processes, and outcomes for opportunities to clarify and improve the overall approach to this work.

Compliance Oversight Plans

- Encourage governance and risk dialogue between RE and registered entities when developing the COP, not limited to a written survey submittal.
- The ERO should consider mapping the requirements to applicable risk categories more clearly.
- The ERO should consider adding a statement reflecting that its current assessment of the registered entity has requirements that are not listed in the COP and are considered minimal risk for the registered entity at the time of execution.
- The ERO should consider updates to the Rules of Procedure with the definition of the CMEP monitoring tools in use by the ERO Enterprise.
- The ERO should consider clarifying the criteria to achieve and definition of demonstrated positive performance in the COP for registered entities.

Other Areas of Interest

- The CCC encourages NERC to consider including the expertise of the CCC's Organization Registration and Certification Subcommittee (ORCS) in the discussions about potential changes to registrations, functional obligations, and potential definitional changes to ensure all owners, operators and influencers of the BPS are appropriately included in the obligations to ensure the reliability and security of the BPS.
- Industry recommends a partnership with the CCC and Standards Drafting Teams to ensure an industry compliance lens is applied to the developed standards language prior to the effective and enforcement date of the developed regulations. We appreciate that the timeliness of this activity would need to be top of mind if the Committee is asked to support the efforts.

For the Stakeholder Perception Activities during 2023, the CCC intends to focus on the following items:

- Strengthening feedback loops in the ERO Enterprise Framework
- Partnership with other NERC Standing Committees on industry collaboration for agility and effectiveness
- Partnership with the NERC Standards Committee on Enhanced Periodic Reviews of Standards and the effectiveness of the process
- Partnership with NERC on value-added opportunities to improve existing programs
- Partnership with industry on communications and awareness of ERO Enterprise Programs and processes

The CCC appreciates the opportunity to provide a Stakeholder Perception Feedback report related to the ERO Enterprise execution of the programs associated with the CCC's chartered scope of work. The report summarizes a diverse and wide area view of industry's perceptions and recommendations. There is a recognition of many areas of improvement and many areas of opportunity. The CCC looks forward to continued partnership with and support of the ERO Enterprise's success. We value the opportunity to collaborate on solutions or improvements to the opportunities relative to the programs and processes that will bring value for all stakeholders.

Introduction

In the capacity of a NERC board-appointed stakeholder committee serving and reporting directly to the Board of Trustees (Board) under a NERC Board-approved charter, as approved by FERC, and as set forth in the Rules of Procedure (ROP), the CCC will engage with, support, and advise the NERC Board and its Compliance Committee (BOARDCC) regarding all facets of the NERC CMEP, Registration program, and Certification program.

Included in the duties of the CCC, as described in the CCC Charter, is the responsibility to provide comments and recommendations to the NERC Board and its BOARDCC, the Board's Enterprise-wide Risk Committee (EWRC), and NERC staff with respect to stakeholders' perceptions of the policies, programs, practices, and effectiveness of the CMEP, Registration program, and Certification program. The CCC Process and Procedure ("CCCPP")-008 describes the program and associated processes utilized by the CCC to fulfill this responsibility:

- As noted in the NERC Board approved CCC Charter, monitoring by the CCC is ongoing and does not preclude, interfere with, or replace, in whole or in part, the Board's responsibility to conduct and provide such reviews of these programs as required by FERC regulations, 18 C.F.R. § 39.3(c): "The Electric Reliability Organization shall submit an assessment of its performance three years from the date of certification by the Commission, and every five years thereafter."
- The CCC will provide to NERC an assessment of stakeholder perceptions regarding the policies, programs, practices, and effectiveness of the NERC CMEP, Registration program, and Certification program using the processes described below. Information received from these monitoring processes will be vetted by the CCC and shared with NERC Management, the EWRC, the Board, and the BOARDCC.
- The CCC and NERC Staff will work in collaboration to assess stakeholder perceptions on initiatives and/or issues related to policies, programs, practices, and effectiveness. This process may be included as part of the CCC's annual work plan, which is prepared by CCC leadership and approved by NERC's Board. Initiatives and/or issues to gauge stakeholder perceptions may include, but may not be limited to, new standards development and implementation, outreach and education, CMEP tools, and/or initiatives linked to internal audit recommendations.

The program was designed to contribute observations and potential recommendations in support of ERO Enterprise success as follows:

- Lead efforts to develop a successor to the ERO Effectiveness Survey by soliciting input on objectives, content, and delivery of assessments of ERO effectiveness, without creating duplicative work for industry or the ERO.
- Ensure that information gathered from industry provides insights that can be used to improve the efficiency and effectiveness of the CMEP.
- Evaluate results of assessments and provide recommendations for the ERO Enterprise and the Board.

As an additional consideration, the results of the work plan can serve as a feedback loop for consideration in engagement planning for the collaborative efforts of the CCC and NERC Internal Audit.

In addition to those items noted above, the Stakeholder Perception Feedback process serves as an input to assess and ensure the effectiveness of the ERO Enterprise programs as a contribution to the continuous improvement loop as described in the ERO Enterprise Framework to Address Known and Emerging Reliability and Security Risks ("Framework").

As an excerpt from the Framework describes,

The ERO’s mission requires establishing a consistent framework to identify, prioritize, and address known and emerging reliability and security risks. The Framework to Address Known and Emerging Reliability and Security Risks identifies the policies, procedures, and programs developed by the ERO to support its mission and incorporates them into an iterative six-step risk management framework. The mitigation of risks to Bulk Electric System (BES) reliability and security are classified according to the likelihood of the risk occurring and the severity of its impact. The ERO’s policies, procedures, and programs are mapped to target risk mitigation against severity and likelihood. Further, the associated Whitepaper reviews how resilience is an important component of reliability risk management. Finally, the whitepaper considers the application of ERO policies, procedures, and programs, within time required to apply the mitigation and the likelihood and severity.

The CCC serves as one input to the Framework in support of the ERO Ecosystem. Its role is to gather and provide input regarding a subset of the programs – referenced as critical - in support of the ERO mission and mitigation of risk to BPS reliability and security. The CCC continues to work with NERC Management and the NERC Standing Committee Coordination Group (SCCG) to formalize the processes between the NERC standing committees and ensure that all NERC committees represent a continuous improvement loop in support of reliability and security.

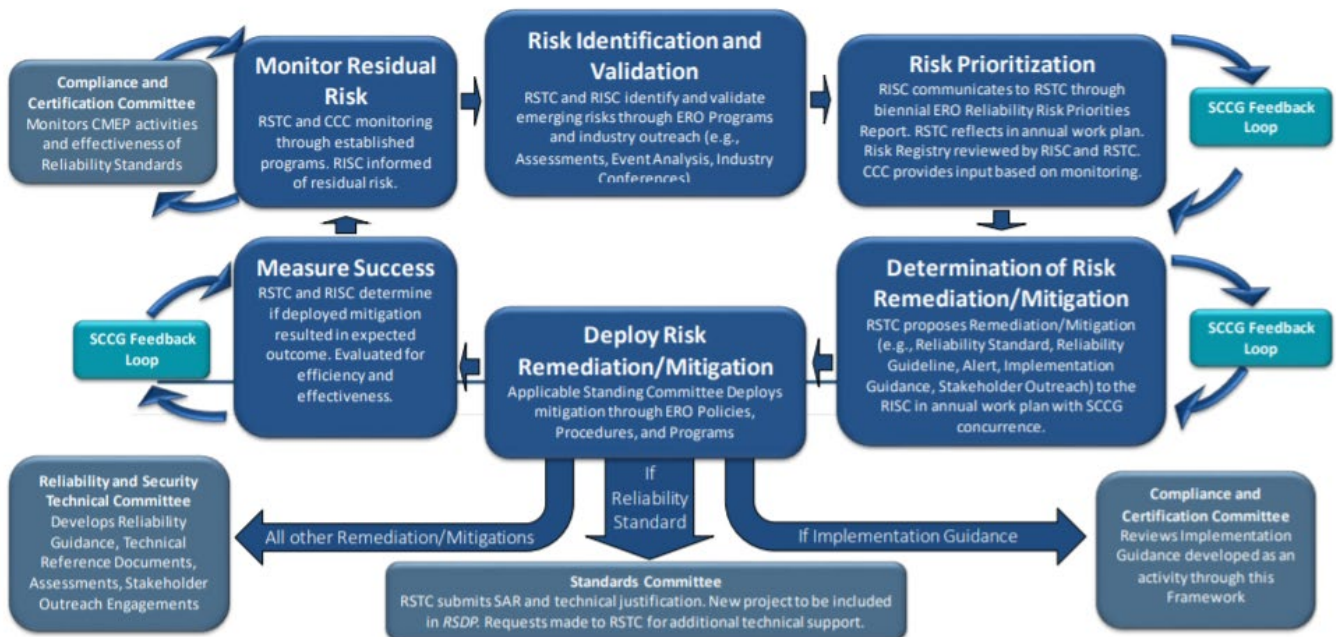


Figure 2: RSTC, RISC, SC, and CCC Coordination within the Risk Framework

One of the tools that the CCC utilizes to close the continuous improvement loop in support of reliability and security is through focused discussions with the ERO Enterprise. This report contains stakeholder perceptions and feedback from the focused discussions held in 2022. In several of the focused discussions, ERO Enterprise staff provided presentations and discussion materials to collaborate with framing the discussion and seeking feedback from the industry on specific aspects of the program. The CCC appreciates the partnership in these discussions and found great value in the information provided by the ERO Enterprise as a critical inject to the process to ensure the feedback is informed with facts and opportunities for robust dialogue.

Below please find the 2022 program to assess stakeholder feedback using quarterly focused discussion topics and project/task force work, with a report to be published in 2023 to the EWRC of the Board of Trustees and for the industry.

2022 Plan to Assess Stakeholder Perceptions

1) *We will solicit feedback and discuss the following topics at the quarterly NERC Quarterly Compliance Certification Committee meetings:*

- Q1 2022 – Finalize 2021 Stakeholder Perception Feedback Report
The CCC worked to review, present and finalize the 2021 report.
- Q2 2022 – Compliance Guidance Policy - Sought to better understand how industry is utilizing guidance and where improvements are necessary.
-
- Q3 2022 – Compliance Oversight Plans & COVID-19 Impact- Sought stakeholder experiences with COPs and what areas improvements can be made.
- Q4 2022 – Align Release 3 - Sought user feedback on the latest release to learn about opportunities to enhance the user experience.

2) *We will partner with industry stakeholders to gather additional input.*

Chapter 1: Compliance Guidance Policy

In 2015, substantive resources and efforts were dedicated to concerns around guidance related to compliance with NERC Standards and Requirements. At that time, the background was summarized as follows:

A key factor in the success of compliance monitoring and enforcement of mandatory standards rests on a common understanding amongst industry and ERO Enterprise Compliance Monitoring and Enforcement Program (CMEP) staff of how compliance can be achieved and demonstrated. For many standards, this is straightforward. For others, it remains a concern. Moreover, some standards are written deliberately to allow a variety of approaches to compliance as the nature of the desired end-state does not lend itself to singular or clear-cut solutions given the range of system configurations and potential responses to achieving the reliability goal. In May 2015, a Compliance Guidance Team (Team) was formed by the Member Representatives Committee (MRC), with support from the NERC Board of Trustees (Board), to consider approaches useful in providing guidance for implementing standards, and develop a policy proposal for the purpose, development, use, and maintenance of this guidance.

The Team agreed to some core principles:

- *Guidance documents cannot change the scope or purpose of the requirements of a standard.*
- *The contents of guidance are not the only way to comply with a standard.*
- *Compliance expectations should be made as clear as possible through the standards development process, which should minimize the need for guidance after final ballot approval of a standard.*
- *Forms of guidance should not conflict.*
- *Guidance should be developed collaboratively and posted on the NERC website for transparency.*

Furthermore, the Team agreed upon the following:

- *There should be a finite and limited set of guidance tools that are well understood and are organized to facilitate the use and implementation of the guidance.*
- *All forms of guidance related to the same standard should be coordinated and collected in one location.*
- *To the extent that guidance does not address all the issues that arise, consideration should be given to revising the standard in question.*
- *NERC and the REs will exercise professional judgement in an objective manner when evaluating all methods or approaches to comply with a standard and maintain processes to ensure its independence with regards to the development of guidance by registered entities.*
- *As guidance cannot expand the scope or purpose of a standard, there are other methods outside the CMEP process (i.e., feedback loops to the Standards Committee and NERC standards department, discussions with the entity) for addressing risks that are not subject to the standard.*

Based on the above principles, the Team identified two purposes for guidance: (1) to assist registered entities with the implementation of standards and (2) for the ERO Enterprise to provide direction to its CMEP staff, and is recommending the development of the following:

- *Implementation Guidance*
- *CMEP Practice Guides*

Implementation Guidance provides examples for implementing a standard, while CMEP Practice Guides provide direction to ERO Enterprise CMEP staff on executing compliance and enforcement activities. To date, performance statistics associated with Implementation Guidance and CMEP Practice Guides reflect the following:

- *There are 23 Implementation Guides given deference submitted by NATF (7), NERC Technical Committees (8), MRO Councils (5) and Standards Drafting Teams (3).*
- *There are 10 documents listed as General Guidance – which is undefined under the Compliance Policy – representing Lessons Learned and White Papers.*
- *There are 20 CMEP Practice Guides posted to the NERC Website with 10 of them directly associated with existing Standards.*
- *There are 7 Implementation Guides under consideration.*
- *There have been 4 retirements of an Implementation Guide.*
- *There have been 39 Implementation Guides submitted for consideration that have not been endorsed (“rejected”).¹*

Successes and Opportunities

There are many aspects of the Board approved Compliance Guidance Policy that have been successful. A few are listed here:

- CMEP Practice guides are developed by NERC for the CMEP staff to give them direction around consistency of approach and process. The industry is supportive of this action.
- The CMEP Practice guides are shared with industry in the interest of transparency. The industry appreciates this visibility. The “open book” test ensures that we collectively remain focused on reliability and security with compliance as one outcome of the resources and efforts.
- The industry can gain insights from the CMEP Practice guides and Implementation guidance, which may help strengthen reliability and security of the grid with the operating assumption that the guides are tools to provide counsel on compliant outcomes for standards that reinforce the reliability and security of the Grid.

The industry continues to maintain there are additional recommendations that should be considered. The Policy was created and accepted by the Board in November of 2015. Substantive changes in Programs, processes and grid operations have occurred since that time and suggest that a review of the Policy’s implementation is warranted. Some of the concerns and recommendations include:

- Some CMEP Practice Guides appear to be expanding the scope of the Standards and are definitely changing the expectations of compliance performance or compliant implementations. Given the CMEP Practice Guides are meant to drive consistency and are targeted for ERO Enterprise staff, there is heavy industry concern with those documents changing regulations or performance expectations. If changes are needed to broaden the scope of the Standards to address a developing risk, it is recommended that these desired changes proceed through the standards development process. This will allow clarity and give industry time to adopt the desired changes. This should certainly be the approach where the ERO Enterprise is observing a reliability or security gap with the existing standards. In addition, this is one of the feedback loops in the Framework as referenced in the Introduction of this report.

¹ <https://www.nerc.com/comm/Pages/Reliability-and-Security-Guidelines.aspx>

- If the CMEP or ORCP activities identify a reliability or security risk that is not effectively managed through ERO Enterprise oversight, these concerns can be managed through other tools within the ERO construct such as NERC Alerts, etc. Using CMEP Practice Guides does not effectively communicate there is a reliability or security risk the industry should address but suggests there is a compliance gap to address (may or may not be congruent). In addition, the documents are meant to drive consistent approach of the ERO Enterprise staff and have been highlighted numerous times as documents that have not been produced for the industry, but for the ERO Enterprise. However, these documents are discussed in the course of CMEP engagements, where industry is asked to explain what has been done to address the content. There is a significant gap in clarity of purpose, intended use and where the documents are different from the NERC Standards and Requirements.
- There is a desire to have the MRC provide Policy input to the Board of Trustees with respect to the implementation of the Policy, how the guidance documents are working, and suggestions for improvement. If the Board is asking industry to early adopt or adopt more quickly, let us work together for improvements to the process and guidance issuance that drives agility, effectiveness, and efficiency.
- Prioritize guidance or guidance-like publications (CMEP Practice Guides, Implementation Guidance, Technical Guidance, Reliability Guidelines, Security Guidelines, White Papers, etc.) based on risk to the BES and the most impacted functions, in order to consider the appropriate entities that may need to adopt the guidance to mitigate potential risk. This will help industry resources prioritize the efforts and avoid volume overload with items to review. The volume of publications produced is causing critical items to be lost.
- The ERO Enterprise has executed a process to implement the facets of the Compliance Guidance Policy. While the perception is that the Policy's implementation is fully complete and processes are in place, some aspects of the process are not widely known or understood by the industry. It may be a visibility issue or could be a definitional issue of what specific aspects of the process and documents mean and the enforceability these tools carry. One example is developing more efficient interactions with industry organizations submitting Implementation Guidance. The CCC as a partner in the implementation of the Compliance Guidance Policy can help with stakeholder awareness and clarification of the process. To restate a conclusion, the process documents are in excess of five years old and should be reviewed for accuracy and improvement opportunities.
- The Implementation Guidance Development Aid checklist is helpful and should be shared more broadly with industry. The Checklist was a positive step to provide industry with specific items for consideration when developing Implementation Guidance for submission and for ERO consideration to give deferential treatment. It would be helpful to point to these types of resources in NERC's Weekly Standards and Compliance Bulletin publication on a routine basis to ensure industry awareness is continually reinforced. In addition, for this specific document, a webinar reminding industry of this checklist and providing examples of some of the items that lead to failed endorsement would be beneficial. Furthermore, with the checklist publication dating back to 2020 and the number of Implementation Guides that have not received ERO Endorsement, is there an update to the checklist that would be helpful based on what has been learned?
- It would be beneficial for the ERO to track statistics around Implementation Guidance as an indicator of effectiveness of the overall program. For example, with the number of Implementation Guides that have not received endorsement, has the submission rate decreased?
- In late 2022, several endorsed Compliance Guidance and Lessons Learned documents were retired by NERC staff. NERC sent a notification to industry with a vague statement that there were concerns that if an entity followed the guidance, they may be found non-compliant. It would be beneficial for NERC to communicate with industry on what specifically was concerning with the retired documents. This will allow registered entities to make appropriate changes to their programs and reduce the likelihood of non-compliance.

- There is an opportunity to refresh the Policy to reflect the Committees' organizational changes, address endorsement criteria and how the One Stop Shop has been implemented. On the latter item, the Policy states all guidance documents for a standard will be stored together. However, guidance information is consolidated but not necessarily with the specific standard.
- A fulsome review of the Board Compliance Policy and implementation of such (Programs, processes and outcomes) should consider the following:

Recommendation: The CCC recommends a review of the Compliance Guidance Policy, implemented Program and processes, and outcomes for opportunities to clarify and improve the overall approach to this work.

Chapter 2: Compliance Oversight Plans & COVID-19 Impacts

The Compliance Oversight Plan (COP) is a registered entity-specific report consisting of registered entity-specific risks identified through analysis of Board Inherent Risk Assessment (IRA) and Performance Considerations, as referenced in the ERO Enterprise Guide for Compliance Monitoring. Performance Consideration is a data point or piece of information that REs consider in understanding a registered entity's performance to identify entity-specific risks. The Performance Considerations are qualitative and dependent on known facts and circumstances. The COP includes the NERC Reliability Standards associated with identified Risk Categories, interval of monitoring activities, and the type of CMEP tool(s) that may be used for monitoring. The COP is dynamic, and changes are likely to occur if a registered entity experiences significant changes or assumes new compliance responsibilities, or new reliability and security risks emerge. Appendix 4C of the NERC ROP and the ERO Enterprise Guide for Compliance Monitoring require the development of an IRA and COP for each registered entity.

The COVID-19 pandemic that began in early 2020 has had a profound impact on all facets of society. That is certainly the case in the ERO Enterprise. As noted in its latest CMEP Annual Report, NERC was faced with the task of ensuring that operators of the Bulk Power System (BPS) could focus their resources on keeping people safe while still keeping the lights on with the practical constraints of the pandemic. NERC used its regulatory discretion to address compliance monitoring and enforcement activities during the pandemic in non-traditional ways. NERC highlights two specific areas: 1) the temporary expansion of the self-logging program, and 2) the use of offsite compliance monitoring and certification engagements using emerging video and audio technologies. To the latter point, NERC worked to ensure that the REs "successfully transitioned to all off-site engagements, working collaboratively with registered entities to utilize technology solutions to maintain effectiveness of engagements." Prior to 2020, the thought of a virtual audit engagement was largely unheard of. Today, the potential use of this tool merits additional consideration, as well as other tools that emerged as a result of the pandemic.

Successes and Opportunities

The ERO Enterprise has provided outreach in the form of tools (Webinars, FAQ documents, etc.) to help industry understand the purpose of the COP. While fully acknowledging the COP is a tool for the ERO Enterprise, there is still an opportunity to work with the registered entities to have a more robust view of the registered entity's risk and gain further efficiencies in future CMEP engagements. The COP does provide value to the registered entities and the understanding of how the COP impacts or influences a registered entity's oversight is important. Based on focused discussion feedback, the CCC offers the following industry observations intended to further the industry's understanding of COPs and enhance the value that the COPs provide.

Observations:

General

- There continue to be opportunities for additional outreach to industry on COPs that can potentially assist industry with further maturation of their internal compliance programs and oversight.
- Common terminology and risk descriptions across the ERO Enterprise is beneficial to facilitate program maturation and avoid chasing continuously shifting expectations.
- It is helpful for registered entities to understand how the COP process feeds into audit planning and risk-based approach.
- Risk-based programs continue to develop and hold opportunities. For example, enforcement actions still require the same volume of interactions, requests for information and documentation, regardless of the enforcement tool selected for use. In addition, some of the older potential non-compliance reports will also require the same level of paperwork to process even though the issues have been mitigated for (in some cases) in excess of a year.

- There is a significant lack of clarity around what constitutes demonstrated positive performance. While auditor subjectivity is certainly an aspect of this assessment, registered entities cannot get a consistent answer when this designation has been granted or not granted. Given there is no definition or consistent explanation, the industry has no way to accomplish meeting the expectations. This fact alone has created a potential credibility issue for the execution of the COP and the appropriate use of the tool itself.
- Many registered entities expressed concerns that the COP stated the RE lacked demonstration of positive performance considerations. After discussion with the ERO Enterprise, this was explained as a need for further experience with the registered entities and additional time needed to see performance considerations implemented. After over 12 years of ERO monitoring activities, it seems the ERO Enterprise would have a good understanding of registered entity, RE footprint risk, internal controls & program elements with respect to the registered entity's performance.

RE and Registered Entity Collaboration

- Need to collaborate with industry on individual inputs to the COP. There is value for the ERO Enterprise and the industry to discuss the risks – real or perceived - from a wide area view and registered entity specific view. While the CEA may have a different view of the entity's risk that is represented in the COP, the collaborative approach will generate more robust discussion for the consideration of the ERO Enterprise.
- There is no process in place to resolve misunderstandings of registered entity programs as represented in the COPs. To be clear, this is not a request for a process to resolve disagreements of the CEA's assessment of the entities' risk – but a request for a process to resolve inaccurate or misunderstood information.

Review of Entity Risk Programs, Internal Controls and Compliance Culture

- COPs could provide additional value for all involved if there was an opportunity to discuss the registered entity's view of its governance and risk program as part of the early development of the COP.
- Registered entities should consistently be provided the opportunity to discuss the implemented Governance, Risk and Controls approach that overlays the NERC compliance program. Without this insight, the CEA does not have a fulsome view of the Inherent Risk of the registered entity or appropriateness of registered entity efforts to mitigate risk.
- Understanding how a registered entity assesses, manages, and mitigates their risks should be a key component of the COP and contribute to how the ERO Enterprise attains a complete view of the registered entity to inform the IRA and COP. This type of maturity dialogue between the ERO Enterprise and registered entity would be beneficial. The ERO acknowledged that the COP preparation included review of hard data or compliance violation history (almost exclusively) to assess risk.
- In consideration of the registered entity's culture of compliance and governance programs, there is confusion in the industry and in the process about how this information is considered in the IRA or the COP. In addition, there is process inconsistency around the IRA and COP represented in one document / process or separate documents / processes.
- Registered entities with a history of submitting self-reports may reflect a strong compliance program. The interpretation around assessing self-reporting by a registered entity appears to need more consistency and process from the Compliance and Enforcement Authority (CEA) oversight perspective. It can be reflective of a strong control environment or weak internal controls, but requires more insight to learn which scenario is reflected in the activity itself.
- Take time to understand the registered entity's Risk Management programs and the relationship of risk to the implementation of internal controls. Registered entities may not have internal controls implemented for every NERC requirement; however, controls may exist at a program or enterprise level. As a unique

point of information, this does not indicate a lack of oversight without a more fulsome understanding of the registered entity's governance and risk.

- COPs do not appear to strongly consider the registered entity's culture of compliance or overall governance. This aspect is key to sustainable compliance and assessing a forward-looking view versus historical box checking on specific compliance obligations
- Focus on the registered entities' continuous improvement efforts is beneficial for reliability and security of the Grid.

Timing

- On the timing of sharing of COPs, consistency and timing should be coordinated early enough to be able to review the COP before any further CMEP activity. This may be related to initial roll out of the COP; however, there is value to discussion with registered entities around the COP. It does not automatically suggest the RE changes the document or the oversight plan but prompts a robust risk discussion to be used in future COP updates.
- It is difficult to provide fulsome and complete input on the COP. Many registered entities have not seen a COP and there is an inconsistent approach for sharing these documents with registered entities.
- Demonstration of positive performance considerations does not substantively change the timing of oversight activities. Most of the activity appears to continue to remain focused on and unchanged by the inherent risk of a registered entity. As such, there is an opportunity to gain efficiencies for Board the RE and registered entity to minimize or eliminate unnecessary or distracting levels of administration.

Compliance Monitoring Tools

- Industry is not experiencing substantive variation in CMEP tools used in the compliance assurance environment. Primarily focused on audits and self-certifications (mostly guided). Are we certain that we have the most effective options in the toolbox? Explaining this in context of the COP discussion would be helpful.
- Guided self-certifications are essentially off-site audits and conducted frequently. The historical view of a self-certification isn't represented by the current actions. The Rules of Procedure may need to be updated to reflect the current base of CMEP tools in use.

Recommendations

- Encourage governance and risk dialogue between RE and registered entities when developing the COP, not limited to a written survey submittal
- The ERO should consider mapping the requirements to applicable risk categories more clearly.
- The ERO should consider adding a statement reflecting that its current assessment of the registered entity has requirements that are not listed in the COP and are considered minimal risk for the registered entity at the time of execution.
- The ERO should consider updates to the Rules of Procedure with the definition of the CMEP monitoring tools in use by the ERO Enterprise.
- The ERO should consider clarifying the criteria to achieve and definition of demonstrated positive performance in the Compliance Oversight Plans for registered entities.

Chapter 3: Align Release 3

The Align Project, formerly known as the CMEP Technology Project, is a culmination of strategic efforts that began in 2014 with the goal of improving and standardizing processes across the ERO Enterprise. As the ERO Enterprise matures to use a risk-based approach to its regulatory posture for the CMEP, the need to develop a more comprehensive system to manage and analyze information is more acute.

The objectives and benefits of the Align Project are:

- Single, common portal for registered entities, enabling consistency of experience
- Real-time access to information, eliminating delays and manual communications
- Improved capability to support the Risk-Based Compliance Oversight Framework
- Enhanced quality assurance and oversight, enabling consistent application of the CMEP
- Improved analytics, including visibility into compliance and reliability risks
- Increased capability to implement audit best practices and processes (planning, fieldwork, reporting, quality assurance)
- Standardization and implementation of common business processes and workflows, enabling increased productivity (estimated 15 percent gain for ERO Enterprise CMEP staff)

Successes and Opportunities

Since the last Stakeholder Perceptions Report industry has had more experience with the technology. The following are the observations shared as part of the discussions. For Align specific comments, please see Appendix B.

- Communications with the industry through newsletters, webinars, presentations, and training materials were generally robust. There is always a need to continue and build on these efforts given the substantive reach of the change.
- Business harmonization across the ERO Enterprise prior to the implementation of Align appears to have provided some consistency benefits related to Phase 1 and Phase 2.
- Generally, the forms in Align for Self-Reports (SR), Mitigation Plans (MP) and Periodic Data Submittals (PDS) are intuitive.
- The pop-up instructions in Align are helpful to users.
- There is no cost associated with using Align, unlike having to pay for certificates to use OATI webCDMS.
- Open RFI's are readily available and easier to track on the dashboard.
- The ERO Enterprise maintains a priorities list for system fixes and improvements. Industry suggestions have been incorporated as well. This is appreciated.

Recommendation

- The Align Users Group (AUG) has not had many interactions as the project was still in the development/implementation phases. The AUG is formally starting its meetings in 2023. The CCC recommends working together to determine ways for the industry participants to be more helpful and involved to support success.

Chapter 4: Other Feedback

As defined in the Stakeholder Feedback Program, industry provided additional feedback beyond the quarterly focused discussions through participation on task forces, project teams, and industry collaboration activities.

NERC Internal Audit

The CCC has been working with NERC's Internal Audit and the EWRC of the NERC Board since its creation. In the past year, the Internal Audit program and processes have taken significant steps forward in maturation of the activities. The working relationship with the CCC has become much more efficient and effective. The oversight strategy and ability to move the program oversight forward in a risk-based manner is much better positioned to be successful with the changes that have been made. The leadership, strong skills and expertise that have been brought to the NERC Internal Audit team over that last year will position the group to exercise their responsibilities in a more responsive and robust way. Over the past few years, one of the joint goals of the CCC and NERC Internal Audit has been to organize procedures and synchronize efforts with an eye toward the overall efficiency of the entire ERO Enterprise. The changes that have been made working with NERC's Internal Audit team allow for the collaboration to be more organized, efficient, and effective. Industry, through the CCC participants, is supportive of the direction and leadership from the ERO Enterprise through NERC Internal Audit and EWRC. The observations relative to the substantive improvement of the oversight programs executed under the EWRC's mandate have been accomplished through the delegated participation in the audits conducted in 2022 under Appendix 4A and Appendix 4B of the NERC Rules of Procedure.

Other

During one of the focused discussions, NERC shared that the ERO Enterprise is developing an Internal Controls Library that will be for internal use only. While the Library will provide auditors with a robust catalog of internal controls, industry appears to be concerned about the potential use of the Library and the extent to which it may result in adverse findings during auditing processes. Internal controls are intended to address the specific risk to the registered entity with specific registered entity concerns, organizational structures and processes in mind. Internal controls are largely not meant to be lifted and transferred into other organizations without customization. There is a concern that this library is setting expectations for registered entities that are not openly known, understood or feasible to implement. This activity is not perceived as value added for the overall CMEP implementation and does not widely support that the oversight is in place to promote reliability and security of the Bulk Power System, given the industry does not have visibility of the product or understand its intended use.

Over the last year, there have been several discussions ongoing about consideration of organization registration changes even up to and inclusive of a FERC order to do so. In the past, the CCC's ORCS has served as a subcommittee of experts with these matters as well as participation with the Bulk Electric System Definition Standards Drafting Team to offer expertise on the integration of concepts with practical application to ensure registered entities were appropriately recognized, thus obligated to comply with standards where applicable.

Recommendation: The CCC encourages NERC to consider including ORCS expertise in the discussions about potential changes to registrations, functional obligations, and potential definitional changes to ensure all owners, operators and influencers of the BPS are appropriately included in the obligations to ensure the reliability and security of the BPS.

We encourage and promote NERC using the CCC as a broad industry input body and sounding board for initiatives under consideration. Historically, NERC has put forward presentations requesting CCC discussion and input prior to publication in the industry or presentation to the Board of Trustees. We encourage this and would willingly participate in discussions to elaborate on tougher issues or specific concerns regarding compliance with Standards.

Understanding more from an ERO Enterprise view related to trends and potential gaps will drive more productive discussions with industry and promote the opportunity to push issues to resolution more quickly.

One of the gaps that industry perceives exists in the Standards Process Manual or overall creation of standards is the feedback loop in developed standards language with a compliance view and ability to implement and evidence outcomes. There is certainly value to the RE view of the language of developed standards prior to effective and enforcement dates, however, we would suggest that the CCC could provide a valuable role in quality review of the standards prior to finalization.

Recommendation: Industry recommends a partnership with the CCC and Standards Drafting Teams to ensure an industry compliance lens is applied to the developed standards language prior to the effective and enforcement date of the developed regulations. We appreciate that the timeliness of this activity would need to be top of mind if the Committee is asked to support the efforts.

NERC CMEP staff have been working with subgroups of the NERC Reliability Security and Technical Committee on various projects that directly impact registered entity compliance leaders, teams and programs. One example of this effort is the work with the NERC Security Working Group on the CIP Evidence Request Tool. There are numerous examples that could be provided, as this feedback would also apply to ongoing discussions with Industry membership organizations and Trade Organizations.

When asking technical groups about compliance-related matters, how can we make sure that a compliance perspective is being included in the discussion? While the industry technical experts have valid and valuable feedback to provide on such matters, it should not be without consideration of the compliance lens. In some cases, these are the same personnel or individuals – however, the industry feedback on this matter is that this is the exception not the rule. We encourage this type of engagement as it further promotes the feedback loops that are referenced in the Framework. We encourage and recommend engagement with the CCC on these matters is also a critical step in the feedback loop when asking for this type of input from industry. The intent of this feedback is not to discourage interaction with any group or entity and acknowledges that it is not practical to engage every entity in all changes. Thoughtful exchange of ideas and selection of topics to share with each group will be important in considering this feedback. We appreciate that agile response and progress cannot suffer at the behest of inclusion of all parties. Where compliance and enforcement processes are concerned, the industry thoughts provided through the CCC would be beneficial as part of the dialogue.

On May 12, 2022, the CCC published its 2021 Stakeholder Perception Feedback Report. Since that time, the CCC has not had any dialogue with NERC about the content, items in response or feedback on the process. While it is not the expectation that this report requires a written or formal response, as this is representative of broad industry feedback, follow up discussions with reactions or responses would be beneficial. If there are suggestions for the CCC in how to facilitate a process that provides additional value, we would welcome those suggestions. The CCC would appreciate the opportunity to be in a position to assure industry stakeholders that the feedback was received, heard and help as an advocate for communications awareness of any items changed or adjusted in response.

Chapter 5: Conclusion

The 2022 Stakeholder Perception Feedback Program and comments generally illustrated positive trends in evaluations, indicating industry's view of continued enhancements to the ERO Enterprise Programs, Efficiency and Effectiveness. This report provides many observations, feedback around strengths and areas for potential improvement.

In the spirit of collaboration and support for ERO Enterprise success, the CCC respectfully submits the following recommendations:

- The CCC recommends a review of the Compliance Guidance Policy, implemented Program and processes, and outcomes for opportunities to clarify and improve the overall approach to this work.
- Encourage governance and risk dialogue between RE and registered entities when developing the COP, not limited to a written survey submittal
- The ERO should consider mapping the requirements to applicable risk categories more clearly.
- The ERO should consider adding a statement reflecting that its current assessment of the registered entity has requirements that are not listed in the COP and are considered minimal risk for the registered entity at the time of execution.
- The ERO should consider updates to the Rules of Procedure with the definition of the CMEP monitoring tools in use by the ERO Enterprise.
- The ERO should consider clarifying the criteria to achieve and definition of demonstrated positive performance in the Compliance Oversight Plans for registered entities.
- The CCC encourages NERC to consider including the ORCS expertise in the discussions about potential changes to registrations, functional obligations, and potential definitional changes to ensure all owners, operators and influencers of the BPS are appropriately included in the obligations to ensure the reliability and security of the BPS.
- Industry recommends a partnership with the CCC and Standards Drafting Teams to ensure an industry compliance lens is applied to the developed standards language prior to the effective and enforcement date of the developed regulations. We appreciate that the timeliness of this activity would need to be top of mind if the Committee is asked to support the efforts.
- The Align Users Group is formally starting its meetings in 2023. The CCC recommends working together to determine ways for the industry participants to be more helpful and involved to support success.

For the Stakeholder Perception Activities for 2023, the CCC intends to focus on the following items:

- Strengthening feedback loops in the ERO Enterprise Framework
- Partnership with other NERC Standing Committees on industry collaboration for agility and effectiveness
- Partnership with the NERC Standards Committee on Enhanced Periodic Reviews of Standards and the effectiveness of the process
- Partnership with NERC on the value add and opportunities to improve existing programs
- Partnership with industry on communications and awareness of ERO Enterprise Programs and processes

The CCC appreciates the opportunity to provide a Stakeholder Perception Feedback report related to the ERO Enterprise execution of the programs associated with the CCC's chartered scope of work. The report summarizes a diverse and wide area view of industry's perceptions and recommendations. There is a recognition of many areas of improvement and many areas of opportunity. The CCC looks forward to continued partnership with and support of the ERO Enterprise's success. We value the opportunity to collaborate on solutions or improvements to the opportunities relative to the programs and processes that will bring value for all stakeholders.

Appendix A: Stakeholder Feedback Questions

2022 Focused Discussion Questions

2nd Quarter

Compliance Guidance Policy

Industry Experiences Using Compliance Guidance Policy

1. For what purpose do you or your sector use Implementation Guidance or Practice Guides?
2. Do they provide value to your organization?
3. Is the process for developing Implementation Guidance and Practice Guides working?
4. What elements are working and what elements should be enhanced?
5. Have circumstances changed that would dictate a review of the current Policy and processes used to develop implementation guidance documents?
6. Are there barriers to approving implementation guidance?
7. What has been your experience (or your sector) in submitting implementation guidance?
8. What recommendations, if any, do you have for the ERO that might better streamline the process for endorsing implementation guidance?
9. Would an FAQ related to drafting Implementation Guidance be worthwhile?

Policy Considerations: Industry Thoughts Regarding the Application of the Compliance Guidance Policy

1. Are the current efforts used by industry and the ERO Enterprise to develop Implementation Guidance and Practice Guides consistent with the objectives of the Compliance Guidance Policy? Please explain why or why not.
2. What changes, if any, to the policy would you recommend to help registered entities to better understand its purpose and what information to include (or not)?
3. Would an FAQ document be worthwhile?
4. What changes would you recommend that would provide a better tool for registered entities in drafting and submitting Implementation Guidance documents?
5. Are the principles agreed to by the 2015 Compliance Guidance Team in the policy creation being adhered to in practice?
 - i. Is the Policy accomplishing the intent of the 2015 Team?
 - ii. Should a working group be formed to review and update the current principles for applicability?

Future Considerations: Industry Thoughts on Improving Compliance Guidance Policy

1. Do the criteria for endorsement need to be changed or revised?
2. What processes/criteria are used to determine endorsement of implementation guidance documents?
3. Would it be worthwhile reviewing rejected Implementation Guidance documents to determine if the substance of the guidance is relevant for registered entities even if not endorsed by the ERO? In other words, does the rejection process re: administrative issues prohibit market participants from having access to substantive implementation guidance?

4. Should implementation guidance be focused on best practices or pathway to meeting compliance requirements?
5. For what purpose is industry using implementation guidance documents for – to enhance their compliance program and/or reviewing for best practices?
6. Should an Implementation Guide be provided for all new standards and/or substantive changes to existing standards? If so, who would provide that guidance? And how does this relate to resources provided by the REs?
7. Should Implementation Guidance be repurposed to become a repository for industry to use as resources for best practices?
8. Could this support a more agile ERO standards development process?
9. Do auditors review practice guides? Are they used in the audit process? Is there a clear understanding across industry on how some questions are not related to meeting compliance, but rather ERO understanding risks and emerging issues? (e.g., cold weather practice guide)
10. Should Practice Guides continue to be posted on the NERC website?
11. In light of NERC’s focus on ERO agility, how can the Compliance Guidance Policy be modified to help address this objective? What tools above and beyond Implementation Guidance and Practice should be developed in this regard?

3rd Quarter

Compliance Oversight Plans & COVID-19 Impacts

1. What substantive changes are being made to the Compliance Oversight Plans to take into consideration a registered entity’s risk profile?
2. What substantive changes are being introduced to ensure consistency among the REs?
3. For Industry: What changes are recommended to help registered entities better understand the COP’s purpose and what information is included (or not)?
4. What additional outreach opportunities does industry and the ERO recommend?
5. Would the ERO consider creating criteria to assess a registered entity’s self-reporting program?
6. On the timing of sharing of COPs, are the Regions moving toward consistency? Is the timing coordinated early enough to be able to review the COP before any further CMEP activity?
7. How does the ERO assess a registered entity’s risk, a RE’s risk, internal controls & program elements with respect to the registered entity’s performance?
8. Maturity discussion on registered entity’s compliance program. Discussion on key component of the COP, namely understanding how a registered entity assesses, manages, and mitigates their risks to aid the ERO in developing the IRA/COP.
9. Discussion: CMEP tools used in the compliance assurance process. What are the tools used to test for compliance with requirements and from a risk-based perspective?

COVID-19

10. Describe the key changes you experienced with respect to compliance, monitoring, and enforcement engagements during the COVID-19 pandemic (timing, impact on staff, logistics, use of virtual media tools).
11. What areas of these engagements did you view as beneficial or problematic for your organization?
12. Were there any changes to the compliance, monitoring, and enforcement engagements provided for efficiencies during COVID-19? In other words, were there any changes that you would recommend retaining on a go-forward basis?
13. Looking ahead, what CMEP program approaches developed in response to the pandemic should the ERO Enterprise consider utilizing indefinitely? Explain why.

4th Quarter *Align Release 3*

General Questions

1. What aspect of using Align/SEL have you liked? Has been challenging?
2. What aspect of using Align/SEL have you found useful?
 - a. Outside of reported issues or bugs:
 - b. Are there recommended improvements that would make the industry's administration easier or system limitations that make the industry's work more difficult?
 - c. Do your colleagues/sectors have any recommendations related to Align system functionality? For example, refresh, logging in, etc.
3. Is there a feature that was in a legacy system that would be nice to have in Align?
4. Now that we are in one system, are there any aspects of coordinated oversight that entities find easier or are there areas for improvement?
5. Have you used Align to export the Standards that are applicable to your entity? If so, has it been beneficial or any recommendations for improvement?

Notifications

1. Are there recommended changes or improvements to system notifications, outside of already reported issues? How can the system notifications change or improve?
2. Entities have expressed challenges in understanding who (registered entity staff) is receiving notifications and how to confirm this is occurring appropriately. Has your sector experienced this? Provide specific examples.

Permissions

1. Roles and permission assignments are limited (PCC, PCO, ACC).
2. Do the limited roles impact the registered entity's ability to efficiently use Align?
3. Does your entity or sector have any recommended improvements or challenges related to assigning entity specific permissions?

Data

1. Related to responding to RFI's in Align, is there any feedback specific to process improvements or access processes?

2. Related to data handling and uploading documents, is there any feedback specific to process improvements or access processes?

Training/Outreach

1. What have you found most useful on the training materials?
2. What training areas could be improved?
3. What are you hearing from your colleagues/sector members about Align? What targeted outreach is needed?
4. For Release 1 (Self-Report, Self-Logging, Enforcement, and Mitigation), Release 2 (PDS, Self-Certification, TFE), Release 3 (Compliance Monitoring Engagement), or SEL, are there any areas where additional training or help text in the UI would be helpful?
5. Since the beginning of the Align project, NERC has had a place on the website that has allowed industry to keep track of project-related developments. With all Align major releases now essentially complete, is there still value in having NERC provide regular updates to the Align page to keep industry aware of ongoing developments? If yes, what information would you find to be most useful to have on the webpage?

Appendix B: Align Release 3 Feedback

Align specific comments to date are as follows:

- There are reporting/export limitations with the various navigation sections. For example, when wanting to export a complete list of mitigation milestones, you are not able to export by the Open Enforcement Action (OEA) (including main Unique ID) along with its mitigating milestones (and their Unique ID), which does not allow for an easy packaged picture of the OEA. This is significant administrative work for the industry.
- There is no way to assign who receives certain notifications. In addition, there is no way to know what roles are receiving what notifications. The notifications should not dictate the role assignment but given the inefficiencies driven by notifications going to those personnel who do not own the actions, industry is having to shift to assign roles based on the notices received.
- It would be helpful to industry for the system to automatically refresh rather than having to remember to click a refresh button each time something new is entered so it appears.
- The description on Compliance Exceptions is not clear for how to submit an acknowledgement in the “Save and Action” section.
- Clarification on how to set up permissions so appropriate access is granted between ERO Portal, CORES and Align.
- Targeted training on Finding Updates and when they are applicable would be helpful.
- It is difficult to navigate through Align to find things. The organization of the interface makes it hard to understand where information is located. For example, all the SEL numbers for submitting evidence are listed within the “Audits and Spot Checks” section near the bottom of the “ANP” under “Audit Notification Letter”. This was not intuitive.
- Once Working Papers (RSAW narratives) are submitted, the data is locked and there is no way to fully review the data that was submitted because the formatting changes and the tables turn into raw data.
- Unable to generate a record of a filed self-report in Align and would recommend added functionality to generate a PDF export for all submissions.
- When mitigation is submitted for review, entity is not able to see the submitted mitigating activities until the RE acts, so recommend continued visibility of the record while it is under RE review.
- The system currently prohibits uploading ZIP files.
- Recommend increasing the SEL upper limit on file size and posting the file size limitation on the UI would be helpful. Currently the max is 40 MB, but it is not posted anywhere.
- Once a submission is made in SEL, the submission disappears – it is gone, no longer available. This makes it difficult for users to determine if the upload was successful. The only record received is an email manifest that is sent outside of the tool. It would be helpful to receive an immediate confirmation within the tool that upload was successful.
- One RE confirmed they do not receive a notification when entities submit data to the SEL, so an additional step is needed to notify them via email that data has been submitted. Recommend enhancing SEL to automatically notify REs of new submittals upon receipt.
- There are many redundant steps and in general, the workflow of various activities (mitigating activities, closing out mitigation plans, etc.) is not intuitive.
- Consider better print and export features such as PDF for RFIs, Self-Certifications, Milestones, etc.

- It would be useful to see a list of approved Access Requests in the ERO Portal for the Align application. Another helpful feature would be an “access removal” feature for each approved request to facilitate access management as users retire/resign for Align (as well as for the ERO Portal).
- There is confusion created by having self-logging and self-reporting going directly to the Enforcement tab. Items should not go to the Enforcement tab until it is in that phase to better align with the Finding Process Summary workflow. The workflows and granular steps within Align are a bit of a mystery, which makes it hard to keep track of where an entity is in the Review process and next steps.
- The Align system seems overly sensitive to micro drops in internet connections. This causes many issues when trying to make longer submissions, such as self-logs/reports, and TFE submittals and edits. Users must start over depending on how far down the page they get unless they do many manual saves, which require starting back at the entry page for the milestones/activities or the draft list page. It is a rush to get as much in as possible before the user is kicked out. However, rushing creates opportunities for error. The longer it takes to review what was submitted to see if changes held, the more likely to suffer another micro-drop and begin the re-log-in process.
- The Export Standards feature does not appear to be working and is not widely utilized.
- An email notification would be helpful when a user has completed a task such as making a data submittal, responding to an RFI, or completing a self-cert would confirm for entities the submittal was completed and/or someone has responded for the Entity.
- Roles, permissions, visibility and notifications are limited, which affects the registered entity’s ability to efficiently use Align.
- Industry appreciates the extension of the hours from 6 am to 8 pm PT; however, entities in the EST zone are able to upload to SEL much later (11pm EST). It would be great to remove this time limitation completely.
- It might be helpful to have additional training to differentiate between Consolidated Mitigations and Mitigations that expand in scope due to updated findings.

CCC Focused Discussion

Q2 2023 CCC Meetings – Austin, TX
April 2023

Goal

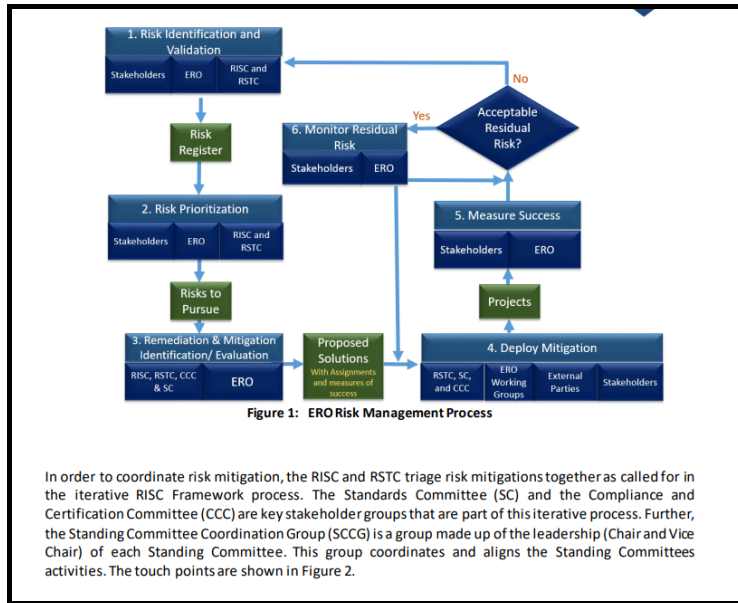
To evaluate the Framework to Address Known and Emerging Reliability Risks that guides the ERO in the prioritization of reliability risk, deployment of mitigation strategies, and measurement of success. In support of the ERO compliance, monitoring, and enforcement program (CMEP), this discussion will examine:

- The extent to which CMEP activities are supporting the Framework
- Gaps where CMEP activities are not supporting the Framework,
- Recommendations for ways to incorporate compliance observations into feedback loops, and
- If the CCC roles and responsibilities designated in the Framework can be more effectively applied or provide more value with a different approach.

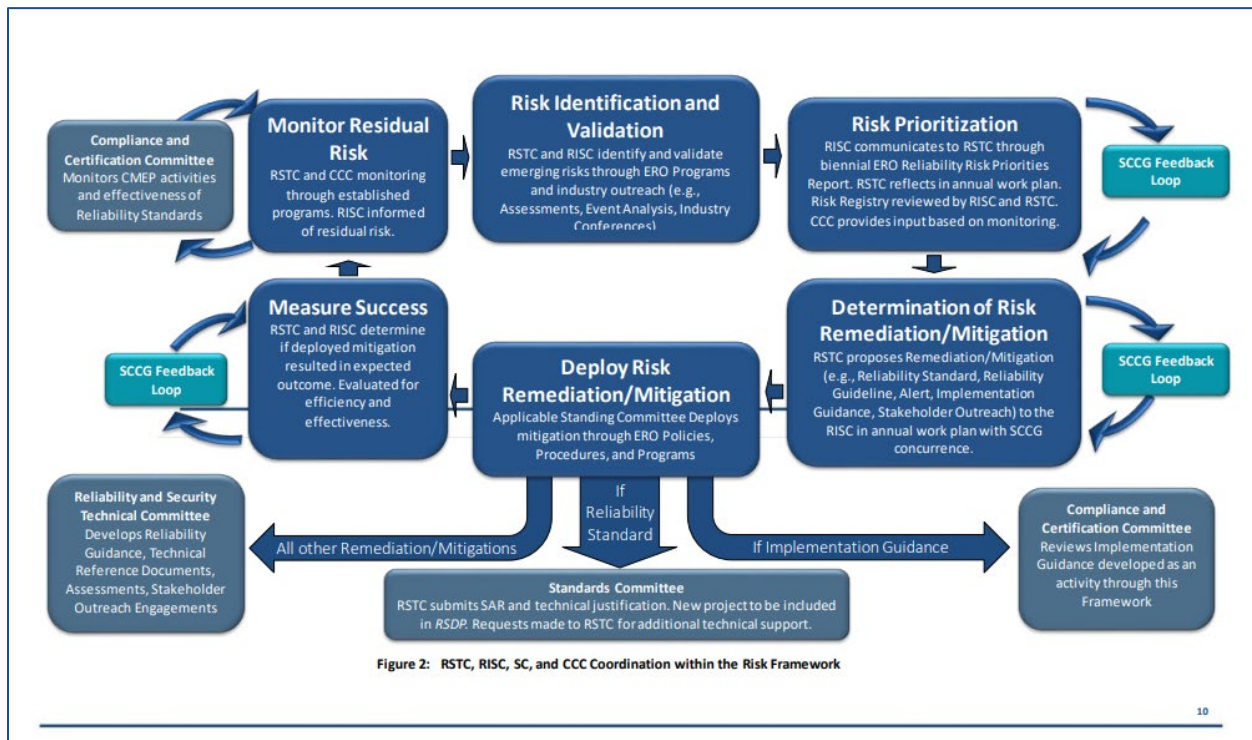
Background

In February 2021, the NERC Board of Trustees approved a document that memorializes the process by which reliability risks are identified, prioritized, and addressed within the ERO Enterprise. The document describes what is commonly known as the Framework to Address Known and Emerging Reliability and Security Risks (“Framework”) and is the subject of the Q2 2023 CCC Focused Discussion. In its broadest sense, the Framework aligns with the ERO mission and provides an important extension of the ERO’s core activities. Its success is dependent on careful coordination between NERC and the regions, as well as the industry committees that support the Framework.

Within the Sections of the actual Framework document are references to several NERC tools and Program steps that are used to assess risk. Figures 1 and 2 illustrate these programs, highlighting the relationship between the activity being addressed, the particular work product being developed, and how success is measured.



The previous image references Figure 2. This figure, which is copied below, is one that the CCC has referenced and discussed several times.



Stakeholder Groups Involved with the Framework

Four committees are highlighted as key stakeholders in the Framework, including the Standards Committee and the CCC, RISC, and the RSTC.

As you will note, there are numerous references to the Standing Committee Coordinating Group (SCCG) which is representative of all the Chairs and Vice-Chairs of NERC's Standing Committees – RISC, RSTC, SC and CCC. The CCC has been receiving a report quarterly from the SCCG meetings to ensure visibility to the discussions. The CCC, working through the SCCG and NERC leadership, continues to look for opportunities to engage in feedback loop discussions and reinforce the importance of compliance perspectives as a consideration through the feedback loops. Additional definition and understanding may be needed to appreciate the value the Framework more fully.

The ERO's Reliability Issues Steering Committee (RISC) hosts the RISC Leadership Summit every other year and from the discussions produces the ERO Reliability Risk Priorities Report. The last RISC Summit was hosted in January 2023 and the report production is in progress. Categorically, the discussions focused on Energy Policy, Security, Resiliency and Grid Transformation, and New Technologies. The associated Emerging Risks Survey reiterated that Grid Transformation, Security Risks, Critical Infrastructure Interdependencies, and Extreme Events are still relevant categories of focus. Changing Resource Mix, Resource Adequacy and Performance, and Cybersecurity Vulnerabilities ranked as top three identified risks as well as the top three to manage versus monitor of risks.

CCC Roles and Responsibilities in the Risk Framework

The CCC is involved in all elements of the Framework, although the level of direct involvement varies depending on the risk coordination categories. At the highest level (Risk Identification and Validation), the CCC holds a seat on the RISC, providing the committee with an opportunity to shape ERO discussions regarding risk prioritization. The Committee has a specifically-referenced role in two areas. Under Category 4 (Deploy Mitigation), the CCC is assigned to review the development of Implementation Guidance prior to industry submitting proposed Guidance to the ERO. Under Category 6 (Residual Risk), the CCC is responsible for measuring the effectiveness of a reliability standard that has been developed, as well as residual risk, to be reported back to the RISC through specific metrics.

Indirectly, the CCC is supporting the Framework by making committee members available for: 1) quality review activities related to the development of new standards, 2) participation in a Joint SC/CCC Task Force evaluating the future of the Standards Grading Tool, and 3) continued support for NERC Internal Audit works.

Issues for Consideration

So, what's next? What happens from all the discussion and what does RSTC do with the information from the RISC Summit? How does the CCC participate or affect change in the discussions?

The Risk Framework is now in its third year and each of the technical committees are reviewing its effectiveness through their specific vantage point. The SCCG is about to embark on a comprehensive review that would benefit greatly from the CCC focusing on how CMEP activities fit into the Framework. The results of this analysis will serve as an important input to recommendations that come out of the SCCG work that will be done over the remainder of 2023.

The following questions that approach this topic by asking questions of industry and from members of the CCC:

Questions for CCC Members

1. Does the CCC Workplan effectively explain the Committee's role in this process? And how do the CCC Strategic Workplan items support the overall efforts?
2. If your answer to question 1 was no, what can the CCC do to strengthen this linkage or explain more about the CCC role?
3. How should the CCC be thinking about risk identification?
4. How can the Committee help others identify the linkage between compliance risk to identify reliability or security risks?
5. What types of engagement would the CCC expertise be beneficial to the other NERC Standing Committee work?
6. Do you see places where further coordination efforts are needed amongst the NERC committees?
7. Regarding CCC review of Implementation Guidance, does the current approaches for Implementation Guidance address the objectives of the Framework. What suggestions would you have to enhance the value of Implementation Guidance.
8. What tools could be developed or modified to ensure that CMEP activities are effectively incorporated into the Framework?
9. Do you have any recommendations to strengthen the processes and framework as proposed?
10. What additional information would be helpful to you to provide better input to the CCC leadership for their participation on the RISC and SCCG?

Questions for Industry Stakeholders:

1. What are the strongest/weakest elements of the current Framework?
2. Are you aware of the RISC Leadership Summit, ERO Reliability Risk Report, and RSTC Processes to address the risks identified by RISC?
3. What level of understanding do you have about the different frameworks at play with respect to risk identification (Framework to Address Known and Emerging Risks to Reliability and Security, ERO Enterprise Risk-based Compliance Monitoring Framework)?
4. Are you aware that the ERO Enterprise Risk Elements are different from the ERO Reliability Risk Report priorities? Or may be different?
5. Do you understand the linkage between the ERO Enterprise Risk Elements and the CMEP Implementation Plan?

6. Do you have input about how your organization or sector considers all of these different types of program documents are considered when thinking about risks, reliability, security and compliance?
7. What are your thoughts about how we can more closely integrate reliability, security and compliance risks?
8. Does the separation of the processes reinforce or detract that the actions we are taking to be compliant support reliability and security of the grid?
9. How should we be thinking about the different types of risk and actions owners and operators take?
10. What do you see are the role differences related to risk for the CCC and Standards Committee versus the RSTC or RISC?
11. Do you believe that the risk processes need stronger feedback loops with the information learned in compliance program management (industry) or compliance oversight (ERO Enterprise)? If yes, do you have suggestions for how to do this?

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

NERC Compliance and Certification Committee Hearing Procedures

CCCPP-004-3

Effective: TBD Version 3.0

RELIABILITY | ACCOUNTABILITY



Table of Contents

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

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

1.6.14 Cross-Examination..... 12

1.6.15 Redirect Examination 12

1.6.16 Examination of Adverse Participant 12

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

1.7 Post Evidentiary Hearing Procedure 13

1.7.1 Briefs 13

1.7.2 Other Pleadings..... 13

1.7.3 Draft Initial Opinions..... 13

1.7.4 Hearing Officer’s Initial Opinion 13

1.7.5 Exceptions 13

1.7.6 Oral Argument..... 14

1.7.7 Additional Hearings..... 14

1.7.8 Hearing Panel Final Order 15

1.7.9 The Record 15

1.7.10 Appeal..... 16

1.8 Settlement..... 17

1.9 Remedial Action Directives 18

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

1.9.2 Remedial Action Directive Hearing Procedure 18

NERC Compliance and Certification Committee		CCCPP-004-3
Title: Hearing Procedures		
Version: 3.0	Revision Date: TBD	Effective Date: TBD

Revision History

Date	Version Number	Comments
03/03/09	1.0	Approved by CCC
05/06/09	1.0	Approved by the Board of Trustees
03/21/18	2.0	Approved by CCC
08/16/18	2.0	Approved by the Board of Trustees
TBD	3.0	Approved by CCC
TBD	3.0	Approved by the Board of Trustees

Preface

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

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



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

Hearing Procedures

1.1 Applicability, Definitions, and Interpretation

1.1.1 Procedure Governed

The provisions set forth in this Attachment (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (CCC) in hearings in the United States, provided, that Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions, as described in the NERC ROP Section 404. Specifically, as directed by the NERC Board of Trustees, the CCC serves as the hearing body for any contest regarding findings of penalties or sanctions for violation(s) of Reliability Standard(s) where NERC is acting as the Compliance Enforcement Authority (CEA) and is directly monitoring the Registered Entity for compliance with those Reliability Standards (by agreement with a Regional Entity or absent a delegation agreement).¹

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

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

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Staff alleging noncompliance with a Reliability Standard, proposing a Penalty, opposing a Registered Entity’s Mitigation Plan or Mitigating Activities, or requiring compliance with a Remedial Action Directive.

If:

- a final order has been entered by the Hearing Panel;
- the Hearing Panel has issued a ruling determining that there are no issues to be decided regarding the Alleged Violation, proposed Penalty amount, proposed Mitigation Plan or Mitigating Activities, or proposed Remedial Action Directive, or
- the Registered Entity and the CEA have entered into a settlement agreement or otherwise resolved the matters that are the subject of the hearing,

then the hearing shall be terminated by the Hearing Panel and no further proceedings shall be conducted before the Hearing Panel.

¹ Upon its certification as the ERO, NERC stated that it maintains a hearing body to be activated in those instances in which NERC itself is responsible for monitoring and adjudicating compliance with Reliability Standards by a Regional Entity or a Registered Entity, noting that these instances are likely to be “extremely limited.” See NERC Answer, Docket Nos. RR06-1-003, RR06-1-005, and RR06-1-007 (May 3, 2007) at pp. 7-9. The Federal Energy Regulatory Commission accepted NERC’s proposal on CCC hearing responsibilities in *Order on Compliance Filing*, 119 FERC ¶ 61,248 at PP 50-51 (June 7, 2007).

1.1.2 Deviation

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

1.1.3 Standards for Discretion

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

Integrity of the Fact-Finding Process - The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision, or order.

- (b) Fairness - Persons appearing in CCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation, and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.
- (c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant, or interest group.
- (d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy NERC's conflict of interest policy.
- (e) Impartiality - Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions, or orders.
- (f) Expedition - Proceedings shall be brought to a conclusion as swiftly as possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

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

1.1.5 Definitions

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

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

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

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

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

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

"Hearing Panel" means the five-person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Section 1.1.1 above.

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

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

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

- (a) All filings made with the Hearing Panel must contain:
- (b) 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;
 - (c) A heading that describes the filing and the Participant on whose behalf the filing is made;
 - (d) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
 - (e) 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
- 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 8 1/2 inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than 1/2 inch. Line numbers, if any, shall have a left-hand margin of not less than 1/2 inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- (b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- (c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- (d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- (e) Filings may include schedules, attachments, or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart, or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

1.2.3 Submission of Documents

- (a) **Where to File:** Filings shall be made with the Clerk located at NERC's Washington, DC office. The office will be open during NERC's regular business hours each day except Saturday, Sunday, legal holidays and any other day declared by NERC.
 - (b) **When to File:** Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Panel. Filings will be considered made when they are date stamped when received by the Clerk. To be timely, filings must be received no later than 5:00 p.m., local time on the date specified.
 - (c) **How to File:** Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made. Alternatively, filing by electronic means will be acceptable upon implementation of a suitable and secure system.
 - (d) **Number of Copies to File:** One original and five exact copies of any document shall be filed. The Clerk will provide each member of the Hearing Panel with a copy of each filing.
 - (e) **Signature:** The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff.
- Verification:** The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer, or the Hearing Panel. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be included in or attached to the verification explaining why a person other than the signer is providing verification.
- 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.
- (g)

1.2.4 Service

- (a) **Service List:** For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, NERC Director of Enforcement, and the Registered Entity's compliance contact as registered with the CEA shall automatically be included on the service list.

Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

- (b) **By Participants:** Subject to the provisions of Section 1.5.10, any Participant filing a document in a proceeding must serve a copy of the document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, and deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage

prepaid, or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

- (c) **By the Clerk:** The Clerk shall serve all issuances of the Hearing Officer and Hearing Panel upon the members of the Hearing Panel and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, or deposit in the United States mail properly addressed with first class postage prepaid, or registered mail properly addressed with postage prepaid, or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

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

- (d) 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 NERC is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the office of the CEA is closed.

1.2.6 Extensions of Time

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

1.2.7 Amendments

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

1.2.8 Transcripts

A 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

- (a) 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.

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

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

1.2.9 Rulings, Notices, Orders, and Other Issuances

Any action taken by the Hearing Officer or the Hearing Panel shall be recorded in a ruling, notice, order or other applicable issuance, or stated on the record for recordation in the transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the Hearing Panel. All notices of hearings shall set forth the date, time, and place of hearing.

1.2.10 Location of Hearings and Conferences

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

1.2.11 Participant Participation

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

1.2.12 Interventions

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

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

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

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

1.2.13 Proceedings Closed to the Public

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

1.2.14 Docketing System

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the filing of a request for a hearing. Unless NERC provides a different docketing system that will be used uniformly, docket

numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "NERC", followed by a dash ("-"), followed by a three-digit number that will be "001" for the first hearing requested after January 1 of each calendar year and ascend sequentially for each additional hearing until December 31 of the same calendar year.

1.2.15 Representations deemed to be made in All Pleadings

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

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

1.2.16 Hold Harmless

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

1.3 Initiation of the Hearing Process


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

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

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

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

- (g) A Registered Entity shall attach to its request for hearing whichever of the following are applicable:
- (1) The Registered Entity's Self-Report of a violation;
 - (2) The Notice of Alleged Violation and the Registered Entity's response thereto; and/or
- The Registered Entity's proposed revised Mitigation Plan or Mitigating Activities and the Staff's statement rejecting the proposed revised Mitigation Plan or Mitigating Activities. 

1.3.2 Staff's Response to Request for Hearing

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

1.3.3 Notice of Hearing

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

1.3.4 Shortened Hearing Procedure

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

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

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

- (a) The initial prehearing conference shall be held within seven (7) days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Section 1.5.2 that may apply, the initial prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with subsections (c) through (e).
- (b) Within ten (10) days after the date on which the notice of hearing is issued, Staff shall make Documents available to the Registered Entity for inspection and copying pursuant to Section 1.5.7.

Within twenty-one (21) days after the initial prehearing conference, the Staff shall file:

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

Within fourteen (14) days of Staff's initial comment filing pursuant to subsection (c), the Registered Entity

- (d) shall file:
 - (1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal arguments, which also may respond to Staff's initial comments;
 - (2) all Documents that the Registered Entity seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - (3) a verification attesting to the truthfulness of the facts alleged in the filing.

Within seven (7) days after the Registered Entity's responsive comment filing, Staff shall file reply comments

- (e) that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional Documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional Documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional Documents in support of its position that are responsive to the additional Documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.

- (f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days after the Staff's reply comments filing or any additional filing by the Registered Entity pursuant to subsection (e).
- (g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Section 1.7.5 and within seven (7) days thereafter, a reply brief designated "brief in reply to exceptions."

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

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

1.4 General Hearing Procedure

1.4.1 [Intentionally Left Blank]

[Blank.]

1.4.2 Hearing Officer

- (a) The CCC shall use a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the Hearing Panel as set forth in Section 1.4.3. Members of the Hearing Panel may attend any aspect of the hearing.
- (b) The Hearing Officer is responsible for the conduct of the hearing, including administering the hearing from the initial prehearing conference through the issuance of the Hearing Officer's initial opinion, any administrative hearing functions thereafter, and submission of the matter to the Hearing Panel for final decision through the presentation to the Hearing Panel of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:
 - (1) To administer oaths and affirmations;
 - (2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone, or adjourn a hearing;
 - (3) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
 - (4) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
 - (5) To supervise and issue orders concerning discovery;
 - (6) To conduct prehearing conferences, status hearings, and Evidentiary Hearings;
 - (7) To hear argument on all objections, motions, and other requests, and to rule upon all objections, motions, and other requests that do not result in the final determination of the proceeding;
 - (8) To rule on and receive evidence;
 - (9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
 - (10) To issue protective orders pursuant to Section 1.5.10;
 - (11) To issue initial opinions; and
 - (12) To ensure that hearings are conducted in a full, fair, and impartial manner, that order is maintained, and that unnecessary delay is avoided in the disposition of the proceedings.

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

1.4.3 Hearing Panel

- (a) The CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members serving on the Hearing Panel shall be selected by vote of a valid quorum of the CCC. Voting members of the CCC at arm's length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.
- (b) The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry sectors may control, and no single industry sector may veto, any decision of the Hearing Panel on any matter brought before it for decision. "Hearing Panel" means the five-person Hearing Panel established as set forth in the CCC Charter on a case-by-case basis and that is responsible for adjudicating a matter as set forth in Section 1.1.1 above.
- (c) The Hearing Panel is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:
- (1) Upon receiving a filing by a Participant, the Clerk shall promptly send a notice to the members of the Hearing Panel identifying the date of the filing and the Participant making the filing and briefly describing the nature of the filing. Any member of the Hearing Panel may request of, and shall receive from, the Clerk, a copy of any filing by a Participant. The Hearing Panel shall not receive Documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such Documents are placed into the record pursuant to Section 1.6.7.
 - (2) The Clerk shall send all issuances of the Hearing Officer to the members of the Hearing Panel.
 - (3) The Hearing Panel or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or Evidentiary Hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any hearing. At any prehearing conference or hearing attended by a member of the Hearing Panel, any member of the Hearing Panel may ask questions directly of any Participant or witness.
 - (4) The Hearing Panel shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence, or briefs; (ii) present oral argument on an issue; (iii) file pre-Evidentiary Hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Panel shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
 - (5) To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Section 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
 - (6) The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the Hearing Panel shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify, or approve the initial opinion in whole or in part.

1.4.4 Interlocutory Review

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

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

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

1.4.5 Disqualification

- (a) A Hearing Officer, Technical Advisor, or member of the Hearing Panel shall recuse himself or herself from a proceeding if participation would violate NERC's applicable conflict of interest policy. A Hearing Officer, Technical Advisor, or member of the Hearing Panel shall disclose potential conflicts of interest relevant to the proceedings.
- (b)

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor, or member of the Hearing Panel from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds

disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

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

1.4.6 Technical Advisor

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

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

1.4.7 No Ex Parte Communications

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

- (a) (1) neither the Hearing Panel, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that
- (2) the Hearing Panel, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
- i. in writing if the writing is simultaneously provided to all Participants;
 - ii. orally if a representative for every Participant is present in person or by telephone; or
 - iii. subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.

Exceptions

- (b)

- (1) The proscription in subsection (a)(1) does not prohibit members of the Staff from communicating with the Registered Entity, and representatives, agents, or employees thereof on any topic, provided that any member of the Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
 - (2) The proscription in subsection (a)(1) does not prohibit communications between or among members of the Hearing Panel, the Hearing Officer, and any Technical Advisor.
 - (3) The proscription in subsection (a)(1) does not prohibit communications between the Hearing Officer or members of the Hearing Panel to the Clerk for the purpose of transmitting documents, giving instructions to the Clerk, or discussing scheduling and other procedural matters relating to the proceeding.
- (c) (4) The proscription in subsection (a)(1) does not prohibit communications between or among the Clerk, the Hearing Panel, and representatives of NERC for purposes of establishing the hearing forum.

Any member of the Hearing Panel, the Hearing Officer, or any Technical Advisor who receives or who makes or knowingly allows a communication prohibited by this Section shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time, and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

be attached

1.4.8 Appearances

- (a) Participants shall file written appearances within seven (7) days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership, or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.
- (b) A Participant's written appearance shall state, with respect to each individual that the Participant identifies for service, the individual's name, address, telephone number, and facsimile number and email address, if available, where service shall be made.
- (c) A Participant may withdraw any individual from the Participant's representation or otherwise change the identity of individuals authorized to represent the Participant in a proceeding by filing a notice of a change in service list.
- (d) Any attorney appearing on behalf of a Participant shall be licensed to practice law and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia. All representatives appearing before the Hearing Panel or Hearing Officer shall conform to the standards of ethical conduct required of practitioners before the courts of the United States.
- (e) Individuals representing Participants in any hearing also shall enter their appearances at the beginning of the hearing by stating their names, addresses, telephone numbers, and email addresses orally on the record.

1.4.9 Failure to Appear or Exercise Diligence

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

1.4.10 Consolidation of Proceedings

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

1.5 Prehearing Procedure

1.5.1 [Intentionally Left Blank]

[Blank.]

1.5.2 Prehearing Conference

- (a) The Hearing Officer shall hold at least one prehearing conference, which may be the initial prehearing conference or a subsequently scheduled prehearing conference, 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 Panel and with the consent of all Participants or for good cause shown; and
 - (7) Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

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

- (b)
- (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.

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.

Hearing Officer's Initial Opinion Granting Summary Disposition: When the Hearing Officer issues an initial opinion granting summary disposition in whole or in part, the ruling shall set forth the rationale for the grant. An initial opinion of the Hearing Officer granting summary disposition shall be confirmed, rejected, or modified in a final order issued by the Hearing Panel.

1.5.4 Status Hearings

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

1.5.5 Motions and Responses

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

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

1.5.6 Experts

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

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

1.5.7 Inspection and Copying of Documents in Possession of Staff

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

- (1) Within twenty-five (25) days after the date the request for hearing is filed, Staff shall make available for inspection and copying by the other Participants, all Documents prepared or obtained by Staff through or in connection with any compliance monitoring processes that led to the institution of proceedings. Such Documents shall include but are not limited to:
- A. requests for information to the Respondent;
 - B. every written request, including e-mail, directed to persons not employed by NERC 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 NERC.

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

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

(b) Documents That May Be Withheld by Staff

- (1) Staff may withhold a Document from inspection and copying by a Participant if:
- A. the Document is privileged to NERC, or constitutes attorney work product of counsel for NERC (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 NERC, 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, NERC, 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 part thereof, that contains exculpatory evidence. Nothing in subsection (b)(1) requires Staff to withhold a Document from disclosure.

Withheld Document List:

- (c) 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 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 NERC 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 NERC's offices during normal business hours. A Participant shall not be given custody of the Documents or be permitted to remove the Documents from NERC's offices, other than copies of Documents made available by NERC for that purpose.

(f) Copying Costs:

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

(g) Failure to Make Documents Available — Harmless Error

In the event that a Document required to be made available to a Participant pursuant to this Section is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to make the Document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff to produce a Document, the burden shall be on Staff to show that such failure was harmless error. The Hearing Officer, or, upon review, the Hearing 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 Panel upon motion by a Participant, or by the Hearing Officer, or by the Hearing Panel on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §§ 385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

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

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

(a) 1.5.10 Protective Orders

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:

- i. Confidential Business and Market Information, including information that is proprietary, commercially valuable, or competitively sensitive;
- ii. Critical Electric Infrastructure Information;

- iii. Critical Energy Infrastructure Information;
- iv. information related to a Cyber Security Incident;
- v. personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information;
- vi. audit work papers; or
- vii. investigative files or Documents that would disclose investigative techniques of Staff, any CEA, the ERO or any federal, state or foreign regulatory authority.

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

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

1.5.11 Pre-Evidentiary Hearing Memorandum

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

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

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

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

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

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

1.6 Procedure at Evidentiary Hearing

1.6.1 Purpose of Evidentiary Hearing

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

1.6.2 Order of Receiving Evidence

In all proceedings, Staff shall open and close.

1.6.3 Opening and Closing Statements

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

1.6.4 Right of Participant to Present Evidence

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

1.6.5 Exhibits

- (a) All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide Documents, information, or testimony, shall be offered in the form of an exhibit.
- (b) Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the Evidentiary Hearing to the Participants and the Hearing Officer.

1.6.6 Witness Attendance at Testimonial Hearing

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

1.6.7 Admission of Evidence

- (a) Staff shall offer its exhibits into evidence first and the Registered Entity or Regional 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 Panel, in accordance with Section 1.6.14, and then for redirect examination in accordance with Section 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.
- (d) (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 CCC's policy to discourage witness testimony at a testimonial hearing when a Participant has not served the witness' written testimony in advance of the testimonial hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

- (a) When relevant and material matter offered in evidence is embraced in a book, paper, or Document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable.
- (b) If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers, or Document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit.
- (c) All other Participants shall be afforded an opportunity to examine the book, paper, or Document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

1.6.9 Stipulations

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

1.6.10 Official Notice

- (a) Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:
 - (1) Rules, regulations, administrative rulings, and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.
 - (2) The orders, transcripts, exhibits, pleadings, or any other matter contained in the record of other docketed proceedings of NERC.
 - (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 NERC.
 - (6) All other matters of which the courts of the United States may take judicial notice.
- (b) All requests to take official notice shall be submitted in advance of the Evidentiary Hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested.
- (c) An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

1.6.11 Admissibility of Evidence

- (a) Any evidence offered, including that included in a book, paper, or Document pursuant to Section 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.
- (b) The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.
- (c) Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

1.6.12 Offer of Proof

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

1.6.13 Reservation of Evidentiary Ruling

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

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

1.6.14 Cross-Examination

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

1.6.15 Redirect Examination

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

1.6.16 Examination of Adverse Participant

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

1.6.17 Close of the Evidentiary Record

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

1.7 Post Evidentiary Hearing Procedure

1.7.1 Briefs

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

1.7.2 Other Pleadings

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

1.7.3 Draft Initial Opinions

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

1.7.4 Hearing Officer's Initial Opinion

- (a) At the conclusion of the Evidentiary Hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Panel's review and consideration.
- (b) The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Mitigating Activities, or Remedial Action Directive that the Hearing Officer proposes the Hearing Panel require.
- (c) The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cyber Security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information or Critical Electric Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Section 1.5.10.

1.7.5 Exceptions

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



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

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

1.7.6 Oral Argument

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

1.7.7 Additional Hearings

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

1.7.8 Hearing Panel Final Order

- (a) Following the receipt of the initial opinion, any exceptions, and replies thereto, and oral argument, if any, the Hearing Panel shall issue its final order.
- (b) Issuance of a final order shall require (i) a quorum of the Hearing Panel, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (in which the number of members voting shall not be less than a quorum).
- (c) The Hearing Panel shall issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions, replies thereto, or oral argument. The Hearing Panel may extend this deadline for good cause and shall provide written notice of any extension to all Participants. The final order may adopt, modify, amend, or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues presented on the record.
- (d) The Hearing Panel will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Remedial Action Directive, Mitigation Plan or Mitigating Activities required.
- (e) The final order shall note if the subject of the proceeding has been deemed to involve a Cyber Security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information or Critical Electric Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Section 1.5.10.
- (f) The service of the final order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

1.7.9 The Record

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

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

1.7.10 Appeal

A Participant or a Regional Entity acting as the CEA, may appeal a final order of the Hearing Panel to NERC in accordance with Rules of Procedure Section 408.

1.8 Settlement

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

1.9 Remedial Action Directives

1.9.1 Initiation of Remedial Action Directive Hearing

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

1.9.2 Remedial Action Directive Hearing Procedure

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Section. The general hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action

- (a) Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Section.

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

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

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

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

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

NERC Compliance and Certification Committee Hearing Procedures

CCCPP-004-3

Effective: TBD Version 3.0

RELIABILITY | ACCOUNTABILITY



Table of Contents

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

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

1.6.14 Cross-Examination..... 12

1.6.15 Redirect Examination 12

1.6.16 Examination of Adverse Participant 12

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

1.7 Post Evidentiary Hearing Procedure 13

1.7.1 Briefs 13

1.7.2 Other Pleadings..... 13

1.7.3 Draft Initial Opinions..... 13

1.7.4 Hearing Officer’s Initial Opinion 13

1.7.5 Exceptions 13

1.7.6 Oral Argument..... 14

1.7.7 Additional Hearings..... 14

1.7.8 Hearing Panel Final Order 15

1.7.9 The Record 15

1.7.10 Appeal..... 16

1.8 Settlement..... 17

1.9 Remedial Action Directives 18

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

1.9.2 Remedial Action Directive Hearing Procedure 18

NERC Compliance and Certification Committee		CCCPP-004-3
Title: Hearing Procedures		
Version: 3.0	Revision Date: TBD	Effective Date: TBD

Revision History

Date	Version Number	Comments
03/03/09	1.0	Approved by CCC
05/06/09	1.0	Approved by the Board of Trustees
03/21/18	2.0	Approved by CCC
08/16/18	2.0	Approved by the Board of Trustees
TBD	3.0	Approved by CCC
TBD	3.0	Approved by the Board of Trustees

Preface

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

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



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

Hearing Procedures

1.1 Applicability, Definitions, and Interpretation

1.1.1 Procedure Governed

The provisions set forth in this Attachment (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (CCC) in hearings in the United States, provided, that Canadian provincial regulators may act as the final adjudicator in their respective jurisdictions, as described in the NERC ROP Section 404. Specifically, as directed by the NERC Board of Trustees, the CCC serves as the hearing body for any contest regarding findings of penalties or sanctions for violation(s) of Reliability Standard(s) where NERC is acting as the Compliance Enforcement Authority (CEA) and is directly monitoring the Registered Entity for compliance with those Reliability Standards (by agreement with a Regional Entity or absent a delegation agreement).¹

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

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

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Staff alleging noncompliance with a Reliability Standard, proposing a Penalty, opposing a Registered Entity’s Mitigation Plan or Mitigating Activities, or requiring compliance with a Remedial Action Directive.

If:

- a final order has been entered by the Hearing Panel;
- the Hearing Panel has issued a ruling determining that there are no issues to be decided regarding the Alleged Violation, proposed Penalty amount, proposed Mitigation Plan or Mitigating Activities, or proposed Remedial Action Directive, or
- the Registered Entity and the CEA have entered into a settlement agreement or otherwise resolved the matters that are the subject of the hearing,

then the hearing shall be terminated by the Hearing Panel and no further proceedings shall be conducted before the Hearing Panel.

¹ Upon its certification as the ERO, NERC stated that it maintains a hearing body to be activated in those instances in which NERC itself is responsible for monitoring and adjudicating compliance with Reliability Standards by a Regional Entity or a Registered Entity, noting that these instances are likely to be “extremely limited.” See NERC Answer, Docket Nos. RR06-1-003, RR06-1-005, and RR06-1-007 (May 3, 2007) at pp. 7-9. The Federal Energy Regulatory Commission accepted NERC’s proposal on CCC hearing responsibilities in *Order on Compliance Filing*, 119 FERC ¶ 61,248 at PP 50-51 (June 7, 2007).

1.1.2 Deviation

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

1.1.3 Standards for Discretion

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

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.

(a)

- (b) Fairness - Persons appearing in CCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation, and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a Participant that would otherwise result from another Participant's failure to act diligently and in good faith.
- (c) Independence - The hearing process should be tailored to protect against undue influence from any Person, Participant, or interest group.
- (d) Balanced Decision-Making - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy NERC's conflict of interest policy.
- (e) Impartiality - Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions, or orders.
- (f) Expedition - Proceedings shall be brought to a conclusion as swiftly as possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

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

1.1.5 Definitions

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

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

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

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

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

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

"Hearing Panel" means the five-person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Section 1.1.1 above.

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

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

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

- (a) All filings made with the Hearing Panel must contain:
- (b) 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;
 - (c) A heading that describes the filing and the Participant on whose behalf the filing is made;
 - (d) The full name, address, telephone number and email address of the Participant or the representative of the Participant making the filing;
 - (e) 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
- 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 8 1/2 inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than 1/2 inch. Line numbers, if any, shall have a left-hand margin of not less than 1/2 inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.
- (b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- (c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- (d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- (e) Filings may include schedules, attachments, or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart, or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

1.2.3 Submission of Documents

- (a) **Where to File:** Filings shall be made with the Clerk located at NERC's Washington, DC office. The office will be open during NERC's regular business hours each day except Saturday, Sunday, legal holidays and any other day declared by NERC.
- (b) **When to File:** Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Panel. Filings will be considered made when they are date stamped when received by the Clerk. To be timely, filings must be received no later than 5:00 p.m., local time on the date specified.
- (c) **How to File:** Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made. Alternatively, filing by electronic means will be acceptable upon implementation of a suitable and secure system.
- (d) **Number of Copies to File:** One original and five exact copies of any document shall be filed. The Clerk will provide each member of the Hearing Panel with a copy of each filing.
- (e) **Signature:** The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff.
- Verification:** The facts alleged in a filing need not be verified unless required by these Hearing Procedures, the Hearing Officer, or the Hearing Panel. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be included in or attached to the verification explaining why a person other than the signer is providing verification.
- (g) **Certificate of Service:** Filings shall be accompanied by a certificate of service stating the name of the individuals served, the Participants whose interests the served individuals represent, the date on which service is made, the method of service, and the addresses to which service is made. The certificate shall be executed by the individual who caused the service to be made.

1.2.4 Service

- (a) **Service List:** For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, NERC Director of Enforcement, and the Registered Entity's compliance contact as registered with the CEA shall automatically be included on the service list.

Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

- (b) **By Participants:** Subject to the provisions of Section 1.5.10, any Participant filing a document in a proceeding must serve a copy of the document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, and deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage

prepaid, or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

- (c) **By the Clerk:** The Clerk shall serve all issuances of the Hearing Officer and Hearing Panel upon the members of the Hearing Panel and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, or deposit in the United States mail properly addressed with first class postage prepaid, or registered mail properly addressed with postage prepaid, or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

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

- (d) 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 NERC is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the office of the CEA is closed.

1.2.6 Extensions of Time

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

1.2.7 Amendments

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

1.2.8 Transcripts

A 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

- (a) 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.

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

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

1.2.9 Rulings, Notices, Orders, and Other Issuances

Any action taken by the Hearing Officer or the Hearing Panel shall be recorded in a ruling, notice, order or other applicable issuance, or stated on the record for recordation in the transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the Hearing Panel. All notices of hearings shall set forth the date, time, and place of hearing.

1.2.10 Location of Hearings and Conferences

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

1.2.11 Participant Participation

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

1.2.12 Interventions

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

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

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

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

1.2.13 Proceedings Closed to the Public

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

1.2.14 Docketing System

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the filing of a request for a hearing. Unless NERC provides a different docketing system that will be used uniformly, docket

numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "NERC", followed by a dash ("-"), followed by a three-digit number that will be "001" for the first hearing requested after January 1 of each calendar year and ascend sequentially for each additional hearing until December 31 of the same calendar year.

1.2.15 Representations deemed to be made in All Pleadings

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

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

1.2.16 Hold Harmless

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

1.3 Initiation of the Hearing Process


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

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

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

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

- (g) A Registered Entity shall attach to its request for hearing whichever of the following are applicable:
- (1) The Registered Entity's Self-Report of a violation;
 - (2) The Notice of Alleged Violation and the Registered Entity's response thereto; and/or
- The Registered Entity's proposed revised Mitigation Plan or Mitigating Activities and the Staff's statement rejecting the proposed revised Mitigation Plan or Mitigating Activities. 

1.3.2 Staff's Response to Request for Hearing

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

1.3.3 Notice of Hearing

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

1.3.4 Shortened Hearing Procedure

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

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

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

- (a) The initial prehearing conference shall be held within seven (7) days after the date on which the notice of hearing is issued. In addition to any other matters set forth in Section 1.5.2 that may apply, the initial prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with subsections (c) through (e).
- (b) Within ten (10) days after the date on which the notice of hearing is issued, Staff shall make Documents available to the Registered Entity for inspection and copying pursuant to Section 1.5.7.

Within twenty-one (21) days after the initial prehearing conference, the Staff shall file:

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

Within fourteen (14) days of Staff's initial comment filing pursuant to subsection (c), the Registered Entity

- (d) shall file:
 - (1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal arguments, which also may respond to Staff's initial comments;
 - (2) all Documents that the Registered Entity seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - (3) a verification attesting to the truthfulness of the facts alleged in the filing.

Within seven (7) days after the Registered Entity's responsive comment filing, Staff shall file reply comments

- (e) that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional Documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional Documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional Documents in support of its position that are responsive to the additional Documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.
- (f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days after the Staff's reply comments filing or any additional filing by the Registered Entity pursuant to subsection (e).
- (g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Section 1.7.5 and within seven (7) days thereafter, a reply brief designated "brief in reply to exceptions."

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

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

1.4 General Hearing Procedure

1.4.1 [Intentionally Left Blank]

[Blank.]

1.4.2 Hearing Officer

- (a) The CCC shall use a Hearing Officer to preside over each hearing conducted pursuant to these Hearing Procedures, provided that the Hearing Officer's actions shall be subject to the authority of the Hearing Panel as set forth in Section 1.4.3. Members of the Hearing Panel may attend any aspect of the hearing.
- (b) The Hearing Officer is responsible for the conduct of the hearing, including administering the hearing from the initial prehearing conference through the issuance of the Hearing Officer's initial opinion, any administrative hearing functions thereafter, and submission of the matter to the Hearing Panel for final decision through the presentation to the Hearing Panel of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:
 - (1) To administer oaths and affirmations;
 - (2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone, or adjourn a hearing;
 - (3) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
 - (4) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
 - (5) To supervise and issue orders concerning discovery;
 - (6) To conduct prehearing conferences, status hearings, and Evidentiary Hearings;
 - (7) To hear argument on all objections, motions, and other requests, and to rule upon all objections, motions, and other requests that do not result in the final determination of the proceeding;
 - (8) To rule on and receive evidence;
 - (9) To call upon a Participant to produce further evidence that is material and relevant to any issue;
 - (10) To issue protective orders pursuant to Section 1.5.10;
 - (11) To issue initial opinions; and
 - (12) To ensure that hearings are conducted in a full, fair, and impartial manner, that order is maintained, and that unnecessary delay is avoided in the disposition of the proceedings.

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

1.4.3 Hearing Panel

- (a) The CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members serving on the Hearing Panel shall be selected by vote of a valid quorum of the CCC. Voting members of the CCC at arm's length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.
- (b) The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry sectors may control, and no single industry sector may veto, any decision of the Hearing Panel on any matter brought before it for decision. "Hearing Panel" means the five-person Hearing Panel established as set forth in the CCC Charter on a case-by-case basis and that is responsible for adjudicating a matter as set forth in Section 1.1.1 above.
- (c) The Hearing Panel is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:
- (1) Upon receiving a filing by a Participant, the Clerk shall promptly send a notice to the members of the Hearing Panel identifying the date of the filing and the Participant making the filing and briefly describing the nature of the filing. Any member of the Hearing Panel may request of, and shall receive from, the Clerk, a copy of any filing by a Participant. The Hearing Panel shall not receive Documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such Documents are placed into the record pursuant to Section 1.6.7.
 - (2) The Clerk shall send all issuances of the Hearing Officer to the members of the Hearing Panel.
 - (3) The Hearing Panel or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or Evidentiary Hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any hearing. At any prehearing conference or hearing attended by a member of the Hearing Panel, any member of the Hearing Panel may ask questions directly of any Participant or witness.
 - (4) The Hearing Panel shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence, or briefs; (ii) present oral argument on an issue; (iii) file pre-Evidentiary Hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Panel shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
 - (5) To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Section 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
 - (6) The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the Hearing Panel shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify, or approve the initial opinion in whole or in part.

1.4.4 Interlocutory Review

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

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

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

1.4.5 Disqualification

- (a) A Hearing Officer, Technical Advisor, or member of the Hearing Panel shall recuse himself or herself from a proceeding if participation would violate NERC's applicable conflict of interest policy. A Hearing Officer, Technical Advisor, or member of the Hearing Panel shall disclose potential conflicts of interest relevant to the proceedings.
- (b)

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor, or member of the Hearing Panel from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds

disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

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

1.4.6 Technical Advisor

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

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

1.4.7 No Ex Parte Communications

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

- (a) (1) neither the Hearing Panel, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that
- (2) the Hearing Panel, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
- i. in writing if the writing is simultaneously provided to all Participants;
 - ii. orally if a representative for every Participant is present in person or by telephone; or
 - iii. subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.

Exceptions

- (b)

- (1) The proscription in subsection (a)(1) does not prohibit members of the Staff from communicating with the Registered Entity, and representatives, agents, or employees thereof on any topic, provided that any member of the Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
 - (2) The proscription in subsection (a)(1) does not prohibit communications between or among members of the Hearing Panel, the Hearing Officer, and any Technical Advisor.
 - (3) The proscription in subsection (a)(1) does not prohibit communications between the Hearing Officer or members of the Hearing Panel to the Clerk for the purpose of transmitting documents, giving instructions to the Clerk, or discussing scheduling and other procedural matters relating to the proceeding.
- (c) (4) The proscription in subsection (a)(1) does not prohibit communications between or among the Clerk, the Hearing Panel, and representatives of NERC for purposes of establishing the hearing forum.

Any member of the Hearing Panel, the Hearing Officer, or any Technical Advisor who receives or who makes or knowingly allows a communication prohibited by this Section shall, within seven (7) days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time, and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

be attached

1.4.8 Appearances

- (a) Participants shall file written appearances within seven (7) days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership, or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.
- (b) A Participant's written appearance shall state, with respect to each individual that the Participant identifies for service, the individual's name, address, telephone number, and facsimile number and email address, if available, where service shall be made.
- (c) A Participant may withdraw any individual from the Participant's representation or otherwise change the identity of individuals authorized to represent the Participant in a proceeding by filing a notice of a change in service list.
- (d) Any attorney appearing on behalf of a Participant shall be licensed to practice law and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia. All representatives appearing before the Hearing Panel or Hearing Officer shall conform to the standards of ethical conduct required of practitioners before the courts of the United States.
- (e) Individuals representing Participants in any hearing also shall enter their appearances at the beginning of the hearing by stating their names, addresses, telephone numbers, and email addresses orally on the record.

1.4.9 Failure to Appear or Exercise Diligence

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

1.4.10 Consolidation of Proceedings

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

1.5 Prehearing Procedure

1.5.1 [Intentionally Left Blank]

[Blank.]

1.5.2 Prehearing Conference

(a) The Hearing Officer shall hold at least one prehearing conference, which may be the initial prehearing conference or a subsequently scheduled prehearing conference, 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 Panel and with the consent of all Participants or for good cause shown; and
- (7) Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

The Hearing Officer shall also hold a final prehearing conference prior to the Evidentiary Hearing, for the

(b) 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.

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.

Hearing Officer's Initial Opinion Granting Summary Disposition: When the Hearing Officer issues an initial opinion granting summary disposition in whole or in part, the ruling shall set forth the rationale for the grant. An initial opinion of the Hearing Officer granting summary disposition shall be confirmed, rejected, or modified in a final order issued by the Hearing Panel.

1.5.4 Status Hearings

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

1.5.5 Motions and Responses

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

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


1.5.6 Experts

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

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

1.5.7 Inspection and Copying of Documents in Possession of Staff

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

- (1) Within twenty-five (25) days after the date the request for hearing is filed, Staff shall make available for inspection and copying by the other Participants, all Documents prepared or obtained by Staff through or in connection with any compliance monitoring processes that led to the institution of proceedings. Such Documents shall include but are not limited to:
- A. requests for information to the Respondent;
 - B. every written request, including e-mail, directed to persons not employed by NERC 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 NERC 

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

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

(b) Documents That May Be Withheld by Staff

- (1) Staff may withhold a Document from inspection and copying by a Participant if:
- A. the Document is privileged to NERC, or constitutes attorney work product of counsel for NERC (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 NERC, 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, NERC, 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 part thereof, that contains exculpatory evidence. Nothing in subsection (b)(1) requires Staff to withhold a Document from disclosure.

Withheld Document List:

- (c) 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 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 NERC 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 NERC's offices during normal business hours. A Participant shall not be given custody of the Documents or be permitted to remove the Documents from NERC's offices, other than copies of Documents made available by NERC for that purpose.



(f)  **Copying Costs:**

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

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

In the event that a Document required to be made available to a Participant pursuant to this Section is not made available by Staff, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to make the Document available was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of Staff to produce a Document, the burden shall be on Staff to show that such failure was harmless error. The Hearing Officer, or, upon review, the Hearing 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 Panel upon motion by a Participant, or by the Hearing Officer, or by the Hearing Panel on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §§ 385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

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

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

- i. Confidential Business and Market Information, including information that is proprietary, commercially valuable, or competitively sensitive;
- ii. Critical Electric Infrastructure Information;

- iii. Critical Energy Infrastructure Information;
- iv. information related to a Cyber Security Incident;
- v. personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information;
- vi. audit work papers; or
- vii. investigative files or Documents that would disclose investigative techniques of Staff, any CEA, the ERO or any federal, state or foreign regulatory authority.

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

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

1.5.11 Pre-Evidentiary Hearing Memorandum

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

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

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

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

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

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

1.6 Procedure at Evidentiary Hearing

1.6.1 Purpose of Evidentiary Hearing

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

1.6.2 Order of Receiving Evidence

In all proceedings, Staff shall open and close.

1.6.3 Opening and Closing Statements

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

1.6.4 Right of Participant to Present Evidence

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

1.6.5 Exhibits

- (a) All material offered in evidence, except oral testimony allowed by the Hearing Officer or the testimony of a non-Participant pursuant to an order to produce or provide Documents, information, or testimony, shall be offered in the form of an exhibit.
- (b) Each exhibit must be marked for identification. A Participant must provide the court reporter with two (2) copies of every exhibit that the Participant offers into evidence, and will provide copies of any exhibit not served in advance of the Evidentiary Hearing to the Participants and the Hearing Officer.

1.6.6 Witness Attendance at Testimonial Hearing

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

1.6.7 Admission of Evidence

- (a) Staff shall offer its exhibits into evidence first and the Registered Entity or Regional 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 Panel, in accordance with Section 1.6.14, and then for redirect examination in accordance with Section 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.
- (d) (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 CCC's policy to discourage witness testimony at a testimonial hearing when a Participant has not served the witness' written testimony in advance of the testimonial hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

- (a) When relevant and material matter offered in evidence is embraced in a book, paper, or Document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable.
- (b) If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers, or Document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit.
- (c) All other Participants shall be afforded an opportunity to examine the book, paper, or Document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

1.6.9 Stipulations

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

1.6.10 Official Notice

- (a) Where relevant and material to the subject matter of the proceeding, the Hearing Officer may, upon request of a Participant, take official notice of any of the following:
 - (1) Rules, regulations, administrative rulings, and orders, written policies of governmental bodies, and rulings and orders of other Compliance Enforcement Authorities.
 - (2) The orders, transcripts, exhibits, pleadings, or any other matter contained in the record of other docketed proceedings of NERC.
 - (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 NERC.
 - (6) All other matters of which the courts of the United States may take judicial notice.
- (b) All requests to take official notice shall be submitted in advance of the Evidentiary Hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested.
- (c) An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

1.6.11 Admissibility of Evidence

- (a) Any evidence offered, including that included in a book, paper, or Document pursuant to Section 1.6.8, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.
- (b) The admission of evidence shall not be limited by the generally recognized rules of evidence as applied in the courts of the United States or of the states, although the Hearing Officer may take such rules of evidence into consideration in ruling on the admissibility of evidence. The Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and shall admit evidence if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Hearing Officer may only exclude material from the record in response to a motion or objection by a Participant.
- (c) Formal exception to a ruling on admissibility of evidence need not be taken to be preserved.

1.6.12 Offer of Proof

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

1.6.13 Reservation of Evidentiary Ruling

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

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

1.6.14 Cross-Examination

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

1.6.15 Redirect Examination

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

1.6.16 Examination of Adverse Participant

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

1.6.17 Close of the Evidentiary Record

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

1.7 Post Evidentiary Hearing Procedure

1.7.1 Briefs

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

1.7.2 Other Pleadings

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

1.7.3 Draft Initial Opinions

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

1.7.4 Hearing Officer's Initial Opinion

- (a) At the conclusion of the Evidentiary Hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Panel's review and consideration.
- (b) The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Mitigating Activities, or Remedial Action Directive that the Hearing Officer proposes the Hearing Panel require.
- (c) The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cyber Security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information or Critical Electric Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Section 1.5.10.

1.7.5 Exceptions

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



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

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

1.7.6 Oral Argument

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

1.7.7 Additional Hearings

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

1.7.8 Hearing Panel Final Order

- (a) Following the receipt of the initial opinion, any exceptions, and replies thereto, and oral argument, if any, the Hearing Panel shall issue its final order.
- (b) Issuance of a final order shall require (i) a quorum of the Hearing Panel, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (in which the number of members voting shall not be less than a quorum).
- (c) The Hearing Panel shall issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions, replies thereto, or oral argument. The Hearing Panel may extend this deadline for good cause and shall provide written notice of any extension to all Participants. The final order may adopt, modify, amend, or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues presented on the record.
- (d) The Hearing Panel will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Remedial Action Directive, Mitigation Plan or Mitigating Activities required.
- (e) The final order shall note if the subject of the proceeding has been deemed to involve a Cyber Security Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information or Critical Electric Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Section 1.5.10.
- (f) The service of the final order shall include a notice informing the Participants of their appeal rights to the ERO or to FERC, as applicable.

1.7.9 The Record

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

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

1.7.10 Appeal

A Participant or a Regional Entity acting as the CEA, may appeal a final order of the Hearing Panel to NERC in accordance with Rules of Procedure Section 408.

1.8 Settlement

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



1.9 Remedial Action Directives

1.9.1 Initiation of Remedial Action Directive Hearing

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

1.9.2 Remedial Action Directive Hearing Procedure

Hearings to address Remedial Action Directives shall be conducted only under the expedited hearing process set forth in this Section. The general hearing procedures described in Sections 1.4 to 1.7 are applicable to the Remedial Action

- (a) Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Section.

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

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

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

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

The logo for NERC (North American Electric Reliability Corporation) features the letters "NERC" in a bold, black, sans-serif font. A horizontal blue bar is positioned directly beneath the letters.

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

A large, steel lattice tower for a high-voltage power line, viewed from a low angle looking up. The tower is silhouetted against a bright, hazy sky. The image is partially obscured by a blue curved shape in the top right corner.

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

CCC Procedure — CCCPP-005-2

A faint, light blue map of North America is visible in the background of the lower half of the page. The map shows the outlines of the United States, Canada, and Mexico.

to ensure
the reliability of the
bulk power system

Version 2.0

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

Title: Hearing Procedures for Use in Appeals of Certification Matters**Version:** 2.0**Revision Date:** n/a**Effective Date:** TBD**Summary**

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in Section 504 and Appendix 5A of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities.

Revision History

Date	Version Number	Comments
03/03/09	1.0	Approved by CCC
05/06/09	1.0	Approved by the Board of Trustees
TBD	2.0	Approved by CCC

Table of Contents

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

1. Hearing Procedures for Use in Appeals of Certification Matters

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

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

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

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

If the Hearing Panel enters a final decision, or the Hearing Panel issues a ruling determining there are no issues to be decided regarding the Certification matter, or the Registered Entity and the CEA have entered into a settlement agreement resolving the matters that are the subject of the hearing, the hearing shall be terminated and the Hearing Panel shall not conduct further proceedings.

1.1.2 Deviation

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

1.1.3 Standards for Discretion

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

- a) Integrity of the Fact-Finding Process — The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision, or order.
- b) Fairness — Persons appearing in CCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation, and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a

Participant that would otherwise result from another Participant's failure to act diligently and in good faith.

- c) Independence — The hearing process should be tailored to protect against undue influence from any Person, Participant, or interest group.
- d) Balanced Decision-Making — Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy NERC's conflict of interest policy.
- e) Impartiality — Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Participants should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions, or orders.
- f) Expedition — Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

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

1.1.5 Definitions

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

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

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

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

“Hearing Panel” means the five-person hearing body established as set forth in the CCC Charter on a case-by-case basis and that is responsible for adjudicating a matter as set forth in Paragraph 1.1.1 above.

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

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

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

General Provisions including Filing, Service, Transcription, and Participation

1.2.1 Contents of Filings

All filings made with the Hearing Panel must contain:

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

1.2.2 Form of Filings

- a) All filings shall be typewritten, printed, reproduced, or prepared using a computer or other word or data processing equipment on white paper 8¹/₂ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ¹/₂ inch. Line numbers, if any, shall have a left-hand margin of not less than ¹/₂ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced, and quotations may be single spaced and indented.
- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments, and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.

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

1.2.3 Submission of Documents

a) Where to File

After initiation of the Hearing in accordance with Appendix 5A, filings shall be made with the Clerk. The Clerk's office will be open during NERC's regular business hours each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

b) When to File

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

c) How to File

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

d) Number of Copies to File

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

e) Signature

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

f) Verification

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

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

g) Certificate of Service

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

1.2.4 Service

a) Service List

For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and email address, if available, of each individual designated for service. The Hearing Officer, NERC Director of Compliance and Certification, and the Registered Entity's compliance contact as registered with the CEA, shall automatically be included on the service list.

Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

b) By Participants

Subject to provisions of Section 1.5.11, any Participant filing a document in a proceeding must serve a copy of the document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid, or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

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

d) Effective Date of Service

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

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

1.2.5 Computation of Time

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

1.2.6 Extensions of Time

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

1.2.7 Amendments

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

1.2.8 Transcripts

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

1.2.9 Rulings, Notices, Orders, and Other Issuances

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

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

1.2.10 Location of Hearings and Conferences

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

1.2.11 Participant Participation

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

1.2.12 Interventions

- a) The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by the Hearing Panel or by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.
- b) The Hearing Panel may allow a Person to intervene only if the Hearing Panel determines that the Person seeking intervention has a direct and substantial interest in the outcome of the Certification.
- c) A Person seeking intervention shall do so by filing a motion to intervene with the Clerk. The motion shall state the Person's interest in sufficient factual detail to demonstrate that the Person should be allowed to intervene pursuant to Section 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 Panel as to whether or not the motion to intervene should be granted.
- e) The Hearing Panel may, within seven (7) days following the date of the Hearing Officer's recommendation, issue a decision granting or denying the motion to intervene. If the Hearing Panel does not issue a decision granting or denying the motion to intervene within seven (7) days following the date of the Hearing Officer's recommendation, the Hearing Officer's recommendation shall become the decision of the Hearing Panel and the motion to intervene shall be deemed granted or denied by the Hearing Panel in accordance with the Hearing Officer's recommendation.
- f) The Hearing Officer, on motion of a Participant or on his or her own motion, or the Hearing Panel, on recommendation by the Hearing Officer or its own motion, may stay or suspend the proceeding while a request to intervene, including any appeal of the grant or denial of the request to intervene, is being resolved.
- g) A Person allowed to intervene and become a Participant to a proceeding shall be designated as a Respondent and deemed to be aligned with the existing Respondent(s), unless the Hearing Panel, in the decision granting intervention, states that the Person allowed to intervene shall be deemed to be aligned with another Participant to the proceeding.
- h) A Person allowed to intervene and become a Participant to a proceeding is required to take the record and the procedural status of the proceeding as it stands on the date the Person's motion to intervene is granted by the Hearing Panel.

- i) A Person may appeal a decision of the Hearing Panel denying the Person's motion to intervene, and Staff, the Respondent or any other Participant may appeal a decision granting or denying a motion to intervene. A notice of appeal shall be filed with the Clerk no later than seven (7) days following the date of the decision of the Hearing Panel granting or denying the motion to intervene.

1.2.13 Proceedings Closed to the Public

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

1.2.14 Docketing System

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

1.2.15 Representations deemed to be made in All Pleadings

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

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;

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;

the claims, defenses and other contentions set forth in the pleading are warranted based on the applicable Rules of Procedure provisions; and

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 NERC, the Regional Entity, and the CCC, including without

limitation their Members, Board of Directors or Trustees, Compliance Committee, any other committees or subcommittees, Staff, contracted employees, Hearing Panel members, Hearing Officers, and Technical Advisors, shall not be liable and shall be held harmless against the consequences of: a) any action or inaction arising out of the hearing process; b) any agreement reached in resolution of a dispute; or 3) any failure to reach agreement as a result of a proceeding. This “hold harmless”

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

1.3 Initiation of the Hearing Process

1.3.1 Respondent’s Option to Request a Hearing

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

A hearing request shall include:

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

1.3.2 Staff’s Response to Request for Hearing

Any response by the Staff required or permitted by this Section shall be filed within fifteen (15) days after the date the request for hearing was filed, unless the Hearing Officer or Hearing Panel allows a longer time to file the response.


1.3.3 Notice of Hearing

The Clerk shall issue a notice of hearing not less than sixteen (16) days, and not more than twenty-one (21) days, after the Respondent files its request for hearing.

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

1.4 General Hearing Procedure

1.4.1 Hearing Officer

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

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

- a) To administer oaths and affirmations;
- b) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone, or adjourn a hearing;
- c) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- d) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- e) To supervise and issue orders concerning discovery;
- f) To conduct prehearing conferences, status hearings, and Evidentiary Hearings;
- g) 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;
- h) To rule on and receive evidence;
- i) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- j) To issue protective orders pursuant to Section 1.5.5;
- k) To issue initial opinions; and
- l) 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.
- m)
- n)

The CCC shall disclose the employment history and professional affiliations of the Hearing Officer within two (2) days of the Hearing Officer's assignment to the proceeding, and

Participants to the hearing may raise objections to the Hearing Officer's participation in accordance with Paragraph 1.4.4.

1.4.2 Hearing Panel

- a) The CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the Hearing Panel shall be selected by vote of a valid CCC quorum. Voting members of the CCC at arm's length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.
- b) The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry sectors may control, and no single industry sector may veto, any decision of the Hearing Panel on any matter brought before it for decision. "Hearing Panel" means the five person Hearing Panel established as set forth in the CCC Charter on a case-by-case basis and that is responsible for adjudicating a matter as set forth in Section 1.1.1 above.
- c) The Hearing Panel is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:

(1) Upon receiving a filing by a Participant, the Clerk shall promptly send a notice to the members of the Hearing Panel identifying the date of the filing and the Participant making the filing and briefly describing the nature of the filing. Any member of the Hearing Panel may request of, and shall receive from, the Clerk, a copy of any filing by a Participant. The Hearing Panel shall not receive Documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such Documents are placed into the record pursuant to Section 1.6.7.

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

(3) The Hearing Panel or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or Evidentiary Hearing, and/or submit questions to the Hearing Officer to submit to a Participant or any witness at any hearing. At any prehearing conference or hearing attended by a member of the Hearing Panel, any member of the Hearing Panel may ask questions directly of any Participant or witness.

(4) The Hearing Panel shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence, or briefs; (ii) present oral argument on an issue; (iii) file pre-Evidentiary Hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Panel shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.

(5) To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Section 1.4.3, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate. The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the Hearing Panel shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify, or approve the initial opinion in whole or in part.

1.4.3 Interlocutory Review

a)

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

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

- b) Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the Hearing Panel, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by references to the record, or by affidavit if based on facts that do not appear in the record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses shall be allowed.
- c) The Hearing Officer shall file a report to the Hearing Panel within fourteen (14) days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the Hearing Panel.
- d) On review of a Hearing Officer's ruling, the Hearing Panel may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The Hearing Panel may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments.
- e) Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Section 1.6.8) of the Hearing Panel, and (ii) a majority vote of the members of the Hearing Panel voting on the final order (in which the number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Panel's action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any other scheduled dates in the proceeding except as authorized by the Hearing Officer or the Hearing Panel based on a finding of exceptional circumstances.

A non-Participant that has been ordered by the Hearing Officer pursuant to Section 1.5.3 to produce or provide Documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the Hearing Panel of the Hearing Officer's order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to Section 1.5.3, and (ii) the reasonableness of the Hearing Officer's order to produce or provide Documents, information or testimony.

1.4.4 Disqualification

- a) A Hearing Officer, Technical Advisor or member of the Hearing Panel shall recuse himself or herself from a proceeding if participation would violate NERC's conflict of interest policy. A Hearing Officer, Technical Advisor, or member of the Hearing Panel shall disclose potential conflicts of interest relevant to the proceedings.
- b) Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor, or member of the Hearing Panel from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Paragraph 1.4.6, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time

when the Participant learns of the facts believed to constitute the basis for disqualification; or
(2) the time when the Participant is notified of the assignment of the Hearing Officer or
Technical Advisor.

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

d) If a quorum (as defined in Paragraph 1.6.8) of the Hearing Panel does not remain after any recusals and rulings on motions for disqualification, then the CCC shall appoint a new member(s) to the Hearing Panel to create a quorum, which new member(s) shall serve on the Hearing Panel through the conclusion of the proceeding but not thereafter. The CCC shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Panel shall be subject to the provisions applicable herein to all Hearing Panel members.

1.4.5 Technical Advisor

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

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

1.4.6 No Ex Parte Communications

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

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

b) Exceptions:

1) The proscription in subsection (a)(1) does not prohibit members of the Staff from communicating with the Registered Entity and representatives, agents or employees thereof on any topic, provided that any member of the Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.

(2) The proscription in subsection (a)(1) does not prohibit communications between or among members of the Hearing Panel, the Hearing Officer, and any Technical Advisor.

(3) The proscription in subsection (a)(1) does not prohibit communications between the Hearing Officer or members of the Hearing Panel to the Clerk for the purpose of transmitting documents, giving instructions to the Clerk, or discussing scheduling and other procedural matters relating to the proceeding.

(4) The proscription in subsection (a)(1) does not prohibit communications between or among the Clerk, the Hearing Panel, and representatives of the CEA for purposes of establishing the hearing forum.

- c) Any member of the Hearing Panel, the Hearing Officer, or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph 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: i) the date, time, and place of communication; ii) a summary of the substance and nature of the communication and all responses thereto; and iii) a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication.

1.4.7 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 email address, if available, where service shall be made.

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

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

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

1.4.8 Failure to Appear or Exercise Diligence

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

1.4.9 Experts

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

1.5 Hearing Procedure

1.5.1 Order of Argument

In all proceedings, Respondent shall open and close.

1.5.2 Right of Participant to Present Evidence

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

1.5.3 Exhibits

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

1.5.4 Witness Attendance at Hearing

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

1.5.5 Protective Orders

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

information; and iii) the requirements, conditions, or safeguards that must be met before an individual may view the information.

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

1.5.6 Admission of Evidence

- a) Respondent shall offer its exhibits into evidence first and the Staff second, unless the Participants agree otherwise.
- b) If witnesses are required to attend the hearing, the Participants shall call each such witness in turn. Following the witness's swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony or exhibits that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate, and complete record without imposing undue delay or prejudice on any Participant. The Participant whose witness has made changes or written corrections to written testimony and exhibits shall file corrected copies with the Clerk and provide corrected copies to the Hearing Officer and other Participants.
- 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's testimony, including all exhibits, schedules, and attachments thereto, into evidence. Other Participants may object to the introduction of the witness's testimony, or any part thereof, as set forth in Paragraph 1.5.10. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph 1.5.13, and then for redirect examination in accordance with Paragraph 1.5.14. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal, or surrebuttal) when they first take the witness stand.
- d) Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide Documents, information, or testimony issued to a non-Participant, no witness shall be allowed to testify during the hearing unless a Participant has served the witness's written testimony in advance of the hearing. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the CCC's policy to discourage witness testimony at a hearing when a Participant has not served the witness's written testimony in advance of the hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

- a) When relevant and material matter offered in evidence is embraced in a book, paper, or Document containing other matter that is not material or relevant, the Participant offering the

same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable.

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.

1.5.8 Stipulations

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

1.5.9 Official Notice

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

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

b) All requests to take official notice shall be submitted as part of a Participant's filings. 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.

1.5.10 Admissibility of Evidence

a) Any evidence offered, including that included in a book, paper, or Document pursuant to Section 1.5.7, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

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

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

1.5.11 Offer of Proof

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

1.5.12 Reservation of Evidentiary Ruling

- a) The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made, provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto.
- b) If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the Evidentiary Hearing to ensure a full, complete, and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

1.5.13 Cross-Examination

- a) Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. Leading questions are permitted on cross-examination.
- b) The credibility of a witness may be attacked by any Participant, including the Participant calling the witness.
- c) The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Section 1.5.14.

1.5.14 Redirect Examination

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

1.5.15 Close of the Evidentiary Record

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

1.6 Post-Evidentiary Hearing Procedure

1.6.1 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.

1.6.2 Other Pleadings

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

1.6.3 Draft Initial Opinions

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

1.6.4 Hearing Officer's Initial Opinion

- a) At the conclusion of the Evidentiary Hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Panel's review and consideration.
- b) The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any registration or certification actions that the Hearing Officer proposes the Hearing Panel require.
- c) The initial opinion shall note if any information in the proceeding was deemed to be Critical Energy Infrastructure Information or Critical Electric Infrastructure Information or is the subject of a protective order pursuant to Section 1.5.5.

1.6.5 Exceptions

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

1.6.6 Oral Argument

- a) The Hearing Panel may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues.

- b) If oral argument is held where briefs have been filed, argument may be limited to issues identified by the Hearing Panel. The Hearing Panel will direct the Clerk to issue a notice of oral argument that identifies the date, time, place, and issues for the argument.
- c) The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record and contain accurate citations to the record. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than forty-eight (48) hours prior to the time and date of oral argument.

1.6.7 Additional Hearings

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

1.6.8 Hearing Panel Final Order

- a) Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Panel shall issue its final order.
- b) Issuance of a final order shall require (i) a quorum of the Hearing Panel, which shall be (after any recusals, disqualifications, and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (in which the number of members voting shall not be less than a quorum).
- c) The Hearing Panel shall issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions and replies thereto, or oral argument. The Hearing Panel may extend this deadline for good cause and shall provide written notice of any extension to all Participants. The final order may adopt, modify, amend, or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion and the reasons or basis therefore, for all material issues presented on the record.
- d) The Hearing Panel will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any registration or certification actions required.
- e) The final order shall note if any information in the proceeding was deemed to be Critical Energy Infrastructure Information or Critical Electric Infrastructure Information or is the subject of a protective order issued pursuant to Section 1.5.5.
- 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.

1.6.9 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) Registered Entity's request for a hearing;
- (2) Participant filings, motions, and responses;
- (3) Notices, rulings, orders, and other issuances of the Hearing Officer and Hearing Panel;
- (4) Transcripts;

- (5) Evidence received;
- (6) Written comments submitted in lieu of written testimony;
- (7) Matters officially noticed;
- (8) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- (9) Pre-Evidentiary Hearing memorandums, briefs, and draft opinions;
- (10) Post-hearing pleadings other than briefs;

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

1.6.10 Appeal

A Participant or the Regional Entity may appeal a final order of the Hearing Panel to the BOTCC in accordance with Rules of Procedure Appendix 5A.

1.7 Settlement

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

The NERC logo consists of the letters "NERC" in a bold, black, sans-serif font. Below the letters is a horizontal blue bar that is slightly wider than the text.

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

A tall, lattice-structured metal tower for a high-voltage power line, with several cross-arms and insulators. The tower is set against a bright, hazy sky. The image is partially obscured by a dark blue curved shape in the top right corner.

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

CCC Procedure — CCCPP-005-2

A faint, light blue map of North America is visible in the background of the lower half of the page. The map shows the outlines of the United States, Canada, and Mexico.

to ensure
the reliability of the
bulk power system

Version 2.0

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

Title: Hearing Procedures for Use in Appeals of Certification Matters**Version:** 2.0**Revision Date:** n/a**Effective Date:** TBD**Summary**

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in Section 504 and Appendix 5A of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities.

Revision History

Date	Version Number	Comments
03/03/09	1.0	Approved by CCC
05/06/09	1.0	Approved by the Board of Trustees
TBD	2.0	Approved by CCC

Table of Contents


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

1. Hearing Procedures for Use in Appeals of Certification Matters

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

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

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

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

If the Hearing Panel enters a final decision, or the Hearing Panel issues a ruling determining there are no issues to be decided regarding the Certification matter, or the Registered Entity and the CEA have entered into a settlement agreement resolving the matters that are the subject of the hearing, the hearing shall be terminated and the Hearing Panel shall not conduct further proceedings.

1.1.2 Deviation

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

1.1.3 Standards for Discretion

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

- a) Integrity of the Fact-Finding Process — The principal goal of the hearing process is to assemble a complete factual record to serve as a basis for a correct and legally sustainable ruling, decision, or order.
- b) Fairness — Persons appearing in CCC proceedings should be treated fairly. To this end, Participants should be given fair notice and opportunity to present explanations, factual information, documentation, and legal argument. Action shall be taken as necessary to eliminate any disadvantage or prejudice to a

Participant that would otherwise result from another Participant's failure to act diligently and in good faith.

- c) Independence — The hearing process should be tailored to protect against undue influence from any Person, Participant, or interest group.
- d) Balanced Decision-Making — Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy NERC's conflict of interest policy.
- e) Impartiality — Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Participants should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions, or orders.
- f) Expedition — Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

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

1.1.5 Definitions

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

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

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



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

“Hearing Panel” means the five-person hearing body established as set forth in the CCC Charter on a case-by-case basis and that is responsible for adjudicating a matter as set forth in Paragraph 1.1.1 above.

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

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

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

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

1.2.1 Contents of Filings

All filings made with the Hearing Panel must contain:

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

1.2.2 Form of Filings

- a) All filings shall be typewritten, printed, reproduced, or prepared using a computer or other word or data processing equipment on white paper 8¹/₂ inches by 11 inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ¹/₂ inch. Line numbers, if any, shall have a left-hand margin of not less than ¹/₂ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced, and quotations may be single spaced and indented.
- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments, and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.

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

1.2.3 Submission of Documents

a) Where to File

After initiation of the Hearing in accordance with Appendix 5A, filings shall be made with the Clerk. The Clerk's office will be open during NERC's regular business hours each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

b) When to File

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

c) How to File

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

d) Number of Copies to File

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

e) Signature

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

f) Verification

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

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

g) Certificate of Service

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

1.2.4 Service

a) Service List

For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and email address, if available, of each individual designated for service. The Hearing Officer, NERC Director of Compliance and Certification, and the Registered Entity's compliance contact as registered with the CEA, shall automatically be included on the service list.

Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the Clerk.

b) By Participants

Subject to provisions of Section 1.5.11, any Participant filing a document in a proceeding must serve a copy of the document on each individual whose name is on the service list for the proceeding. Unless otherwise provided, service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage prepaid, registered mail properly addressed with postage prepaid, or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made.

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

d) Effective Date of Service

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

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

1.2.5 Computation of Time

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

1.2.6 Extensions of Time

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

1.2.7 Amendments

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

1.2.8 Transcripts

a) 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 the 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 truth and ensure the accuracy of the record.

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

1.2.9 Rulings, Notices, Orders, and Other Issuances

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

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

1.2.10 Location of Hearings and Conferences

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

1.2.11 Participant Participation

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

1.2.12 Interventions

- a) The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by the Hearing Panel or by FERC, no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.
- b) The Hearing Panel may allow a Person to intervene only if the Hearing Panel determines that the Person seeking intervention has a direct and substantial interest in the outcome of the Certification.
- c) A Person seeking intervention shall do so by filing a motion to intervene with the Clerk. The motion shall state the Person's interest in sufficient factual detail to demonstrate that the Person should be allowed to intervene pursuant to Section 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 Panel as to whether or not the motion to intervene should be granted.
- e) The Hearing Panel may, within seven (7) days following the date of the Hearing Officer's recommendation, issue a decision granting or denying the motion to intervene. If the Hearing Panel does not issue a decision granting or denying the motion to intervene within seven (7) days following the date of the Hearing Officer's recommendation, the Hearing Officer's recommendation shall become the decision of the Hearing Panel and the motion to intervene shall be deemed granted or denied by the Hearing Panel in accordance with the Hearing Officer's recommendation.
- f) The Hearing Officer, on motion of a Participant or on his or her own motion, or the Hearing Panel, on recommendation by the Hearing Officer or its own motion, may stay or suspend the proceeding while a request to intervene, including any appeal of the grant or denial of the request to intervene, is being resolved.
- g) A Person allowed to intervene and become a Participant to a proceeding shall be designated as a Respondent and deemed to be aligned with the existing Respondent(s), unless the Hearing Panel, in the decision granting intervention, states that the Person allowed to intervene shall be deemed to be aligned with another Participant to the proceeding.
- h) A Person allowed to intervene and become a Participant to a proceeding is required to take the record and the procedural status of the proceeding as it stands on the date the Person's motion to intervene is granted by the Hearing Panel.

- i) A Person may appeal a decision of the Hearing Panel denying the Person's motion to intervene, and Staff, the Respondent or any other Participant may appeal a decision granting or denying a motion to intervene. A notice of appeal shall be filed with the Clerk no later than seven (7) days following the date of the decision of the Hearing Panel granting or denying the motion to intervene.

1.2.13 Proceedings Closed to the Public

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

1.2.14 Docketing System

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

1.2.15 Representations deemed to be made in All Pleadings

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

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;

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;

the claims, defenses and other contentions set forth in the pleading are warranted based on the applicable Rules of Procedure provisions; and

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 NERC, the Regional Entity, and the CCC, including without

limitation their Members, Board of Directors or Trustees, Compliance Committee, any other committees or subcommittees, Staff, contracted employees, Hearing Panel members, Hearing Officers, and Technical Advisors, shall not be liable and shall be held harmless against the consequences of: a) any action or inaction arising out of the hearing process; b) any agreement reached in resolution of a dispute; or 3) any failure to reach agreement as a result of a proceeding. This “hold harmless”

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

1.3 Initiation of the Hearing Process

1.3.1 Respondent’s Option to Request a Hearing

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

A hearing request shall include:

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

1.3.2 Staff’s Response to Request for Hearing

Any response by the Staff required or permitted by this Section shall be filed within fifteen (15) days after the date the request for hearing was filed, unless the Hearing Officer or Hearing Panel allows a longer time to file the response.

1.3.3 Notice of Hearing

The Clerk shall issue a notice of hearing not less than sixteen (16) days, and not more than twenty-one (21) days, after the Respondent files its request for hearing.

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

1.4 General Hearing Procedure

1.4.1 Hearing Officer

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

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

- a) To administer oaths and affirmations;
- b) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone, or adjourn a hearing;
- c) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- d) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- e) To supervise and issue orders concerning discovery;
- f) To conduct prehearing conferences, status hearings, and Evidentiary Hearings;
- g) 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;
- h) To rule on and receive evidence;
- i) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- j) To issue protective orders pursuant to Section 1.5.5;
- k) To issue initial opinions; and
- l) 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.
- m)
- n)

The CCC shall disclose the employment history and professional affiliations of the Hearing Officer within two (2) days of the Hearing Officer's assignment to the proceeding, and

Participants to the hearing may raise objections to the Hearing Officer's participation in accordance with Paragraph 1.4.4.

1.4.2 Hearing Panel

- a) The CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the Hearing Panel shall be selected by vote of a valid CCC quorum. Voting members of the CCC at arm's length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.
- b) The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry sectors may control, and no single industry sector may veto, any decision of the Hearing Panel on any matter brought before it for decision. "Hearing Panel" means the five person Hearing Panel established as set forth in the CCC Charter on a case-by-case basis and that is responsible for adjudicating a matter as set forth in Section 1.1.1 above.
- c) The Hearing Panel is vested with the authority to issue a final order resolving the issue(s) in all cases. To that end:

(1) Upon receiving a filing by a Participant, the Clerk shall promptly send a notice to the members of the Hearing Panel identifying the date of the filing and the Participant making the filing and briefly describing the nature of the filing. Any member of the Hearing Panel may request of, and shall receive from, the Clerk, a copy of any filing by a Participant. The Hearing Panel shall not receive Documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such Documents are placed into the record pursuant to Section 1.6.7.

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

(3) The Hearing Panel or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or Evidentiary Hearing, and/or submit questions to the Hearing Officer to submit to a Participant or any witness at any hearing. At any prehearing conference or hearing attended by a member of the Hearing Panel, any member of the Hearing Panel may ask questions directly of any Participant or witness.

(4) The Hearing Panel shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence, or briefs; (ii) present oral argument on an issue; (iii) file pre-Evidentiary Hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Panel shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.

(5) To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Section 1.4.3, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate. The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the Hearing Panel shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify, or approve the initial opinion in whole or in part.

1.4.3 Interlocutory Review

a)

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

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

- b) Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the Hearing Panel, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by references to the record, or by affidavit if based on facts that do not appear in the record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses shall be allowed.
- c) The Hearing Officer shall file a report to the Hearing Panel within fourteen (14) days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the Hearing Panel.
- d) On review of a Hearing Officer's ruling, the Hearing Panel may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The Hearing Panel may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments.
- e) Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Section 1.6.8) of the Hearing Panel, and (ii) a majority vote of the members of the Hearing Panel voting on the final order (in which the number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Panel's action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any other scheduled dates in the proceeding except as authorized by the Hearing Officer or the Hearing Panel based on a finding of exceptional circumstances.

A non-Participant that has been ordered by the Hearing Officer pursuant to Section 1.5.3 to produce or provide Documents, information or testimony, and has failed to obtain the relief sought from the Hearing Officer through filing objections to or a motion to quash the order, shall also be entitled to seek interlocutory review by the Hearing Panel of the Hearing Officer's order, with respect to (i) whether the non-Participant is within the class of Persons subject to such orders pursuant to Section 1.5.3, and (ii) the reasonableness of the Hearing Officer's order to produce or provide Documents, information or testimony.

1.4.4 Disqualification

- a) A Hearing Officer, Technical Advisor or member of the Hearing Panel shall recuse himself or herself from a proceeding if participation would violate NERC's conflict of interest policy. A Hearing Officer, Technical Advisor, or member of the Hearing Panel shall disclose potential conflicts of interest relevant to the proceedings.
- b) Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor, or member of the Hearing Panel from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Paragraph 1.4.6, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time

when the Participant learns of the facts believed to constitute the basis for disqualification; or
(2) the time when the Participant is notified of the assignment of the Hearing Officer or
Technical Advisor.



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

d) If a quorum (as defined in Paragraph 1.6.8) of the Hearing Panel does not remain after any recusals and rulings on motions for disqualification, then the CCC shall appoint a new member(s) to the Hearing Panel to create a quorum, which new member(s) shall serve on the Hearing Panel through the conclusion of the proceeding but not thereafter. The CCC shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Panel shall be subject to the provisions applicable herein to all Hearing Panel members.

1.4.5 Technical Advisor

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

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

1.4.6 No Ex Parte Communications

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

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

b) Exceptions:

1) The proscription in subsection (a)(1) does not prohibit members of the Staff from communicating with the Registered Entity and representatives, agents or employees thereof on any topic, provided that any member of the Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.

(2) The proscription in subsection (a)(1) does not prohibit communications between or among members of the Hearing Panel, the Hearing Officer, and any Technical Advisor.

(3) The proscription in subsection (a)(1) does not prohibit communications between the Hearing Officer or members of the Hearing Panel to the Clerk for the purpose of transmitting documents, giving instructions to the Clerk, or discussing scheduling and other procedural matters relating to the proceeding.

(4) The proscription in subsection (a)(1) does not prohibit communications between or among the Clerk, the Hearing Panel, and representatives of the CEA for purposes of establishing the hearing forum.

- c) Any member of the Hearing Panel, the Hearing Officer, or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph 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: i) the date, time, and place of communication; ii) a summary of the substance and nature of the communication and all responses thereto; and iii) a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication.

1.4.7 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 email address, if available, where service shall be made.

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

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

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

1.4.8 Failure to Appear or Exercise Diligence

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

1.4.9 Experts

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

1.5 Hearing Procedure

1.5.1 Order of Argument

In all proceedings, Respondent shall open and close.

1.5.2 Right of Participant to Present Evidence

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

1.5.3 Exhibits

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

1.5.4 Witness Attendance at Hearing

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

1.5.5 Protective Orders

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

information; and iii) the requirements, conditions, or safeguards that must be met before an individual may view the information.

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

1.5.6 Admission of Evidence

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

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

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's testimony, including all exhibits, schedules, and attachments thereto, into evidence. Other Participants may object to the introduction of the witness's testimony, or any part thereof, as set forth in Paragraph 1.5.10. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph 1.5.13, and then for redirect examination in accordance with Paragraph 1.5.14. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal, or surrebuttal) when they first take the witness stand.

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

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

a) When relevant and material matter offered in evidence is embraced in a book, paper, or Document containing other matter that is not material or relevant, the Participant offering the

same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable.

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.

1.5.8 Stipulations

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

1.5.9 Official Notice

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

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

b) All requests to take official notice shall be submitted as part of a Participant's filings. 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.

1.5.10 Admissibility of Evidence

a) Any evidence offered, including that included in a book, paper, or Document pursuant to Section 1.5.7, shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

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

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

1.5.11 Offer of Proof

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

1.5.12 Reservation of Evidentiary Ruling

- a) The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made, provided that the Hearing Officer has discretion to reserve such a ruling or to require the Participants to file written arguments in relation thereto.
- b) If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the Evidentiary Hearing to ensure a full, complete, and accurate record in relation to the objected to evidence in the event the objection to the evidence's admissibility is overruled.

1.5.13 Cross-Examination

- a) Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine each witness of any other Participants. A Participant may waive cross-examination of any witness. Leading questions are permitted on cross-examination.
- b) The credibility of a witness may be attacked by any Participant, including the Participant calling the witness.
- c) The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Section 1.5.14.

1.5.14 Redirect Examination

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

1.5.15 Close of the Evidentiary Record

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

1.6 Post-Evidentiary Hearing Procedure

1.6.1 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.

1.6.2 Other Pleadings

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

1.6.3 Draft Initial Opinions

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

1.6.4 Hearing Officer's Initial Opinion

- a) At the conclusion of the Evidentiary Hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Panel's review and consideration.
- b) The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any registration or certification actions that the Hearing Officer proposes the Hearing Panel require.
- c) The initial opinion shall note if any information in the proceeding was deemed to be Critical Energy Infrastructure Information or Critical Electric Infrastructure Information or is the subject of a protective order pursuant to Section 1.5.5.

1.6.5 Exceptions

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

1.6.6 Oral Argument

- a) The Hearing Panel may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues.

- b) If oral argument is held where briefs have been filed, argument may be limited to issues identified by the Hearing Panel. The Hearing Panel will direct the Clerk to issue a notice of oral argument that identifies the date, time, place, and issues for the argument.
- c) The presentation of written materials or visual aids is permitted at oral argument. To the extent such materials or aids contain factual information, they shall be supported by the record and contain accurate citations to the record. Such materials or aids may not contain new calculations or quantitative analyses not presented in the record, unless they are based on underlying data contained in the record. Copies of all written materials or visual aids to be presented at oral argument shall be served on all Participants not less than forty-eight (48) hours prior to the time and date of oral argument.

1.6.7 Additional Hearings

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

1.6.8 Hearing Panel Final Order

- a) Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Panel shall issue its final order.
- b) Issuance of a final order shall require (i) a quorum of the Hearing Panel, which shall be (after any recusals, disqualifications, and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (in which the number of members voting shall not be less than a quorum).
- c) The Hearing Panel shall issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions and replies thereto, or oral argument. The Hearing Panel may extend this deadline for good cause and shall provide written notice of any extension to all Participants. The final order may adopt, modify, amend, or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion and the reasons or basis therefore, for all material issues presented on the record.
- d) The Hearing Panel will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any registration or certification actions required.
- e) The final order shall note if any information in the proceeding was deemed to be Critical Energy Infrastructure Information or Critical Electric Infrastructure Information or is the subject of a protective order issued pursuant to Section 1.5.5.
- 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.

1.6.9 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) Registered Entity's request for a hearing;
- (2) Participant filings, motions, and responses;
- (3) Notices, rulings, orders, and other issuances of the Hearing Officer and Hearing Panel;
- (4) Transcripts;

- (5) Evidence received;
- (6) Written comments submitted in lieu of written testimony;
- (7) Matters officially noticed;
- (8) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- (9) Pre-Evidentiary Hearing memorandums, briefs, and draft opinions;
- (10) Post-hearing pleadings other than briefs;

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

1.6.10 Appeal

A Participant or the Regional Entity may appeal a final order of the Hearing Panel to the BOTCC in accordance with Rules of Procedure Appendix 5A.

1.7 Settlement

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

Members Representatives Committee (MRC) and NERC Board of Trustees (Board) Report

Action

Inform

Summary

The MRC and Board convened their first quarter meetings in Tucson, AZ, on February 15 and 16, 2023 respectively. The meetings were open to all participants and held in person, with no WebEx option available. This is part of the new format for NERC Board meetings. Highlights from each meeting provided below.

At the MRC meeting,

- Election of Trustees
- Updates on Budget and Business Plan
- Discussion on the evaluation of the MRC governance and effectiveness
- Discussion on ongoing prioritization of activities across the ERO and effective engagement with industry and the Board

At the Board meeting,

- Review of 2022 accomplishments
- Adopted Reliability Standards: 1)PRC-002-4 – Disturbance Monitoring and Reporting; PRC-023-6 – Relay Performance During Stable Power Swings
- Update on the Extreme Cold Weather FERC recommendations, the plan will be completed by September 30, 2023
- Update on the Standards Process improvements, posted for comments and to be approved by Board in May, these include: 1) Remove requirement for the American National Standards
- Institute (ANSI) accreditation; 2) Provide Board authority to direct the development of a Reliability Standard; 3) Modify section 321 to include projects to address Board directives
- Presentation by RSTC and RISC leadership on the evaluation and prioritization of emerging risks, summary of the 2023 Reliability Summary panel discussions

Preview Q3-2023 MRC and Board Meetings

The MRC has scheduled its Pre-Meeting and Informational Session on April 12 via WebEx, to review schedule, preliminary agenda topics for the May meetings, and the policy input topic.

The next MRC and Board meetings are scheduled for May 10-11. This will be a hybrid meeting, where only MRC and Board will be in-person, observers only virtual.

Will provide any additional updates at the CCC meeting.

Reliability Issues Steering Committee (RISC) Report

Action

Inform

Summary

The RISC convened its first quarter meeting January 26, 2023, this was a Hybrid Meeting, after the 2023 Reliability Leadership Summit, covering a summary of the summit and the results of the 2022 Emerging Risks Survey. Several key updates below:

- At the Summit
 - Willie Phillips, FERC Chairman, shared his priorities: 1) Cyber and Physical Security, 2) Extreme Weather, and 3) Resilience to address rapid changes. Highlighted collaboration across regulatory agencies
 - Across the four panels 1) Energy Policy, 2) Security, 3) Grid Transformation and Resilience, and 4) New Technologies, several common themes emerged: More coordination and greater information sharing; detect, investigate and remediate issues more quickly to address changing threat landscape; rethinking and re-planning grid investments and use of technology to continue to have resilience
- For the Emerging Risk Survey results and 2023 Risk Report
 - Grid Transformation, Security Risks, Critical Infrastructure Interdependencies, and Extreme Events remain consistent with the 2021 risk report areas
 - Changing resource mix, resource adequacy and performance and cybersecurity vulnerabilities ranked as top 3 risk to manage versus monitor
 - RISC team is currently drafting the 2023 Risk Report to be presented to the NERC Board for approval at their August Board meeting.
- The next RISC meeting is scheduled for April 10, 2023 via WebEx

Any updates/discussion from the April meeting will be provided during the CCC Q2 meeting.