

Meeting Agenda Compliance and Certification Committee

June 10, 2008 | 1–5 p.m. EST
June 11, 2008 | 8 a.m.–noon EST

Renaissance Hotel
2800 Coliseum Centre Drive
Charlotte, NC
704-357-1414

Welcome

NERC Antitrust Guidelines

1) Committee Business

- | | |
|--|------------------|
| a) Approve Minutes of March 19–20, 2008 Meeting | Ted Hobson |
| b) Approve April 9, 2008 Conference Call Minutes | Ted Hobson |
| c) Approve May 16, 2008 Conference Call Minutes | Ted Hobson |
| d) Nominating Committee | John Blazekovich |
| i) New members | |
| ii) Nominating committee term | |

2) CCC Subcommittees

- | | |
|--|---------------|
| a) Organization Registration and Certification Subcommittee | Lucius Burris |
| i) Approve New Organization Registration and Certification Procedures | |
| b) ERO Monitoring Subcommittee | Tom Burgess |
| i) Approve Program to Monitor NERC Compliance to Reliability Standards | |
| ii) Approve Program to Monitor NERC Adherence to CMEP | |
| iii) Approve Program to Monitor NERC Adherence to ROP for Standards Development Procedures | |
| iv) Review Program to Evaluate the Effectiveness of the NERC CMEP | |

- v) Confidentiality and Non-Disclosure Agreement
- c) Standards Interface Subcommittee John Blazekovich
 - i) Compliance Elements Training
- d) Procedures Subcommittee Clay Smith
 - i) Violation Hearing Procedure
 - ii) Certification Hearing Procedure
 - iii) Mediation Procedure
- 3) ERO CMEP Implementation Updates**
 - a) Enforcement update Tim Kucey
 - b) Oversight update Susan Morris
 - c) Registration and Certification update Craig Lawrence
 - d) Reporting update Mike DeLaura
- 4) NERC-Initiated Issues**
 - a) ERO Assessment Ellen Oswald
 - b) Endorse RE Audit Program Document Ellen Oswald
- 5) Member-Initiated Issues**
 - a) RSAW Disclaimer – “Not the only way to show compliance” Ellen Oswald
 - b) Multi-regional registered entities Terry Bilke/Earl Cass
 - c) Closed Door Sessions for the CCC Tom Smith
 - d) NERC’s Feedback Process for Comments on RE Performance Jim Stanton
- 6) Introduce New Chair and Vice Chair** Ted Hobson
- 7) Review Action Items from the Meeting** Ellen Oswald
- 8) Adjourn** Ted Hobson

Antitrust Compliance Guidelines

I. General

It is NERC's policy and practice to obey the antitrust laws and to avoid all conduct that unreasonably restrains competition. This policy requires the avoidance of any conduct that violates, or that might appear to violate, the antitrust laws. Among other things, the antitrust laws forbid any agreement between or among competitors regarding prices, availability of service, product design, terms of sale, division of markets, allocation of customers or any other activity that unreasonably restrains competition.

It is the responsibility of every NERC participant and employee who may in any way affect NERC's compliance with the antitrust laws to carry out this commitment.

Antitrust laws are complex and subject to court interpretation that can vary over time and from one court to another. The purpose of these guidelines is to alert NERC participants and employees to potential antitrust problems and to set forth policies to be followed with respect to activities that may involve antitrust considerations. In some instances, the NERC policy contained in these guidelines is stricter than the applicable antitrust laws. Any NERC participant or employee who is uncertain about the legal ramifications of a particular course of conduct or who has doubts or concerns about whether NERC's antitrust compliance policy is implicated in any situation should consult NERC's General Counsel immediately.

II. Prohibited Activities

Participants in NERC activities (including those of its committees and subgroups) should refrain from the following when acting in their capacity as participants in NERC activities (e.g., at NERC meetings, conference calls and in informal discussions):

- Discussions involving pricing information, especially margin (profit) and internal cost information and participants' expectations as to their future prices or internal costs.
- Discussions of a participant's marketing strategies.
- Discussions regarding how customers and geographical areas are to be divided among competitors.

- Discussions concerning the exclusion of competitors from markets.
- Discussions concerning boycotting or group refusals to deal with competitors, vendors or suppliers.
- Any other matters that do not clearly fall within these guidelines should be reviewed with NERC's General Counsel before being discussed.

III. Activities That Are Permitted

From time to time decisions or actions of NERC (including those of its committees and subgroups) may have a negative impact on particular entities and thus in that sense adversely impact competition. Decisions and actions by NERC (including its committees and subgroups) should only be undertaken for the purpose of promoting and maintaining the reliability and adequacy of the bulk power system. If you do not have a legitimate purpose consistent with this objective for discussing a matter, please refrain from discussing the matter during NERC meetings and in other NERC-related communications.

You should also ensure that NERC procedures, including those set forth in NERC's Certificate of Incorporation, Bylaws, and Rules of Procedure are followed in conducting NERC business.

In addition, all discussions in NERC meetings and other NERC-related communications should be within the scope of the mandate for or assignment to the particular NERC committee or subgroup, as well as within the scope of the published agenda for the meeting.

No decisions should be made nor any actions taken in NERC activities for the purpose of giving an industry participant or group of participants a competitive advantage over other participants. In particular, decisions with respect to setting, revising, or assessing compliance with NERC reliability standards should not be influenced by anti-competitive motivations.

Subject to the foregoing restrictions, participants in NERC activities may discuss:

- Reliability matters relating to the bulk power system, including operation and planning matters such as establishing or revising reliability standards, special operating procedures, operating transfer capabilities, and plans for new facilities.
- Matters relating to the impact of reliability standards for the bulk power system on electricity markets, and the impact of electricity market operations on the reliability of the bulk power system.
- Proposed filings or other communications with state or federal regulatory authorities or other governmental entities.
- Matters relating to the internal governance, management and operation of NERC, such as nominations for vacant committee positions, budgeting and assessments, and employment matters; and procedural matters such as planning and scheduling meetings.

**Compliance Monitoring Program
For Reliability Standards
Applicable to the
North American
Electric Reliability Corporation**

CCCPP - 002

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TABLE OF CONTENTS

- 1.0 INTRODUCTION
- 1.1 Terms
- 2.0 COMPLIANCE MONITORING PROCESSES
- 2.1 Compliance Audits
- 2.2 Self-Certifications
- 2.3 Spot Checking
- 2.4 Compliance Violation Investigations
- 2.5 Self-Reporting
- 2.6 Periodic Data Submittals
- 2.7 Exception Reporting
- 2.8 Complaints
- 3.0 ANNUAL IMPLEMENTATION PLAN
- 4.0 NOTIFICATION AND RESOLUTION OF COMPLIANCE FINDINGS
- 5.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS
- 5.1 Contents of Mitigation Plans
- 5.2 Timetable for Completion of Mitigation Plans
- 5.3 Review of Mitigation Plans
- 5.5 Completion of Implementation of Mitigation Plans
- 6.0 REPORTING AND DISCLOSURE
- 7.0 DATA RETENTION AND CONFIDENTIALITY
- 7.1 Records Management
- 7.2 Retention Requirements
- 7.3 Confidentiality of Critical Energy Infrastructure Information

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1.0 INTRODUCTION

The Compliance and Certification Committee (CCC) is a NERC Board-appointed stakeholder committee serving and reporting directly to the NERC Board and is responsible for engaging with, supporting, and advising the NERC Board and NERC Compliance regarding all facets of the NERC Compliance Monitoring and Enforcement Program (Compliance program), Organization Registration program (Registration program), and Organization Certification program (Certification program).

Also and in a similar manner, as a committee independent of NERC's obligations to comply with reliability standards applicable to NERC, the CCC is responsible for establishing and implementing a program [as specified in Section 405 of NERC's Rules of Procedure](#) to monitor NERC's compliance with the reliability standards that apply to NERC. This document describes the program and associated processes to be utilized by the CCC in carrying out 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 NERC Board's responsibility to conduct and provide such reviews of these programs as required by FERC Order 672 at § 39.3.c: "The Electric Reliability Organization will submit an assessment of its performance three years from the date of certification by the Commission, and every five years thereafter."

1.1 Terms

The terms defined below are applicable to this program only and are not intended to be applicable to or conflict with the same or similar terms used by NERC for other purposes.

- 1.1.1** Alleged Violation: A potential violation for which the CCC has completed its accuracy and completeness review and has determined that evidence exists to indicate NERC has violated a Reliability Standard.
- 1.1.2** Complaint: An allegation that NERC violated a Reliability Standard.
- 1.1.3** Compliance Audit: A systematic, objective review and examination of records and activities to determine whether NERC meets the requirements of applicable Reliability Standards.
- 1.1.4** Compliance Violation Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if a violation of a Reliability Standard has occurred.

1.1.5 Confirmed Violation: A violation of Reliability Standards identified by Self-Reporting, or an Alleged Violation which; (1) NERC has accepted, or (2) was disputed by NERC but subsequently determined by the NERC Board to be a Confirmed Violation.

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1.1.6 Mitigation Plan: An action plan developed by NERC to (1) correct a violation of a Reliability Standard and/or (2) prevent recurrence of the violation.

1.1.7 Periodic Data Submittals: Modeling, studies, analyses, documents, procedures, methodologies, operating data, process information, or other information to demonstrate compliance with Reliability Standards and provided by NERC to the CCC in a time frame required by a Reliability Standard or as requested on an ad hoc basis.

1.1.8 Registered Entity: An owner, operator, or user of the bulk power system or the entities registered as their designees for the purpose of compliance that is included in the NERC and Regional Compliance Registry.

1.1.9 Self-Certification: Periodic reporting by NERC of compliance or non-compliance with Reliability Standards.

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1.1.10 Self-Reporting: A report by NERC of a violation of a Reliability Standard, based on its own assessment, in order to provide prompt reports of any Reliability Standard violation and of any actions taken or that are being taken to resolve the violation.

1.1.11 Spot Checking: A process in which the CCC requests NERC to provide information to assess whether NERC complies with Reliability Standards.

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2.0 COMPLIANCE MONITORING PROCESSES

The CCC will monitor and assess NERC's compliance with Reliability Standards applicable to NERC using the processes described below to collect information and make assessments of compliance. All monitoring activities will be conducted in a manner consistent with NERC Rule of Procedure 402.8.

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2.1 Compliance Audits

NERC will be subject to audits for compliance with all Reliability Standards applicable to NERC. Compliance Audits will be conducted at NERC's facility(s) and in a manner consistent with NERC Rule of Procedure 403.11. All Compliance Audits will be conducted in accordance with audit guides established for the Reliability Standards included in the audit, consistent with accepted auditing guidelines as approved by NERC.

2.1.1 Compliance Process Audit Steps

- At least four (4) months prior to commencement of a regularly scheduled audit, the CCC notifies NERC of the audit and requests that NERC recommend an independent contractor to oversee the audit and serve as the Audit Team Leader. NERC will provide a list of potential contractors to the CCC and recommend the independent contractor within one (1) month of receiving the notification. Within two (2) weeks of receiving NERC's recommendation, the CCC will accept or reject NERC's recommendation and notify NERC. If the independent contractor is rejected by the CCC, the CCC will inform NERC of the reasons for the rejection and request that NERC provide another recommendation within two (2) weeks. NERC will be responsible for funding the independent contractor.
- At least two (2) months prior to commencement of a regularly scheduled audit, the CCC will identify other audit team members and their recent employment history, and request data from NERC, including a pre-audit questionnaire. If the audit team members change from the time of the original notification, the CCC will promptly notify NERC of the change and will allow time for NERC to object to the member (see Section 2.1.4).
- NERC will provide the audit team the required information in the format specified in the request.
- The audit team will review the submitted information for conformance with the requirements of the Reliability Standards prior to performing the audit. The audit team will then conduct an on-site audit following NERC audit guidelines. This will include conducting an exit briefing with NERC, providing for a review of the audit report with NERC before it is finalized, and issuing an audit report, including an assessment to the CCC of compliance with the Reliability Standards. Deleted: to the CCC
- The CCC will review the report developed by the audit team and complete an assessment of any Alleged Violations identified in the report. Deleted: with the Reliability Standards
- If the CCC concludes that a reasonable basis exists for believing a violation has occurred, the CCC will notify NERC pursuant to the provisions of Section 4.0.

2.1.2 Frequency of Compliance Audits

The CCC will perform Compliance Audits of NERC at least every three (3) years. Additionally, an unscheduled Compliance Audit of NERC may be initiated by the CCC if reasonably determined to be necessary to determine NERC's compliance with Reliability Standards.

2.1.3 Scope of Compliance Audits

A Compliance Audit will include all Reliability Standards applicable to NERC. If a Reliability Standard does not require retention of data for the full period of the audit, the audit will be applicable to the data retention period specified in the Reliability Standard.

2.1.4 Conduct of Compliance Audits

The audit team will be comprised of (1) an independent contractor recommended by NERC and selected by the CCC who will also serve as the Audit Team Leader, (2) at least one CCC member, and (3) additional industry experts selected by the CCC, generally from other NERC committees.

Each audit team member must:

- Be free of conflicts of interests.
- Comply with the NERC Antitrust Compliance Guidelines and have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the CCC is applicable.
- Successfully complete NERC or NERC-approved Regional Entity auditor training applicable to the standards addressed in the audit.

Prior to the audit, copies of executed confidentiality agreements or acknowledgements will be provided to NERC [and to the CCC](#).

NERC may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the CCC within fifteen (15) days of being notified of the proposed audit team members. The CCC will make a final determination on whether the member will participate in the audit of NERC. Nothing in this paragraph will be read to limit the participation of FERC staff in the audit.

2.1.5 Compliance Audit Reports

The audit team will develop a draft audit report that will include a description of the objective, scope, and methodology of the audit; identify any Alleged Violations of Reliability Standards; identify any mitigation activities which have been completed or pending in the year of the audit; and identify the nature of any confidential information redacted. The audit report may contain other recommendations of the audit team related to the findings. The draft report will be provided to NERC for comment.

The audit team will consider corrections based on comments of NERC and provide the final audit report to the CCC who will review the report and assess compliance with the Reliability Standards and provide NERC with a copy of the final report.

In the event the audit report identifies Alleged Violations, the final audit report, or pertinent part thereof, will not be released to the NERC Board until after such Alleged Violations have been addressed by NERC and the CCC pursuant to the provisions of Section 4.0.

Information deemed by the CCC or NERC as critical energy infrastructure information or confidential information will be protected in accordance with Section 1500 of the NERC Rules of Procedure.

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2.2 Self-Certifications

NERC will periodically conduct self-assessments for compliance with all applicable Reliability Standards and report results to the CCC. Such reports will be provided at least annually by a NERC officer or equivalent responsible for ensuring compliance with all Reliability Standards applicable to NERC.

2.3 Spot Checking

The CCC may from time to time request NERC to provide information to assess whether NERC complies with Reliability Standards. Spot Checking may also be initiated in response to events or a complaint.

The CCC may solicit the participation of industry experts from other NERC committees and their associated subcommittees to assist with conducting the compliance assessment for a Spot Check. Any such expert must be free of any conflicts of interest.

Results of the Spot Check will be provided to NERC in accordance with Section 4.0 and will be reported to the NERC Board in accordance with Section 6.0.

2.4 Compliance Violation Investigations

A Compliance Violation Investigation may be initiated at any time by the CCC in response to an event, [a Complaint](#), or [a possible violation](#) of a Reliability Standard identified by any other means. Compliance Violation Investigations will follow the processes outlined for a Compliance Audit.

2.5 Self-Reporting

NERC is encouraged to self-report to the CCC at the time NERC becomes aware (1) of a violation of a Reliability Standard, or (2) a change in the Violation Severity Level of a previously reported violation. Self-Reporting of a violation of a Reliability Standard is encouraged regardless of whether the Reliability Standard requires reporting on a pre-defined schedule.

2.6 Periodic Data Submittals

If a Reliability Standard applicable to NERC requires Periodic Data Submittals, NERC will submit such data to the CCC using the same data reporting processes, schedules, and forms applicable to other Registered Entities for which the standard is applicable.

If such Periodic Data Submittals are required, the CCC will establish a team of industry experts to review the data and provide the CCC with a report identifying any potential compliance violations. If any potential compliance violations are identified, a Compliance Violation Investigation will be conducted in accordance with Section 2.4.

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2.7 Exception Reporting

Some Reliability Standards require reporting of exceptions to compliance with the Reliability Standard as a form of compliance monitoring. NERC will provide to the CCC reports identifying any exceptions to the extent required by any Reliability Standard. NERC will also confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.

2.8 Complaints

The CCC may receive Complaints alleging violations of a Reliability Standard. The CCC will conduct a review of each Complaint it receives to determine if the Complaint [may be closed as a result of the initial review and assessment of the Complaint, or if the Complaint](#) provides sufficient basis for [the CCC to conduct either a Compliance Violation Investigation in accordance with Section 2.4 or Spot Checking in accordance with Section 2.3.](#)

All anonymous Complaints will be reviewed and any resulting Compliance Violation Investigations or Spot Checks will be conducted in a manner that will prevent disclosure of the identity of the complainant.

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3.0 ANNUAL IMPLEMENTATION PLAN

The CCC will maintain and update an Annual Implementation Plan, to be carried out by the CCC in the performance of its responsibilities and duties in implementing this program. The implementation plan will be provided to NERC by October 1 of each year and will specify the Reliability Standards for which reporting by NERC to the CCC that will be required to provide verification of compliance through any of the monitoring methods described in Section 2.0 of this document. The implementation plan will be posted on the NERC Web site.

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If, as a result of the initial review of the Complaint, the CCC determines that a Compliance Violation Investigation or Spot Check is warranted, a Compliance Violation Investigation or Spot Check will be conducted in accordance with Sections 2.3 or 2.4.

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4.0 NOTIFICATION AND RESOLUTION OF COMPLIANCE FINDINGS

If the CCC alleges that NERC has violated a Reliability Standard, the CCC will provide written notice of the Alleged Violation to NERC. The notice of Alleged Violation will contain, at a minimum:

- the Reliability Standard and requirement(s) thereof that NERC has allegedly violated,
- the date and time the Alleged Violation occurred (or is occurring), and
- the facts the CCC believes demonstrate or constitute the Alleged Violation.
- NERC will elect to either accept or dispute the Alleged Violation and report its election to the CCC. If NERC disputes the Alleged Violation, such report will include NERC's reason for such dispute. If NERC has not provided such a report to the CCC within thirty (30) days after having been notified of the Alleged Violation, the CCC will deem NERC to have accepted the determination of violation.

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disagree with the Alleged Violation

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No later than five (5) days after the CCC either receives NERC's report accepting or disputing the Alleged Violation or deems NERC to have accepted the determination of violation, the CCC will forward to the NERC Board a copy of the notice of the Alleged Violation, previously provided to NERC, and a copy of NERC's report, if any, either accepting or disputing the Alleged Violation.

The NERC Board will review the submitted information, determine if any further action is required, and notify the CCC of its determination.

5.0 MITIGATION OF VIOLATIONS OF RELIABILITY STANDARDS

If a Confirmed Violation is determined (or if otherwise directed by the NERC Board) NERC will (1) develop and implement a Mitigation Plan to correct the underlying cause of a violation, or (2) provide the NERC Board and the CCC with a description of how the violation has been mitigated.

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If a Mitigation Plan is developed, NERC will provide a copy of the Mitigation Plan to the CCC for review, and will keep the CCC informed of NERC's progress toward completion of the Mitigation Plan.

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5.1 Contents of Mitigation Plans

The Mitigation Plan should include the following information:

- NERC's point of contact for the Mitigation Plan, who will be a person (1) responsible for implementing the Mitigation Plan, (2) technically knowledgeable regarding the Mitigation Plan, and (3) authorized and competent to respond to questions regarding the status of the Mitigation Plan.
- The violation(s) of Reliability Standard(s) the Mitigation Plan will correct.
- The cause of the violation(s).
- NERC's action plan to correct the violation(s).
- NERC's action plan to prevent recurrence of the violation(s).
- An action plan to mitigate any increased risk to the reliability of the bulk power-system while the Mitigation Plan is being implemented.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the violation(s) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate.

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5.2 Timetable for Completion of Mitigation Plans

The Mitigation Plan should be completed in time to have a reasonable potential to correct all of the violation(s) prior to the next applicable compliance reporting/assessment period after occurrence of the violation for

which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay.

NERC will advise the CCC of any extensions of any milestones or the completion dates of a Mitigation Plan.

5.3 Review of Mitigation Plans

Within thirty (30) days of receipt [of the Mitigation Plan](#), the CCC will complete a review of the Mitigation Plan, and will advise the NERC Board of any concerns the CCC has related to a Mitigation Plan.

5.4 Completion/Confirmation of Implementation of Mitigation Plans

NERC will inform the CCC when implementation of a Mitigation Plan has been completed.

6.0 REPORTING AND DISCLOSURE

The CCC will report to the NERC Board, on a confidential basis, any Alleged Violations of Reliability Standards regardless of significance, [within five \(5\) business days after giving NERC notice pursuant to Section 4.0](#). Such reports will include information regarding the nature of the Alleged Violation and the name of a NERC staff person knowledgeable of the [Alleged Violation](#).

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The CCC will report to the NERC Board at least quarterly the status of [Compliance Violation Investigations](#), regardless of significance, that have not yet resulted in a determination of [Alleged Violation](#), [and of any violations](#) for which mitigation activities have [begin but have](#) not been completed.

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All Complaints received will be communicated to the NERC Board by the CCC along with the disposition of the Complaint.

In addition to other reporting requirements outlined in this document, the CCC will provide an annual report of its compliance monitoring activities to the NERC Board.

7.0 DATA RETENTION AND CONFIDENTIALITY

7.1 Records Management

All records associated with the program will be maintained by NERC [staff](#). The associated records management policy will provide for a routine and orderly process for the retention and disposal of electronic and paper records related to this program, ensure verification of compliance with appropriate business, regulatory, and legal requirements, and at a minimum conform to the

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Reliability Standards data retention requirements of the Reliability Standards. The policy will allow for the maintenance of records as required to implement the [CCC's monitoring of NERC's compliance with applicable Reliability Standards](#).

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7.2 Retention Requirements

NERC's records management policy will require that information and data generated or received pursuant to activities associated with this program be retained for a minimum of five (5) years unless a different retention period is specified in a Reliability Standard or by an Applicable Governmental Authority. If the information or data is material to the resolution of a controversy, the retention period for such data will not commence until after the controversy is resolved.

7.3 Confidentiality of Information

NERC and the CCC will keep confidential all [Confidential Information](#) in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be Critical Energy Infrastructure Information will be redacted and will not be released publicly.

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Compliance Monitoring Program
For
North American
Electric Reliability Corporation's
Compliance Enforcement

CCCPP - 001

TABLE OF CONTENTS

1.0 INTRODUCTION

1.1 Terms

2.0 COMPLIANCE MONITORING PROCESSES

2.1 Compliance Audits

2.2 Self-Certifications

2.3 Spot Checking

2.4 Adverse Finding Investigation

2.5 Self-Reporting

2.6 Periodic Data Submittals

2.7 Reserved

2.8 Complaints

3.0 ANNUAL COMPLIANCE MONITORING PLAN

4.0 NOTIFICATION AND RESOLUTION OF COMPLIANCE FINDINGS

5.0 MITIGATION OF ADVERSE FINDINGS.....

5.1 Contents of Mitigation Plans

5.2 Timetable for Completion of Mitigation Plans

5.3 Review of Mitigation Plans

5.5 Completion of Implementation of Mitigation Plans

6.0 REPORTING AND DISCLOSURE

7.0 DATA RETENTION AND CONFIDENTIALITY

7.1 Records Management

7.2 Retention Requirements

7.3 Confidentiality of Information

1.0 Introduction

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The Compliance and Certification Committee (CCC) is a NERC Board-appointed stakeholder committee serving and reporting directly to the NERC Board and is responsible for engaging with, supporting, and advising the NERC Board and NERC Compliance regarding all facets of the NERC Compliance Monitoring and Enforcement Program (Compliance program), Organization Registration program (Registration program), and Organization Certification program (Certification program).

Also and in a similar manner, the CCC is responsible for establishing and implementing a program as specified in Section 405 of NERC's Rules of Procedure to monitor NERC's adherence to Rules of Procedure for Compliance Enforcement, including but not limited to, the Uniform **Compliance Monitoring and Enforcement Program (Appendix 4C) and the Sanction Guidelines (Appendix 4B)**. This document describes the program and associated processes to be utilized by the CCC in carrying out this responsibility. While the aforementioned rules are the focal point of this monitoring program, the intent of this enterprise requires a comprehensive view of the Rules of Procedure. Compliance activities are best viewed in a context and not as stand-alone components easily separated from originating text.

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As noted in the Board-approved CCC Charter, monitoring by the CCC is ongoing and does not preclude, interfere with, or replace, in whole or in part, the NERC Board's responsibility to conduct and provide such reviews of these programs as required by FERC Order 672 at § 39.3.c: "The Electric Reliability Organization will submit an assessment of its performance three years from the date of certification by the Commission, and every five years thereafter."

1.1 Terms

The terms defined below are applicable to this program only and are not intended to be applicable to or conflict with the same or similar terms used by NERC for other purposes.

1.1.1 Alleged Adverse Finding: A potential Adverse Finding for which the CCC has completed its accuracy and completeness review and has determined that evidence exists.

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1.1.2 Complaint: An allegation that NERC has not adhered to its Rules of Procedure for Compliance Enforcement.

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1.1.3 Compliance Audit: A systematic, objective review and examination of records and activities to determine whether NERC has adhered to its Rules of Procedure for Compliance Enforcement.

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1.1.4 Adverse Finding Investigation: A comprehensive investigation, which may include an on-site visit with interviews of the appropriate personnel, to determine if there should be an Adverse Finding.

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1.1.5 Adverse Finding: An event of noncompliance identified by Self-Reporting, or an Alleged Adverse Finding which: (1) NERC has accepted as an Adverse Finding, or (2) was disputed by NERC but subsequently determined by the NERC Board to be an Adverse Finding.

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1.1.7 Mitigation Plan: An action plan developed by NERC to (1) correct an Adverse Finding and/or (2) prevent any recurrence of the Adverse Finding.

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1.1.8 Periodic Data Submittals: Documents, procedures, data, process information or other information to demonstrate compliance to Rules of Procedure for Compliance Enforcement, and provided by NERC to the CCC.

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1.1.10 Self-Certification: Periodic reporting by NERC of compliance or noncompliance with the Rules of Procedure for Compliance Enforcement.

1.1.11 Self-Reporting: A report by NERC of noncompliance or change in compliance with Rules of Procedure for Compliance Enforcement, based on its own assessment, and of any actions taken or that are being taken to resolve the noncompliance.

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1.1.12 Spot Checking: A process in which the CCC requests NERC to provide information to assess whether NERC complies with Rules of Procedure for Compliance Enforcement.

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2.0 COMPLIANCE MONITORING PROCESSES

The CCC will monitor and assess NERC's adherence to its Rules of Procedure for Compliance Enforcement using the processes described below to collect information and make assessments. This process is described below. All monitoring activities will be conducted in a manner consistent with NERC Rule of Procedure 402.8.

Deleted: 1.1.13 Performance Element: Actions as identified in Appendix 4b and 4c directing a responsible entity to act in a specific manner. Performance Elements usually contain a specific actor (e.g. NERC, Compliance Enforcement Authority, and Registered Entities) and may include parameters for successful execution. Each Performance Element is auditable in so far as it is within the scope of the CCC as contained in the Charter.¶

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2.1 Compliance Audits

Compliance Audits will be conducted at NERC's facility(s) in a manner consistent with the NERC Rule of Procedure 403.11.2. All Compliance Audits will be conducted in accordance with audit guides, consistent with accepted auditing guidelines as approved by NERC.

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2.1.1 Compliance Audit Steps

At least four (4) months prior to commencement of a regularly scheduled audit, the CCC notifies NERC of the audit and requests that NERC recommend an independent contractor to oversee the audit and serve as the Audit Team Leader. NERC will provide a list of contractors to the CCC and recommend the independent contractor within one (1) month of receiving the notification. Within two (2) weeks of receiving NERC's recommendation, the CCC will accept or reject NERC's recommendation and notify NERC. If the independent contractor is rejected by the CCC, the CCC will inform NERC of the reasons for the rejection and request that NERC provide another recommendation within two (2) weeks. NERC will be responsible for funding the

independent contractor.

At least two (2) months prior to commencement of a regularly scheduled audit, the CCC will identify other audit team members and their recent employment history, and request data from NERC, including a pre-audit questionnaire. If the audit team members change from the time of the original notification, the CCC will promptly notify NERC of the change and will allow time for NERC to object to the member (see Section 2.1.4).

NERC will provide the audit team the required information in the format specified in the request.

The audit team will review the submitted information for conformance with the [Rules of Procedure for Compliance Enforcement](#) prior to performing the audit. The audit team will then conduct an on-site audit following NERC audit guidelines. This will include conducting an exit briefing with NERC, providing for a review of the audit report with NERC before it is finalized, and issuing an audit report, including an assessment [to the CCC](#) of compliance with the [Rules of Procedure for Compliance Enforcement](#).

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The CCC will review the report developed by the audit team and complete an assessment of any Alleged Adverse Findings identified in the report.

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If the CCC concludes that a reasonable basis exists for believing an Adverse Finding has occurred, the CCC will notify NERC pursuant to the provisions of Section 4.0.

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2.1.2 Frequency of Compliance Audits

The CCC will perform full-scale Compliance Audits of NERC at least every three (3) years with lower-scaled audits annually. Additionally, an unscheduled Compliance Audit of NERC may be initiated by the CCC if reasonably determined to be necessary to determine NERC's compliance with the [Rules of Procedure for Compliance Enforcements](#).

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2.1.3 Scope of Compliance Audits

A Compliance Audit will include all elements of the [Rules of Procedure for Compliance Enforcement](#).

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2.1.4 Conduct of Compliance Audits

The audit team will be comprised of (1) an independent contractor recommended by NERC and selected by the CCC, who will also serve as the Audit Team Leader, (2) at least one CCC member, and (3) additional industry experts selected by the CCC, generally from other NERC committees.

Each audit team member must:

- Be free of conflicts of interests.
- Comply with the NERC Antitrust Compliance Guidelines and have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the CCC is applicable.
- Successfully complete NERC or NERC-approved Regional Entity auditor training applicable to the standards addressed in the audit.

Prior to the audit, copies of executed confidentiality agreements or acknowledgements will be provided to NERC ~~and to the CCC.~~

NERC may object to any member of the audit team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the CCC no later than fifteen (15) days prior to the start of on-site audit work. The CCC will make a final determination on whether the member will participate in the audit of NERC. Nothing in this paragraph will be read to limit the participation of FERC staff in the audit.

2.1.5 Compliance Audit Reports

The audit team will develop a draft audit report that will include a description of the objective, scope, and methodology of the audit; identify any Alleged Adverse Findings; identify any mitigation activities which have been completed or pending in the year of the audit; and identify the nature of any confidential information redacted. The audit report may contain other recommendations of the audit team related to the findings. The draft report will be provided to NERC for comment.

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The audit team will consider corrections based on comments of NERC and provide the final audit report to the CCC who will review the report and assess compliance with the [Rules of Procedure for Compliance Enforcement](#), and provide NERC with a copy of the final report. In the event the audit report identifies Alleged Adverse Findings, the final audit report, or pertinent part thereof, will not be released to the NERC Board until after such Alleged Adverse Findings have been addressed by NERC and the CCC pursuant to the provisions of Section 4.0. Information deemed by the CCC or NERC as critical energy infrastructure information or confidential information ~~will be protected in accordance with Section 1500 of the NERC Rules of Procedure.~~

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2.2 Self-Certifications

NERC will certify its compliance with the [Rules of Procedure for Compliance Enforcement](#) with respect to a subset of performance items selected by the CCC on an annual basis as part of the CCC's Annual Compliance Monitoring Plan. Such [Self-Certification](#) will be achieved through reports to the CCC by a NERC officer or equivalent responsible for ensuring compliance with the [Rules of Procedure for Compliance Enforcement](#).

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2.3 Spot Checking

The CCC may [from time to time](#) request NERC to provide information to assess whether NERC complies with [the Rules of Procedure for Compliance Enforcement](#). Spot Checking may also be initiated in response to events or a complaint. Results of the Spot Check will be provided to NERC in accordance with Section 4.0 and will be reported to the NERC Board in accordance with Section 6.0.

2.4 Adverse Finding Investigation

An Adverse Finding Investigation may be initiated at any time by the CCC in response to an event, [a Complaint](#), or [a possible Adverse Finding identified by any other means](#). Adverse Finding Investigations will follow the processes outlined for a Compliance Audit.

2.5 Self-Reporting

NERC is encouraged to self-report to the CCC at the time NERC becomes aware (1) of [any NERC noncompliance with the Rules of Procedure for Compliance Enforcement](#), or (2) a change in a previously [identified](#) Adverse Finding.

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2.6 Periodic Data Submittals

If Periodic Data Submittals are required, the CCC will establish a team to review the data and provide the CCC with a report identifying any potential [Adverse Findings](#). If any potential [Adverse Findings](#) are identified, an [Adverse Finding Investigation](#) will be conducted in accordance with Section 2.4.

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2.8 Complaints

The CCC may receive Complaints alleging [NERC noncompliance with Rules of Procedure for Compliance Enforcement](#). The CCC will conduct a review of each Complaint it receives to determine if [the Complaint may be closed as a result of the initial review and assessment of the Complaint, or if](#) the Complaint provides sufficient basis for [the CCC to conduct either an Adverse Finding Investigation in accordance with Section 2.4 or Spot-Checking in accordance with Section 2.3](#).

Deleted: 2.7 Exception Reporting ¶ NERC will provide to the CCC reports identifying any exceptions to the Compliance Monitoring and Enforcement Program and Sanction Guidelines. NERC will also confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.¶

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All anonymous Complaints will be reviewed and any resulting [Adverse Finding Investigations](#) or [Spot Checks](#) will be conducted in a manner that will prevent disclosure of the identity of the complainant.

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3.0 ANNUAL COMPLIANCE MONITORING PLAN

The CCC will maintain and update an [Annual Compliance Monitoring Plan](#), to be carried out by the CCC in the performance of its responsibilities and duties in implementing this program. The plan will be provided to NERC by October 1 of each year and will specify reporting by NERC to the CCC [that will be required](#) to provide verification of compliance through [any](#) of the monitoring methods described in [Section 2.0 of](#) this document. The implementation plan will be posted on the NERC Web site.

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4.0 NOTIFICATION AND RESOLUTION OF COMPLIANCE FINDINGS

If the CCC alleges that NERC has [not complied with NERC's Rules of Procedure for Compliance Enforcement](#), the CCC will provide written notice of the Alleged Adverse Finding to NERC. The notice of Alleged Adverse Finding will contain, at a minimum:

- the provision of [the NERC Rules of Procedure for Compliance Enforcement with which](#) NERC has allegedly [not complied](#), the date and time the [noncompliance](#) occurred (or is occurring), and
- the facts the CCC believes demonstrate or constitute the [noncompliance](#).

NERC will elect [to either accept or dispute the Alleged Adverse Finding](#) and report its [election](#) to the CCC. [If NERC disputes the Alleged Adverse Finding, such report will include NERC's reasons for such dispute. If NERC has not provided such a report to the CCC within thirty \(30\) days after having been notified of the Alleged Adverse Finding,](#) the CCC will deem NERC to

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have accepted the determination of an Adverse Finding.

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No later than five (5) days after the CCC either receives NERC's report accepting or disputing the Alleged Adverse Finding or deems NERC to have accepted the Adverse Finding, the CCC will forward to the NERC Board a copy of the notice of Alleged Adverse Finding previously provided to NERC, and a copy of NERC's report, if any, either accepting or disputing the Alleged Adverse Finding.

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<#>agree with the Alleged Adverse Finding or ¶
<#>disagree with the Alleged Adverse Finding. ¶
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Following a thirty (30) day period,

The NERC Board will review the submitted information, determine if any further action is required, and notify the CCC of its determination.

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5.0 MITIGATION OF ADVERSE FINDING

If an Adverse Finding is determined, (or if otherwise directed by the NERC Board) NERC will (1) develop and implement a Mitigation Plan to correct the underlying noncompliance, or (2) provide the NERC Board and the CCC with a description of how the noncompliance has been mitigated.

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If a Mitigation Plan is developed, NERC will provide a copy of the Mitigation Plan to the CCC for review, and will keep the CCC informed of NERC's progress toward completion of the Mitigation Plan.

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5.1 Contents of Mitigation Plans

The Mitigation Plan should include the following information:

- NERC's point of contact for the Mitigation Plan, who will be a person (1) responsible for implementing the Mitigation Plan, (2) technically knowledgeable regarding the Mitigation Plan, and (3) authorized and competent to respond to questions regarding the status of the Mitigation Plan.
- The noncompliance with the Rules of Procedure for Compliance Enforcement that the Mitigation Plan will correct.
- The cause of the noncompliance.
- NERC's action plan to correct the noncompliance.
- NERC's action plan to prevent recurrence of the noncompliance.
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the noncompliance corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional Adverse Findings could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate.

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5.2 Timetable for Completion of Mitigation Plans

The Mitigation Plan should be completed in time to have a reasonable potential to correct all of the noncompliance prior to the next applicable compliance reporting/assessment period after occurrence of the noncompliance, for which the Mitigation Plan is submitted. In all cases the Mitigation Plan should be completed without delay.

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NERC will advise the CCC of any extensions of any milestones or the completion dates of a

Mitigation Plan

5.3 Review of Mitigation Plans

Within thirty (30) days of receipt of the Mitigation Plan, the CCC will review the Mitigation Plan, and will advise the NERC Board of any concerns the CCC has related to a Mitigation Plan.

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5.4 Completion/Confirmation of Implementation of Mitigation Plans

NERC will inform the CCC when implementation of a Mitigation Plan has been completed.

6.0 REPORTING AND DISCLOSURE

The CCC will report to the NERC Board, on a confidential basis, any Alleged Adverse Findings, regardless of significance, within five (5) business days after giving NERC notice pursuant to Section 4.0. Such reports will include information regarding the nature of the Alleged Adverse Finding and the name of a NERC staff person knowledgeable of the Alleged Adverse Finding. The CCC will report to the NERC Board at least quarterly the status of Adverse Finding Investigations, regardless of significance, that have not yet resulted in a determination of Alleged Adverse Finding, and of any Adverse Findings for which mitigation activities have begun but have not been completed.

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All Complaints received will be communicated to the NERC Board by the CCC along with the disposition of the Complaint.

In addition to other reporting requirements outlined in this document, the CCC will provide an annual report of its compliance monitoring activities to the NERC Board.

7.0 DATA RETENTION AND CONFIDENTIALITY

7.1 Records Management

All records associated with the program will be maintained by NERC staff. The associated records management policy will provide for a routine and orderly process for the retention and disposal of electronic and paper records related to this program, ensure verification of compliance with appropriate business, regulatory, and legal requirements. The policy will allow for the maintenance of records as required to implement the CCC's monitoring of NERC's compliance with Rules of Procedure for Compliance Enforcement.

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7.2 Retention Requirements

NERC's records management policy will require that information and data generated or received pursuant to activities associated with this program be retained for a minimum of five (5) years. If the information or data is material to the resolution of a controversy, the retention period for such data will not commence until after the controversy is resolved.

7.3 Confidentiality of Information

NERC and the CCC will keep confidential all Confidential Information in accordance with Section 1500 of the NERC Rules of Procedure. Information deemed to be Critical Energy Infrastructure Information will be redacted and will not be released publicly.

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NERC will be subject to audits for compliance with its Compliance Monitoring and Enforcement Program and Sanction Guidelines. Audits will be conducted at NERC's facility(s) and in a manner consistent with NERC Rule of Procedure 403.11.2. All Compliance Audits will be conducted in accordance with audit guides, consistent with accepted auditing guidelines as approved by CCC.

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If, as a result of the initial review of the Complaint, the CCC determines that a Compliance Adverse Finding Investigation or Spot Check is warranted, an Adverse Finding Investigation or Spot Check will be conducted in accordance with Sections 2.3 or 2.4.

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**Compliance Monitoring Program
For the North American Electric
Reliability Corporation's
Reliability Standards Development
Procedure**

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CCCPP-003

TABLE OF CONTENTS

1.0 INTRODUCTION
1.1 Terms

2.0 COMPLIANCE MONITORING PROCESSES
2.1 Reviews.....
2.2 Self-Certifications
2.3 Spot Checking
2.4 Investigation.....
2.5 Self-Reporting
2.6 Data Submittals
2.7 Reserved.....
2.8 Complaints

3.0 ANNUAL IMPLEMENTATION PLAN

4.0 NOTIFICATION AND RESOLUTION OF FINDINGS

5.0 MITIGATION
5.1 Contents of Mitigation Plans
5.2 Timetable for Completion of Mitigation Plans
5.3 Review of Mitigation Plans
5.5 Completion of Implementation of Mitigation Plans

6.0 REPORTING AND DISCLOSURE

7.0 DATA RETENTION AND CONFIDENTIALITY
7.1 Records Management
7.2 Retention Requirements
7.3 Confidentiality of Information

1.0 Introduction

The Compliance and Certification Committee (CCC) is a NERC Board-appointed stakeholder committee serving and reporting directly to the NERC Board and is responsible for engaging with, supporting, and advising the NERC Board and NERC Compliance regarding all facets of the NERC Compliance Monitoring and Enforcement Program (Compliance program), Organization Registration program (Registration program), and Organization Certification program (Certification program).

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Also and in a similar manner, as a committee independent of reliability standards development, the CCC is responsible for establishing and implementing a program [as specified in Section 405 of NERC's Rules of Procedure](#) to monitor NERC's adherence to its Reliability Standards Development Procedure [NERC Rules of Procedure – Appendix 3A], with the exception of appeals of substantive or procedural action or inaction associated with a reliability standard or the standards process as defined in the *Appeals* section of the Reliability Standards Development Procedure. This document describes the program and associated processes to be utilized by the CCC in carrying out 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 NERC Board's responsibility to conduct and provide such reviews of these programs as required by FERC Order 672 at § 39.3.c: "The Electric Reliability Organization will submit an assessment of its performance three years from the date of certification by the Commission, and every five years thereafter."

1.1 Terms

The terms defined below are applicable to this program only and are not intended to be applicable to or conflict with the same or similar terms used by NERC for other purposes.

1.1.1 Preliminary Adverse Finding: A finding for which the CCC has completed its accuracy and completeness review and has determined that evidence exists to indicate NERC has not adhered to its Reliability Standards Development Procedure.

1.1.2 Complaint: An allegation that NERC has not adhered to its Reliability Standards Development Procedure.

1.1.3 Review: A systematic, objective examination of records and activities to determine whether NERC has adhered to its Reliability Standards Development Procedure.

1.1.4 [Adverse Finding](#) Investigation: A comprehensive investigation in response to a Complaint or to evidence brought forth to determine if NERC has not adhered to the Reliability Standards Development Procedure.

1.1.5 Adverse Finding: A [Self-Reported deviation by NERC from the Reliability Standards Development Procedure](#) or a Preliminary Adverse Finding which: (1) NERC has

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accepted, or (2) NERC disputed but was subsequently determined by the NERC Board to be an Adverse Finding.

1.1.7 Mitigation Plan: An action plan developed by NERC to address an Adverse Finding.

1.1.8 Data Submittals: Documents, procedures, data, process information or other information to demonstrate adherence to the Reliability Standards Development Procedure and provided by NERC to the CCC on an ad hoc basis.

1.1.10 Self-Certification: Periodic reporting by NERC of adherence or non-adherence to the Reliability Standards Development Procedure.

1.1.11 Self-Reporting: A report by NERC of a deviation made from the Reliability Standards Development Procedure, based on its own assessment, and of any actions taken or that are being taken to resolve the deviation.

1.1.12 Spot Checking: A process in which the CCC requests NERC to provide information to assess whether NERC adhered to the Reliability Standards Development Procedure.

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2.0 COMPLIANCE MONITORING PROCESSES

The CCC will monitor and assess NERC's adherence to its Reliability Standards Development Procedure using a process to collect information and make assessments. This process is described below. All monitoring activities will be conducted in a manner consistent with NERC Rule of Procedure 402.8, regarding confidentiality.

2.1 Reviews

Reviews will be conducted in a manner consistent with the NERC Rule of Procedure 403.11.2, through either on-site reviews or reviews of documents. All Reviews will be conducted in accordance with audit guides, consistent with accepted auditing guidelines as approved by NERC.

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NERC's Reliability Standards Development Procedure will be reviewed. Reviews will be conducted in a manner consistent with NERC Rule of Procedure 403.11.2, regarding either on-site reviews or reviews of documents. All Reviews will be conducted in accordance with audit guides, consistent with accepted auditing guidelines as approved by NERC. ¶

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2.1.1 Review Steps

At least four (4) months prior to commencement of a regularly scheduled review, the CCC notifies NERC of the review and requests that NERC recommend an independent contractor to oversee the review and serve as the Review Team Leader. NERC will provide a list of contractors to the CCC and recommend the independent contractor within one (1) month of receiving the notification. Within two (2) weeks of receiving NERC's recommendation, the CCC will accept or reject NERC's recommendation and notify NERC. If the independent contractor is rejected by the CCC, the CCC will inform NERC of the reasons for the rejection and request that NERC provide another recommendation within two (2) weeks. NERC will be responsible for funding the independent contractor.

At least two (2) months prior to commencement of a regularly scheduled review, the CCC will identify other review team members and their recent employment history, and request data from NERC, including a pre-review questionnaire. If the review team members change from the time of the original notification, the CCC will promptly notify NERC of the change and will allow time for NERC to object to the member (see Section 2.1.4).

NERC will provide the review team the required information in the format specified in the request.

The review team will review the submitted information for conformance with the Reliability Standards Development Procedure.

The review team will then conduct a review following NERC audit guidelines. This will include conducting an exit briefing with NERC, providing for a briefing of the review report with NERC before it is finalized, and issuing a review report, including an assessment to the CCC of NERC's adherence to the Reliability Standards Development Procedure.

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The CCC will check the report developed by the review team and complete an assessment of any Preliminary Adverse Findings identified in the report.

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If the CCC concludes that a reasonable basis exists for believing NERC has not adhered to its Reliability Standards Development Procedure, the CCC will notify NERC pursuant to the provisions of Section 4.0.

2.1.2 Frequency of Reviews

The CCC will perform full-scale Reviews of NERC at least every three (3) years with lower-scaled reviews annually. Additionally, an unscheduled Review of NERC may be initiated by the CCC if reasonably determined to be necessary to determine NERC's adherence to the Reliability Standards Development Procedure.

2.1.3 Scope of Reviews

A Review will include all elements of the Reliability Standards Development Procedure.

2.1.4 Conduct of Reviews

The review team will be comprised of (1) an independent contractor recommended by NERC and selected by the CCC who will also serve as the review team leader, (2) at least one CCC member, and (3) additional industry experts selected by the CCC, generally from other NERC committees.

Each review team member must:

- Be free of conflicts of interests.
- Comply with the NERC Antitrust Compliance Guidelines and have either signed appropriate confidentiality agreements or acknowledgments that the confidentiality agreement signed by the CCC is applicable.

Prior to the review, copies of executed confidentiality agreements or acknowledgements will be provided to NERC and to the CCC.

NERC may object to any member of the review team on grounds of a conflict of interest or the existence of other circumstances that could interfere with the team member's impartial performance of his or her duties. Such objections must be provided in writing to the CCC within fifteen (15) days of being notified of the proposed review team member. The CCC will make a final determination on whether the member will participate in the review of NERC. Nothing in this paragraph will be read to limit the participation of FERC staff in the

review.

2.1.5 Review Reports

The review team will develop a draft review report that will include a description of the objective, scope, and methodology of the review; identify any Preliminary Adverse Findings; identify any mitigation activities which have been completed or pending in the year of the review; and identify the nature of any confidential information redacted. The review report may contain other recommendations of the review team related to the findings. The draft report will be provided to NERC for comment.

The review team will consider corrections based on comments of NERC and provide the final review report to the CCC who will review the report and assess adherence to the Reliability Standards Development Program and provide NERC with a copy of the final report. In the event the review report identifies Preliminary Adverse Findings, the final review report, or pertinent part thereof, will not be released to the NERC Board until after such Preliminary Adverse Findings have been addressed by NERC and the CCC pursuant to the provisions of Section 4.0. Information deemed by the CCC or NERC as critical energy infrastructure information or confidential information will be protected in accordance with Section 1500 of the NERC Rules of Procedure.

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2.2 Self-Certifications

NERC will certify its adherence to the Reliability Standards Development Procedure with respect to a subset of performance items selected by the CCC on an annual basis as part of the CCC's Annual Implementation Plan. Such Self-Certification will be achieved through reports to the CCC by a NERC officer or equivalent responsible for ensuring adherence to the Reliability Standards Development Procedure.

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2.3 Spot Checking

The CCC may from time to time request NERC to provide information to assess whether NERC adheres to the Reliability Standards Development Procedure. Spot Checking may also be initiated in response to events or a complaint. Results of the Spot Check will be provided to NERC in accordance with Section 4.0 and will be reported to the NERC Board in accordance with Section 6.0.

2.4 Investigation

An Investigation may be initiated at any time by the CCC in response to a Complaint or evidence that NERC has not adhered to the Reliability Standards Development Procedure. Investigations will follow the processes outlined for a Review.

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2.5 Self-Reporting

NERC is encouraged to self-report to the CCC at the time NERC becomes aware (1) of a deviation from the Reliability Standards Development Procedure, or (2) a change in a previously reported deviation.

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2.6 Data Submittals

If Data Submittals are required, the CCC will establish a team of industry experts to review

the data and provide the CCC with a report identifying any potential Adverse Findings. If any potential Adverse Findings are identified, an Investigation will be conducted in accordance with Section 2.4.

2.7 Reserved

2.8 Complaints

The CCC may receive Complaints alleging deviations from the Reliability Standards Development Procedure. The CCC will conduct a review of each Complaint it receives to determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint, or if the Complaint provides sufficient basis for an Investigation in accordance with Section 2.4 or Spot Checking in accordance with Section 2.3.

All anonymous Complaints will be reviewed and any resulting Investigations or Spot Checks will be conducted in a manner that will prevent disclosure of the identity of the complainant.

3.0 ANNUAL IMPLEMENTATION PLAN

The CCC will maintain and update an Annual Implementation Plan, to be carried out by the CCC in the performance of its responsibilities and duties in implementing this program. The plan will be provided to NERC by October 1 of each year and will specify reporting by NERC to the CCC that will be required to provide verification of adherence through any of the monitoring methods described in Section 2.0 of this document. The implementation plan will be posted on the NERC Web site.

4.0 NOTIFICATION AND RESOLUTION OF FINDINGS

If the CCC alleges that NERC has not adhered to the Reliability Standards Development Procedure, the CCC will provide written notice of the Preliminary Adverse Finding to NERC.

NERC will elect to either accept or dispute the Preliminary Adverse Finding and report its election to the CCC. If NERC disputes the Preliminary Adverse Finding, such report will include NERC's reason for the dispute. If NERC has not provided such a report to the CCC within thirty (30) days after having been notified of the Preliminary Adverse Finding, the CCC will deem NERC to have accepted the determination of an Adverse Finding.

No later than five (5) days after the CCC either receives NERC's report accepting or disputing the Preliminary Adverse Finding or deems NERC to have accepted the Adverse Finding, the CCC will forward to the NERC Board a copy of the notice of the Preliminary Adverse Finding previously provided to NERC, and a copy of NERC's report, if any, accepting or disputing the Preliminary Adverse Finding.

The NERC Board will review the submitted information, determine if any further action is required, and notify the CCC of its determination.

5.0 MITIGATION

If an Adverse Finding is determined (or if otherwise directed by the NERC Board) NERC will (1) develop and implement a Mitigation Plan to address the non-adherence, or (2)

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- Deleted: 2.7 Exception Reporting ¶ NERC will provide to the CCC reports identifying any exceptions, with advance notice, to the Reliability Standards Development Procedure. NERC will also confirm the number of exceptions that have occurred in a given time period identified by NERC, even if the number of exceptions is zero.¶
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- ¶ If, as a result of the initial review of the Complaint, the CCC determines that an Investigation or Spot Check is warranted, an Investigation or Spot Check wi... [1]
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provide [the](#) NERC Board and the CCC with a description of how the [non-adherence](#) has been mitigated.

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If a Mitigation Plan is required, NERC will provide a copy of the Mitigation Plan to the CCC for review, and will keep the CCC informed of NERC's progress toward completion of the Mitigation Plan.

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5.1 Contents of Mitigation Plans

The Mitigation Plan should include the following information:

- NERC's point of contact for the Mitigation Plan, who will be a person (1) responsible for implementing the Mitigation Plan, (2) technically knowledgeable regarding the Mitigation Plan, and (3) authorized and competent to respond to questions regarding the status of the Mitigation Plan.
- The [non-adherence to the Reliability Standard Development Process that](#) the Mitigation Plan will correct.
- The cause of the [non-adherence](#).
- NERC's action plan to correct the [non-adherence](#).
- NERC's action plan to prevent recurrence of the [non-adherence](#).
- A timetable for completion of the Mitigation Plan including the completion date by which the Mitigation Plan will be fully implemented and the [non-adherence](#) corrected.
- Implementation milestones no more than three (3) months apart for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional [Adverse Findings](#) could be determined for not completing work associated with accepted milestones.
- Any other information deemed necessary or appropriate.

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5.2 Timetable for Completion of Mitigation Plans

The Mitigation Plan should be completed in time to have a reasonable potential to correct all of the [non-adherence](#) prior to the next applicable reporting/assessment period. In all cases the Mitigation Plan should be completed without delay.

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NERC will advise the CCC of any extensions of any milestones or the completion dates of a Mitigation Plan

5.3 Review of Mitigation Plans

Within thirty (30) days of receipt [of the Mitigation Plan](#), the CCC will review the Mitigation Plan, and will advise the NERC Board of any concerns the CCC has related to a Mitigation Plan.

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5.4 Completion/Confirmation of Implementation of Mitigation Plans

NERC will inform the CCC when implementation of a Mitigation Plan has been completed.

6.0 REPORTING AND DISCLOSURE

The CCC will report to the NERC Board, on a confidential basis, any Preliminary Adverse Findings regardless of significance, within five (5) business days after giving NERC notice pursuant to Section 4.0. Such reports will include information regarding the nature of the Preliminary Adverse Finding and the name of a NERC staff person knowledgeable of the Preliminary Adverse Finding.

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The CCC will report to the NERC Board at least quarterly the status of Investigations, regardless of significance, that have not yet resulted in a final determination of Preliminary Adverse Finding, and of any Adverse Findings for which mitigation activities have begun but have not been completed.

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All Complaints received will be communicated to the NERC Board by the CCC along with the disposition of the Complaint.

In addition to other reporting requirements outlined in this document, the CCC will provide an annual report of its compliance monitoring activities to the NERC Board.

7.0 DATA RETENTION AND CONFIDENTIALITY

7.1 Records Management

All records associated with the program will be maintained by NERC staff. The associated records management policy will provide for a routine and orderly process for the retention and disposal of electronic and paper records related to this program, ensure verification of compliance with appropriate business, regulatory, and legal requirements. The policy will allow for the maintenance of records as required to implement the CCC's monitoring of NERC's adherence to the Reliability Standards Development Procedure.

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7.2 Retention Requirements

NERC's records management policy will require that information and data generated or received pursuant to activities associated with this program be retained for a minimum of five (5) years. If the information or data is material to the resolution of a controversy, the retention period for such data will not commence until after the controversy is resolved.

7.3 Confidentiality of Information

NERC and the CCC will keep confidential all Confidential Information in accordance with Section 1500 of the NERC Rules of Procedures. Information deemed to be Critical Energy Infrastructure Information will be redacted and will not be released publicly.

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The CCC will determine if the Complaint may be closed as a result of the initial review and assessment of the Complaint, or if the Complaint provides sufficient basis for an Investigation or Spot Checking.

If, as a result of the initial review of the Complaint, the CCC determines that an Investigation or Spot Check is warranted, an Investigation or Spot Check will be conducted in accordance with Sections 2.3 or 2.4.

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the NERC Board and a NERC officer or equivalent responsible for ensuring compliance with all Reliability Standards applicable to

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agreed with the findings and report such agreement to the NERC Board:
agree with the Preliminary Adverse Finding or
disagree with the Preliminary Adverse Finding.

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Following a thirty (30) day period

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to the NERC Board. This notification will include a statement of whether NERC agrees with the Preliminary Adverse Finding and it is now considered an Adverse Finding, or whether NERC disputes the findings.

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and if NERC disagrees with the compliance findings, the Board will

COMPLIANCE AND CERTIFICATION COMMITTEE HEARING PROCEDURES

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 in the United States as described in the NERC Rules of Procedure (“ROP”) conducted into (i) whether Registered Entities or Regional Entities have violated Reliability Standards directly administered by NERC, and if so, to determine the appropriate Mitigation Plans as well as any remedial actions, penalties or sanctions in accordance with the NERC *ERO Sanction Guidelines* and other applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), or (ii) a challenge by a Regional Entity regarding a regional compliance program audit finding (in either case, such Respondent or Regional Entity, hereafter a “Respondent”). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Panel established by the CCC in accordance with Section 8.3 of the CCC Charter. The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, and decision by the Hearing Panel on any matter brought before it for decision.

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, as defined in Paragraph 1.1.5, or the Hearing Panel, for good cause shown, either upon the Hearing Officer’s or the Hearing Panel’s own motion or upon the motion of any Participant.

1.1.3 Standards for Discretion

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

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

- e) Impartiality - Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Respondents 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 Paragraph 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.
- b) Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.
- c) To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

1.1.5 Definitions

Unless otherwise defined, as used in these Hearing Procedures (i) definitions in Section 1.1 of the NERC Compliance Monitoring and Enforcement Program shall apply, and (ii) the following terms shall have the following meanings:

“Bulk Power System,” for the purposes of these Hearing Procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

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

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

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

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

“Director of Compliance” means the NERC Director of Compliance, who is responsible for the management and supervision of Compliance Staff.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Officer” means a CCC member or other individual employed or contracted by NERC as designated by the CCC to preside over hearings conducted pursuant to these Hearing Procedures. The CCC shall approve the individual appointed as the Hearing Officer. The Hearing Officer will not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established by the CCC that is responsible for adjudicating a matter as set forth in the CCC Charter.

“Participant” means any Person who is allowed or required to participate in a proceeding conducted pursuant to these Hearing Procedures. The term “Participant” as used herein shall include the members of the Compliance Staff that participate in a proceeding.

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

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

“Reliable Operation” has the meaning set forth in Section 215 of the Federal Power Act.

“Reliability Standards” means standards approved by FERC pursuant to Section 215 of the Federal Power Act and 18 C.F.R. Section 39.5, as such standards are authorized and in effect from time to time.

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

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

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

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

All filings made with the CCC must contain:

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

1.2.2 Form of Filings

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

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

1.2.3 Submission of Documents

a) Where to File

Filings shall be made with the NERC Director of Compliance located at NERC's principal office. The office will be open from [*NERC business hours*] local time each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Panel. Filings will be considered made when they are date stamped received by the NERC Director of Compliance. To be timely, filings must be received no later than [*NERC close of business*] local time on the date specified.

c) How to File

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

d) Number of Copies to File

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

e) Signature

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an Officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief.

f) Verification

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

g) Certificate of Service

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

1.2.4 Service

a) Service List

For each proceeding, the NERC Director of Compliance 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 Compliance and the Respondent's designated agent for service as registered on the NERC Compliance Registry shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the NERC Director of Compliance.

b) By Participants

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 NERC Director of Compliance

The NERC Director of Compliance 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, 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.

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. The time in which any action is required to be done shall be computed by excluding intermediate Saturdays, Sundays, and legal holidays, or days upon which the NERC office is closed when the period is less than fifteen (15) days.

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 or the Hearing Panel may allow off-the-record discussion of any matter provided the Hearing Officer or the Hearing Panel states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. Unless otherwise prescribed by the Hearing Officer or the Hearing Panel, a Participant may file and serve suggested corrections to any portion of the transcript within thirty-five (35) days from the date on which the relevant portion of the transcript was taken, and any responses shall be filed within ten (10) days after service of the suggested corrections. The Hearing Officer or the Hearing Panel shall determine what changes, if any, shall be made, and shall only allow changes that conform the transcript to the truth and ensure the accuracy of the record.

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 NERC'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 that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 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 Are Not Permitted

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

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 FERC 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 NERC Director of Compliance shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a notice of Alleged Violation or the findings of a regional compliance program audit. Unless NERC provides a different docketing system that will be used, 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 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 Hold Harmless

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the NERC 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, 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 Respondent’s Option to Request a Hearing

Except when contesting a Remedial Action Directive pursuant to Paragraph 1.9 of these Hearing Procedures, a Respondent may file a statement with the NERC Director of Compliance requesting a hearing if either:

- a) The Respondent files (i) a response to a notice of Alleged Violation that contests either the alleged violation, the proposed Penalty, or both, or (ii) a response that challenges a regional compliance program audit finding; or
- b) The Compliance Staff submits to the Respondent a statement identifying a disagreement with a Respondent’s proposed Mitigation Plan.

A Respondent must file its hearing request within forty (40) days¹ after (i) the Respondent files its response to the notice of Alleged Violation or to the regional compliance program audit finding; or (ii) the Compliance Staff submits to the Respondent its statement identifying a disagreement with the Respondent’s proposed Mitigation Plan, whichever is applicable. If the Respondent does not file a hearing request within the time period set forth in this Paragraph, then the Respondent will be deemed to have agreed and waived any objection to the proposed Penalty, the Alleged Violation, the regional compliance program audit finding or the Compliance Staff’s stated position on the Mitigation Plan, whichever is applicable.

A notice of Alleged Violation issued to a Respondent, a Staff statement setting forth its disagreement with a Respondent’s proposed Mitigation Plan, or a report of the findings from a regional compliance program audit shall clearly state that the Respondent has the option to contest the Alleged Violation or proposed Penalty, or both, the regional compliance program audit finding, or the Compliance Staff’s position on the proposed Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Paragraphs 1.4 to 1.7. If the Respondent files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Respondent requests the full hearing procedure, the full hearing procedure shall apply. If the Respondent requests the shortened hearing procedure, Compliance Staff shall submit a filing within five (5) days of the Respondent’s hearing request that states whether Staff agrees to use the shortened hearing procedure. If Staff either fails to file or files but does not agree to use the shortened hearing procedure, then the full hearing procedure shall apply. Once either the full 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.

¹ **Inconsistency:** ROP 409.1 provides that challenges to NERC decisions be filed within twenty-one (21) days.

A Respondent shall attach to a request for hearing whichever of the following are applicable:²

- a) The Respondent's Self-Reporting of a violation;
- b) The notice of Alleged Violation and the Respondent's response thereto;
- c) The report of the regional compliance program audit and the Respondent's response thereto; and/or
- c) The Respondent's proposed Mitigation Plan and the Compliance Staff's statement identifying its disagreement with the proposed Mitigation Plan.

1.3.2 Shortened Hearing Procedure

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

The Hearing Panel may utilize a Hearing Officer to preside over the shortened hearing procedure in accordance with Paragraph 1.4.2. But, no evidentiary 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 Subparagraph (g). Instead, the following events shall take place within the following periods:

- a) The 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 Paragraph 1.5.2 that may apply, the prehearing conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).
- b) Within seven (7) days after the date on which the notice of hearing is issued, Staff shall make documents available to the Respondent for inspection and copying pursuant to Paragraph 1.5.7.
- c) Within twenty-one (21) days³ after the prehearing conference, the Staff shall file:

² ROP 409.2 prescribes additional specific "contents" for the Respondent's filing.

³ This period corresponds with the same period provided for NERC's response in ROP 409.3. However, ROP 409.3 also provides that the NERC Director of Compliance shall file NERC's response. Because ROP 409.1 required that any challenge be filed with the NERC Director of Compliance, this draft treats him as analogous to the Clerk. Believing the same person should not receive an appeal and respond to it, the current draft has the response come from the Staff, who already are otherwise responsible for defending the decision.

3.18.08 DRAFT

- 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
 - 2) all documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) days of Staff's initial comment filing pursuant to Subparagraph (c), the Respondent shall file:
- 1) responsive comments stating the Respondent's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
 - 2) all documents that the Respondent seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- e) Within seven (7) days after the Respondent's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Respondent'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 Respondent 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 Respondent 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 Respondent pursuant to Subparagraph (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 Paragraph 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 ninety (90) days of the notice of hearing.

The Hearing Officer or Hearing Panel may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Panel to issue the final order within ninety (90) days of the notice of hearing.

1.4 General Hearing Procedure

1.4.1 Notice of Hearing

Within seven (7) days of a Respondent requesting a hearing pursuant to Paragraph 1.3, the NERC Director of Compliance shall issue a notice of hearing in the docket. The notice of hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) days after the notice of hearing is issued. The notice of hearing shall state that the Respondent has the option to elect either the shortened hearing procedures (Paragraph 1.3.2) or the full hearing procedures (Paragraphs 1.4 to 1.7).

1.4.2 Hearing Officer

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

The Hearing Panel may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing from the prehearing conference through the issuance of the initial opinion and any administrative hearing functions thereafter, and the responsibility for 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 discovery;
- 6) To conduct prehearing conferences, status hearings and evidentiary hearings;
- 7) 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 Paragraph 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.

If the Hearing Panel uses a Hearing Officer to preside over a hearing, the Hearing Panel shall disclose the identity, 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 1.4.5.

1.4.3 Hearing Panel

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

- 1) The Hearing Panel shall receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written comments, testimony and evidence. 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 Paragraph 1.6.7.
- 2) The Hearing Panel or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- 3) 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.
- 4) 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 pursuant to Paragraph 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
- 5) 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 Participant shall be allowed to seek interlocutory review of any ruling of the Hearing Officer with the Hearing Panel. Failure to seek such review shall not operate as a waiver of any objection to such ruling. 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 be filed with any offer of proof and supported by affidavit if based on facts that do not appear of record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses are allowed. The Hearing Officer shall file a report to the Hearing Panel within fourteen (14) days from the filing of the petition.

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. Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Paragraph 1.7.8) of the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (which 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.

1.4.5 Disqualification

A Hearing Officer, Technical Advisor or member of the Hearing Panel shall recuse himself or herself from a proceeding if participation would violate the NERC's applicable conflict of interest policy.

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 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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.

If a quorum (as defined in Paragraph 1.7.8) 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.

1.4.6 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 in any Compliance Staff investigation, initial determination of Alleged Violation or Penalty, regional compliance program audit, or assessment of a Respondent's proposed Mitigation Plan that resulted in the proceeding in which technical advice would be rendered, and shall not be a member of Staff participating in the proceeding on which such technical advice would be rendered.

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 1.4.5.

1.4.7 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;
 - 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) The proscription in Subparagraph (a)(1) does not prohibit members of the Compliance Staff from communicating with the Respondent, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
 - c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the Hearing Panel, the Hearing Officer and any Technical Advisor.
 - d) 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 the date, time and place of communication, and a summary of the substance and nature of the communication and all responses thereto, and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

1.4.8 Appearances

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.

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

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

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.

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

In the event that more than one Respondent receives a Notice of Alleged Violation for the same event or transaction, and each Respondent selects the full hearing procedure described in Paragraphs 1.4 to 1.7, the Hearing Panel on its own motion may exercise its discretion to examine the actions of both Respondents 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.

A Participant may file a motion pursuant to Paragraph 1.5.5 to consolidate into a single proceeding allegations of violations of different Reliability Standards against a single Respondent, and related contests of Penalties or Mitigation Plans, arising out of the same event or transaction. Such consolidation may be allowed in the discretion of the Hearing Officer or Hearing Panel, as applicable.

1.5 Prehearing Procedure

1.5.1 Waiver of Time Limits

A Respondent that elects the full hearing procedure as set forth in Paragraphs 1.4 to 1.7 shall be deemed to have waived the time limit requirements, if any, in the NERC Rules of Procedure.

1.5.2 Prehearing Conference

The purpose of the prehearing conference shall be to:

- 1) Preliminarily identify the issues;
- 2) Develop a schedule for any discovery to be conducted and address any discovery issues;
- 3) Explore the possibility of obtaining admissions of fact and of the genuineness of documents that would avoid unnecessary proof;
- 4) Develop a schedule for the preparation and submission of evidence and witness testimony in advance of the evidentiary hearing;
- 5) Schedule a date(s) for the evidentiary hearing; and
- 6) Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

1.5.3 Summary Disposition

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. 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. When the Hearing Officer issues an initial opinion granting a motion for 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 prehearing conference to address issues that have arisen between the Participants. Such issues may include, but are not limited to, discovery disputes and scheduling matters. The Hearing Officer shall direct the NERC Director of Compliance to issue a notice of status hearing that sets forth the date, time and place for the hearing, and identifies the matters to be addressed at the hearing.

1.5.5 Motions

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, 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; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

1.5.6 Experts

A Participant may employ an expert(s) to testify or consult in a proceeding. Any expert utilized in either capacity shall sign a confidentiality agreement appropriate to the level of involvement in the proceeding. The Participant employing the expert shall propose the confidentiality 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.

1.5.7 Inspection and Copying of Documents in Possession of Staff

(a) Documents to be Available for Inspection and Copying

(1) Unless otherwise provided by these Hearing Procedures, or by order of the Hearing Officer or Hearing Panel, within five (5) days after issuance of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, all documents prepared or obtained by Staff in connection with the investigation 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.

However, the documents made available for inspection and copying need not include any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

(2) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same investigation leading to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in Subparagraph (a), the additional documents shall be made available to the Respondent 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 Respondent not less than ten (10) days before the hearing. If Staff receives such documents ten or fewer days before the hearing is scheduled to begin or after the hearing begins, Staff shall make the additional documents available immediately to the Respondent.

(3) Nothing in subparagraph (a)(1) shall limit the discretion of NERC to make any other document available to the Respondent 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 the Respondent if:

(A) the document is privileged to Staff or constitutes attorney work product of Staff's counsel;

(B) the document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that shall not be offered in evidence;

(C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline 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, the 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 Subparagraphs (A), (B), (C) or (D) that is capable of being redacted, Staff shall make the document available for inspection and copying by Respondent in redacted form.

(2) Nothing in Subparagraph (b)(1) authorizes Staff to withhold a document, or a part thereof, that contains exculpatory evidence.

(c) Withheld Document List

The Hearing Officer may require Staff to submit to the Hearing Officer a list of documents withheld pursuant to Subparagraph (b)(1) or to submit to the Hearing Officer any document withheld. Upon review, the Hearing Officer may order Staff to make the list or any document withheld available to the Respondent(s) for inspection and copying. A motion to require Staff to produce a list of documents withheld pursuant to Subparagraph (b)(1) shall be based upon some reason to believe that a document is being withheld in violation of these Hearing Procedures.

(d) Timing of Inspection and Copying

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

(e) Place and Time of Inspection and Copying

Documents subject to inspection and copying pursuant to this Paragraph shall be made available to the Respondent 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 Respondent shall be given access to the documents at NERC's offices during normal business hours. A Respondent shall not be given custody of the documents or be permitted to remove the documents from NERC's offices.

(f) Copying Costs

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

(g) Failure to Make Documents Available — Harmless Error

In the event that a document required to be made available to a Respondent pursuant to this Paragraph is not made available by Staff], no rehearing or amended decision of a proceeding already heard or decided shall be required unless Respondent establishes that the failure to make the document available was not harmless error. The Hearing Officer, or, upon review, the Hearing Panel shall determine whether the failure to make the document available was harmless error.

1.5.8 Other Discovery Procedures

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods commonly used in civil courts, including requests for production of documents, written interrogatories, requests for admission, and depositions of witnesses under oath. All discovery that a Participant wishes to conduct, other than the inspection and copying of documents pursuant to Paragraph 1.5.7, shall be presented to the Hearing Officer at the prehearing conference or a status hearing or by written motion, and the Hearing Officer, after receiving any objections from other Participants, shall issue a ruling setting forth the discovery to be conducted and the schedule on which it shall be initiated and completed. The provisions of Subparagraphs (b) through (g) of Paragraph 1.5.7 shall apply to any such discovery. The Hearing Officer shall supervise all discovery in accordance with the following policies: (i) the opportunity to obtain full disclosure of all relevant and material documents and information shall be provided; (ii) a Participant shall be obligated to exercise due diligence in the conduct of discovery; and (iii) discovery shall not be employed by a Participant as a means of delay of the proceeding or to harass or burden any other Participant.

1.5.9 Pre-Evidentiary Hearing Submission of Testimony and Evidence

Unless the Hearing Officer orders otherwise and with the exception of any adverse Participant examination pursuant to Paragraph 1.6.16, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination, 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 the evidentiary hearing.

Compliance Staff shall file the documents it intends to offer into evidence as its direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, first. The Respondent 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 Respondent's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, third.

If appropriate due to the number and/or complexity of the issues, the Hearing Officer may allow for the Respondent to submit a rebuttal case that responds to Staff's rebuttal case, in which event the Hearing Officer shall also allow Staff to submit a surrebuttal case that responds to the Respondent's rebuttal case.

Each round of evidence shall be limited in scope to responding to the preceding round of evidence, except that the Respondent's direct case may exceed the scope of Staff's direct case if necessary for the Respondent to set forth its direct case fully.

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.

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 FERC 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, 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, for which *NERC Security Guidelines for the Electricity Sector*

- *Protecting Potentially Sensitive Information* may be used as a guide; (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of the ERO or any federal, state or foreign regulatory authority.

- c) A Participant submitting 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 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.

1.5.11 Pre-Evidentiary Hearing Memorandum

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

1.6 Evidentiary Hearing Procedure

1.6.1 Evidentiary Hearings

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. The evidentiary hearing also may be used to address any other issue pending between the Participants.

1.6.2 Burden of Proof and Order of Receiving Evidence

The standard of proof in the hearing shall be by a preponderance of the evidence. The burden of persuasion on the merits of the hearing shall rest upon Compliance Staff alleging noncompliance with a Reliability Standard, proposing a Penalty, supporting a regional compliance program audit finding, opposing a Respondent's Mitigation Plan, or requiring compliance with a Remedial Action Directive. Therefore, in all proceedings Compliance Staff shall open and close.

1.6.3 Opening and Closing Statements

Opening and closing statements will not be made during the evidentiary hearing as a matter of course except that such statements may be allowed when requested by a Participant, and shall be required when requested by the Hearing Officer or the Hearing 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

All material offered in evidence, unless the Hearing Officer allows oral testimony, shall be offered in the form of an exhibit. 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 Evidentiary Hearing

Each witness shall attend the evidentiary hearing in person unless a Participant has been informed in advance of the evidentiary 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 evidentiary hearing. All testimony offered at the evidentiary hearing is to be under oath or affirmation. If a witness is not required to attend the evidentiary 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

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

Except for witnesses who are not required to attend the evidentiary 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 NERC Director of Compliance and provide corrected copies to the Hearing Officer and other Participant.

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 Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except in exceptional cases and upon a showing of good cause, no witness shall be allowed to testify during the evidentiary hearing unless a Participant has served the witness' written testimony in advance of the evidentiary 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 an evidentiary hearing when a Participant has not served the witness' written testimony in advance of the evidentiary 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

When relevant and material matter offered in evidence is embraced in a book, paper or document containing other matter that is not material or relevant, the Participant offering the same must plainly designate the matter offered as evidence, and segregate and exclude the material not offered to the extent practicable. If the material not offered is in such volume as would unnecessarily encumber the record, such book, papers or document will not be received in evidence but may be marked for identification and, if properly authenticated, the relevant or 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. 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

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.
- 3) State, provincial and federal statutes and municipal and local ordinances.
- 4) The decisions of state, provincial and federal courts.
- 5) Generally recognized scientific or technical facts within the specialized knowledge of the NERC.
- 6) All other matters of which the courts of the United States may take judicial notice.

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. 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

Any evidence offered, including that included in a book, paper or document pursuant to Paragraph 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.

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.

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

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. 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

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. 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 Paragraph 1.6.15. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

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

1.6.16 Examination of Adverse Participant

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

1.6.17 Close of the Evidentiary Record

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

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, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page 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

Except as otherwise ordered by the Hearing Panel, 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. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis

therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Remedial Action Directive that the Hearing Officer proposes the Hearing Panel require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Paragraph 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, the Participant must specify each error asserted, and include a concise discussion of any policy considerations applicable and any other 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 designed "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 page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions. Such page 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

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. 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 NERC Director of Compliance to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

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 shall contain accurate record citations. 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 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 an initial opinion, 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 adduced.

1.7.8 Hearing Panel Final Order

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. 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 (which number of members voting shall not be less than a quorum). The Hearing Panel shall strive, but shall not be required, to issue its final order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. 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, sanction, Remedial Action Directive or Mitigation Plan required. If the final order imposes a Penalty, it shall be entitled "Final Order and Notice of Penalty". The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The Hearing Panel shall direct the NERC Director of Compliance to serve the

final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights pursuant to Section 400 of the Rules of Procedure.

1.7.9 The Record

The NERC Director of Compliance 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 Respondent's response thereto;
- 2) Respondent's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- 3) Remedial Action Directives and the Respondent's notice contesting the Remedial Action Directive;
- 4) Respondent'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) Briefs, pre-evidentiary hearing memorandums, 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, any notice of Penalty issued therewith, and the NERC Director of Compliance'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 of Technical Advisor and any responses or replies thereto.

1.7.10 Appeal

A Final Order of the Hearing Panel may be appealed to NERC in accordance with NERC's Rules of Procedure, Subsections 409.5 et seq.

1.8 Settlement

Settlements may be entered into at any time pursuant to Section 5.4 of the NERC Compliance Monitoring and Enforcement Program and NERC's settlement procedures.

1.9 Remedial Action Directives

1.9.1 Initiation of Remedial Action Directive Hearing

Staff may issue a Remedial Action Directive to a Respondent at any time, including during any proceeding related to an alleged violation of a Reliability Standard.

The Respondent may contest the Remedial Action Directive by filing a written notice with the NERC Director of Compliance that states that the Respondent contests the Remedial Action Directive and that the Respondent requests a Remedial Action Directive hearing. The Respondent shall attach a copy of the Remedial Action Directive to its written notice. The Respondent must provide such notice within two (2) days following issuance of the Remedial Action Directive. If the Respondent does not give written notice to the NERC Director of Compliance within the required time period, the Respondent shall be deemed to have waived its right to contest the Remedial Action Directive.

The NERC Director of Compliance 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 pursuant to Paragraph 1.4.1.

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 Paragraph 1.9.2. The full hearing procedures described in Paragraphs 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless the context of a provision is inconsistent with or otherwise renders it inapplicable to the procedures set forth in this Paragraph.

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

3.18.08 DRAFT

- a) The Hearing Officer or the Hearing Panel will hold a prehearing conference within two (2) days after receipt of the Respondent's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Respondent 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.
- d) At the evidentiary 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 Respondent's closing argument.
- e) 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.
- f) The Hearing Panel shall issue a summary written decision within ten (10) days following the hearing, stating whether the Respondent shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.

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.

COMPLIANCE AND CERTIFICATION COMMITTEE 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 in the United States as described in Section 504 of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities. Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Panel established by the CCC in accordance with Section 8.3 of the CCC Charter. The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, and decision by the Hearing Panel on any matter brought before it for decision.

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, as defined in Paragraph 1.1.5, or the Hearing Panel, for good cause shown, either upon the Hearing Officer’s or the Hearing Panel’s own motion or upon the motion of any Participant.

1.1.3 Standards for Discretion

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

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

- d) **Balanced Decision-Making** - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy the NERC's conflict of interest policy.
- e) **Impartiality** - Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Respondents 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 Paragraph 1.1.3, and so as to require that all practices in connection with the hearings shall be just and reasonable.
- b) Unless the context otherwise requires, the singular of a term used herein shall include the plural and the plural of a term shall include the singular.
- c) To the extent that the text of a rule is inconsistent with its caption, the text of the rule shall control.

1.1.5 Definitions

Unless otherwise defined, as used in these Hearing Procedures (i) definitions in Section 1.1 of the NERC Compliance Monitoring and Enforcement Program shall apply, and (ii) the following terms shall have the following meanings:

“Bulk-Power System,” for the purposes of these Hearing Procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

“Certification” means the determination in accordance with Section 500 of the NERC Rules of Procedure of the competency of an entity with primary reliability responsibility to ensure that the entity has the tools, processes, training and procedures to become operational.

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

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

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

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

“Director of Compliance” means the NERC Vice President and Director of Compliance.

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. Section 39.3.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Officer” means a CCC member or other individual employed or contracted by NERC as designated by the CCC to preside over hearings conducted pursuant to these Hearing Procedures. The CCC shall approve the individual appointed as the Hearing Officer. The Hearing Officer will not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established by the CCC that is responsible for adjudicating a matter as set forth in the CCC Charter.

“Participant” means any Person who is allowed or required to participate in a proceeding conducted pursuant to these Hearing Procedures. The term “Participant” as used herein shall include the members of the Certification Staff that participate in a proceeding.

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

“Reliable Operation” has the meaning set forth in Section 215 of the Federal Power Act.

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

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

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

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

All filings made with the CCC must contain:

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

1.2.2 Form of Filings

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

1.2.3 Submission of Documents

- a) **Where to File**

Filings shall be made with the NERC Director of Compliance located at NERC's principal office. The office will be open from [NERC business hours] local time each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Panel. Filings will be considered made when they are date stamped received by the NERC Director of Compliance. To be timely, filings must be received no later than [NERC close of business] local time on the date specified.

c) How to File

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

d) Number of Copies to File

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

e) Signature

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an Officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. The signature on a filing constitutes a certificate that the signer has read the filing and knows its contents, and that the contents are true to the best of the signer's knowledge and belief.

f) Verification

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

g) Certificate of Service

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

1.2.4 Service

a) Service List

For each proceeding, the NERC Director of Compliance 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 Compliance and the Respondent's designated agent for service as registered on the NERC Compliance Registry shall automatically be included on the service list. Participants shall identify all other individuals whom they would like to designate for service in a particular proceeding in their appearances or other filings. Participants may change the individuals designated for service in any proceeding by filing a notice of change in service list in the proceeding. Participants are required to update their service lists to ensure accurate service throughout the course of the proceeding. Copies of the service list may be obtained from the NERC Director of Compliance.

b) By Participants

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 NERC Director of Compliance

The NERC Director of Compliance 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, 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.

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. The time in which any action is required to be

done shall be computed by excluding intermediate Saturdays, Sundays, and legal holidays, or days upon which the NERC office is closed when the period is less than fifteen (15) days.

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 or the Hearing Panel may allow off-the-record discussion of any matter provided the Hearing Officer or the Hearing Panel states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. Unless otherwise prescribed by the Hearing Officer or the Hearing Panel, a Participant may file and serve suggested corrections to any portion of the transcript within thirty-five (35) days from the date on which the relevant portion of the transcript was taken, and any responses shall be filed within ten (10) days after service of the suggested corrections. The Hearing Officer or the Hearing Panel shall determine what changes, if any, shall be made, and shall only allow changes that conform the transcript to the truth and ensure the accuracy of the record.

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 NERC'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. Staff may participate and be represented by counsel in hearings, and shall have the rights and duties of any Participant.

1.2.12 Interventions Are Not Permitted

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

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 FERC 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 NERC Director of Compliance shall maintain a system for docketing proceedings to record appeals of Certification decisions. A docketed proceeding shall be created upon the issuance of a notice of an appeal of a Certification decision. Unless NERC provides a different docketing system that will be used, 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 the letters “CERT” and a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

1.2.15 Hold Harmless

A condition of a Participant invoking these Hearing Procedures and participating in a hearing is that the Participant agrees that the NERC 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, 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 Respondent’s Option to Request a Hearing

To appeal a Certification decision, a Respondent must file a statement with the NERC Director of Compliance requesting a Certification hearing within fourteen (14) calendar days after (i) the Certification Appeal Hearing Procedures - Page 8

Certification report or finding is issued, or (ii) the final regional entity appeals process is made. If the Respondent does not file a hearing request within the time period set forth in this Paragraph, then the Respondent will be deemed to have agreed and waived any objection to the Certification decision.

A Respondent shall attach to a request for Certification hearing:

- a) the Certification decision being appealed;
- b) the Respondent's statement explaining and supporting its disagreement with the Certification decision;
- c) all documents, including affidavits, supporting its position; and
- d) a verification attesting to the truthfulness of the facts alleged in the filing..

1.3.2 Hearing Procedure

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

- a) Within ten (10) calendar days after the notice of hearing is issued, the Staff shall file:
 - 1) initial comments stating Staff's position on all issues raised by Respondent and the rationale in support of Staff's position, including all factual and legal argument;
 - 2) all documents that Staff seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- b) Within seven (7) calendar days of Staff's filing pursuant to Subparagraph (a), the Respondent shall file:
 - 1) responsive comments stating the Respondent's position on all issues presented by Staff and the rationale in support of Respondent's position, including all factual and legal argument which respond to Staff's filing;
 - 2) all documents that the Respondent seeks to introduce in support of its position that have not already been submitted in the proceeding; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.

The Hearing Officer or Hearing Panel may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Panel to issue the final order within twenty-nine (29) calendar days of the notice of hearing.

1.4 General Hearing Procedure

1.4.1 Notice of Hearing

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

1.4.2 Hearing Officer

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

The Hearing Panel may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing through the issuance of the opinion and any administrative hearing functions thereafter. 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 rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- 6) To issue protective orders pursuant to Paragraph 1.4.10; and
- 7) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

If the Hearing Panel uses a Hearing Officer to preside over a hearing, the Hearing Panel shall disclose the identity, 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.

1.4.3 Hearing Panel

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

- 1) The Hearing Panel shall receive all filings in a hearing.
- 2) The Hearing Panel or any individual member thereof may, but is not required to, submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- 3) 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; or (ii) present oral argument on an 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.
- 4) To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
- 5) The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order.

1.4.4 Disqualification

A Hearing Officer, Technical Advisor or member of the Hearing Panel shall recuse himself or herself from a proceeding if participation would violate the NERC's applicable conflict of interest policy.

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Panel from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by Paragraph 1.4.6, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within five (5) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

The Hearing Officer shall issue a proposed ruling for the Hearing Panel's consideration upon the filing of a motion for disqualification unless the Hearing Officer is the subject of the motion. The Hearing Panel, without the participation of any member who is the subject of the motion, Certification Appeal Hearing Procedures - Page 11

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.

If a quorum (as defined in Paragraph 1.5.15) 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

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.

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;
 - 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) The proscription in Subparagraph (a)(1) does not prohibit members of the Certification Staff from communicating with the Respondent, and representatives, agents or employees thereof on any topic, provided that any member of the Certification Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the Hearing Panel, the Hearing Officer and any Technical Advisor.
- d) 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 five (5) 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, and a summary of the substance and nature of the communication and all responses thereto, and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

1.4.7 Appearances

Participants shall file written appearances within five (5) 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.

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

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

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.

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 utilized in either capacity shall sign a confidentiality agreement appropriate to the level of involvement in the proceeding. The Participant employing the expert shall propose the confidentiality 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.

1.4.10 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 FERC 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, 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, for which *NERC Security Guidelines for the Electricity Sector - Protecting Potentially Sensitive Information* may be used as a guide; (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of the ERO or any federal, state or foreign regulatory authority.
- c) A Participant submitting 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 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 Hearing Procedure

1.5.1 Burden of Proof and Order of Argument

The standard of proof in the hearing shall be by a preponderance of the evidence. The burden of persuasion on the merits of the hearing shall rest upon Respondent challenging a Certification decision. Therefore, 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, unless the Hearing Officer allows oral 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, 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.

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 evidentiary hearing. All testimony offered at the hearing is to be under oath or affirmation.

1.5.5 Admission of Evidence

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

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

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 1.5.8. 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 1.5.11, and then for redirect examination in accordance with Paragraph 1.5.12. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except in exceptional cases and upon a showing of good cause, no witness shall be allowed to testify during the hearing unless a Participant has served the witness's affidavit in advance of the hearing in accordance with Paragraph 1.3.1. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the CCC's policy to discourage witness testimony at a hearing when a Participant has not served the witness's written affidavit 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.

1.5.6 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.

1.5.7 Official Notice

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.
- 3) State, provincial and federal statutes and municipal and local ordinances.
- 4) The decisions of state, provincial and federal courts.
- 5) Generally recognized scientific or technical facts within the specialized knowledge of the NERC.
- 6) All other matters of which the courts of the United States may take judicial notice.

All requests to take official notice shall be submitted as part of the filings made pursuant to Paragraph 1.3.1. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which Certification Appeal Hearing Procedures - Page 16

official notice is requested. 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.

1.5.8 Admissibility of Evidence

Any evidence offered shall be subject to appropriate and timely objections. Any Participant objecting to the admission or exclusion of evidence must state the grounds for objection.

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.

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

1.5.9 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.

1.5.10 Evidentiary Ruling

The Hearing Officer shall rule upon any objection to the admissibility of evidence at the time the objection is made.

1.5.11 Cross-Examination

Any witness personally attending the hearing shall be tendered for cross-examination subsequent to the admission of the witness's 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. The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the witness's cross-examination by the other Participant, and prior to the witness's redirect examination pursuant to Paragraph 1.5.12. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.5.12 Redirect Examination

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

member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

1.5.13 Close of the Evidentiary Record

The Hearing Officer shall designate the time at which the evidentiary record will be closed, which will typically be at the conclusion of the hearing. Evidence may not be added to the evidentiary record after it is closed, provided that the Hearing Officer may reopen the evidentiary record for good cause shown by any Participant.

1.5.14 Closing Statements

At the close of the evidentiary hearing, Participants shall present oral closing statements. The Hearing Officer may establish reasonable time limitations applicable to closing statements.

1.5.15 Hearing Panel Final Order

Following the hearing, the Hearing Panel shall issue its final order. 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 (which number of members voting shall not be less than a quorum). The Hearing Panel shall issue its final order within one (1) day following the close of the hearing. The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The Hearing Panel shall direct the NERC Director of Compliance to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights pursuant to Section 400 of the Rules of Procedure.

1.5.16 The Record

The NERC Director of Compliance shall maintain the record for all dockets. The record shall include all filings made in the matter, a transcript of the hearing, including all exhibits presented, the final order and any other written correspondence or communications between the Participants and either the Hearing Officer or the Hearing Panel.

1.5.17 Appeal

A Final Order of the Hearing Panel may be appealed to NERC in accordance with the NERC Organization Registration and Certification Manual, Section VI, Paragraph 4.

NERC Compliance and Certification Committee Mediation Program

The NERC Compliance and Certification Committee (“CCC”) Mediation Program is designed as an informal, voluntary process in which a CCC mediation panel assists NERC and a Regional Entity (“RE”) (NERC and the Regional Entity individually a “Party,” collectively, the “Parties”) to understand and work through disagreements or disputes concerning NERC performance audits of a Regional Entity’s compliance program. This alternative dispute resolution mechanism is intended to be a more collaborative, less adversarial method to attain a mutually agreeable resolution to the dispute, consistent with the NERC Rules of Procedures and without formal hearing proceedings.

The Parties to a mediation are not obligated to reach agreement, if they do not reach a consensus, either party may elect to proceed with other more traditional methods of resolving the dispute, but in those instances where consensus is reached and reduced to a written Mediation Settlement Agreement, the agreements of the entities as expressed therein will be enforceable between them.

A. Mediators

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

Once NERC and a Regional Entity have decided to pursue a resolution of their dispute through mediation, each Party will provide the chair of the CCC with introductory information (i.e., brief statements of the nature and history of the dispute, participants’ names, contact information); each Party must be represented by participants who will have the authority to enter into an agreement to resolve the matter in dispute, if the Parties are able to reach an agreement. The chair then provides the introductory information to three disinterested members of the CCC whom the chair assigns to serve as mediators. The mediators may choose, but are not required, to select one of their number as the Lead Mediator to coordinate the process and serve as their primary contact with the Parties. After reviewing the information provided by the Parties, the mediators will communicate with the Parties to identify to them the Lead Mediator, if any, and to arrange an agreeable time and location for the mediation to be held.

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

The materials provided as introductory information and all communications made during or in connection with a mediation will be kept confidential by the mediators and both Parties, and statements made by the Parties during mediation may not be used against

NERC Compliance and Certification Committee Mediation Program

them in later proceedings. The sole exception to this rule of confidentiality would be any written settlement agreement entered into by the Parties, as discussed below. Should the mediation be unsuccessful, no one who participated as a mediator will serve in any capacity in connection with any subsequent legal, administrative or grievance proceeding regarding the subject of the mediation.

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

B. Mediation Process

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

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

- 1) Introductory remarks;
- 2) statements of the problem(s) by the Parties;
- 3) information gathering;
- 4) issue identification;
- 5) bargaining and generation of options; and
- 6) written settlement agreement.

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

In some cases, the Parties and mediators may agree that the mediation will adjourn and reconvene and a later agreed upon time and place. All participants should give the mediation every chance to resolve the dispute, but because mediation is a voluntary process, at any time any participant can express discomfort about any aspect of the process or suggest changes. Also at any time, either Party or the mediators has the authority to terminate the mediation for any reason. If the mediation terminates without a written settlement agreement, either Party is free to pursue all other available legal, administrative or grievance procedures.

1. Introductory Remarks

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

NERC Compliance and Certification Committee Mediation Program

The mediators or Lead Mediator may describe ground rules intended to help the mediation move smoothly. Ground rules may include such things as turning off beepers and cell phones, appropriate conduct, mutual respect, and note taking with instructions for after the process. From time to time during the mediation, the mediators may ask each Party's participants to meet separately from the other Party, or to "caucus," in order to discuss aspects of the dispute and possible resolution among themselves or with some or all of the mediators. Throughout the process, Parties should try not to interrupt each other; the mediators will give each Party the opportunity to fully share their side.

2. Statements of the Problem(s) by the Parties

The mediators will allow each Party the opportunity to explain its perception of the dispute uninterrupted. This statement is not necessarily a recital of the facts, but it is to give each Party an opportunity to frame the issues and to give the mediator more information on the Party's position. If a Party's lawyers make the initial statement, the mediators may also invite the Party's other participants to supplement the statement. The intent is for each Party and the mediators to better understand the other Party's position or point of view.

3. Information Gathering

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

4. Issue Identification

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

5. Bargaining and Generation of Options

Methods for developing options may include caucuses, group processes, discussion groups or sub-groups, developing hypothetical plausible scenarios, or a mediator's proposal where the mediator puts a proposal on the table and the parties take turns

NERC Compliance and Certification Committee Mediation Program

modifying it. If a caucus is held, discussions in the caucus are confidential and the mediators will not share those discussions with the other Party unless the Party in the caucus specifically asks them to do so.

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

6. Written Settlement Agreement

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

As the parties reach a sense that they may be able to agree on all or some of the issues being mediated, the Parties and mediators can begin crafting language to address resolutions of the issues comprising the dispute. This language must be satisfactory to both Parties. The elements and wording of the agreement must be those of the participants, and need to be specific enough that the Parties' intentions will be clear to others who may read it and to each participant at a later time.

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

The draft agreement probably will be reviewed and revised repeatedly by each Party and will continue to be edited, expanded, condensed and rewritten as necessary until both Parties are satisfied. Only after final agreement is reached on all its parts and a final version written out will the Parties be asked to sign the settlement agreement to indicate their understanding of and agreement to the agreement and their willingness to abide by its provisions.

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

NERC Compliance and Certification Committee Mediation Program

Note: the following forms still need to be developed

Request to Mediate (Regional Entity to the NERC Board)

Agreement to Mediate (between Regional Entity and NERC)

Mediation Settlement Agreement Form (between Regional Entity and NERC)

Mediation Evaluation Survey (Regional Entity)

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION NERC PROCESS PROCEDURE (NPP)		
NUMBER	APPROVED BY	DATE
NPP-CME-01		
ORGANIZATION		
COMPLIANCE PROGRAM INTERFACES		
ACTIVITY		
COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM (CMEP)		
TITLE		
REGIONAL ENTITY COMPLIANCE PROGRAM AUDIT PROCESS		

NUMBER	REVISION	PAGE
NPP-CME-01	Draft	1 of 9

Overview

The NERC process for auditing regional entity (RE) compliance programs was established to assess the effectiveness of the RE's compliance program's implementation and adherence to the NERC Rules of Procedures (ROP), NERC Compliance Monitoring Enforcement Program (CMEP) and Delegation Agreements.

The CCC will maintain oversight for the NERC RE audit process

The audits shall be administered using generally accepted auditing procedures and based on the applicable rules of procedures, the delegation agreement, approved RE annual compliance enforcement program implementation plans, required program attributes, and the NERC compliance program procedures. These audits shall be provided to the appropriate ERO governmental authorities to demonstrate the effectiveness of each RE.

Scheduling

Each RE compliance program shall be audited at least once every three years. The three year schedule for RE compliance program audits is approved by NERC VP of Compliance. This schedule is updated annually or as needed by NERC compliance management and posted on the RECM restricted website. Attachment 1 is the three year audit schedule template.

Audit Team

The audit team consists of at least one representative from each of the following:

- Compliance and Certification Committee (oversight team leader)
- Independent Contract Auditors (audit team lead)
- Independent Contract Auditors (team member)
- NERC Manager of Compliance Program Interfaces (team member)
- NERC Compliance Staff (team member)
- Regional Entity Compliance Manager from another regional entity (recused due to conflict)

Audit team members shall not be from the RE being audited or from an Organizational Entity which is responsible for Standards Compliance in the footprint of the RE being Audited or have had a relationship with a registered entity in the footprint within the past 12 months.

In addition to the mandatory team members, regulatory agency personnel may participate in the audit as observers.

The Audit Team Lead shall ensure that the total number of audit team members does not impede the audit process or place undue burdens on the audited RE.

Audit Process

NUMBER	REVISION	PAGE
NPP-CME-01	Draft	2 of 9

The audit process shall contain the following process elements. Attachment 1 is an audit process flowchart.

Assignment of the Audit Team

- 80 days prior to the audit, the Oversight Audit Team Leader will be identified by the NERC Manager of Compliance Program Interfaces. The NERC Manager of Compliance Program Interfaces will also identify the audit team members and identify an Audit Lead. At this time, a requests for names of personnel that will attend the audit as observers shall be sent to the CCC, the RE being audited, and applicable regulatory agencies.

Notification of Intent to Audit

- 70 days prior to the audit, the audit team lead will finalize the introduction letter and audit materials that will be sent to the Regional Entity.

Introduction letter

At least 60 days prior to the onsite audit, the Audit Team Lead shall send a “Notification of Intent to Audit” letter to the regional manager of the RE and copy applicable regulatory agencies. The letter shall include the following information:

- Scope and key dates of the audit
- Introduction and biography of audit team leader
- Audit team members confidentiality agreements and non-disclosure agreements
- On-site accommodations
- Expectations regarding the pre-audit questionnaire (Attachment 2)
- References to the applicable Rules of Procedures and the region’s delegation agreement

Audit Team Status Check with RE

- 45 days prior to the audit, the Audit Team Leader shall have a conference call with the RE and audit team to review the status and clarify concerns regarding the audit.

Receipt of Regional Entity Responses

- 30 days prior to the audit, the Audit Team Lead shall acknowledge the receipt of responses from the RE and forward the responses to the audit team for their review. If responses have not been received, the Audit Team Leader shall send a reminder to the RE asking for missing documentation to be due within five business days.

Audit Team Review of RE Responses

NUMBER	REVISION	PAGE
NPP-CME-01	Draft	3 of 9

- 20 days prior to the audit, the Audit Team Lead shall schedule an off-site meeting with the audit team to collectively review the audited RE documentation. The number of days required on sight will be determined by the audit lead and the NERC Manager of Compliance Program Interfaces . The Audit Team Leader will set expectations for the team’s on sight audit, including confidentiality of information reviewed. The purpose of the meeting is for the audit team to identify any discrepancy and need for additional information. The audit team will develop a focused list of items which need further clarification and documentation while on-site. The Audit Team Lead will communicate to the audited RE additional information identified by the team for review while on site.
- The Audit Team Lead shall develop an on-sight audit agenda to be forwarded to the audit team and RE.
- The Audit Team Lead will establish specific roles and responsibilities for the audit team members

Audit Agenda

See Template

Onsite Audit Week

The following is a recommended schedule for the audit:

First Day 1: The team meets and the lead provides an outline on what is expected of the team (timeline & deliverables). This time is for the team to discuss any lingering questions and establish roles and responsibilities for specific audit functions. As an overview, the team may request to tour the facilities and meet with the RE staff members involved in implementing the compliance enforcement program. The remainder of first day and subsequent days will be spent reviewing documentation and interviewing key personnel. (During the onsite audit, detailed questions related to the completed questionnaire are discussed by all the participants.) To determine the effectiveness of the audited RE’s program, the team shall evaluate the goals, tools, and procedures of the audited RE’s compliance monitoring and enforcement program.

Exit Meeting: In preparation of the exit meeting, the Audit Team Lead shall facilitate a discussion with the audit team on any issues which need to be communicated to the audited RE during the exit meeting. The audit team shall debrief the RE staff on the audit’s initial findings and preliminary recommendations. Lastly, the Audit Team Leader provides the RE and team member’s feedback forms for critical feedback for process improvement.

Audit Report

The Audit Team Leader shall develop a draft report that documents the findings and recommendations of the audit team. The draft report shall be submitted to the RE within 30 calendar days after the completion of the on-site audit.

NUMBER NPP-CME-01	REVISION Draft	PAGE 4 of 9
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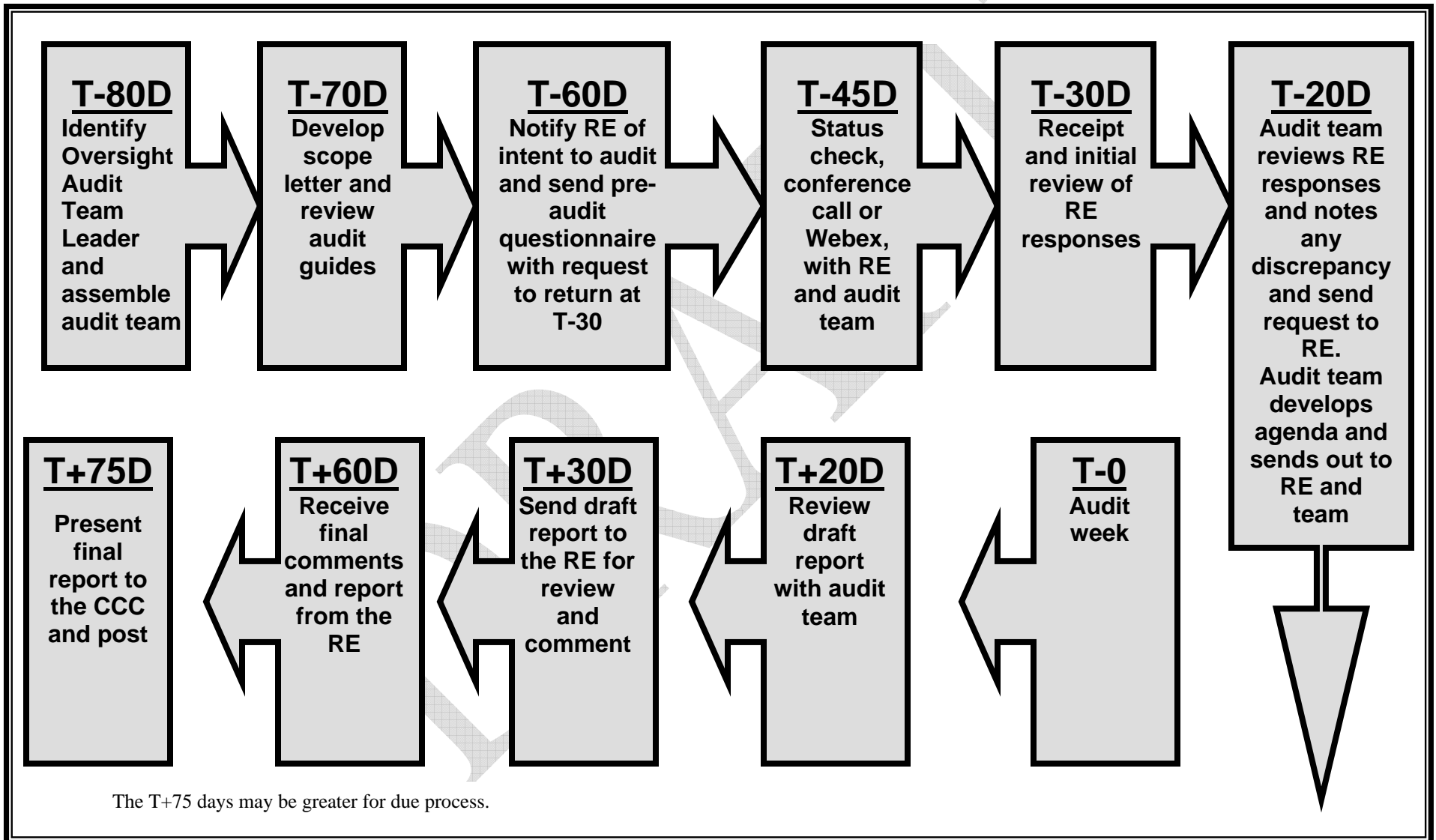
The RE shall have 30 calendar days to analyze each recommendation and finding and report to NERC on those it has implemented or plans to implement. The RE is required to develop action plans for all findings. However, the RE is not required to develop action plans for recommendations. If there are recommendations that the RE does not plan to implement, its rationale for reaching that conclusion shall be provided.

NERC shall issue a final report to the RE 75 calendar days after the draft report is issued. If the RE disputes a finding or recommendation it shall refer to the NERC Rules of Procedure, Sections 409–411 within 15 days of receiving the final report from NERC. Throughout this entire process, the information provided, discussions held, and the draft report shall be kept confidential. The final report, along with the RE response to the recommendations, are posted on the NERC Web site 15 days after the final report is sent to the region or when due process is complete, whichever is greater.

DRAFT

NUMBER	REVISION	PAGE
NPP-CME-01	Draft	5 of 9

Audit Timeline



NUMBER	REVISION	PAGE
NPP-CME-01	Draft	6 of 9

Regional Entity Compliance Program Pre-Audit Questionnaire

Region being audited:

Date of audit:

Send the ¹ completed questionnaire and supporting documentation to:

NERC
C/O: Manager of Compliance Program Interfaces
116-390 Village Boulevard
Princeton, New Jersey 08540-5721

Or e-mail
Ellen.oswald@nerc.net

This documentation shall be provided to NERC no later than .

Pre-Audit questions:

1. Identify the number of registered entities and types within your region?

Response:

2. Provide a high level description of your company including an organizational chart?

Response:

3. Please provide an detailed organization chart of your compliance department .

Response:

4. Please provide a job description to include responsibilities for each of your compliance staff members.

Response:

¹ The region shall provide objective evidence ensuring that sufficient, appropriate evidence is provided to support the answer (e.g., anecdotal examples, metrics, reference to documentation, or documentation).

NUMBER	REVISION	PAGE
NPP-CME-01	Draft	7 of 9

5. Please describe how your compliance department maintains independence.

Response:

[Redacted]

6. Have you performed or plan to perform a joint audit with another regional entity. Please describe the process?

Response:

[Redacted]

7. Other than NERC or FERC, please describe the regulatory organizations do you report to and the reporting requirements and obligations?

Response:

[Redacted]

8. Please describe how you assess your compliance processes? Are there periodic reviews?

Response:

[Redacted]

9. Please provide a description of your process to determine a possible violation is an alleged violation?

Response:

[Redacted]

10. Please provide a description of your process to determine an alleged violation is a confirmed violation?

Response:

[Redacted]

11. Please identify any additional regional training requirements and assessments given to regional compliance auditors to ensure uniformity/consistency of the compliance program implementation.

Response:

[Redacted]

12. Please provide an overview of how a mitigation plan is approved and tracked to completion within your region.

Response:

[Redacted]

13. Please provide any RE performance excellence items and good practices.

NUMBER	REVISION	PAGE
NPP-CME-01	Draft	8 of 9

Response:

14. Are there any CMEP implementation challenges you have faced and what was the associated action plans to address these challenges.

Response:

DRAFT

NUMBER	REVISION	PAGE
NPP-CME-01	Draft	9 of 9