



AMENDED AND RESTATED BYLAWS

OF

Reliability*First* Corporation

a Delaware nonprofit corporation

Adopted December 19, 2006

Amended September 21, 2007¹

Amended December 6, 2007²

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¹ Section 5.9.2

² Sections 1.2, 1.26, 16.1

³ [Sections 1.12, 7.13, 7.14](#)

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**AMENDED AND RESTATED
BYLAWS OF
ReliabilityFirst Corporation
a Delaware nonprofit corporation
(the “Corporation”)**

[As adopted by the Members on December 19, 2006,
amended by the Board of Directors on September 21, 2007 and
amended by the Members on December 6, 2007]

**ARTICLE I.
DEFINITIONS**

Section 1.1. Act. “Act” shall mean Section 215 of the Federal Power Act (16 U.S.C. §824n).

Section 1.2. Adjunct Member. “Adjunct Member” shall mean any entity that does not qualify to join an Industry Sector but has been approved for membership. Adjunct Members may include Regulatory Participants.

Section 1.3. Affiliate. “Affiliate” shall mean, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity, as determined in the sole discretion of the Board of the Corporation. For this purpose, “control” may be presumed by the direct or indirect ownership of ten percent (10%) or more of the outstanding voting capital stock or other equity interests having ordinary voting power.

Section 1.4. Associate Member. “Associate Member” shall mean any entity that has joined an Industry Sector and is an Affiliate or Related Party of a Regular Member.

Section 1.5. Board. “Board” shall mean the Board of Directors of the Corporation.

Section 1.6. Bulk Power System. “Bulk Power System” shall mean facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and electric energy from generation facilities needed to maintain transmission system reliability, but does not include facilities used in the local distribution of electricity.

Section 1.7. Certificate of Incorporation. “Certificate of Incorporation” shall mean the Certificate of Incorporation of the Corporation filed with the Delaware Secretary of State, as from time to time amended.

Section 1.8. Commission. “Commission” shall mean the Federal Energy Regulatory Commission.

Section 1.9. Delegation Agreement. “Delegation Agreement” shall mean the delegation agreement, as supplemented or amended from time to time, between NERC and the Corporation pursuant to which NERC has delegated its authority to the Corporation to propose and enforce Reliability Standards within the Region.

Section 1.10. Electronic Transmission. “Electronic transmission” shall mean any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 1.11. ERO. “ERO” shall mean the electric reliability organization established under the Act to enforce Reliability Standards applicable to all owners, operators and users of the Bulk Power System in North America.

Section 1.12. Hearing Body. “Hearing Body” shall mean a group established with authority to conduct and render decisions in a formal compliance hearing of an entity registered in the NERC Compliance Registry who is the subject of a notice of alleged violation, proposed penalty or sanction, contested mitigation plan or contested remedial action directive. The Hearing Body composition is set forth in Section 7.14.

Section 1.12-Section 1.13. Industry Sector. “Industry Sector” shall mean a group of Bulk Power System owners, operators or users in the Region with substantially similar interests as pertinent to the purposes and operations of the Corporation of the Bulk Power System. The Industry Sectors shall consist of the following: (1) Suppliers, (2) Transmission Companies, (3) RTOs, (4) Small LSEs, (5) Medium LSEs, and (6) Large LSEs.

Section 1.13-Section 1.14. Large LSEs. “Large LSEs” shall mean entities that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region of 50,000 GWh or greater.

Section 1.14-Section 1.15. Medium LSEs. “Medium LSEs” shall mean entities that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region between 10,000 GWh and 50,000 GWh.

Section 1.15-Section 1.16. Members. “Members” shall mean Regular Members, Associate Members and Adjunct Members.

Section 1.16-Section 1.17. NERC. “NERC” shall mean the North American Electric Reliability Corporation, or any successor entity, which has been certified by the Commission as the ERO pursuant to the Act to establish and enforce Reliability Standards for the Bulk Power System.

Section 1.17-Section 1.18. NERC Rules. “NERC Rules” shall mean the NERC Rules of Procedure as approved by the Commission.

Section 1.18-Section 1.19. Net Energy for Load. “Net Energy for Load” shall mean net generation of an electric system plus energy received from others less

energy delivered to others through interchange. It includes system losses, but excludes energy required for storage of energy at energy storage facilities. Calculations of net energy for load for all purposes under these Bylaws shall be based on the most recent calendar year for which data on net energy for load of the Region is available.

~~Section 1.19.~~Section 1.20. Person. “Person” shall mean a natural person, corporation, cooperative, partnership, association, or other private or public entity.

~~Section 1.20.~~Section 1.21. Region. “Region” shall mean the geographic boundaries of the Corporation described in the Delegation Agreement.

~~Section 1.21.~~Section 1.22. Regional Entity. “Regional Entity” shall mean any entity with which NERC has entered into a delegation agreement to delegate, or which the Commission or a governmental authority in Canada or Mexico has directly assigned, enforcement authority for reliability standards for the Bulk Power System in a defined geographic area of North America.

~~Section 1.22.~~Section 1.23. Regional Variance. “Regional Variance” shall mean an aspect of a Reliability Standard that applies only within a particular Regional Entity or group of Regional Entities. A Regional Variance may be used to qualify how a particular Regional Entity or Regional Entities achieves the objectives of a Reliability Standard or may establish different measures or performance criteria as necessary to achieve reliability within the particular Regional Entity or group of Regional Entities. A Regional Variance may not be inconsistent with any Reliability Standard as it would otherwise exist without the Regional Variance. Such a Regional Variance may be proposed by a Regional Entity and, if adopted by NERC and approved by the Commission, shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authority.

~~Section 1.23.~~Section 1.24. Regional Reliability Standard. “Regional Reliability Standard” shall mean a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Commission, shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities.

~~Section 1.24.~~Section 1.25. Regular Member. “Regular Member” shall mean any entity that has joined an Industry Sector that either (i) has no Affiliates or Related Parties that are Members or (ii) is the entity designated to be the Regular Member by any related group of Associate Members.

~~Section 1.25.~~Section 1.26. Regulatory Participant. “Regulatory Participant” shall mean any state, District of Columbia or any provincial regulatory agency in the Region exercising authority over the rates, terms or conditions of electric service of an entity other than itself within the Region, or the planning, siting, construction or operation of electric facilities of an entity other than itself within the

Region, as well as the Commission, regional advisory bodies that may be established by the Commission, or any federal regulator or agency or any entity authorized by any state, the District of Columbia or any province to represent utility consumers.

~~Section 1.26.~~Section 1.27. Related Party. “Related Party” shall mean, solely for purposes of the governance provisions of these Bylaws, any entity that is registered as part of another entity or is registered for other entities in the NERC Compliance Registry. For purposes of these Bylaws, a representative of a state or federal government agency shall not be deemed a Related Party with respect to each other, and a public body’s regulatory authority, if any, over a Member shall not be deemed to make it a Related Party with respect to that Member.

~~Section 1.27.~~Section 1.28. Reliability Coordinator. “Reliability Coordinator” shall mean any entity that is recognized as a reliability coordinator by NERC in the Region that does not otherwise qualify as a Transmission Company or RTO.

~~Section 1.28.~~Section 1.29. Reliability Standard. “Reliability Standard” shall mean a requirement to provide for Reliable Operation of the Bulk Power System, including, without limitation, the foregoing requirements for the operation of existing Bulk Power System facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the Bulk Power System, but shall not include any requirement to enlarge Bulk Power System facilities or to construct new transmission capacity or generation capacity.

~~Section 1.29.~~Section 1.30. Reliable Operation. “Reliable Operation” shall mean operating the elements of the Bulk Power System within equipment and electric system thermal, voltage and stability limits so that instability, uncontrolled separation, or cascading failure of the Bulk Power System will not occur as a result of a sudden disturbance, including a cyber security incident, or unanticipated failure of system elements.

~~Section 1.30.~~Section 1.31. RTOs. “RTOs” shall mean PJM Interconnection L.L.C. and Midwest Independent Transmission System Operator, Inc., or such other entity that has been recognized by the Commission as a regional transmission operator or recognized functional equivalent in the Region.

~~Section 1.31.~~Section 1.32. Small LSEs. “Small LSEs” shall mean (i) owners or operators of entities (or their representatives) that serve, or whose Related Parties serve, end use load with annual energy delivery to such load in the Region of 10,000 GWh or less, and (ii) end-use customers interconnected with the Bulk Power System with load of at least 100 MW at one location in the Region.

~~Section 1.32.~~Section 1.33. Suppliers. “Suppliers” means owners or operators of electric generation connected to the transmission system and wholesale power marketers in the Region.

~~Section 1.33.~~Section 1.34. Transmission Companies. “Transmission companies” means (i) owners (or those with ownership entitlement), planners and

operators of transmission facilities included in the Bulk Power System in the Region and (ii) Reliability Coordinators.

ARTICLE II. PURPOSE AND ACTIVITIES

Section 2.1. Purpose. The business or purposes to be conducted or promoted by the Corporation are:

- (a) to be a Regional Entity and exercise enforcement authority for Reliability Standards for the Bulk Power System in the Region pursuant to the Delegation Agreement;
- (b) to carry out certain of NERC's activities that are in furtherance of NERC's responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules or the Delegation Agreement; and
- (c) to engage in any other lawful act or activity for which not for profit corporations may be organized under the Delaware General Corporation Law.

The Corporation shall be exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code") as an organization described in Section 501(c)(6) of the Code. The Corporation shall not engage directly or indirectly in any activity which would invalidate its status as an organization exempt from taxation under Section 501(a) of the Code as an organization described in Section 501(c)(6) of the Code. No part of the net income to the Corporation shall inure to the benefit of or be distributed to its directors, officers, members or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered.

Section 2.2. Activities. In support and furtherance of its purpose, and in accordance with and at all times subject to the NERC Rules and the Delegation Agreement, the Corporation's responsibilities shall include, but not be limited to, the following:

- (a) Reliability Standards. The Corporation shall:
 - (1) propose Reliability Standards, Regional Variances or modifications thereof to NERC; and
 - (2) develop Regional Reliability Standards through the Corporation's standards development procedure.

(b) Enforcement. The Corporation shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the Region through the Corporation's compliance enforcement program.

(c) Delegation-Related Services. The Corporation, on behalf of NERC, shall carry out certain of NERC's activities that are in furtherance of NERC's responsibilities as the ERO under the Act or in support of delegated functions, including:

- (1) Organization registration and certification.
- (2) Reliability readiness audit and improvement.
- (3) Reliability assessment and performance analysis.
- (4) Training and education.
- (5) Situational awareness and infrastructure security.

(d) Budget. The Corporation shall prepare and submit a budget to NERC for the amount of costs the Corporation will incur in support of delegated functions that are in furtherance of NERC's responsibilities as the ERO under the Act.

(e) Non-delegated Functions. The Corporation may conduct such other activities for or on behalf of the Members that are not delegated to the Corporation by NERC under the Delegation Agreement if authorized by the Board and not inconsistent with the Act, NERC Rules, the Delegation Agreement or these Bylaws.

Section 2.3. Not-for-Profit Corporation. The Corporation is operated as a Delaware non-stock nonprofit corporation and is organized pursuant to the general corporation law of the State of Delaware.

ARTICLE III. POWERS

Section 3.1. Powers. The Corporation shall have the power to engage in any lawful act or activity for which corporations may be organized under the general corporation law of the State of Delaware, subject to any limitations provided in applicable federal, provincial or state law or in the Certificate of Incorporation or these Bylaws.

ARTICLE IV. OFFICES

Section 4.1. Principal Office. The principal office of the Corporation shall be located initially within the Region, at such location as the Board may from time to time determine, giving consideration to the total cost to the Corporation and convenience of

travel for staff, Members and Regulatory Participants. Once established, the principal office may remain in its location, even if outside the Region.

ARTICLE V. MEMBERS

Section 5.1. General. The terms and conditions of membership in the Corporation shall be as provided in the Certificate of Incorporation and these Bylaws if not inconsistent therewith. All Regular Members and Associate Members shall be required to join a single Industry Sector.

Section 5.2. Classes of Members. The Corporation shall have three (3) classes of Members: Regular Members, Associate Members and Adjunct Members.

5.2.1 Regular Members. Except as set forth in Section 7.4 of these Bylaws, Regular Members shall have the right to vote on all matters within their Industry Sector. Regular Members shall have all the rights and obligations of being a Member in the Corporation.

5.2.2 Associate Members. Associate Members shall not be entitled to vote within their Industry Sector or for any other purpose as a Member. Associate Members shall otherwise have all the rights and obligations of being a Member in the Corporation.

5.2.3 Adjunct Members. Adjunct Members shall not be entitled to vote for any purpose as a Member. Adjunct Members shall otherwise have all the rights of being a Member in the Corporation.

Section 5.3. Qualifications of Members. Any entity eligible to join an Industry Sector may be a Regular Member or Associate Member of the Corporation. Any entity not eligible to join an Industry Sector may be an Adjunct Member of the Corporation.

Section 5.4. Admission of Members. New Members may join the Corporation upon submittal of an application, in a form approved by the Board, and upon payment of such fees or charges, if any, as may be established by the Board or required by NERC. Each Regular Member and Associate Member shall designate the Industry Sector it wishes to join. A Regular Member and Associate Member may change its Industry Sector designation once each calendar year upon notice to the Corporation. Such notice must be provided to the Secretary of the Corporation at least sixty (60) days before an annual or other meeting of Members if the change is to be effective for such meeting. The President shall review a membership application and may request demonstration by the applicant that it qualifies for membership in a particular Industry Sector. Any dispute with respect to a Regular Member's or Associate Member's qualifications for a particular Industry Sector shall be resolved by the Board. The President shall have authority to approve an application for membership, subject to review by the Board.

Section 5.5. Voting Rights. Each Regular Member in good standing shall be entitled to one vote in the Industry Sector in which it belongs on all matters submitted to a vote of Members. The Board may suspend voting rights for a Regular Member

delinquent by more than 60 days in payment of any penalties or because of the Regular Member's failure to meet other obligations to the Corporation. Except with respect to the election of Industry Sector directors as described elsewhere in the Certificate of Incorporation and these Bylaws, matters properly brought before the Members at an annual or special meeting shall be acted upon by the Industry Sectors voting together as a single class. The vote of each Industry Sector shall be split into an affirmative component based on votes for the matter(s) presented, and a negative component based on votes against the matter(s) presented, in direct proportion to the votes cast within the Industry Sector for and against the matter presented, rounded to two decimal places. If authorized in advance by the Board, voting may be held electronically under such terms and conditions as are approved by the Board.

Section 5.6. Transfer of Membership. A Member of the Corporation may not transfer its membership or a right arising from it except to any Person succeeding to all or substantially all of the assets of the Member. If challenged, the President shall have authority to approve any such transfer, subject to review by the Board.

Section 5.7. Obligations of Members. By applying for and becoming a Regular or Associate Member of the Corporation, each Member agrees to comply with all Reliability Standards, all NERC standards and requirements, and the other obligations of Members of the Corporation set forth in these Bylaws or duly adopted by the Board in order to achieve the purposes of the Corporation. A Regular or Associate Member also agrees to obligate all of its Affiliates that have an impact on reliability in the Region to comply with all Reliability Standards and NERC standards and requirements. These obligations include but are not limited to: (a) obligations to provide data and information needed to perform the functions of the Corporation, (b) payment of any authorized penalties resulting from non-compliance with Reliability Standards, (c) in the case of Regular Members, electing the Board, and (d) providing qualified candidates to serve on organizational working groups. Adjunct Members agree to provide data and information needed to perform the functions of the Corporation.

Section 5.8. Withdrawal. A Member may withdraw from participation in the Corporation by providing written notice to the Corporation of such withdrawal. Such notice shall specify a date, not earlier than thirty (30) days from the date of notice, on which the withdrawal shall become effective; provided, however, that any such withdrawing Member shall remain liable to the Corporation for any dues or penalties or other obligations to the Corporation pursuant to Section 5.9 of these Bylaws.

Section 5.9. Funding and Dues.

5.9.1 NERC Funding. In accordance with and at all times subject to the NERC Rules and the Delegation Agreement, the Corporation shall equitably allocate its dues, fees and other charges for the delegated functions conducted by the Corporation among all end users. The Corporation shall submit to NERC annually a list of all load-serving entities within the Region. NERC will bill all load-serving entities in the Region for the Corporation's costs for the delegated functions based on Net Energy for Load and be responsible for collection.

5.9.2 Application Fee, User-Fees and Other Charges. The Corporation may charge a nominal fee, which shall be determined by the President, for the submission of applications for membership. The Board of Directors may from time to time fix the amount of user-fees or other charges, if any, for activities that are not delegated to the Corporation by NERC under the Delegation Agreement and determine the methods of collection from entities that choose to participate in such activities.

Section 5.10. Penalties. If the Corporation initiates an investigation that leads to the imposition of a penalty, the Corporation shall receive any penalty monies that results from the investigation. All monies which the Corporation collects from the issuance of penalties shall be applied as a general offset to the Corporation's budget requirements for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the Corporation.

ARTICLE VI. MEETING OF MEMBERS

Section 6.1. Annual Meeting of Members. The Members shall hold an annual meeting in December of each year, or at such other time specified by the Board. At the annual meeting of Members: (i) each Industry Sector shall elect the successor(s), if any, for any director(s) from their Industry Sector whose term will expire before the next annual meeting of the Members, provided however, that any Industry Sector may elect a successor director representing such Industry Sector prior to such annual meeting, in accordance with the provisions of this Article VI, in which case the election of such succeeding director(s) shall be reported to the Corporation at such annual meeting; (ii) the President and Treasurer shall report on the activities and financial condition of the Corporation; (iii) the Industry Sectors shall elect a slate of at-large and independent directors to fill vacancies or expiring terms; and (iv) the Industry Sectors shall consider and act upon such other matters as are consistent with the notice of the annual meeting. The failure to hold an annual meeting in accordance with these Bylaws shall not affect the validity of a corporate action.

Section 6.2. Special Meetings of Members. Special meetings of the Members may be called by six (6) directors on the Board, by the President, or by Members if at least ten percent (10%) of the Regular Members sign, date, and deliver to the President one or more written demands for a special meeting describing the purpose for which it is to be held. Within fifteen (15) days after receipt of a demand for a special meeting from Regular Members, the President shall cause a special meeting to be called and held on notice in accordance with Section 6.4 of these Bylaws. If the President fails to cause a special meeting to be called and held as required by this Section 6.2, a Regular Member making the demand may call the meeting by giving notice under Section 6.4. In either event, notice of the meeting and the costs of the meeting shall be at the expense of the Corporation. The business transacted at a special meeting is limited to the purposes stated within the notice of the meeting. Business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the

Corporation, unless ninety percent (90%) of the Regular Members entitled to vote were present at such meeting or have waived notice of the meeting under Section 6.4.

Section 6.3. Location of Meetings of Members. Meetings of Members shall be held at a location designated by the President or the Board. If a Regular Member calls a meeting pursuant to Section 6.2, the Regular Members making the demand for the meeting may designate the location, provided the meeting must be held within the Region and in a facility of appropriate size to accommodate the Members.

Section 6.4. Notice of Meetings.

6.4.1 Notice Requirements. Notice of meetings of Members must be given at least five (5) days before the date of a meeting and not more than sixty (60) days before the date of a meeting. The notice must contain the date, time and place of the meeting, instructions for electronic attendance or voting, if applicable, and an agenda of the matters upon which action may be taken at the meeting. A matter may be added to the agenda of a meeting at the meeting upon the affirmative vote of three-quarters (3/4) of the Industry Sector votes cast on a motion to amend the agenda. If the meeting is an adjourned meeting and the date, time and place of the meeting were announced at the time of the adjournment, notice is not required unless a new record date for the adjourned meeting is or must be fixed. Notice shall be deemed given by the Corporation to the Members when (a) posted on the Corporation's public website in a reasonably prominent location, and (b) sent by mail, facsimile or reputable overnight delivery service or by electronic transmission to each Member's representative authorized pursuant to section 6.10.1

6.4.2 Waiver of Notice; Objections. A Member may waive notice of a meeting of Members. A waiver of notice by a Member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a Member at a meeting is a waiver of notice of that meeting, unless the Member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

Section 6.5. Record Date. The Board may fix a date not more than sixty (60) days before the date of a meeting of Members as the date for the determination of the Members entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only Members on that date are entitled to notice and to vote at the meeting unless the Board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than sixty (60) days after the record date for determining Members entitled to notice of the original meeting.

Section 6.6. Right to Vote; Act of Members.

6.6.1 Industry Sector Voting. Voting of the Members shall be by Industry Sector, with each Industry Sector entitled to cast one vote. Each Member entitled to vote in an Industry Sector shall be entitled to cast one vote in its Industry Sector. The vote of each Industry Sector shall be split into an affirmative component based on votes

for the pending motion, and a negative component based on votes against the pending motion, in direct proportion to the votes cast within the Industry Sector for and against the pending motion, rounded to two decimal places. To the extent practicable, all Member votes may be held electronically under such terms and conditions as are approved by the Board.

6.6.2 Act of Members. If a quorum is present, except with respect to any matter described in Section 6.6.3, a majority of the Industry Sector votes cast on the matter shall be the act of the Members.

6.6.3 Special Voting Requirements. Notwithstanding any other provision of these Bylaws, and except as set forth in the Certificate of Incorporation and Section 13.2 of these Bylaws, two-thirds (2/3) of the Industry Sector votes cast shall be required to:

(a) Amend the Bylaws, except as otherwise provided in Section 19.1 of these Bylaws. The substance of the proposed amendment must be contained in the notice of the meeting at which the vote will be taken; however, the Members may modify a proposed Bylaw amendment at the meeting.

(b) Approve any proposal to terminate the Corporation.

Section 6.7. Quorum. A quorum for a meeting of Members is a majority of the Regular Members entitled to vote in each Industry Sector at the meeting. A quorum for a meeting of an Industry Sector is a majority of the Regular Members of that Industry Sector entitled to vote at the meeting. In both cases, electronic participation is acceptable if authorized by the Board. A quorum is necessary for the transaction of business at a meeting of Members or of any Industry Sector. If a quorum is not present, a meeting may be adjourned for that reason by the Industry Sectors or Regular Members then represented or present.

Section 6.8. Action by Written Ballot. An action that may be taken at a regular or special meeting of Members may be taken without a meeting if the Corporation mails or delivers a written ballot to every Regular Member entitled to vote on the matter. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Solicitations for votes by written ballot must: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve the matter; (iii) specify the time by which a ballot must be received by the Corporation in order to be counted; and (iv) may not be revoked once received.

Section 6.9. Action by Electronic Communication. Any vote of an Industry Sector to elect a director or for any other purpose may be taken by electronic means without a meeting or during a meeting. In addition, a conference among Members by a means of communication through which the participants may simultaneously hear each other during the conference is a meeting of the Members, if the same notice is given of

the conference as would be required for a meeting and if the number of persons participating in the conference is a quorum. Participation in a meeting by this means is personal presence at the meeting. A Member may participate in a meeting of the Members by a means of communication through which the Member, other persons participating, and all persons physically present at the meeting may simultaneously communicate with each other during the meeting. Participation in a meeting by this means constitutes personal presence at the meeting.

Section 6.10. Member Representatives; Proxies.

6.10.1 Designation of Representative. Each year prior to the annual meeting of Members, each Regular Member shall designate the individual authorized to vote on Corporation matters on behalf of the Member, in accordance with procedures approved by the Board. A Regular Member may change such designation at any time by providing at least twenty-four (24) hour written notice to the Secretary of the Corporation. Such notice may be provided by electronic transmission.

6.10.2 Authorization. The individual designated to vote by a Regular Member may appoint a proxy to vote or otherwise act for the Regular Member at any meeting or by electronic transmission by signing an appointment form either personally or by an attorney so designated by the Regular Member.

6.10.3 Effective Period. An appointment of a proxy is effective when received by the Secretary or other officer or agent authorized to tabulate votes. An appointment is valid for the next regular or specially scheduled meeting or ballot by electronic transmission. However, a proxy is not valid for more than sixty (60) days from its date of execution.

6.10.4 Revocation. An appointment of a proxy is revocable by a Regular Member. Appointment of a proxy is revoked by the person appointing the proxy either by open declaration at a meeting or by signing and delivering a written revocation to the Secretary or other officer or agent authorized to tabulate proxy votes. This may be done either in a written statement that the appointment of the proxy is revoked or by a subsequent appointment that shall serve to cancel all prior proxies.

Section 6.11. Public Notice of Member Meetings. Notice to the public of the dates, times and places of meetings of the Members, and all nonconfidential material provided to the Members, shall be posted on the Corporation's website at approximately the same time that notice is given to the Members. Meetings of the Members shall be open to the public, subject to reasonable limitations due to the availability and size of meeting facilities; provided, that the meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including, but not limited to, personnel matters, compliance and enforcement matters, litigation or commercially sensitive or critical infrastructure information of a Member or other Person.

Section 6.12. Posting of Minutes. Minutes of meetings of Members shall be posted on the Corporation's website when available.

Section 6.13. Reimbursement of Member Expenses. The Corporation will be under no obligation to reimburse Members for expenses associated with their attendance at regular or special Member meetings.

ARTICLE VII.
BOARD OF DIRECTORS

Section 7.1. General. The composition of the Board and the terms of office of the directors, the manner of their nomination, election or appointment, and other terms and conditions of their service, shall be as provided in the Certificate of Incorporation and these Bylaws if not inconsistent therewith.

Section 7.2. Management of Corporation. The business of the Corporation shall be managed under the direction of the Board. Specific functions of the Board shall include, but not be limited to:

- (a) govern the Corporation and oversee all of its activities;
- (b) establish and oversee all organizational groups;
- (c) approve, revise and enforce Reliability Standards utilizing a fair, open, balanced and inclusive process;
- (d) establish compliance monitoring procedures and requirements, and penalties and sanctions for non-compliance consistent with applicable NERC Rules;
- (e) impose penalties and sanctions consistent with the NERC Rules and the procedures approved by the Board;
- (f) establish and approve an annual budget for submission to NERC;
- (g) hire the Corporation's president and approve his or her salary;
- (h) annually at the first regular Board meeting following the annual meeting of Members, elect a Chair ("Chair") and a vice-chair from among the directors on the Board; and
- (i) establish Board committees as appropriate.

Section 7.3. Voting. Each director shall have one vote with respect to decisions of the Board.

Section 7.4. Composition of the Board. Effective as of the date of the first annual meeting of Members:

- (a) The Board shall consist of fourteen (14) directors.
- (b) Eight directors shall be elected by the Industry Sectors as follows:

- (i) Suppliers shall elect two (2) directors;
- (ii) Transmission Companies shall elect two (2) directors;
- (iii) RTOs shall select one (1) director;
- (iv) Small LSEs shall elect one (1) director;
- (v) Medium LSEs shall elect one (1) director; and
- (vi) Large LSEs shall elect one (1) director.

(c) Three (3) directors shall be at-large. At-large directors shall be elected by all of the Industry Sectors voting together as a single class.

(d) Three (3) directors shall be independent from the Corporation and any Member or any Affiliate or Related Party of any Member. Independent directors shall be elected by all of the Industry Sectors voting together as a single class.

(e) Industry Sectors shall elect their respective sector and at-large directors from among individuals holding senior management positions in Member organizations. Any sector-elected or at-large director whose Member organization changes Industry Sectors or who ceases to hold a senior management position in a Member organization shall continue to serve out his or her remaining term, unless such director resigns or is removed. When selecting at-large directors, Industry Sectors shall consider such factors as the geographic and functional representation of the Board. No two directors may be employees of a single Member or any Affiliate or Related Party of a Member or any Affiliate.

(f) An independent director is a person (i) who is not an officer or employee of the Corporation, an officer, director, or employee of a Member, or an officer, director or employee of any entity that would reasonably be perceived as having a direct financial interest in the outcome the Board's decisions, or (ii) who does not have a relationship that would interfere with the exercise of independent judgment in carry out the responsibilities of a director. The Board may adopt additional standards for director independence not inconsistent herewith.

(g) At-large and independent directors shall be nominated by the nominating and governance committee of the Board. The nominating and governance committee shall seek out for nomination independent directors from diverse backgrounds, who will contribute to the effective functioning of the Board and the Corporation by bringing a broad range of industry expertise, viewpoints, experiences, skill sets and knowledge. The nominating and governance committee will establish procedures to ensure that diverse candidates are in the pool of applicants for every independent director position and will retain an independent consultant to prepare a list of individuals qualified and willing to serve as independent directors.

(h) Any director which the full Board has determined has a conflict of interest on any compliance or enforcement matter brought before the Board shall not vote on such matter and shall recuse himself or herself from all Board deliberations concerning such matter.

(i) There will be no alternates or proxies for directors.

Section 7.5. Terms of Directors. The directors will be divided into three classes. The term of office of the first class will expire at the second annual meeting of Members; the term of office of the second class will expire one year thereafter; and the term of office of the third class two years thereafter. At each annual meeting of Members, directors shall be chosen for a three year term to succeed those whose term expires. The directors for each class will be selected by lot at the first annual meeting of directors, provided that no two at-large directors, no two independent directors and no two directors of the same Industry Sector shall be in the same class. Each director shall hold office until (a) the expiration of the term for which he or she was elected and until his or her successor is elected and qualified, or (b) his or her earlier death, resignation or removal. Any director may be removed at any time by the affirmative vote of two-thirds of the Industry Sector or Industry Sectors, as applicable, electing such director. A director may be removed by the Board for non-attendance at three consecutive Board meetings.

Section 7.6. Reimbursement. Independent directors shall have the right to reimbursement by the Corporation of their actual reasonable travel expenses to Board meetings or when specifically selected to represent the Corporation at a business meeting. The directors elected by the Industry Sectors and the at-large directors shall not be reimbursed by the Corporation for any expenses, unless specifically approved in advance by resolution of the Board.

Section 7.7. Resignations; Vacancies.

(a) Resignations. A director may resign at any time from the Board by submitting a written resignation to the Corporation. Such resignation shall take effect at the time of its receipt by the Corporation.

(b) Vacancies. If an Industry Sector or at-large director resigns, dies or otherwise becomes incapacitated or is removed during the term of office for which elected, the directorship shall thereupon be vacant and shall be filled by the Industry Sector or Industry Sectors, as applicable, by written or electronic ballot in accordance with the procedures and requirements set forth above. The successor director elected by the Industry Sector shall hold office for the unexpired term of the vacated directorship replaced. If an independent director ceases to be independent, as determined by the Board, his or her directorship shall thereupon be vacant and may be filled by the Board until the next annual meeting of Members, at which time a permanent successor shall be elected by the Industry Sectors for the remainder of the unexpired term.

Section 7.8. Meetings; Notice; Waiver.

(a) Meetings. An annual meeting of the Board shall be held without notice immediately following the annual meeting of the Members. The Board shall elect the Chair and Vice-Chair for the next year at the annual meeting. In addition, regular meetings may be held at such time or times as fixed by the Board. Special meetings of the Board may be called by the Board's Chair, the President or by any three directors and shall be held at the principal office of the Corporation, or such other place within the Region as determined by the Chair or the President after consultation with the Board.

(b) Notice. Notice of the dates, times, and places of all regular and special meetings of the Board shall be published by the Secretary and provided to all directors and Members not less than three (3) days prior to the date of the meeting. Notice shall be deemed given by the Corporation to directors and the Members when (a) posted on the Corporation's public website in a reasonably prominent location, and (b) sent by mail, facsimile or reputable overnight delivery service or by electronic transmission to each director and each Member's representative authorized pursuant to section 6.10.1.

(c) Waiver. Any person entitled to notice of a regular or special meeting of the Board may waive notice thereof. A waiver of notice by a person entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing or by attendance. Attendance by a director at a meeting of the Board is a waiver of notice of that meeting, unless the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

Section 7.9. Quorum. For the Board to take action at a meeting, a quorum of directors must be present. A quorum is a majority of the directors then in office, provided that: (a) if there are three independent directors holding office, two independent directors must be present to constitute a quorum, or (b) if there are two independent directors holding office, one independent director must be present to constitute a quorum. If there is only one independent director or no independent directors holding office, there is no requirement that an independent director be present in order for the Board to have a quorum. In the absence of a quorum, a majority of the directors present may adjourn a meeting, without notice, except as may be given at such meeting, until a quorum is present.

Section 7.10. Board Action. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by law or these Bylaws.

Section 7.11. Action Without a Meeting. Any action required or permitted to be taken at a Board meeting or any committee thereof may be taken by written action, signed by all of the directors of the Board or members of the committee, as the case may be. The written action is effective when signed by the directors unless a different effective time is provided in the written action. Any nonconfidential material provided to

the Board or a committee in connection with such written action shall be posted on the Corporation's website at approximately the same time that it is given to the Board or the committee. Written actions shall be filed with the minutes of the Corporation and the results of such written action shall be promptly posted on the Corporation's website.

Section 7.12. Action by Electronic Communication. A conference among directors by a means of communication through which the directors may simultaneously hear each other during the conference is a Board meeting if the same notice is given of the conference as would be required for a meeting and if the number of directors participating in the conference is a quorum. Participation in a meeting by this means constitutes personal presence at the meeting. A director may participate in a Board meeting by any means of communication through which the director, other directors participating, and all directors physically present at the meeting may simultaneously communicate with each other during the meeting.

Section 7.13. Board Committees. The Board shall have an audit committee, compensation committee, nominating and governance committee and compliance committee, and such other committees the Board deems necessary and appropriate. Each committee shall be comprised of not less than three directors. The compliance committee shall be comprised of five directors, a majority of whom are independent directors. The Board may require that a minimum number of independent directors serve on each of these committees. The Board shall have the power to appoint, and to delegate authority to, such committees of the Board as it determines to be appropriate from time to time. The Board may require any committee to adopt a charter, subject to approval by the Board, governing the activities and authority of the committee and the composition of its members.

Section 7.14. Hearing Body. The Hearing Body shall consist of the Board compliance committee except as noted in Section 7.14.1.

7.14.1 Quorum. For the Hearing Body to take action at a hearing, a quorum of members must be present. A quorum is a majority of members of the Hearing Body, provided that at least two independent directors are present. If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, the compliance committee shall appoint a new member to the Hearing Body from among other directors to create a quorum. Such new member shall serve on the Hearing Body through the conclusion of the proceeding but not thereafter.

7.14.2 Voting. Each Hearing Body member shall have one vote with respect to matters presented at a hearing. Action may be taken at a hearing at which a quorum is present upon the vote of the majority of members present.

Section 7.14. Section 7.15. Public Notice of Board Meetings. Notice to the public of the dates, times and places of Board meetings, including committees thereof, and all nonconfidential material provided to the Board or the committees, shall be posted on the Corporation's website, and notice of Board and committee meetings shall be sent by electronic transmission to Members, at approximately the same time that notice is given to the Board or the committee, as the case may be. Board and committee Meetings shall be open to all Members and the public, subject to reasonable

limitations due to the availability and size of meeting facilities; provided, that any meeting may be held in or adjourn to closed session to discuss matters of a confidential nature, including, but not limited to, personnel matters, compliance and enforcement matters, litigation or commercially sensitive or critical infrastructure information of a Member or other Person.

~~Section 7.15.~~Section 7.16. Posting of Minutes. Minutes of Board and committee meetings shall be posted on the Corporation's website when available.

~~Section 7.16.~~Section 7.17. Compensation of Directors. The directors elected by the Industry Sectors and the at-large directors shall not receive compensation for their service to the Corporation as directors on the Board. The independent directors shall be entitled to such compensation as the Board may from time to time determine. Nothing contained in these Bylaws shall preclude any director from receiving compensation for services to the Corporation in any other capacity.

ARTICLE VIII. ORGANIZATIONAL GROUPS

Section 8.1. Establishment of Organizational Groups. The Board shall establish such organizational groups, consisting of committees, sub-committees, task forces and working groups of Members, as are necessary and appropriate to accomplish the purposes of the Corporation in an efficient and cost-effective manner. All organizational groups shall be subject to the direction and control of the Board. The membership of organizational groups shall be determined based upon experience, expertise and geographic diversity and to the extent practicable shall include balanced representation of the Industry Sectors. The Board shall establish policies and procedures governing the creation of organizational groups, how they are populated, how voting and related matters are conducted, how they may be reorganized and the direction and termination of such groups. The Board shall conduct a review of all organizational groups of the Corporation on an annual basis to ensure that the business of the Corporation is conducted in an efficient, cost-effective manner.

Section 8.2. Reimbursement. The Board may authorize reimbursement for persons acting on behalf of the Corporation, as necessary in the interests of the Corporation.

ARTICLE IX. OFFICERS

Section 9.1. Officers. The officers of the Corporation shall include a President, one or more Vice Presidents, a Secretary, a Treasurer and any other officers as may be elected or appointed in accordance with the provisions of this Article. The Board may elect or appoint any additional officers that it deems desirable, such other officers to have the authority and perform the duties prescribed by the Board. The same individual may hold any number of offices, except that of President.

Section 9.2. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board at the annual meeting of the Board. Each officer shall hold office at the pleasure of the Board. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as is convenient. New officers may be created and the positions filled at any meeting of the Board. Each elected officer shall hold office until his or her successor has been duly elected and qualified or upon his or her earlier resignation or removal.

Section 9.3. Removal. Any officer elected by the Board may be removed by the affirmative vote of two-thirds (2/3) of the Board whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 9.4. Vacancies. A vacancy in any office because of death, incapacity, resignation, removal, disqualification, or otherwise, may be filled by the Board for the unexpired portion of the term.

Section 9.5. President. The President shall:

- (a) be the principal executive and operating officer of the Corporation;
- (b) sign certificates of membership, and may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation; and
- (c) perform all duties incident to the office of President, including hiring and directing staff, and such other duties as may be prescribed by the Board from time to time.

Section 9.6. Vice Presidents. The Vice President(s) shall perform such duties and have such powers as the Board or President may from time to time prescribe. At the request of the Board, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 9.7. Secretary. The Secretary shall ensure that the following duties are carried out:

- (a) the minutes of the meetings of the Members and of the Board, and each committee thereof, are recorded;
- (b) all required notices are duly given in accordance with these Bylaws and as required by law;

(c) a register of the current names and addresses of all Members is maintained and posted on the Corporation's website;

(d) a complete copy of the Certificate of Incorporation and Bylaws of the Corporation containing all amendments thereto are kept on file at all times and posted on the Corporation's website, which copies shall always be open to the inspection of any Member; and

(e) generally perform all duties incident to the office of Secretary and such other duties as may be prescribed by the Board from time to time.

Section 9.8. Treasurer. The Treasurer shall be responsible for the following activities:

(a) maintain custody of all funds and securities of the Corporation;

(b) receipt of and the issuance of receipts for all monies due and payable to the Corporation and for deposit of all such monies in the name of the Corporation in such bank or banks or financial institutions as shall be selected by the Board; and

(c) generally perform all duties incident to the office of Treasurer and such other duties as may be prescribed by the Board from time to time.

ARTICLE X. CERTIFICATES OF MEMBERSHIP

Section 10.1. Certificates of Membership. The Board may, but need not, provide for the issuance of certificates evidencing membership in the Corporation, which certificates shall be in such form as may be determined by the Board.

ARTICLE XI. BOOKS AND RECORDS

Section 11.1. Books and Records; Financial Statements. The Corporation shall keep at such office selected by the Board correct and complete copies of its Certificate of Incorporation and Bylaws, accounting records, and minutes of meetings of Members, Board, and committees having any of the authority of the Board. A Member, or the agent or attorney of a Member, may inspect all books and records for any proper purpose at any reasonable time. Upon request, the Corporation shall give the Member a statement showing the financial result of all operations and transactions affecting income and expenses during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of the accounting period.

ARTICLE XII.
FISCAL YEAR

Section 12.1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

ARTICLE XIII.
TRANSFER OF ASSETS

Section 13.1. Member Approval Not Required. Subject to restrictions set forth in the Certificate of Incorporation, the Corporation, by affirmative vote of the Board, may sell, lease, transfer, or dispose of its property and assets in the usual and regular course of its activities and grant a security interest in all or substantially all of its property and assets in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the Board considers expedient, in which case no Member approval is required.

Section 13.2. Member Approval Required. Subject to restrictions set forth in the Certificate of Incorporation, the Corporation may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the Board considers expedient only when approved at a regular or special meeting of the Members by the affirmative vote of two-thirds (2/3) of all the Members. Notice of the meeting must be given to the Members. The notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the Corporation.

ARTICLE XIV.
CONTRACTS, CHECKS, DEPOSITS, AND GIFTS

Section 14.1. Contracts. The Board may authorize any officer or officers or agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or may be confined to specific instances.

Section 14.2. Checks, Drafts, or Orders. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation, may be signed by such officer or officers or agent or agents of the Corporation, and in such manner, as shall from time to time be determined by resolution of the Board.

Section 14.3. Deposits. All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

Section 14.4. Gifts. The Board may accept on behalf of the Corporation any contribution, gift, bequest, or devise for any purpose of the Corporation.

ARTICLE XV.
INSURANCE, LIMITATION ON LIABILITY AND INDEMNIFICATION

Section 15.1. Insurance. The President is authorized to procure insurance to protect the Corporation against damages arising out of or related to any directive, order, procedure, action or requirement of the Corporation.

Section 15.2. Limitations on Liability. As provided in Article Fourteenth of the Certificate of Incorporation, a director of the Corporation shall not be personally liable to the Corporation or its Members for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Any repeal or modification of Article Fifteenth of these Bylaws by the Members of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

Section 15.3. Right to Indemnification.

15.3.1 Indemnified Persons. Each person who was or is made a party or is threatened to be made a party to or is involved in or called as a witness in any Proceeding because he or she is an Indemnified Person shall be indemnified and held harmless by the Corporation to the fullest extent permitted under the Delaware General Corporation Law (the "DGCL"), as the same now exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the DGCL permitted the Corporation to provide prior to such amendment). Such indemnification shall cover all expenses incurred by an Indemnified Person (including, but not limited to, attorneys' fees and other expenses of litigation) and all liabilities and losses (including, but not limited to, judgments, fines, ERISA or other excise taxes or penalties and amounts paid or to be paid in settlement) incurred by such person in connection therewith.

15.3.2 Denial of Authorization for Certain Proceedings. Notwithstanding anything to the contrary in this Section 15.3, except with respect to indemnification of Indemnified Persons specified in paragraph 15.3.3 of this Section 15.3, the Corporation shall indemnify an Indemnified Person in connection with a Proceeding (or part thereof) initiated by such person only if authorization for such Proceeding (or part thereof) was not denied by the Board of the Corporation prior to the earlier of 60 days after receipt of notice thereof from such Indemnified Person.

15.3.3 Certain Defined Terms. For purposes of this Section 15.3, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

(1) a “Proceeding” is any investigation, action, suit or proceeding, whether civil, criminal, administrative or investigative, and any appeal therefrom.

(2) an “Indemnified Person” is a person who is, was, or had agreed to become a Director of the Corporation (including, in the case of such person seeking indemnification while serving as a Director who is or was an officer of the Corporation, such person in his capacity as an officer.)

15.3.4 Expenses. Expenses, including attorneys’ fees, incurred by a person indemnified pursuant to paragraph 15.3.1 in defending or otherwise being involved in a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding, including any appeal therefrom, upon receipt of an undertaking (the “Undertaking”) by or on behalf of such person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation; provided that in connection with a Proceeding (or part thereof) initiated by such person, except a Proceeding authorized by paragraph 15.3.5, the Corporation shall pay said expenses in advance of final disposition only if authorization for such Proceeding (or part thereof) was not denied by the Board of the Corporation prior to the earlier of 60 days after receipt of a request for such advancement accompanied by the Undertaking. A person to whom expenses are advanced pursuant hereto shall not be obligated to repay such expenses until the final determination of any pending Proceeding in a court of competent jurisdiction concerning the right of such person to be indemnified or the obligation of such person to repay such expenses.

15.3.5 Protection of Rights. If a claim by an Indemnified Person under paragraph 15.3.1 is not promptly paid in full by the Corporation after a written claim has been received by the Corporation or if expenses pursuant to paragraph 15.3.4 have not been promptly advanced after a written request for such advancement by an Indemnified Person (accompanied by the Undertaking required by paragraph 15.3.4) has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or the advancement of expenses. If successful, in whole or in part, in such suit, such claimant shall also be entitled to be paid the reasonable expense thereof. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the Undertaking has been tendered to the Corporation that indemnification of the claimant is prohibited by law, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board, independent legal counsel, or the Members) to have made a determination, if required, prior to the commencement of such action that indemnification of the claimant is proper in the circumstances, nor an actual determination by the Corporation (including the Board, independent legal counsel, or the Members) that indemnification of the claimant is prohibited, shall be a defense to the action or create a presumption that indemnification of the claimant is prohibited.

15.3.6 Miscellaneous.

(a) Non-Exclusivity of Rights. The rights conferred on any person by this Section 15.3 shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, vote of Members or disinterested directors or otherwise. The Board shall have the authority, by resolution, to provide for such other indemnification of directors, and such indemnification of officers, delegates, employees, agents, or others of the Corporation as it shall deem appropriate.

(b) Insurance, contracts, and funding. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee, delegate or agent of the Corporation against any expenses, liabilities or losses, whether or not the Corporation would have the power to indemnify such person against such expenses, liabilities or losses under the DGCL. The Corporation may enter into contracts with any director, officer, or employee of the Corporation in furtherance of the provisions of this Section 15.3 and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect the advancing of expenses and indemnification as provided in such contracts or as otherwise provided in this Section 15.3.

(c) Contractual nature. The provisions of this Section 15.3 shall continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such person. This Section 15.3 shall be deemed to be a contract between the Corporation and each person who, at any time that this Section 15.3 is in effect, serves or agrees to serve in any capacity which entitles him to indemnification and advancement of expenses hereunder and any repeal or other modification of this Section 15.3 or any repeal or modification of the DGCL or any other applicable law shall not limit any rights of indemnification for Proceedings then existing or arising out of events, acts or omissions occurring prior to such repeal or modification, including, without limitation, the right to indemnification and advancement of expenses for Proceedings commenced after such repeal or modification to enforce this Section 15.3 with regard to Proceedings arising out of acts, omissions or events arising prior to such repeal or modification.

(d) Cooperation. Each Indemnified Person shall cooperate with the person, persons or entity making the determination with respect to such Indemnified Person's entitlement to indemnification under this Section 15.3, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to such Indemnified Person and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) incurred by such Indemnified Person in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to such Indemnified Person's entitlement to indemnification) and the

Corporation hereby indemnifies and agrees to hold such Indemnified Person harmless therefrom.

(e) Subrogation. In the event of any payment under this Section 15.3 to an Indemnified Person, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of such Indemnified Person, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

(f) Severability. If this Section 15.3 or any portion hereof shall be invalidated or held to be unenforceable on any ground by any court of competent jurisdiction, the decision of which shall not have been reversed on appeal, this Section 15.3 shall be deemed to be modified to the minimum extent necessary to avoid a violation of law and, as so modified, this Section 15.3 and the remaining provisions hereof shall remain valid and enforceable in accordance with their terms to the fullest extent permitted by law.

ARTICLE XVI. TRANSITION

Section 16.1. Transition Standards. The Corporation will use the existing standards, criteria, rules or guides from each existing reliability council region for those Members that join the Corporation as in effect immediately prior to formation of the Corporation until such standards, criteria, rules or guides are adopted, superseded, or rejected by the Corporation. The Corporation will establish any necessary transition committees, subcommittees, working groups or task forces to administer the existing regional reliability standards, criteria, rules and guides until they are adopted, superseded, or rejected by the Corporation. The Corporation will employ its best efforts, within two (2) years of its formation, to work toward a uniform set of Reliability Standards for the entire Region. The Board will develop and implement a standards process and a plan for transition to new Reliability Standards. This process will include a requirement that two-thirds of the directors present at a meeting must vote to adopt new Reliability Standards.

ARTICLE XVII. PARTICIPATION BY REGULATORY PARTICIPANTS

Section 17.1. Regulatory Participants. All Regulatory Participants shall be entitled to and be provided with the same rights to notice of and participation in meetings or other activities of the Corporation as are provided to Members, but shall not have the right to vote.

ARTICLE XVIII. BUDGET AND BUSINESS PLAN

Section 18.1. Budget and Business Plan. Each annual budget and business plan of the Corporation shall be approved by the Board in sufficient time in each fiscal year to allow for timely submittal of the approved annual budget and business plan to

NERC in accordance with the NERC Rules. The Corporation shall post a draft of each budget and business plan on the Corporation's website for purposes of review and comment by the Members at least ten (10) days prior to the Board meeting at which the budget and business plan are to be approved.

ARTICLE XIX.
AMENDMENT OF BYLAWS

Section 19.1. Amendment Of Bylaws. The power to adopt, amend or repeal these Bylaws is vested in the Members as set forth in Section 6.6.3 of these Bylaws; provided, however, that upon the passage of any federal electric reliability legislation, and/or the adoption of any rules or regulations of the Commission, NERC or other governmental entity with jurisdiction, the Board shall have authority to amend these Bylaws as necessary and appropriate to comply with such law, legislation, rules and regulations.

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Reliability*First* Corporation Reliability Standards Development Procedure

Introduction

This procedure establishes the process for adoption of a Regional Reliability Standard¹ (hereinafter referred to as “Standard”) of the Reliability*First* Corporation (Reliability*First*) and the development of consensus for adoption, approval, revision, reaffirmation, and deletion of such Standards¹. Reliability*First* Standards provide for the reliable regional and sub-regional planning and operation of the Bulk Power System² (BPS), consistent with Good Utility Practice² within the Reliability*First* geographical footprint.

This procedure was developed under the direction of the Reliability*First* Board of Directors (Board), who may request changes to this Reliability*First* Reliability Standards Development Procedure (hereinafter referred to as “this Procedure”) as deemed appropriate. A procedure for revising this Procedure is contained in Appendix A. This Procedure is consistent with the North American Electric Reliability Council (NERC) Reliability Standards Development Procedure.

Proposed Standards shall be subject to approval by NERC, as the electric reliability organization, and by the Federal Energy Regulatory Commission (FERC) before becoming mandatory and enforceable under Section 215 of the FPA. No Standard shall be effective within the Reliability*First* area unless filed by NERC with FERC and approved by FERC.

Reliability*First* Standards shall provide for as much uniformity as possible with NERC reliability standards across the interconnected BPS. A Reliability*First* Standard shall be more stringent than a NERC reliability standard, including a regional difference that addresses matters that the NERC reliability standard does not, or shall be a regional difference necessitated by a physical difference in the BPS. A Reliability*First* Standard that satisfies the statutory and regulatory criteria for approval of proposed NERC reliability standards, and that is more stringent than a NERC reliability standard, would generally be acceptable.

Reliability*First* Standards, when approved by FERC, shall be made part of the body of NERC reliability standards and shall be enforced upon all applicable BPS owners,

¹ Legacy standards, such as ECAR Documents, MAIN Guides, and MAAC Procedures shall be considered Reliability*First* Regional Reliability Standards for the purposes of this document until otherwise acted upon by the Reliability*First* Board

² As defined in the Reliability*First* By-laws

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operators, and users within the Reliability*First* area, regardless of membership in the region.

Background

Regions may develop, through their own processes, separate “Regional Standards” (Reliability*First* Standards) that go beyond, add detail to, or implement NERC reliability standards, or otherwise address issues that are not addressed in NERC reliability standards.

As a condition of Reliability*First* membership, all Reliability*First* Members² agree to adhere to the NERC reliability standards. As such, the Reliability*First* and its Members will adhere to the NERC reliability standards in addition to the Reliability*First* Standards. NERC reliability standards and the Reliability*First* Standards are both to be included within the Reliability*First* Compliance Program.

Reliability*First* Standards are intended to apply only to that part of the Eastern Interconnection within the Reliability*First* geographical footprint. The development of these Reliability*First* Standards is developed according to the following principles via the process contained within this Procedure:

- Developed in a fair and open process that provided an opportunity for all interested parties to participate;
- Does not have an adverse impact on commerce that is not necessary for reliability;
- Provides a level of BPS reliability that is adequate to protect public health, safety, welfare, and national security and would not have a significant adverse impact on reliability; and
- Based on a justifiable difference between Regions or between sub-Regions within the Regional geographic area.

² As defined in the Reliability*First* By-laws
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Regional Reliability Standard Definition, Characteristics, and Elements

Definition of a Reliability Standard

As contained in the ReliabilityFirst By-laws, ReliabilityFirst “Regional Reliability Standard” shall mean a type of Reliability Standard that is applicable only within a particular Regional Entity or group of Regional Entities. A Regional Reliability Standard may augment, add detail to, or implement another Reliability Standard or cover matters not addressed by other Reliability Standards. Regional Reliability Standards, upon adoption by NERC and approval by the Commission, shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities.

Inherent in this definition, a ReliabilityFirst Standard will define certain obligations or requirements of entities that own, operate, plan, and use the BPS within the ReliabilityFirst geographical footprint. These obligations or requirements as contained in the ReliabilityFirst Standards are to be ~~material to reliability and be~~ measurable consistent with Good Utility Practice. Standards are not to include processes or procedures that implement a Standard. In addition, obligations, requirements or procedures imposed upon ReliabilityFirst by NERC reliability standards are not to be ReliabilityFirst Standards, unless those obligations, requirements or procedures require the establishment of a “policy or standard” as defined by the ReliabilityFirst By-laws.

Characteristics of a Regional Reliability Standard

A Standard is policy or standard, including adequacy criteria to provide for the reliable regional and sub-regional planning and operation of the BPS, consistent with Good Utility Practice

A Standard shall generally have the following characteristics:

- **Measurable** - A Standard shall establish technical or performance requirements that can be practically measured.
- **Relative to NERC Reliability Standards** - A Standard generally must go beyond, add detail to, or implement NERC Reliability Standards, or cover matters not addressed in NERC Reliability Standards.

Format Requirements of a Regional Reliability Standard

A Standard shall consist of the format requirements shown in the Regional Reliability Standard Template. These requirements apply to the development and revision of

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Standards. These requirements are necessary to achieve Standards that are measurable, enforceable, and consistent. Supporting documents to aid in the implementation of a Standard may be referenced by the Standard but are not part of the Standard itself.

Regional Reliability Standard Format Requirement Template

Identification Number	A unique identification number assigned in accordance with an administrative classification system to facilitate tracking and reference Reliability <i>First</i> documentation.
Title	A brief, descriptive phrase identifying the topic of the Standard.
Applicability	Clear identification of the functional classes of entities responsible for complying with the Standard, noting any specific additions or exceptions. If not applicable to the entire Reliability <i>First</i> area, then a clear identification of the portion of the BPS to which the Standard applies. Any limitation on the applicability of the Standard based on electric facility requirements should be described.
Effective Date and Status	The effective date of the Standard or, prior to approval of the Standard, the proposed effective date.
Purpose	The purpose of the Standard. The purpose shall explicitly state what outcome will be achieved or is expected by this Standard.
Requirement(s)	Explicitly stated technical, performance, and preparedness requirements. Each requirement identifies what entity is responsible and what action is to be performed or what outcome is to be achieved. Each statement in the requirements section shall be a statement for which compliance is mandatory.

Risk Factor(s)	<p>The potential reliability significance of each requirement, designated as a High, Medium, or Lower Risk Factor in accordance with the criteria listed below:</p> <p>A High Risk Factor requirement (a) is one that, if violated, could directly cause or contribute to BPS instability, separation, or a cascading sequence of failures, or could place the BPS at an unacceptable risk of instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to BPS instability, separation, or a cascading sequence of failures, or could place the BPS at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to abnormal condition.</p> <p>A Medium Risk Factor requirement (a) is a requirement that, if violated, could directly affect the electrical state or the capability of the BPS, or the ability to effectively monitor and control the BPS, but is unlikely to lead to BPS instability, separation, or cascading failures; or (b) is a requirement in a planning timeframe that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly affect the electrical state or capability of the BPS, or the ability to effectively monitor, control, or restore the BPS, but is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to BPS instability, separation, or cascading failures, nor to hinder restoration to a normal condition.</p> <p>A Lower Risk Factor requirement is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the BPS, or the ability to effectively monitor and control the BPS; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the BPS, or the ability to effectively monitor, control, or restore the BPS.</p>
Measure(s)	<p>Each requirement shall be addressed by one or more measurements. Measurements that will be used to assess performance and outcomes for the purpose of determining compliance with the requirements stated above. Each measurement identifies to whom the measurement applies. Each measurement shall be tangible, practical, and as objective as is practical. Achieving the full compliance level of each measurement should be a necessary and sufficient indicator that the requirement was met.</p>

Compliance Administration Elements

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<p>Compliance Monitoring Process</p>	<p>Defines for each measure:</p> <ul style="list-style-type: none"> • The specific data or information that is required to measure performance or outcomes. • The entity that is responsible to provide the data or information for measuring performance or outcomes. • The process that will be used to evaluate data or information for the purpose of assessing performance or outcomes. • The entity that is responsible for evaluating data or information to assess performance or outcomes. • The time period in which performance or outcomes is measured, evaluated, and then reset. • Measurement data retention requirements and assignment of responsibility for data archiving. • Violation severity levels.
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Supporting Information Elements

Interpretations	Any Reliability <i>First</i> interpretations of the Standards that were developed, and approved in accordance with the “Interpretation of Standards” section of this Procedure, to expound on the application of the Standard for unusual or unique situations or provide clarifications.
Implementation Plan	Each Reliability <i>First</i> Standard shall have an associated implementation plan describing the effective date of the Standard or effective dates if there is a phased implementation. The implementation plan may also describe the implementation of the Standard in the compliance program and other considerations in the initial use of the Standard, such as necessary tools, training, etc. The implementation plan must be posted for at least one public comment period and is approved as part of the ballot of the standard.
Supporting References	This section references related documents that support reasons for, or otherwise provide additional information related to the Standard Examples include, but are not limited to: <ul style="list-style-type: none"> • Glossary of Terms • Developmental history of the Standard and prior versions • Subcommittee(s) responsible for Standard • Notes pertaining to implementation or compliance • Standard references • Procedures/Practices • Training and/or Technical Reference

Roles in the Regional Reliability Standards Development Process

Process Roles

Originator - Any entity (person, organization, company, government agency, individual, etc.) that is directly and materially affected by the reliability of the Reliability*First* BPS, is allowed to request a Standard be developed or an existing Standard is modified, or deleted, by creating a Standards Authorization Request (SAR). See Appendix B.

Board – The Reliability*First* Board shall act on any proposed Standard that has gone through the process contained in this Procedure. Once the Reliability*First* Board approves a Standard, compliance with the Standard will be enforced consistent with the By-laws and the terms of the Standard.

Standards Committee (SC) - The Reliability*First* SC will consider which requests for new or revised Standards shall be assigned for development (or existing Standards

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considered for deletion). The SC manages the Standards development process. The SC will advise the ReliabilityFirst Board on Standards presented for adoption by the ReliabilityFirst Board.

Standards Process Manager (SPM) – A person or persons on the ReliabilityFirst staff assigned the task of ensuring that the development, revision or deletion of Standards is in accordance with this Procedure. The SPM works to ensure the integrity of the process and consistency of quality and completeness of the Standards. The SPM facilitates the administration of all actions contained in all steps in the process.

Standards Process Staff – Employees of the ReliabilityFirst that work with or for the SPM.

Interim Compliance Committee (ICC) – The ReliabilityFirst committee responsible for the administration of the ReliabilityFirst Compliance Program. The duties of this committee includes, but not limited to, providing inputs and comments during the standards development process to ensure the measures will be effective and other aspects of the Compliance Program can be practically implemented.

Standard Drafting Team (SDT) – Normally a team of technical experts, and typically includes a member of the ReliabilityFirst Standards staff and the Originator, assigned the task of developing a proposed Standard based upon an approved SAR using the Standard development process contained in this Procedure.

Ballot Body (BB) – The Ballot Body comprises all entities that qualify for one or more of the categories and are registered with ReliabilityFirst as potential ballot participants in the voting on standards. The categories of registration within the Ballot Body and the registration process are described in Appendix D.

Ballot Pool – The Ballot Pool is comprised of those members of the Ballot Body that register to vote for each particular standard that is up for vote. A separate Ballot Pool is established for each standard up for vote. Only individuals who have joined the Ballot Pool for that particular standard are eligible to vote on a standard.

Regional Reliability Standard Development Process (Flow chart of Process shown in Appendix C)

Assumptions and Prerequisites

The ReliabilityFirst Regional Reliability Standards Development Process has the following characteristics:

- **Fair due process** - The ReliabilityFirst standards development process shall provide for reasonable notice and opportunity for public comment. At a minimum, the procedure shall include public notice

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of the intent to develop a standard, a public comment period on the proposed standard, due consideration of those public comments, and a ballot of interested stakeholders.

- **Openness** - Participation is open to all Organizations who are directly and materially affected by the Reliability*First* region BPS reliability. There shall be no undue financial barriers to participation. Participation shall not be conditioned upon membership in the Reliability*First*, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of SDTs are open to the Reliability*First* membership and to others.
- **Balanced** - The Reliability*First* standards development process strives to have an appropriate balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.
- **Inclusive** - Any entity (person, organization, company, government agency, individual, etc.) with a direct and material interest in the BPS in the Reliability*First* area shall have a right to participate by: a) expressing a position and its basis, b) having that position considered, and c) having the right to appeal.
- **Transparent** - All actions material to the development of Reliability*First* Standards shall be transparent. All standards development meetings shall be open and publicly noticed on Reliability*First*'s Web site.
- Does not unnecessarily delay development of the proposed Standard.

Note: The term “days” refers to calendar days.

Each standard shall enable or support one or more of the reliability principles, thereby ensuring that each standard serves a purpose in support of the reliability of the regional BPS. Each standard shall also be consistent with all of the reliability principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

While Reliability*First* Standards are intended to promote reliability, they must at the same time accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. Recognizing that BPS reliability and electricity markets are inseparable and mutually interdependent, all Reliability*First* Standards shall be consistent with NERC's market interface principles. Consideration of the market interface principles is intended to ensure that standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

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ReliabilityFirst will coordinate with NERC such that the acknowledgement of receipt of a standard request identified in step 1, notice of comment posting period identified in step 4, and notice for vote identified in step 5 below are concurrently posted on both the ReliabilityFirst and NERC websites.

Step 1 - Development of a Standards Authorization Request (SAR) to Develop, Revise or Delete a Regional Reliability Standard

Any individual representing an organization (Originator) which is directly or materially impacted by the operation of the BPS within the geographical footprint of the ReliabilityFirst may request, via a submittal of a Standard Authorization Request (SAR) form, the development, modification, or deletion of a ReliabilityFirst Standard. Any such request shall be submitted to the ReliabilityFirst SPM, or his/her designee, or by another process as otherwise posted on the ReliabilityFirst website. The SAR form may be downloaded from the ReliabilityFirst website.

The SAR contains a description of the proposed Standard subject matter containing sufficiently descriptive detail to clearly define the purpose, scope, impacted parties, and other relevant information of the proposed Standard. The SPM will verify that the submitted SAR form has been adequately completed. The SPM may offer the Originator suggestions regarding changes and/or improvements to improve clarity and assist the ReliabilityFirst community to understand the Originator's intent and objectives. The Originator is free to accept or reject these suggestions. Within 15 days the SPM will electronically acknowledge receipt of the SAR.

The SPM will forward all adequately completed SARs to the ReliabilityFirst SC. Within 60 days of receipt of an adequately completed SAR, the SC shall determine the disposition of the SAR. The disposition decision and decision process shall use the normal "business rules and procedures" of the SC then in effect. The SC may take one of the following actions:

- Accept the SAR as a candidate for: development of a new Standard, revision of an existing Standard or deletion of an existing Standard. The SC may, in its sole discretion, expand or narrow the scope of the SAR under consideration. The SC shall prioritize the development of SARs as may be required based on the number of SARs under development at any time.
- Reject the SAR. If the SC rejects a SAR, a written explanation for rejection will be delivered to the Originator within 30 days of the decision.
- Remand the SAR back to the Originator for additional work. The SPM will make reasonable efforts to assist the Originator in addressing the deficiencies identified by the SC. The Originator may then resubmit the modified SAR using the

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process above. The Originator may choose to withdraw the SAR from further consideration prior to re-submittal to the SC

Any SAR that is accepted by the SC for development of a Standard (or modification or deletion of an existing Standard) shall be posted for public viewing on the ReliabilityFirst website within no greater than 30 days of acceptance by the SC. The status of posted SARs will be publicly noted at regularly scheduled (appropriately two weeks) intervals.

Any documentation of the deliberations of the SC concerning SARs shall be made available according to the “ReliabilityFirst Standards Committee Governance” document then in effect.

The SC shall submit a written report to the ReliabilityFirst Board on a periodic basis (at least at every regularly scheduled ReliabilityFirst Board meeting) showing the status of all SARs that have been brought to the SC for consideration.

Step 2 – Formation of the Standard Drafting Team and Declaration of Milestone Date

Upon acceptance by the SC of a SAR for development of a new Standard (or modification or deletion of an existing Standard), the SC shall direct the SPM to develop a qualified balance slate for the SDT using the specific directions and preferences of the SC. The SPM will send out self-nomination forms to solicit SDT nominees. The SDT will consist of a group of people (members of ReliabilityFirst and, as appropriate, non-members) who collectively have the necessary technical expertise and work process skills. The SPM will recommend a slate of ad-hoc individuals or a preexisting task force, work group or similar for the SDT based upon the SC’s desired SDT capabilities.

The SC may also direct the SPM to designate an existing ReliabilityFirst committee (or subset thereof) as the SDT augmented by other persons as may be appropriate for the subject matter. The SC will insure that SDT membership includes all necessary administrative support. This support typically includes a ReliabilityFirst staff member and the Originator if he/she chooses to participate. The SC appoints the interim chair (should not be a staff person) of the SDT. The SDT will elect the permanent Chair and Vice-chair at its first meeting.

The SPM submits the proposed list of names of the SDT to the SC. The SC will either accept the recommendations of the SPM or modify the SDT slate, as it deems appropriate within 60 days of accepting a SAR for development.

Upon approval of the SDT slate, the SC will declare a preliminary date on which the SDT is expected to have ready a completed draft Standard and associated supporting documentation available for consideration by the ReliabilityFirst membership.

Step 3 – Work and Work Product of the Standard Drafting Team

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The SDT will then develop a work plan for completing the Standard development work, including the establishment of milestones for completing critical elements of the work in sufficient detail to ensure that the SDT will meet the date objective established by the SC or the SDT shall propose an alternative date. This plan is then delivered to the SC for its concurrence.

The SDT is to meet, either in person or via electronic means as necessary, establish sub-work teams (made up of members of the SDT) as necessary, and performs other activities to address the parameters of the SAR and the milestone date(s) established by the SC.

The work product of the SDT will consist of the following:

- A draft Standard consistent with the SAR on which it was based.
- An assessment of the impact of the SAR on neighboring regions, and appropriate input from the neighboring regions if the SAR is determined to impact any neighboring region.
- An implementation plan, including the nature, extent and duration of field-testing, if any.
- Identification of any existing Standard that will be deleted, in part or whole, or otherwise impacted by the implementation of the draft Standard.
- Technical reports, white papers and/or work papers that provide technical support for the draft Standard under consideration.
- Document the perceived reliability impact should the Standard be approved.

Upon completion of these tasks, the SDT submits these documents to the SC, which will verify that the proposed Standard is consistent with the SAR on which it was developed

The SDT regularly (at least once each month) informs the SC of its progress in meeting a timely completion of the draft Standard. The SDT may request of the SC scope changes of the SAR at any point in the Standard development process.

The SC may, at any time, exercise its authority over the Standards development process by directing the SDT to move to Step 4 and post for comment the current work product. If there are competing drafts, the SC may, at its sole discretion, have posted the version(s) of the draft Standard for comment on the *ReliabilityFirst* website. The SC may take this step at any time after a SDT has been commissioned to develop the Standard.

Step 4 – *Comment Posting Period*

At the direction from the SC, the SPM then facilitates the posting of the draft Standard on the *ReliabilityFirst* website, along with a draft implementation plan and supporting documents, for a 30-day comment period. The SPM shall also inform *ReliabilityFirst* Members and other potentially interested entities inside or outside of *ReliabilityFirst* of

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the posting using typical membership communication procedures then currently in effect or by other means as deemed appropriate. As early as the start of the first posting for comment, entities may join one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted. The Ballot Pool category description and associated requirements are in Appendix D.

Within 30 days of the conclusion of 30-day comment posting period the SDT shall convene and consider changes to the draft Standard, the implementation plan and/or supporting technical documents based upon comments received. Based upon these comments, the SDT may elect to return to step 3 to revise the draft Standard, implementation plan and/or supporting technical documentation.

The SDT shall prepare a “modification report” summarizing the comments received and the changes made as a result of these comments. The modification report also summarizes comments that were rejected by the SDT and the reason(s) that these comments were rejected, in part or whole. Responses to all comments will be posted on the *ReliabilityFirst* website no later than the next posting of the proposed Standard.

Step 5 – Posting for Voting by *ReliabilityFirst* Registered Ballot Body

Upon recommendation of the SDT, and if the SC concurs that all of the requirements for development of the Standard have been met, the SPM will post the revised draft Standard, implementation plan, supporting technical documentation and the “modification report”. Once the notice for a vote has been issued, no substantive modifications may be made to the proposed standard unless the revisions are posted and a new notice of the vote is issued.

Entities may register in the BB at any time during the Standards process. The BB category description and associated rules are in Appendix D.

By 11:59 PM Central Prevailing Time (CPT) of the seventh day of the 15 day pre ballot posting period, registered BB entities intending to vote on the proposed standard must have joined one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted. The SPM will schedule a Vote by the Ballot Pool which is to be scheduled to commence no sooner than 15 days and no later than 30 days following this posting. The Vote by the Ballot Pool is an advisory to the *ReliabilityFirst* Board.

The Ballot Pool shall be allowed to vote over a period of 15 days. It is expected that votes will be submitted electronically, but may be submitted through other means as approved by the SC.

All entities registered as part of the BB are eligible to participate in voting on proposed new Standards, Standard revisions or Standard deletions. There is a requirement to

separately join a Ballot Pool to participate in voting for each standard. Each entity can join only in one category of the Ballot Pool and shall have one vote.

The voting results will be composed of only the votes from BB entities that have joined the Ballot Pool for the standard being voted on and responding within the 15 day voting period. Votes may be accompanied by comments explaining the vote, but are not required. All comments shall be responded to and posted to the *ReliabilityFirst* website prior to going to the SC or Board.

Step 6A – Voting Receives Simple Majority of Affirmative Category Votes

A simple majority³ of votes within a category determines the vote for that category. If there is a simple affirmative majority of category votes (only those categories with votes cast will be considered) during the 15-day voting period and a quorum is met (a quorum consists of a simple majority of individuals who have joined the Ballot Pool), the SC will forward the Standard to the *ReliabilityFirst* Board for action (Step 7).

Step 6B – Voting Does Not Receive Simple Majority of Affirmative Category Votes or a Quorum is Not Met

If a draft Standard does not receive a simple affirmative majority of votes determined for each category (only those categories with votes cast will be considered) during the 15-day voting period or a quorum is not met during the 15-day voting period, the SC may:

- Direct the existing SDT to reconsider or modify certain aspects of the draft Standard and/or implementation plan. The resulting draft Standard and/or implementation plan will be posted for a second voting period. The SC may require a second comment period prior to the second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the SC action.
 - If there is a simple affirmative majority of categories with votes cast and a quorum is met during the second voting period, the SC will forward it to the *ReliabilityFirst* Board for action (Step 7).
 - If a draft Standard does not receive a simple majority of affirmative category votes cast during the second voting period or a quorum is not met, the SC will refer the draft Standard and implementation plan to the *ReliabilityFirst* Board. The SC may also submit an assessment, opinion and recommendations to the *ReliabilityFirst* Board (Step 7).
- Revise the SAR on which the draft Standard was based and remand the development work back to the original SDT or a newly appointed SDT. The resulting draft Standard and/or implementation plan will be posted for a second

³ For the purposes of determining majority within a category, an abstention is not considered a vote.

voting period. The SC may require a second comment period prior to a second voting period. The second posting of the draft Standard, implementation plan, and supporting documentation shall be within 60 days of the SC action.

- If there is a simple affirmative majority of categories with votes cast during the second voting period and a quorum is met, the SC will forward it to the Reliability*First* Board for action (Step 7).
- If a draft Standard does not receive a simple majority of affirmative category votes cast during the second voting period or a quorum is not met, the SC will refer the draft Standard and implementation plan to the Reliability*First* Board. The SC may also submit an assessment, opinion and recommendations to the Reliability*First* Board (Step 7).
- Recommend termination of all work on the development of the Standard action under consideration and so notify the Reliability*First* Board.

Step 7 – Action by the ReliabilityFirst Board

A draft Standard submitted to the Reliability*First* Board for action must be publicly posted at least 30 days prior to action by the Board. At a regular or special meeting, the Reliability*First* Board shall consider adoption of the draft Standard. The Board will consider the results of the voting and dissenting opinions. The Board will consider any advice offered by the SC.

Draft Standards that received a simple affirmative majority of categories with votes cast shall be delivered to the Reliability*First* Board for their action. The Reliability*First* Board shall be provided with an “informational package” which includes:

- The draft Standard and any modification or deletion of other related existing Standard(s)
- Implementation Plan (including recommending field testing and effective dates)
- Technical Documentation supporting the draft Standard
- A summary of the vote and summary of the comments and responses that accompanied the votes.

The Reliability*First* Board is expected to either:

- Approve the draft Standard action with only minor or no modification. Under no circumstances may the Board substantively modify the proposed regional reliability standard.
- Remand to the SC with comments and instructions, or
- Disapprove the draft Standard action without recourse.

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Draft Standards that did not receive a simple affirmative majority of categories with votes cast in the second voting period shall be delivered to the Reliability*First* Board for their action. The Reliability*First* Board shall be provided with an “informational package”.

The Reliability*First* Board is expected to either:

- Approve the draft Standard action with only minor or no modification. Under no circumstances may the Board substantively modify the proposed regional reliability standard.
- Remand to the SC with comments and instructions, or
- Disapprove the draft Standard action without recourse.

Once a regional Reliability*First* Standard is approved by the Board, the standard will be submitted to NERC for approval and filing with FERC.

Step 8 - Implementation of a Regional Reliability Standard

Upon approval of a draft Standard action by FERC, the SPM will notify the membership of the effective date through the normal and customary membership communication procedures and processes then in effect. The SPM will also notify the Reliability*First* Compliance Staff for integration into the Reliability*First* Compliance Program.

Appendix A

Maintenance of Regional Reliability Standards Development Process

Significant changes to this Procedure shall begin with the preparation of a SAR and be handled using the same procedure as a request to add, modify, or delete a Standard.

The Reliability*First* SC has the authority to make ‘minor’ changes to this Procedure as deemed appropriate by the SC and subject to the SC voting practices and procedures according to the “Reliability*First* Standards Committee Governance” document then in effect. The SC shall promptly notify the Reliability*First* Board of such ‘minor’ changes to this Procedure for their review and concurrence at the next Reliability*First* Board meeting.

Maintenance of Regional Reliability Standards

The SC shall ensure that each Standard shall be reviewed at least once every five years from the effective date of the Standard or the latest revision to the Standard, whichever is the later. The review process shall be conducted by soliciting comments from the stakeholders. If no changes are warranted, the SC shall recommend to the Reliability*First* Board that the Standard be reaffirmed. If the review indicates a need to revise or delete a Standard, a SAR shall be prepared and submitted in accordance with the standards development process contained in this Procedure.

Urgent Action

Under certain conditions, the SC may designate a proposed Standard or revision to a Standard as requiring urgent action. Urgent action may be appropriate when a delay in implementing a proposed Standard or revision could materially impact reliability of the BPS. The SC must use its judgment carefully to ensure an urgent action is truly necessary and not simply an expedient way to change or implement a Standard.

A requester prepares a SAR and a draft of the proposed Standard and submits both to the SPM. The SAR must include a justification for urgent action. The SPM submits the request to the SC for its consideration. If the SC designates the requested Standard or revision as an urgent action item, then the SPM shall immediately post the draft for pre-ballot review. This posting requires a minimum 30-day posting period before the ballot and applies the same voting procedure as detailed in Step 5. Processing will continue as outlined in the subsequent steps. In the event additional drafting is required, a SDT will be assembled as outlined in the Procedure.

Any Standard approved as an urgent action shall have a termination date specified that shall not exceed one year from the approval date. Should there be a need to make the Standard permanent, then the Standard would be required to go through the full Standard

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development process. All urgent action Standards require ReliabilityFirst Board, NERC and FERC approval, as outlined for Standards in the regular process.

Urgent actions that expire may be renewed using the urgent action process again, in the event a permanent Standard is not adopted. In determining whether to authorize an urgent action Standard for a renewal ballot, the SC shall consider the impact of the Standard on the reliability of the BPS and whether expeditious progress is being made toward a permanent replacement Standard. The SC shall not authorize a renewal ballot if there is insufficient progress toward adopting a permanent replacement Standard or if the SC lacks confidence that a reasonable completion date is achievable. The intent is to ensure that an urgent action Standard does not in effect take on a degree of permanence due to the lack of an expeditious effort to develop a permanent replacement Standard. With these principles, there is no predetermined limit on the number of times an urgent action may be renewed. However, each urgent action Standard renewal shall be effective only upon approval by the ReliabilityFirst Board, NERC and FERC.

Any person or entity, including the SDT working on a permanent replacement Standard, may at any time submit a SAR proposing that an urgent action Standard become a permanent Standard by following the full Standards process.

Interpretations of Standards

All persons who are directly and materially affected by the reliability of ReliabilityFirst BPS shall be permitted to request an interpretation of the standard. The person requesting an interpretation will send a request to the SPM explaining the specific circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party or others caused by the lack of clarity or a possibly incorrect interpretation of the standard.

The SPM, along with guidance from the SC, will assemble a team with the relevant expertise to address the request. The Interpretation Drafting Team (IDT) typically consists of members from the original SDT. The SPM submits the proposed list of names of the IDT to the SC. The SC will either accept the recommendations of the SPM or modify the IDT slate.

As soon as practical (not more than 45 days), the team will draft a written interpretation to the standard addressing the issues raised. Once the IDT has completed a draft interpretation to the Standard addressing only the issues raised, the team will forward the draft interpretation to the SPM. The SPM will forward the draft interpretation to the Interim Compliance Committee (ICC). The ICC is to assess if the inclusion of the interpretation lessens the measurability of the Standard. In addition, the SPM will forward the interpretation to the Reliability Committee (RC). Barring receipt of an opinion from either the ICC or RC within 21 calendar days, that the interpretation sufficiently lessens measurability or is not technically appropriate for the Standard, ReliabilityFirst Reliability Standards Development Procedure

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respectively, the SPM will forward the interpretation to the SC. The SC will determine if the interpretation is consistent with the Standard. The SC will forward the interpretation to the ReliabilityFirst Board for informational purposes as being appended to the approved Standard.

Note: In the event that the ICC determines that measurability is lessened, the ICC shall provide an explanation of its reasoning to the SPM and IDT for inclusion in a subsequent revision. The RC shall in a similar manner provide an explanation of its reasoning if it determines that the interpretation makes the standard technically inappropriate. In either case, the IDT and SPM will continue to re-circulate the interpretation as stated above.

The interpretation will stand until such time as the standard is revised through the normal process, at which time the standard will be modified to incorporate the clarifications provided by the interpretation.

Appeals

Persons who have directly and materially affected interests and who have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of a Standard shall have the right to appeal. This appeals process applies only to the Standards process as defined in this Procedure.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time. In all cases, the request for appeal must be made prior to the next step in the process.

The final decisions of any appeal shall be documented in writing and made public.

The appeals process provides two levels, with the goal of expeditiously resolving the issue to the satisfaction of the participants:

Level 1 Appeal

Level 1 is the required first step in the appeals process. The appellant submits a complaint in writing to the SPM that describes the substantive or procedural action or inaction associated with a Standard or the standards process. The appellant describes in the complaint the actual or potential adverse impact to the appellant. Assisted by any necessary staff and committee resources, the SPM shall prepare a written response addressed to the appellant as soon as practical but not more than 45-days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response will be made a part of the public record associated with the standard.

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Level 2 Appeal

If after the Level 1 Appeal the appellant remains unsatisfied with the resolution, as indicated by the appellant in writing to the SPM, the SPM shall convene a Level 2 Appeals Panel. This panel shall consist of five members total appointed by the Reliability*First* Board.

In all cases, Level 2 Appeals Panel members shall have no direct affiliation with the participants in the appeal.

The SPM shall post the complaint and other relevant materials and provide at least 30-days notice of the meeting of the Level 2 Appeals Panel. In addition to the appellant, any person that is directly and materially affected by the substantive or procedural action or inaction referenced in the complaint shall be heard by the panel. The panel shall not consider any expansion of the scope of the appeal that was not presented in the Level 1 Appeal. The panel may in its decision find for the appellant and remand the issue to the SC with a statement of the issues and facts in regard to which fair and equitable action was not taken. The panel may find against the appellant with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections. The panel may not, however, revise, approve, disapprove, or adopt a reliability standard. The actions of the Level 2 Appeals Panel shall be publicly posted.

In addition to the foregoing, a procedural objection that has not been resolved may be submitted to the Reliability*First* Board for consideration at the time the Board decides whether to adopt a particular reliability standard. The objection must be in writing, signed by an officer of the objecting entity, and contain a concise statement of the relief requested and a clear demonstration of the facts that justify that relief. The objection must be filed no later than 30-days after the announcement of the vote on the Standard in question.

Appendix B

Standard Authorization Request

The SC shall be responsible for implementing and maintaining this form as needed to support the information requirements of the standards development process in this Procedure. Changes to this form are considered minor, and therefore subject to only the approval of the SC.

ReliabilityFirst Standard Authorization Request Form

**ReliabilityFirst
will complete**

Title of Proposed Standard
Request Date

ID
Authorized for Posting
Authorized for Development

SAR Originator Information

Name	SAR Type (Check box for one of these selections.)	
Company	<input type="checkbox"/>	New Standard
Telephone	<input type="checkbox"/>	Revision to Existing Standard
Fax	<input type="checkbox"/>	Withdrawal of Existing Standard
E-mail	<input type="checkbox"/>	Urgent Action

Purpose (Provide one or two sentences.)

Industry Need (Provide one or two sentences.)

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Brief Description (A few sentences or a paragraph.)

Reliability Functions

The Standard will Apply to the Following Functions (Check box for each one that applies.)

Reliability Authority	Ensures the reliability of the bulk transmission system within its Reliability Authority area. This is the highest reliability authority.
Balancing Authority	Integrates resource plans ahead of time, and maintains load-interchange-resource balance within its metered boundary and supports system frequency in real time
Generator Owner	Owns and maintains generating units
Interchange Authority	Authorizes valid and balanced Interchange Schedules
Planning Authority	Plans the BPS
Resource Planner	Develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority Area
Transmission Planner	Develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority Area
Transmission Service Provider	Provides transmission services to qualified market participants under applicable transmission service agreements
Transmission Owner	Owns transmission facilities
Transmission Operator	Operates and maintains the transmission facilities, and executes switching orders

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	Distribution Provider	Provides and operates the “wires” between the transmission system and the customer
	Generator Operator	Operates generating unit(s) and performs the functions of supplying energy and Interconnected Operations Services
	Purchasing-Selling Entity	The function of purchasing or selling energy, capacity and all necessary Interconnected Operations Services as required
	Load-Serving Entity	Secures energy and transmission (and related generation services) to serve the end user
	Market Operator	Integrates energy, capacity, balancing, and transmission resources to achieve an economic, reliability-constrained dispatch of resources. The dispatch may be either cost-based or bid-based
	Regional Reliability Organizations	An entity that ensures that a defined area of the BPS is reliable, adequate and secure. A member of the North American Electric Reliability Council. The Regional Reliability Organization can serve as the Compliance Monitor

NOTE: The SDT may find it necessary to modify the initial reliability function responsibility assignment as a result of the standards development and comments received.

Reliability Principles

<i>Applicable Reliability Principles (Check box for all that apply.)</i>	
	1. Interconnected BPS shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions as defined in the NERC Standards.
	2. The frequency and voltage of interconnected BPS shall be controlled within defined limits through the balancing of real and reactive power supply and demand.
	3. Information necessary for the planning and operation of interconnected BPS shall be made available to those entities responsible for planning and operating the systems reliably.
	4. Plans for emergency operation and system restoration of interconnected BPS shall be developed, coordinated, maintained, and implemented.
	5. Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of interconnected BPS.

	6. Personnel responsible for planning and operating interconnected BPS shall be trained, qualified, and have the responsibility and authority to implement actions.
	7. The security of the interconnected BPS shall be assessed, monitored, and maintained on a wide-area basis.

Market Interface Principles

<i>Does the proposed Standard comply with all of the following Market Interface Principles?</i>	
Recognizing that reliability is an essential requirement of a robust North American economy:	
yes or no	1. A reliability standard shall not give any market participant an unfair competitive advantage.
yes or no	2. A reliability standard shall neither mandate nor prohibit any specific market structure.
yes or no	3. A reliability standard shall not preclude market solutions to achieving compliance with that standard.
yes or no	4. A reliability standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards.

Detailed Description (Provide enough detail so that an independent entity familiar with the industry could draft a Standard based on this description.)

Related Standards (NERC and Regional)

Standard No.	Explanation

Related SARs

SAR ID	Explanation

Implementation Plan

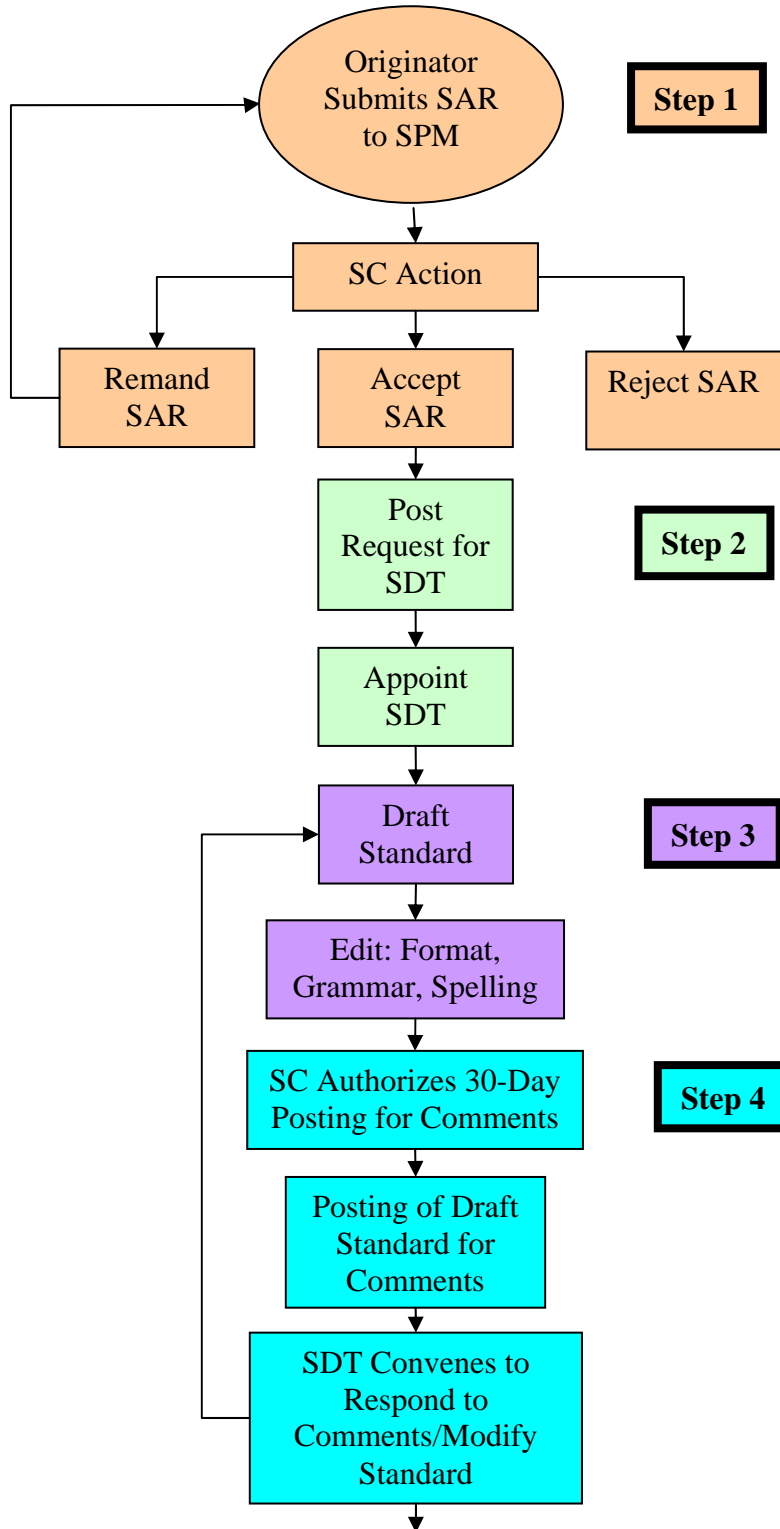
Description (<i>Provide plans for the implementation of the proposed standard, including any known systems or training requirements. Include the reliability risk(s) associated with the violation that the standard will mitigate, and the costs associated with implementation.</i>)
Proposed Implementation days after Board adoption or
on (date):

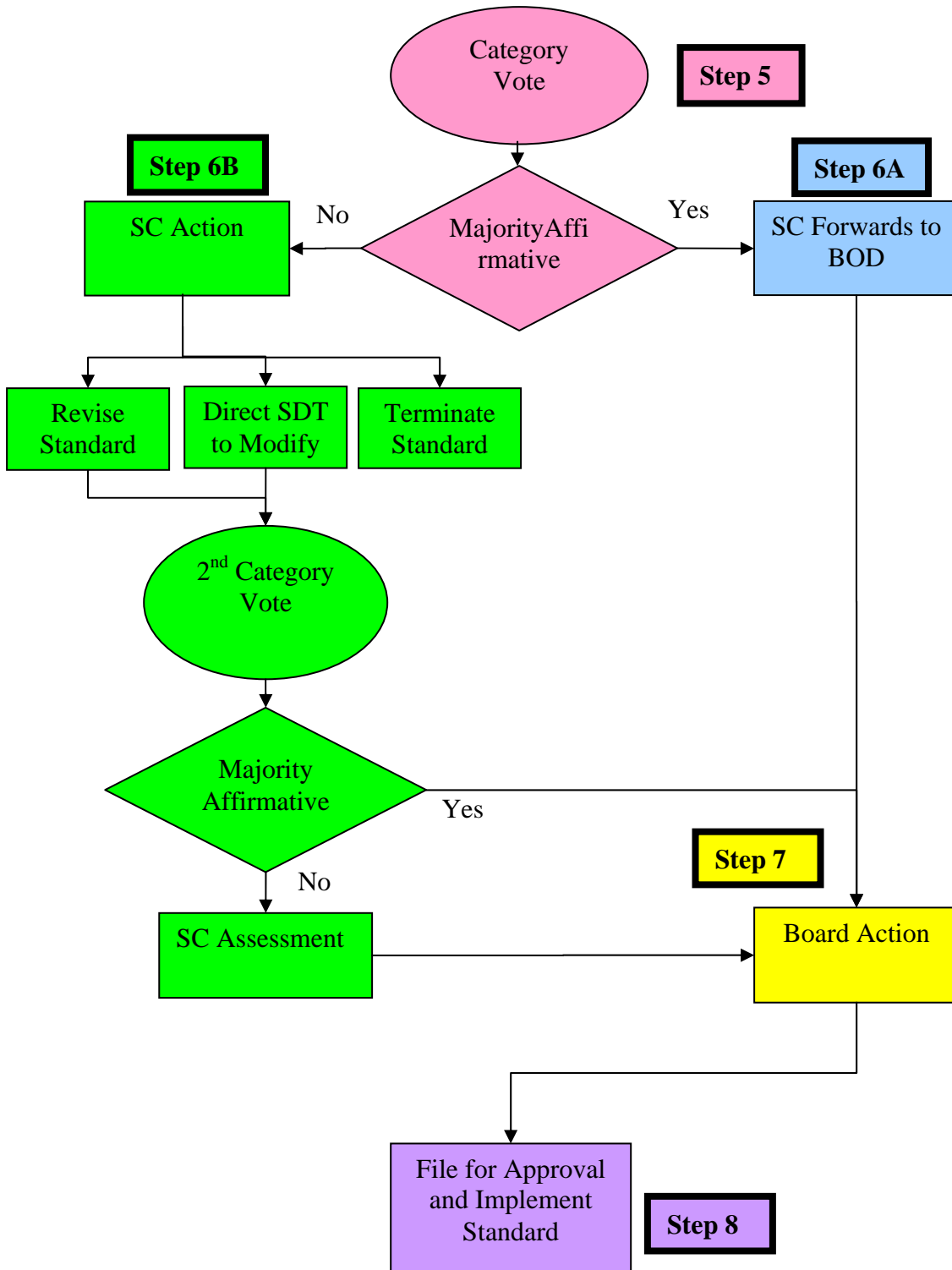
Assignments

	<i>Assignment</i>
Team Members	
ReliabilityFirst Staff	

Appendix C

Flowchart for Standards Process





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Appendix D

Ballot Pool Categories

For the purposes of category Ballot Pool registration and voting, an entity shall register in only one of the following categories for each standard that will be voted on (only one vote is allowed per entity per vote):

Category 1 – Transmission Owner, Transmission Operator, Transmission Service Provider

Category 2 – Generator Owner, Generator Operator

Category 3 – Load Serving Entity, Purchasing and Selling Entity, End User

Category 4 – Reliability Coordinator, Planning Coordinator, Transmission Planner, Resource Planner, Regional Transmission Organization, Balancing Authority, regulatory or governmental agency

Category 5 – Distribution Provider

Ballot Body Registration

Entities may register in the BB at any time during the Standards process. The SPM shall review all applications for joining the BB, and make a determination of whether they qualify for the self-selection category(ies). In order to comment or vote you must have an active membership in the BB. When you submit your registration request to join the BB, you are placed in a “pending stage” until your account is activated. Activation of your account may take up to 24 hours. You will be unable to submit comments or join a Ballot Pool until your account is activated. The contact designated as primary representative to ReliabilityFirst is the voting member with the secondary contact as the backup.

Note: Registration for a BB is not the same as registration for the compliance registry. Although the terminology used to describe the BB categories in most cases has the same meaning as the terms used in the NERC Functional Model, registration in a BB goes beyond the compliance registry in that entities smaller than those stated in the compliance registry guidelines are allowed to register in a BB. Entities shall have evidence that they qualify for the BB category they register in. Such evidence shall be available for the SPM review to verify BB registration and may include compliance registration.

Ballot Pool Formation

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In order to participate in voting on a particular standard, an entity must join the Ballot Pool being established for the standard as follows:

1 – As early as the start of the first posting for comment, entities may join one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted.

2 - By close of business of the seventh day of the 15 day pre ballot posting period, entities wishing to vote must have joined one of the five categories of the Ballot Pool established for the eventual voting on the proposed standard being posted.

EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.1 Obligations of ReliabilityFirst Corporation

ReliabilityFirst Corporation (ReliabilityFirst) will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within ReliabilityFirst's geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

ReliabilityFirst has adopted the pro forma compliance program without exception, as revised by NERC.

ReliabilityFirst has adopted the Attachment 2 Uniform Eastern Interconnection Hearing Process with the following exceptions:

- a. The ReliabilityFirst Hearing Process allows members of the Hearing Body to introduce information to the proceeding at their discretion. The members of the ReliabilityFirst Compliance Committee, from which the Hearing Body is drawn, may have unique expertise, knowledge and experience and may be able to contribute useful background information and documentation to the hearing procedure decision process.
- b. ReliabilityFirst has incorporated the clarified definition of "Critical Energy Infrastructure Information" as issued by FERC in Order No. 683 on September 21, 2006.
- c. Whereas NERC adopts the generally recognized rules of evidence, the ReliabilityFirst Hearing Process does not incorporate the generally recognized rules of evidence but rather allows our Hearing Officer to exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and the evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. ReliabilityFirst believes that allowing a degree of freedom in the introduction of evidence in the Hearing Procedure allows for the most expeditious, thorough and just proceeding. Furthermore, such an evidentiary policy provides all participants the opportunity to submit all relevant facts and evidence for consideration by the Hearing Officer and Hearing Body in order to promote a fair and impartial proceeding that includes all of the relevant facts and completes an inclusive record to serve as a basis for a correct and

legally sustainable ruling, decision or order that promotes and advances real-world reliability.

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

ReliabilityFirst shall establish ~~and maintain~~ a hearing body with authority to conduct and render decisions in a formal compliance hearing ~~in which~~ of a Registered Entity ~~may contest a finding who is the subject of a notice of~~ alleged violation, proposed penalty or sanction, ~~or a proposed contested~~ mitigation plan ~~or contested remedial action directive~~. ReliabilityFirst's hearing body ~~generally will be~~ is the Board Compliance Committee (CC), which is a ~~sub-committee~~ portion of the full Board of Directors. The CC is comprised of five (5) Directors, three (3) of which are independent Board of Director members, and two (2) that are stakeholder Board of Director members. For the Hearing Body to take action at a hearing, a quorum must be present. A quorum is a majority of the members of the Hearing Body, provided that at least two independent directors are present. If a quorum of the Hearing Body does not remain after any recusals and rulings on motions for disqualification, the compliance committee shall appoint a new member to the Hearing Body from among other directors to create a quorum. Each Hearing Body member shall have one vote with respect to matters presented at a hearing. Action may be taken at a hearing at which a quorum is present upon the vote of the majority of members present. A majority of the independent Board of Directors, two (2), must be present for a quorum of the CC to be established.

3.0 OTHER DECISION-MAKING BODIES

There are no other decision-making bodies within the ReliabilityFirst organizational structure with regards to the compliance program. The Compliance Committee of the Board of Directors has been given the responsibility and authority to make all compliance program related decisions.

Memorandum

TO• Bob Wargo
Ray Palmieri

FROM• Phil Casey
Stefanie Glover

DATE• April 24, 2008

RE• Summary of Proposed Revisions to Reliability *First* Hearing Procedures in Response to Directives in FERC March 21, 2008 Order

RELIABILITYFIRST HEARING PROCEDURES

Definitions

1. RFC is to either adopt the *pro forma* definition of “Person” or justify the omission of “limited liability company” from the definition. P 186.

Proposed Revision: Adoption of the *pro forma* definition, re-inserting “limited liability company” to the definition of “Person”.

Interventions

2. RFC is to adopt the *pro forma* paragraph 1.2.12 of the NERC hearing procedures to allow for multiple respondents. P187.

Proposed Revision: RFC adopts the *pro forma* prohibition on interventions, which should alleviate any concerns that the paragraph is contrary to RFC hearing procedure paragraph 1.4.10, which allows for the consolidation of proceedings to address violations for more than one Registered Entity when that violation is for the same event or transaction.

The *pro forma* paragraph 1.2.12 states:

“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.”

The RFC deviation was written as follows:

The Respondent and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC, a Person that is not a Participant to a docketed proceeding is not permitted to intervene or otherwise become a Participant to that proceeding.

Suspension of Schedule for Settlement Negotiations

3. RFC is to enumerate settlement procedures within paragraph 1.5.5

Proposed Revision: Delete specific reference to Settlement Procedures from the hearing procedure's paragraph concerning motions, paragraph 1.5.5.

RFC's revisions to *pro forma* paragraph 1.5.5, which governs "Motions," added the following clause:

. . . requesting any relief as may be appropriate, including suspension of the procedural schedule to pursue settlement negotiations as set forth in ReliabilityFirst's Settlement procedures, Paragraph 2.0.

The FERC Order directs that the because the revised RFC paragraph 1.5.5 references settlement procedures, those settlement procedures must be enumerated in 1.5.5. Because the RFC Settlement Procedures are outlined in a document of several pages, and because the specific provision for suspension of the schedule to pursue settlement negotiations does not explicitly confer a benefit upon the movant in that situation, RFC would prefer to address this directive by reverting to the *pro forma* paragraph. RFC believes that reverting to the *pro forma* definition does not act to negate the intended effect of the RFC language: that settlement negotiations not be chilled or curtailed by an impending discovery or hearing date.

RFC believes that the deletion of the added clause is the most practical solution to the FERC directive. However, the Order also includes a footnote, FN102, that directs the reader's attention to the RFC Hearing Procedure paragraph 1.8, which makes reference to RFC Hearing procedures. There is no specific directive contained in the Order regarding needed changes to RFC paragraph 1.8; however, RFC would like its response to FERC's directive for 1.5.5 to include a revised paragraph 1.8, for consistency. RFC would amend its 1.8 to read as follows:

1.8 Settlement Settlements may be entered into at any time pursuant to ReliabilityFirst's Settlement Procedures, ~~Paragraph 2.0.~~

Deletion of the reference to Paragraph 2.0 of the RFC settlement procedures brings that paragraph more in line with the NERC paragraph 1.8 regarding settlement.

Hearing Officer

4. RFC is to reinstate the requirement that Hearing Officer and technical advisor disclose employment history information into 1.4.2 and 1.4.6. P189

Proposed Revision: Adopt the *pro forma* 1.4.2 and 1.4.6 by re-inserting "employment history" as a required disclosure for hearing officers and technical advisors.

Objections to Evidence offered by the Hearing Body

5. The Order directs that RFC and NERC clarify their procedures in 1.4.2(4) to ensure that the Participants are given adequate time to respond with objections or by presenting other related evidence. P190.

Proposed Revision: Revision to 1.4.3(4) to address the Order's concerns: 1) the insertion of adequate time to respond to an action pursuant to 1.4.3(4), and 2) requiring a statement by the hearing body outlining its reasons, should it decline objections or refuses to admit related evidence.

RFC believes that the March 21 Order erroneously directed revisions to paragraph 1.4.2(4), when its concerns were related to the RFC deviation at 1.4.3(4), which allows for the introduction of evidence by the Hearing Body.

The RFC proposed deviation is contained in its paragraph 1.4.3(4), and states:

The Hearing Body or any individual member thereof shall be entitled to offer information or documents, including books, papers, logs, graphs, maps, drawings, charts or any other written material, for submission into the evidentiary record at any time until the issuance of a Final Order; provided that the Participants shall be provided an opportunity to object to the introduction of such information or documents into the evidentiary record, and to present testimony and other evidence in relation to such information or documents. The Hearing Body and individual members thereof shall strive to submit any such information or documents in a timely manner to avoid any undue delay in the hearing process.

The March 21 Order appears to accept this deviation, but mistakenly cites paragraph 1.4.2(4) as the location of the deviation (1.4.2 addresses the powers of the Hearing Officer, 1.4.3 the powers of the Hearing Body).

Further, the Order directs that RFC and NERC clarify their procedures in 1.4.2(4) to ensure that the Participants are given adequate time to respond with objections or by presenting other related evidence. P190. Adding to the confusion is the fact that if the deviation in question -- 1.4.3(4) - is accepted, then RFC and NERC have entirely different paragraphs 1.4.3(4), because the RFC deviation is the addition/insertion of a paragraph (4). Therefore, the directive to NERC in P190 will likely require some clarification.

Inspection and Copying of Documents

6. RFC is to define "material" as used in 1.5.7(b)(2). P191

Proposed Revision: Remove the word "material" from the proposed deviation at 1.5.7(b)(2). RFC had proposed a slight deviation to the *pro forma* 1.5.7(b)(2):

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

The Order accepted the deviation here for compliance staff, but wanted “material” defined. However, RFC concedes that for this paragraph, the inclusion of the word “exculpatory” may render the additional qualifier of “material” unnecessary.

RFC’s reversion to the *pro forma* 1.5.7(b)(2) in this instance will again be a diversion from the NERC Hearing Procedure, because the Proposed Revisions of NERC in response to the March 21 Order include revisions to its 1.5.7(b)(2). RFC may choose to adopt the 1.5.7(b)(2) revisions proposed by NERC as its 1.5.7(b)(2) responsive proposal.

Hearing Confidentiality

7. **Reinstate the first sentence from Paragraph 1.5.10(a) P 192.**

Proposed Revision: RFC has complied with the clear direction from FERC and has re-inserted the provisions with provide for confidentiality of all evidence and documents connected with the hearing process. However, RFC remains concerned that the provision is overbroad and could be construed to require RFC to treat its own information -- information or documentation which would not otherwise be considered confidential or proprietary -- as confidential simply because that information was used or produced in conjunction with the proceeding. The *pro forma* paragraph does not limit the scope of protections and confidentiality to the evidence of other, or adverse, Participants.

8. **RFC is to amend the language in its 1.5.10(b) addressing protective orders. P 192.**

Proposed Revision: RFC has re-inserted protections for all compliance authorities, and has otherwise incorporated the proposed revisions of NERC in its response to the Order’s stated concerns regarding the production of materials subject to a protective order in discovery. RFC agrees with the Order’s directive to cross-reference 1.5.7(b) in an effort to clarify that the existence of a protective order may not act to compel the production of documents otherwise subject to being withheld by Staff.

Evidentiary Hearing Burden of Persuasion

9. **The Order directs the reversion to the *pro forma* wording for paragraph 1.6.2, because of the concern that there is no burden of persuasion identified in the paragraphs under 1.9, which address Remedial Action Directives.**

In paragraph 131 of the Order, the suggested action for NERC is to remove this entire paragraph from the “evidentiary hearing” section.

Proposed Revision: RFC proposes to incorporate NERC’s proposed revision to its 1.6.2, which removes NERC’s 1.6.2 and articulates the burden of persuasion in the introductory paragraph for the Hearing Procedures. This changes addresses RFC’s initial concern with the *pro forma*

paragraph 1.6.2: that Remedial Action Directives are subject to a separate evidentiary procedure under 1.9, and so should not have been referenced under 1.6.

Cross Examination

10. RFC is to adopt *pro forma* language in paragraph 1.6.14 regarding cross-examination or is to provide support the deviation. P 194.

Proposed Revision: RFC does not offer a proposed revision in response to the Order. It will instead offer support for the deviation.

The Order directs the re-insertion of the underlined passage into RFC's Evidentiary Hearing procedures.

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 Body shall be entitled to ask the witness questions . . .

RFC maintains that the sentence in question is confusing and arguably redundant, since the rule explicitly states that *each* witness is to be *tendered for cross*. This would seem sufficient to clearly provide to allow for cross-examination of each witness. Further, "Participant" is a broad term as defined within these procedures. The term "Participant" may be read to refer to multiple members of the same "party" (as that term is commonly understood). Therefore, the sentence in question arguably allows for a type of "preemptive re-direct," since a Participant could cross its own co-Participant prior the appropriate timing of redirect as provided for in paragraph 1.6.15 of the RFC hearing procedures. Because of the potential for abuse (however slight), RFC would prefer that the sentence in question not be included in RFC paragraph 1.6.14.



Hearing

Procedure

October 16, 2007

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Hearing Procedure

1.0 HEARING PROCEDURES

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

The provisions set forth in this Paragraph 1.0 (“Hearing Procedure”) shall apply to and govern practice and procedure before ReliabilityFirst in hearings in the United States conducted into (i) whether Registered Entities within ReliabilityFirst’s area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate mitigation plans as well as any remedial actions, penalties or sanctions in accordance with applicable penalty guidelines approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2). Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Body established by ReliabilityFirst. The composition of the Hearing Body, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, and decision by the Hearing Body on any matter brought before it for decision.

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

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

1.1.3 Standards for Discretion

ReliabilityFirst’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 ReliabilityFirst 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.

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- d) **Balanced Decision-Making** - Decisions should be based solely on the facts and arguments of record in a proceeding and by individuals who satisfy ReliabilityFirst's conflict of interest policy.
- e) **Impartiality** - Persons appearing before the Hearing Body should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) **Expedition** - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

- a) These Hearing Procedures shall be interpreted in such a manner as will aid in effectuating the Standards for Discretion set forth in 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 procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.

“Clerk,” as designated by ReliabilityFirst.

“Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general 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.

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“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 Director of Compliance of ReliabilityFirst, 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, the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System subject to FERC review.

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Body” means a composition of members of the ReliabilityFirst Compliance Committee as established by the Board of Directors of ReliabilityFirst as set out in the ReliabilityFirst Compliance Committee Charter. No two industry sectors may control any decision and no single segment may veto any matter brought before the Hearing Body either before or after any recusals or disqualifications in accordance with Paragraph 1.4.5.

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

“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 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 Registered Entity to a reliability watch list composed of major violators. Penalties must be determined in accordance with the *Sanction Guidelines of the North American Electric Reliability Council* approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2).

“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.

“Mitigation Plan” means a plan to eliminate the violation of a Reliability Standard and its underlying causes.

“North American Electric Reliability Council” or “NERC” means North American Electric Reliability Corporation.

“Registered Entity” means each user, owner and operator of the Bulk-Power System within the United States that is required to register with ReliabilityFirst pursuant to 18 C.F.R. Section 39.2.

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“ReliabilityFirst’s area of responsibility” means ReliabilityFirst’s corporate region.

“Reliable Operation” has the meaning set forth in the Federal Power Act, as it may be amended from time to time.

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

“Remedial Action Directive” means an action (other than a penalty or sanction) required that (1) is to bring a Registered Entity into compliance with a Reliability Standard or to avoid a Reliability Standard violation, and (2) is immediately necessary to protect the reliability of the bulk power system from an imminent threat.

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

“Hearing Procedure” means the procedure of ReliabilityFirst as set forth in this Paragraph 1.

“Staff” or “Compliance Staff” means individuals employed or contracted by ReliabilityFirst who have the authority to make initial determinations of compliance or violation with Reliability Standards by Registered Entities and associated Penalties and Mitigation Plans. Staff members may participate and be represented by counsel in ReliabilityFirst proceedings, and shall have the rights and duties of any Participant. Staff members must satisfy ReliabilityFirst’s conflict of interest policy.

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

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

All filings made with ReliabilityFirst 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 if available; and

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- e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.

1.2.2 Form of Filings

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

1.2.3 Submission of Documents

- a) Where to File

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

- b) When to File

Filings shall be made within the time limits set forth in these Hearing Procedures or as otherwise directed by the Hearing Officer or the Hearing Body. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later than close of business at Reliability*First* on the date specified.

- c) How to File

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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 an electronic filing system by ReliabilityFirst.

d) Number of Copies to File

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

e) Signature

The original of every filing shall be signed by the Participant on whose behalf the filing is made, either by an attorney of the Participant or, by the individual if the Participant is an individual, by an Officer of the Participant if the Participant is not an individual, or if the Participant is Staff, by a designee authorized to act on behalf of Staff. 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 Body. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be 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 made the service.

1.2.4 Service

a) Service List

For each proceeding, the Clerk shall prepare and maintain a list showing the name, address, telephone number, and facsimile number and email address, if available, of each individual designated for service. The Hearing Officer, Director of Compliance and the Registered Entity's designated agent for service shall automatically be included on the service list. Participants shall identify all

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

b) By Participants

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

c) By the Clerk

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

d) Effective Date of Service

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

1.2.5 Computation of Time

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

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legal holidays, or days upon which the Office of Reliability*First* 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 Body for good cause upon a motion made before the expiration of the period prescribed. If any motion for extension of time is made after the expiration of the period prescribed, the Hearing Officer or Hearing Body may permit performance of the act if the movant shows circumstances sufficient to justify the failure to act in a timely manner.

1.2.7 Amendments

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

1.2.8 Transcripts

A full and complete record of all hearings, including any oral argument shall be transcribed verbatim by a certified court reporter, except that the Hearing Officer may allow off-the-record discussion of any matter provided the Hearing Officer states the ruling on any such matter, and the Participants state their positions or agreement in relation thereto, on the record. Unless otherwise prescribed by the Hearing Officer, 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 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.

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

1.2.9 Rulings, Notices, Orders and Other Issuances

Any action taken by the Hearing Officer or the Hearing Body shall be recorded in a Ruling, Notice, Order or other applicable issuance, such as a transcript, and is effective upon the date of issuance unless otherwise specified by the Hearing Officer or the Hearing Body. All notices of hearings shall set forth the date, time and place of hearing.

1.2.10 Location of Hearings and Conferences

All hearings, oral arguments and conferences shall be held at the principal office of Reliability*First* unless the Hearing Officer or Hearing Body elects a different location.

1.2.11 Participant Participation

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Participants may appear at any hearing via teleconference subject to the approval of the Hearing Officer and, in the event of oral argument, the Hearing Body, except that witnesses shall personally appear at the evidentiary hearing if required by Paragraph 1.6.6.

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 a Person that is shall be not a Participant to a docketed proceeding is not~~ permitted to intervene or otherwise become a Participant to that proceeding.

1.2.13 Proceedings Closed to the Public

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

1.2.14 Docketing System

The Clerk shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a Notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the Regional Entities, 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 "RFC", 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 ReliabilityFirst, including without limitation its members, Board, compliance committee, any other committees or subcommittees, Staff, contracted employees, 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" clause does not extend to matters constituting gross negligence, intentional misconduct or breach of confidentiality.

1.3 Initiation of the Hearing Process

1.3.1 Registered Entity's Option to Request a Hearing

Except when contesting a Remedial Action Directive pursuant to section 1.9 of these procedures, a Registered Entity may file a statement with ReliabilityFirst requesting a hearing if either:

- a) The Registered Entity files a Response to a Notice of Alleged Violation that contests either the alleged violation, the proposed Penalty, or both; or

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- b) The Compliance Staff submits to the Registered Entity a statement identifying a disagreement with a Registered Entity's proposed Mitigation Plan.

A Registered Entity must file its hearing request within forty (40) days after (i) the Registered Entity files its Response to the Notice of Alleged Violation; or (ii) the Compliance Staff submits to the Registered Entity its statement identifying a disagreement with the Registered Entity's proposed Mitigation Plan, whichever is applicable. If the Registered Entity does not file a hearing request within the time period set forth in this Paragraph, then the Registered Entity will be deemed to have agreed and waived any objection to the proposed Penalty, the alleged violation or the Compliance Staff's stated position on the Mitigation Plan, whichever is applicable.

Either a Notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its disagreement with a Registered Entity's proposed Mitigation Plan shall clearly state that the Registered Entity has the option to contest the alleged violation, proposed Penalty, or both, or the Compliance Staff's position on the proposed Mitigation Plan, under either 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 Registered Entity 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 section Sections 1.4 to 1.7. If the Registered Entity requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity requests the shortened hearing procedure, Compliance Staff shall submit a filing within five (5) days of the Registered Entity'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.

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

- a) The Registered Entity's self-report of a violation;
- b) The Notice of Alleged Violation and the Registered Entity's Response thereto; and/or
- c) The Registered Entity'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 a rule's context 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.

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The Hearing Body may utilize a Hearing Officer to preside over the shortened hearing process 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 briefs on 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 Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.
- c) Within twenty-one (21) days of the Prehearing Conference, the Staff shall file:
 - 1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;
 - 2) all documents that Staff seeks to introduce in support of its position that are not already in the record; 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 Registered Entity shall file:
 - 1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
 - 2) all documents that the Registered Entity seeks to introduce in support of its position that are not already in the record; and
 - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- e) Within seven (7) days after the Registered Entity's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.

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- f) The Hearing Officer shall issue an initial opinion within twenty-one (21) days of the Staff's reply comments filing pursuant to Subparagraph (e).
- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) days of 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. No replies to Briefs on Exceptions shall be allowed.
- h) The Hearing Body 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 Body may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the Hearing Body to issue the Final Order within 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 Registered Entity requesting a hearing pursuant to Paragraph 1.3, the Clerk 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. The notice of hearing shall state that the Registered Entity 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

ReliabilityFirst 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 Body as set forth in Paragraph 1.4.3. The Hearing Body reserves its right to attend any aspect of the hearing as a body or by individual members.

The Hearing Body 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 Body for final decision through the presentation to the Hearing Body of an initial opinion. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- 1) To administer oaths and affirmations;
- 2) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone, suspend or adjourn a hearing;
- 3) 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;

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- 4) 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 initial opinions; and
- 11) 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 Body uses a Hearing Officer to preside over a hearing, the Hearing Body 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 Body

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

- 1) The Hearing Body shall be entitled to 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 testimony and evidence. The Hearing Body shall not receive documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such documents are placed into the record pursuant to Paragraph 1.6.7.
- 2) The Hearing Body or any individual member thereof shall be entitled, but 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 Body shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to

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any issue. To this end, the Hearing Body shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a Final Order.

- 4) The Hearing Body or any individual member thereof shall be entitled to offer upon its own motion information or documents, including books, papers, logs, graphs, maps, drawings, charts or any other written material, for submission into the evidentiary record at any time until the issuance of a Final Order; provided that the Participants shall be provided an opportunity to object to the motion seeking introduction of such information or documents into the evidentiary record, and to present testimony and other evidence in relation to such information or documents. The Hearing Body and individual members thereof shall strive to submit any such information or documents, upon motion, -in a timely manner to avoid any undue delay in the hearing process. Participants shall file objections, if any, to a motion by the Hearing Body within 14 days after service of the motion. Participant objections shall clearly state the basis for the objection and may identify any evidence it seeks to introduce in response to the information or documents offered by the Hearing Body. If the Hearing Body denies the Participant's objections, the basis for the denial shall be explained in the Hearing Body's Final Order.
- 5) To the extent that the Hearing Body disagrees with any issuance or ruling of the Hearing Officer, it shall be entitled, on its own motion or upon petition for interlocutory review, to reverse or modify the issuance or ruling in whole or in part, or to take any other action as may be appropriate.
- 6) The Hearing Body shall resolve the issue(s) in every hearing through the issuance of a Final Order. In issuing a Final Order, the Hearing Body shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

1.4.4 Interlocutory Review

A Participant shall be allowed to seek interlocutory review of any Hearing Officer ruling with the Hearing Body provided that 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 Body, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall 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 Body within fourteen (14) days from the filing of the petition.

On review of a Hearing Officer's ruling, the Hearing Body may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. 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 Body and (ii) majority vote of the members of the Hearing Body voting on the final order (which

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number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Body's action taken on interlocutory review shall not be allowed. Only in exceptional circumstances shall an interlocutory review of a ruling of the Hearing Officer suspend a hearing.

1.4.5 Disqualification

A Hearing Officer, Technical Advisor or member of the Hearing Body shall recuse himself or herself from a proceeding if participation would violate ReliabilityFirst'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 Body from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Participant shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Participant learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Participant is notified of the assignment of the Hearing Officer or Technical Advisor.

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

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

1.4.6 Technical Advisor

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

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

1.4.7 No Ex Parte Communications

- a) Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:
 - 1) neither the Hearing Body, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; but
 - 2) the Hearing Body, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
 - A) in writing if the writing is simultaneously provided to all Participants; or
 - B) orally if a representative for every Participant is present in person or by telephone;
 - C) subject to the requirement that the substance of ruling on such issue be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling have the opportunity to state its objection on the record.
- b) This proscription does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof, provided that any member of the Compliance Staff involved in such communication may not be and may not subsequently serve as a Technical Advisor.
- c) This proscription also does not prohibit communications between members of the Hearing Body, the Hearing Officer and any Technical Advisor.
- d) Any member of the Hearing Body, 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

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Participants shall file written appearances within seven (7) days of the Notice of Hearing. 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, 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 defaulting Participant. Any hearing costs incurred as a failure to appear may be assessed against such Participant.

Participants shall exercise diligence and timeliness in all actions before the Hearing Officer and the Hearing Body and in all other actions related to these Hearing Procedures. The failure of any Participant to exercise diligence or timeliness in any such actions, as determined by the Hearing Officer or Hearing Body, will be noted in the record and the Hearing Officer or Hearing Body may take such action as to promote the accomplishment of the goals of these Procedures outlined in Paragraph 1.1.3.

1.4.10 Consolidation of Proceedings

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

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

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or transaction. Such consolidation may be allowed in the discretion of the Hearing Officer or Hearing Body, as applicable.

1.5 Prehearing Procedure

1.5.1 Waiver of Time Limits

A Registered Entity that elects the full hearing procedure as set forth in Sections 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) 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 grant, in whole or in part, a motion for 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 Body.

1.5.4 Status Hearings

Any Participant may request, and the Hearing Officer may call, a status hearing at any time subsequent to the Prehearing Conference to address issues that have arisen between the Participants. Such issues may include, but are not limited to, discovery disputes and scheduling

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matters. The Hearing Officer shall direct the Clerk to issue a notice of status hearing that sets forth the date, time and place for the hearing, and identifies the matters to be addressed at the hearing.

1.5.5 Motions

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate. ~~including suspension of the procedural schedule to pursue settlement negotiations as set forth in ReliabilityFirst's Settlement procedures, Paragraph 2.0.~~ 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 a hearing proceeding. When the Hearing Officer grants a motion to dismiss a proceeding in whole or in part, the ruling shall set forth the rationale for the grant and shall be considered an initial opinion.

1.5.6 Experts

A Participant may employ an expert 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 objection, 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 this procedure, or by order of the Hearing Officer or Hearing Body, within five (5) days of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, documents prepared or obtained by Staff in connection with the investigation that led to the institution of proceedings. Such documents 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 ReliabilityFirst to provide documents or to be interviewed;
 - (C) the documents provided in response to any such requests described in (A) and (B) above;

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- (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 ReliabilityFirst.

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 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 paragraph (a), and if such documents are material and relevant to the proceeding, the additional documents shall be made available to the Respondent not later than fourteen (14) days after Staff receives such documents. If the hearing is scheduled to begin, 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 such hearing begins, Staff shall make the additional documents available immediately to the Respondent.
 - 3) Nothing in subparagraph (a)(1) shall limit the discretion of ReliabilityFirst to make available any other document or the authority of the Hearing Officer to order the production of any other document.
- b) Documents That May Be Withheld
- 1) Staff may withhold a document if:
 - (A) the document is privileged or constitutes attorney work product;
 - (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 ReliabilityFirst, 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

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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, ReliabilityFirst, 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 ~~material~~ 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 subparagraphs (b)(1)(A) through (D) 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 other Respondents for inspection and copying. A motion to require Staff to produce a list of documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a document is being withheld in violation of the rules set forth herein.

- d) Timing of Inspection and Copying

Except as set forth in this Paragraph, the Hearing Officer shall determine the schedule of production of documents pursuant to this hearing procedure 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 ReliabilityFirst 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 the ReliabilityFirst's offices during normal business hours. A Respondent shall not be given custody of the documents or be permitted to remove the documents from the ReliabilityFirst's offices.

- (f) Copying Costs

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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, charges for copies made at the request of a Respondent shall be at a rate to be established by Reliability *First*.

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 Body shall determine whether the failure to make the document available was not 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 will be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. This requirement does not preclude a Participant from using a document or other demonstrative evidence if grounds exist for such use in the conduct of proper cross-examination even if the Participant did not file the document in advance of the evidentiary hearing.

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Compliance Staff shall file the documents it intends to offer into evidence as its direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, first. The Registered Entity shall file the documents it intends to offer into evidence as its direct case, which also may be responsive to Staff's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, second. Staff shall file as its rebuttal case the documents it intends to offer into evidence in response to the Registered Entity's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, third.

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

Each round of evidence shall be limited in scope to the preceding round of evidence to which it is responsive, except that the Registered Entity's direct case may exceed the scope of Staff's direct case if necessary for the Registered Entity to set forth its direct case fully.

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 testimony and other evidence in advance of the evidentiary hearing shall not entitle the documents for admission 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 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 from these proceedings, shall be non-public and shall be held in confidence by all Participants, except as the ERO or FERC authorizes or directs public disclosure of any portion of the record. At any time during a proceeding, on the Hearing Officer's own motion or on the motion of any Participant, an order may be entered 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: (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

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identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; or (vi) investigative files or documents that would disclose investigative techniques of Staff, Reliability *First or any Compliance Authority*, the ERO or any federal, state or foreign regulatory authority. Nothing in this Subparagraph 1.5.10(b) shall require Staff to produce any documents it is entitled to withhold under Subparagraph 1.5.7(b).

- c) A Participant submitting a motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, information or studies, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information.
- 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, information or studies 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 close the hearing while the information is addressed 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 Body may request, as needed on a case by case basis due to the number or complexity of the issue(s), the submission of memorandums 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 memorandums will be to aid the Hearing Officer and Hearing Body in preparation for the evidentiary hearing. A Participant will not be deemed to have waived any issue, fact or argument that is not set forth in a pre-evidentiary hearing memorandum. The Hearing Officer may establish page limitations on such submissions.

1.6 Evidentiary Hearing Procedure

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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 or opposing a Registered Entity's Mitigation Plan. As such, i~~n all proceedings, Compliance Staff shall open and close.

1.6.3 Opening and Closing Statements

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

1.6.4 Right of Participant to Present 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, or other Hearing Officer designee, 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 Body have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. If a witness is not required to attend the evidentiary hearing, then the Participant on whose behalf the witness prepared testimony shall file 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.

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1.6.7 Admission of Evidence

Compliance Staff shall offer its exhibits into evidence first and the Registered Entity second, unless the Participants agree otherwise. All testimony is to be under oath or affirmation.

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 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.

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 Body, 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 surebuttal) 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. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is ReliabilityFirst'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 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 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 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 Stipulation

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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

The Hearing Officer may 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 regional reliability entities other than Reliability*First*.
- 2) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed Reliability*First* proceedings.
- 3) State and Federal statutes and municipal and local ordinances.
- 4) The decisions of State and Federal courts.
- 5) Generally recognized scientific or technical facts within the specialized knowledge of Reliability*First*.
- 6) All other matters of which the courts of the United States may take judicial notice.

An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit unless waived by the Participants and approved by the Hearing Officer. Any scientific or technical fact, or other information not in document form, of which notice is taken shall be set forth in a statement on the record. The Hearing Officer will afford any Participant making a timely request an opportunity to show the contrary to the matter officially noticed.

1.6.11 Admissibility of Evidence

Any evidence offered, including that which is 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.

Generally recognized rules of evidence shall not apply. Rather, the Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Participants, and evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. However, 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

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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. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Body shall be entitled to ask the witness questions following the conclusion of the witness' cross-examination, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the Hearing Body 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.

1.6.15 Redirect Examination

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Body. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the Hearing Body. The Hearing Officer and any member of the Hearing Body shall be entitled to ask the witness questions following the conclusion of the witness' redirect-examination. If a member of the Hearing Body 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 do so, 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

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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, and the number and complexity of the issues.
- 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 Opinions

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

1.7.4 Hearing Officer's Initial Opinion

Except as otherwise ordered by the Hearing Body, at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Body's review and consideration. 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 or Mitigation Plan that the Hearing Officer proposes the Hearing Body require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed Notice of Penalty.

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The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be Critical Energy Infrastructure Information protected 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, "Brief in Reply to Exceptions."
- b) Exceptions and replies thereto with respect to statements, findings of fact or rulings of law must be specific and must be stated and numbered separately in the brief. With regard to each, the Participant must specify each error of fact or law 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.
- 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.

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1.7.6 Oral Argument

The Hearing Body may elect to hear oral argument. If oral argument is held without initial briefs, Participants will be given the opportunity to present argument on all issues. If oral argument is held in addition to initial briefs, argument may be limited to issues identified by the the Hearing Body. The Hearing Body will direct the Clerk to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

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 Body's own motion if there is reason to believe that reopening is warranted by any changes in conditions of fact or law, or by the public interest. Any Participant may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes of fact or of law, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

1.7.8 Hearing Body Final Order

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Body shall issue its Final Order. Issuance of a Final Order shall require (i) a quorum of the hearing Body, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Body, and (ii) majority vote of the members of the Hearing Body voting on the final order (which number of members voting shall not be less than a quorum). The Hearing Body shall strive, but shall not be required, to issue its Final Order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The Final Order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The Final Order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The Final Order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, remedial action 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 or if any information in the proceeding was deemed to be critical energy infrastructure information protected pursuant to Paragraph 1.5.10. The Hearing Body shall direct the Clerk to serve the Final Order on the Participants. The service of the Final Order shall include a notice informing the Participantss of their appeal rights to the ERO or to FERC, as applicable.

1.7.9 The Record

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

- 1) Notice of Alleged Violation and Registered Entity's Response thereto;
- 2) Registered Entity's Proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- 3) Registered Entity's request for a hearing;
- 4) Participant filings, motions, and responses;
- 5) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Body;
- 6) Transcripts;
- 7) Evidence received;
- 8) Matters officially noticed;
- 9) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- 10) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- 11) Post-hearing pleadings other than briefs;
- 12) The Hearing Officer's initial opinion;
- 13) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- 14) The Hearing Body's Final Order and any Notice of Penalty therewith;
- 15) All Notices of Ex Parte Communications;
- 16) Written comments submitted in lieu of written testimony;
- 17) Remedial Action Directives and the Registered Entity's notice contesting the Remedial Action Directive;
- 18) Any notifications of recusal and motions for disqualification of a member of the Hearing Body or Hearing Officer of Technical Advisor and any responses or replies thereto; and
- 19) All Settlement Agreements and supporting Explanatory Statements, and Initial Opinions and Final Orders on Settlement Agreements.

1.7.10 Appeal

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A Final Order of the Hearing Body may be appealed to NERC in accordance with NERC's Rules of Procedure, Section 410. The Clerk shall transmit the record of any docket to NERC that is the subject of an appealed Final Order.

1.8 Settlement

Settlements may be entered into at any time pursuant to ReliabilityFirst's Settlement Procedures, [Paragraph 2.0](#).

1.9 Remedial Action Directives

1.9.1 Initiation of Remedial Action Directive Hearing

Staff may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. ReliabilityFirst will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

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

The Clerk shall assign a docket number, and issue a Notice of Hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.9.2(a).

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 Sections 1.4 to 1.7 are applicable to the Remedial Action Directive hearing unless a rule's context 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:

- a) The Hearing Officer or the Hearing Body will hold a prehearing conference within two (2) days after receipt of the Registered Entity'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 Registered Entity shall present oral witness testimony and evidence to show why

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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 Registered Entity's closing argument.
- e) The Participants shall not file any briefs or draft opinions, and oral argument shall not be held.
- f) The Hearing Body shall issue a summary written decision within ten (10) days following the hearing, stating whether the Registered Entity shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.
- g) Within thirty (30) days following issuance of its summary written decision, the Hearing Body shall issue a full written decision. The written decision shall state the conclusions of the Hearing Body with respect to the Remedial Action Directive, and shall explain the reasons for the Hearing Body's conclusions.