

**ATTACHMENT 1**

Clean and Redline Version of Section 500 – Organization Registration and Certification

## **SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION**

### **501. Scope of the Organization Registration and Organization Certification Programs**

The purpose of the Organization Registration Program is to clearly identify those entities that are responsible for compliance with the FERC approved reliability standards.

Organizations that are registered are included on the NERC Compliance Registry (NCR) and are responsible for knowing the content for complying with all applicable reliability standards. Registered organizations are not and do not become members of NERC or a Regional Entity, by virtue of being listed on the NCR. Membership in NERC is governed by Article II of NERC's bylaws; membership in a Regional Entity or regional reliability organization is governed by that entity's bylaws or rules.

The purpose of the Organization Certification Program is to ensure that the new entity (i.e., applicant to be an RC, BA, or TOP that is not already performing the function for which it is applying to be certified as) has the tools, processes, training, and procedures to demonstrate their ability to meet the requirements/sub requirements of all of the reliability standards applicable to the function(s) for which it is applying, thereby demonstrating the ability to become certified and then operational.

Organization Registration and Organization Certification may be delegated to Regional Entities in accordance with the procedures in this Section 500; the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into these rules as Appendix 5; and, approved Regional Entity delegation agreements or other applicable agreements.

1. **NERC Compliance Registry** — NERC shall establish and maintain the NCR of the bulk power system owners, operators, and users that are subject to approved reliability standards.
  - 1.1 (a) The NCR shall set forth the identity and functions performed for each organization responsible for meeting requirements/sub-requirements of the reliability standards including: Reliability Coordinators, Balancing Authorities, Transmission Operators, Transmission Owners, Generator Operators, Generator Owners, Transmission Service Providers, Planning Authorities, Transmission Planners, Resource Planners, Load-Serving Entities, Purchasing-Selling Entities, Interchange Authorities, Reserve Sharing Groups, and Distribution Providers. Bulk power system owners, operators, and users shall provide to NERC and the applicable Regional Entity information necessary to complete the registration.
    - (b) A generation or transmission cooperative, a joint-action agency or another organization may register as a Joint Registration Organization (JRO), in lieu of each of the JRO's members or related entities being

registered individually for one or more functions. Refer to Section 507.

(c) Multiple entities may each register using a Coordinated Functional Registration (CFR) for one or more reliability standard(s) and/or for one or more requirements/sub-requirements within particular reliability standard(s) applicable to a specific function pursuant to a written agreement for the division of compliance responsibility. Refer to Section 508.

1.2 In the development of the NCR, NERC and the Regional Entities shall consider the following factors in determining which organizations should be placed on the NCR:

1.2.1 Owners, operators and users of the bulk power system will generally be included on the NCR. The bulk power system includes, as defined by the Regional Entity, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition;

1.2.2 A customer that receives electric service at retail and does not otherwise directly receive, sell, purchase, or transmit power over the bulk power system or own, operate, maintain, or control facilities or systems that are part of the bulk power system will not, in general, be considered a user of the bulk power system, unless the entity's actions or facilities have material impact on the bulk power system;

1.2.3 An entity directly connected to the bulk power system selling, purchasing, or transmitting electric energy over the bulk power system will generally be considered a user of the bulk power system, unless the entity's actions or facilities does not have a material impact on the bulk power system;

1.2.4 Notwithstanding the other considerations in this Section 1.2, if the consequences of an entity's actions or inactions could have a material impact on the bulk power system, that entity may be considered a user of the bulk power system; and,

1.2.5 Further guidance for registration criteria may be found in the NERC *Statement of Compliance Registry Criteria* document.

- 1.3 NERC and the Regional Entities shall use the following rules for establishing and maintaining the NCR based on the registration criteria as identified by NERC:
  - 1.3.1 NERC shall notify each organization that it is on the NCR. The entity is responsible for compliance with all the reliability standards applicable to the functions for which it is registered from the time it receives the registration notification from NERC.
  - 1.3.2 Any organization receiving such a notice may challenge its placement on the NCR according to the process in Appendix 5 *Organization Registration and Organization Certification Manual*, Section V.
  - 1.3.3 The Compliance Committee of the Board of Trustees shall promptly issue a written decision on the challenge, including the reasons for the decision.
  - 1.3.4 The decision of the Compliance Committee of the Board of Trustees shall be final unless, within 21 days of the date of the Compliance Committee of the Board of Trustees decision, the organization appeals the decision to the applicable governmental authority.
  - 1.3.5 Each entity identified on the NCR shall notify its corresponding Regional Entity(s) of any corrections, revisions, deletions, changes in ownership, corporate structure, or similar matters that affect the entity's responsibilities with respect to the reliability standards. Failure to notify will not relieve the entity from any responsibility to comply with the reliability standards or shield it from any penalties or sanctions associated with failing to comply with the standards applicable to its associated registration.
- 1.4 For all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the reliability standards to the fullest extent practical, and (2) there is no unnecessary duplication of such coverage or of required oversight of such coverage. In particular the process shall:
  - 1.4.1 Ensure that all areas are under the oversight of one and only one Reliability Coordinator.

- 1.4.2 Ensure that all Balancing Authorities and Transmission Operator entities<sup>1</sup> are under the responsibility of one and only one Reliability Coordinator.
  - 1.4.3 Ensure that all transmission facilities of the bulk power system are the responsibility and under the control of one and only one Transmission Planner, Planning Authority, and Transmission Operator.
  - 1.4.4 Ensure that all loads and generators are under the responsibility and control of one and only one Balancing Authority.
  - 1.5 NERC shall maintain the NCR of organizations responsible for meeting the requirements/sub-requirements of the reliability standards currently in effect on its Web site and shall update the NCR monthly.
2. **Entity Certification** — NERC shall provide for certification of all entities with primary reliability responsibilities requiring certification. This includes those entities that satisfy the criteria established in the NERC Provisional Certification Process. The NERC programs shall:
- 2.1 Evaluate and certify the competency of entities performing reliability functions. The entities presently expected to be certified include Reliability Coordinators, Transmission Operators, and Balancing Authorities.
  - 2.2 Evaluate and certify each applicant’s ability to meet the requirements for certification.
  - 2.3 Maintain process documentation.
  - 2.4 Maintain records of currently certified entities.
  - 2.5 Issue a certification document to the applicant that successfully demonstrates its competency to perform the evaluated functions.
3. **Delegation and Oversight**
- 3.1 NERC may delegate the responsibilities of Organization Registration and Organization Certification to Regional Entities in accordance with requirements established by NERC. Delegation will be via the delegation agreement between NERC and the Regional Entity or other applicable agreement. The Regional Entity shall administer Organization

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<sup>1</sup> Some organizations perform the listed functions (e.g., balancing authority, transmission operator) over areas that transcend the footprints of more than one reliability coordinator. Such organizations will have multiple registrations, with each such registration corresponding to that portion of the organization’s overall area that is within the footprint of a particular reliability coordinator.

Registration and Organization Certification Programs to meet NERC's programs goals and requirements subject to NERC oversight.

- 3.2 NERC shall develop and maintain a plan to ensure the continuity of Organization Registration and Organization Certification within the geographic or electrical boundaries of a Regional Entity in the event that no entity is functioning as a Regional Entity for that region, or the Regional Entity withdraws as a Regional Entity, or does not operate its Organization Registration and Organization Certification Programs in accordance with delegation agreements.
- 3.3 NERC shall develop and maintain a program to monitor and oversee the NERC Organization Registration and Organization Certification Programs activities that are delegated to each Regional Entity through a delegation agreement or other applicable agreement.
  - 3.3.1 This program shall monitor whether the Regional Entity carries out those delegated activities in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability.
  - 3.3.2 Monitoring and oversight shall be accomplished through direct participation in the Organization Registration and Organization Certification Programs with periodic reviews of documents and records of both programs.

## **502. Organization Registration and Organization Certification Program Requirements**

1. NERC shall maintain the Organization Registration and Organization Certification Programs.
  - 1.1 The roles and authority of Regional Entities in the programs are delegated from NERC pursuant to the Rules of Procedure through regional delegation agreements or other applicable agreements.
  - 1.2 Processes for the programs shall be administered by NERC and the Regional Entities. Materials that each Regional Entity uses are subject to review and approval by NERC.
  - 1.3 The appeals process for the Organization Registration and Organization Certification Programs are identified in Appendix 5 *Organization Registration and Organization Certification Manual*, Sections V and VI, respectively.
  - 1.4 The certification team membership is identified in Appendix 5 *Organization Registration and Organization Certification Manual*, Section IV.8.d.

2. To ensure consistency and fairness of the Organization Registration and Organization Certification Programs, NERC shall develop procedures to be used by all Regional Entities and NERC in accordance with the following criteria:
  - 2.1 NERC and the Regional Entities shall have data management processes and procedures that provide for confidentiality, integrity, and retention of data and information collected.
  - 2.2 Documentation used to substantiate the conclusions of the Regional Entity/ NERC related to registration and/or certification must be retained by the Regional Entity for (6) six years, unless a different retention period is otherwise identified, for the purposes of future audits of these programs.
  - 2.3 To maintain the integrity of the NERC Organization Registration and Organization Certification Programs, NERC, Regional Entities, certification team members, program audit team members (Section 506), and committee members shall maintain the confidentiality of information provided by an applicant or entities.
    - 2.3.1 NERC and the Regional Entities shall have appropriate codes of conduct and confidentiality agreements for staff, certification team, certification related committees, and certification program audit team members.
    - 2.3.2 NERC, Regional Entities, certification team members, program audit team members and committee members shall maintain the confidentiality of any registration or certification-related discussions or documents designated as confidential (see Section 1500 for types of confidential information).
    - 2.3.3 NERC, Regional Entities, certification team members, program audit team members and committee members shall treat as confidential the individual comments expressed during evaluations, program audits and report-drafting sessions.
    - 2.3.4 Copies of notes, draft reports, and other interim documents developed or used during an entity certification evaluation or program audit shall be destroyed after the public posting of a final, uncontested report.
    - 2.3.5 Information deemed by an applicant, entity, a Regional Entity, or NERC as confidential, including critical energy infrastructure information, shall not be released publicly or distributed outside of a committee or team.
    - 2.3.6 In the event that an individual violates any of the confidentiality rules set forth above, that individual and any member organization

with which the individual is associated will be subject to immediate dismissal from the audit team and may be prohibited from future participation in compliance program activities by the Regional Entity or NERC.

2.3.7 NERC shall develop and provide training in auditing skills to all individuals prior to their participation in certification evaluations. Training for certification team leaders shall be more comprehensive than the training given to industry experts, Regional Entity members and volunteers. Training for Regional Entity members and volunteers may be delegated to the Regional Entity.

2.4 An applicant that is determined to be competent to perform a function after completing all certification requirements shall be deemed certified by NERC to perform that function for which it has demonstrated full competency.

2.4.1 All NERC certified entities shall be included on the NCR.

**503. Regional Entity Implementation of Organization Registration and Organization Certification Program Requirements**

1. **Delegation** — Recognizing the Regional Entity’s knowledge of and experience with their members, NERC may delegate responsibility for Organization Registration and Organization Certification to the Regional Entity through a delegation agreement.
2. **Registration** — The following Organization Registration activities shall be managed by the Regional Entity per the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into the Rules of Procedure as Appendix 5 *Organization Registration and Organization Certification Manual*.
  - 2.1 An Entity seeking registration shall contact the Regional Entity(ies) in which it operate to become registered and, if necessary, certified.
  - 2.2 Regional entities shall verify that all Reliability Coordinators, Balancing Authorities, and Transmission Operators meet the registration requirements of Section 501(1.4).
3. **Certification** — The following Organization certification activities shall be managed by the Regional Entity in accordance with an approved delegation agreement or another applicable agreement:



- 3.1 An entity seeking certification to perform one of the functions requiring certification shall contact the Regional Entity for the region(s) in which it plans to operate to apply for certification.
- 3.2 An entity seeking certification and other affected entities shall provide all information and data requested by NERC or the Regional Entity to conduct the certification process.
- 3.3 Regional Entities shall notify NERC of all certification applicants.
- 3.4 NERC and/or the Regional Entity shall evaluate the competency of entities requiring certification to meet the NERC certification requirements.
- 3.5 NERC or the Regional Entity shall establish certification procedures to include evaluation processes, schedules and deadlines, expectations of the applicants and all entities participating in the evaluation and certification processes, and requirements for certification team members.
  - 3.5.1 The NERC / Regional Entity certification procedures will include provisions for on-site visits to the applicant's facilities to review the data collected through questionnaires, interviewing the operations and management personnel, inspecting the facilities and equipment (including requesting a demonstration of all tools identified in the certification process), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the certification process), reviewing certification documents and projected system operator work schedules, and reviewing any additional documentation needed to support the completed questionnaire or inquiries arising during the site visit.
  - 3.5.2 The NERC/ Regional Entity certification procedures will provide for preparation of a written report by the certification team, detailing any deficiencies that must be resolved prior to granting certification, along with any other recommendations for consideration by the applicant, the Regional Entity, or NERC.

#### **504. Appeals**

1. NERC shall maintain an appeals process to resolve any disputes related to registration or certification activities per the *Organization Registration and Organization Certification Manual*, which is incorporated in these rules as Appendix 5.
2. The Regional Entity registration and certification appeals process shall culminate with the regional board or a committee established by and reporting to the regional board as the final adjudicator, provided that: (1) in Texas RE (TRE), as

long as TRE is affiliated with ERCOT, the TRE Chief Compliance Office must act as the final adjudicator, and (2) where applicable, Canadian provincial governmental authorities may act as the final adjudicator in their jurisdictions. NERC shall be notified of all appeals and may observe any proceedings (Appendix 5 *Organization Registration and Organization Certification Manual*).

**505. Program Maintenance**

NERC shall maintain its program materials, including such manuals or other documents as it deems necessary, of the governing policies and procedures of the Organization Registration and Organization Certification Programs.

**506. Independent Audit of NERC Organization Registration and Organization Certification Program**

1. NERC, through the Compliance and Certification Committee, shall provide for an independent audit of its Organization Registration and Organization Certification Programs at least once every three years, or more frequently, as determined by the Board. The audit shall be conducted by independent expert auditors as selected by the Board.
2. The audit shall evaluate the success, effectiveness and consistency of the NERC Organization Registration and Organization Certification Programs.
3. The final report shall be posted by NERC for public viewing according to the Reporting and Disclosure Process in Section 408.
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response to the Board within 30 days of the final report, detailing the disposition of each and every recommendation, including an explanation of the reasons for rejecting a recommendation and an implementation plan for the recommendations accepted.

**507. Provisions Relating to Joint Registration Organizations (JRO)**

1. In addition to registering as the entity responsible for all functions that it performs itself, an entity may register as a JRO on behalf of one or more of its members or related entities for one or more functions for which such members or related entities would otherwise be required to register and, thereby, accept on behalf of such members or related entities all compliance responsibility for that function or those functions including all reporting requirements. Any entity seeking to register as a JRO must submit a written agreement with its members or related entities for all requirements/sub-requirements for the function(s) for which the entity is registering for and takes responsibility for, which would otherwise be the responsibility of one or more of its members or related entities. Neither NERC nor the Regional Entity shall be parties to any such agreement, nor shall NERC or the

Regional Entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the JRO registration.

2. The JRO registration data must include the same registration information as a normal compliance registration entry. The JRO is responsible for providing all of the information and data, including submitting reports, as needed by the Regional Entity for performing assessments of compliance.
3. The Regional Entity shall notify NERC of each JRO that the Regional Entity accepts. The notification will identify the point of contact and the function(s) being registered for on behalf of its members or related entities.
4. For purposes of compliance audits, the Regional Entity shall keep a list of all JROs. This document shall contain a list of each JRO's members or related entities and the function(s) for which the JRO is registered for that member(s) or related entity(s). It is the responsibility of the JRO to provide the Regional Entity with this information as well as the applicable JRO agreement(s).
5. The Regional Entity may request clarification of any list submitted to it that identifies the members of the JRO and may request such additional information as the Regional Entity deems appropriate.
6. The Regional Entity's acceptance of a JRO shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded the JRO will meet the registration requirements of Section 501(1.4).
7. NERC shall maintain, and post on its Web site, a JRO registry listing all JRO registrations that have been reviewed and accepted by the Regional Entity. The posting shall identify the JRO entity taking compliance responsibilities for itself and its members.
8. The JRO shall inform the Regional Entity of any changes to an existing JRO. The Regional Entity shall promptly notify NERC of each such revision.
9. Nothing in Section 507 shall preclude a member of a JRO, a related entity, or any other entity from registering on its own behalf and undertaking full compliance responsibility including reporting requirements for the reliability standards applicable to the function(s) for which the member or other entity is registering. A JRO member or related entity that registers as responsible for any reliability standard or requirement/sub-requirement of a reliability standard shall inform the JRO of its registration.

**508. Provisions Relating to Coordinated Functional Registration (CFR) Entities**

1. In addition to registering as an entity responsible for all functions that it performs itself, multiple entities may each register using a CFR for one or more reliability standard(s) and/or for one or more requirements/sub-requirements within particular reliability standard(s) applicable to a specific function. The CFR submission must include a written agreement that governs itself and clearly specifies the entities' respective compliance responsibilities. The registration of the CFR is the complete registration for each entity. Additionally, each entity shall take full compliance responsibility for those standards and/or requirements/sub-requirements it has registered for in the CFR. Neither NERC nor the Regional Entity shall be parties to any such agreement, nor shall NERC or the Regional Entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the CFR.
2. Each CFR or each individual entity within a CFR must identify a point of contact that is responsible for providing information and data, including submitting reports as needed by the Regional Entity related to the CFR registration.
3. The Regional Entity shall notify NERC of each CFR that the Regional Entity accepts.
4. NERC or the Regional Entity may request clarification of any list submitted to it that identifies the compliance responsibilities of the CFR and may request such additional information as NERC or the Regional Entity deems appropriate.
5. The Regional Entity's acceptance of that CFR shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded the CFR will meet the registration requirements of Section 501(1.4).
6. NERC shall maintain, and post on its Web site, a CFR registry listing all CFR registrations that have been accepted by NERC or by a Regional Entity. The posting shall clearly list all the reliability standards or requirements/sub-requirements thereof for which each entity of the CFR is responsible for under the CFR.
7. The point of contact shall inform the Regional Entity of any changes to an existing CFR. The Regional Entity shall promptly notify NERC of each such revision.
8. In the event of a violation of a reliability standard or of a requirement/sub requirement of a reliability standard for which an entity of a CFR is registered, that entity shall be identified in the notice of alleged violation and shall be assessed the sanction or penalty in accordance with the NERC Sanctions Guidelines. In the event a Regional Entity is not able to determine which entity(ies) is responsible for a particular reliability standard, or requirements/sub requirements thereof that has been violated, the Regional Entity shall investigate

the noncompliance in accordance with the NERC Rules of Procedure Section 400, *Compliance Enforcement*, to determine the entity(ies) to which the Regional Entity shall to issue the sanction or penalty for the violation.

9. Nothing in Section 508 shall preclude an entity registered in a CFR, or any other entity from registering on its own behalf and undertaking full compliance responsibility including reporting requirements for the reliability standards applicable to the function(s) for which the entity is registering. An entity registered in a CFR that registers as responsible for any reliability standard or requirement/sub requirement of a reliability standard shall inform the point of contact of its registration.

## SECTION 500 — ORGANIZATION REGISTRATION AND CERTIFICATION

### 501. Scope of the Organization Registration and Organization Certification Program

~~Enforcing compliance with the NERC reliability standards requires that the identity of those responsible for complying with the standards be known and that those with primary reliability responsibilities be reviewed and certified as meeting established minimum requirements for performing those tasks. NERC shall develop and maintain a compliance registry and certification program for the purpose of promoting compliance with reliability standards and enhancing the reliability of the bulk power system.~~

The purpose of the ~~compliance registry will be~~ Organization Registration Program is to clearly identify those entities that are responsible for compliance with the FERC approved reliability standards. Organizations ~~listed on the registry will be~~ that are registered are included on the NERC Compliance Registry (NCR) and are responsible for knowing the content of and for complying with ~~the NERC~~ all applicable reliability standards. ~~Organizations listed in the registry~~ Registered organizations are not, ~~nor and do they not~~ become, members of NERC or a ~~regional entity~~ Regional Entity, by virtue of being listed ~~in on~~ the compliance registry NCR. Membership in NERC is governed by Article II of NERC's bylaws; membership in a Regional Entity or regional entity reliability organization is governed by that entity's bylaws or rules.

The purpose of the Organization Certification Program is to ensure that the new entity (i.e., applicant to be an RC, BA, or TOP that is not already performing the function for which it is applying to be certified as) has the tools, processes, training, and procedures to demonstrate their ability to meet the requirements/sub requirements of all of the reliability standards applicable to the function(s) for which it is applying thereby demonstrating the ability to become certified and then operational.

Organization ~~registration and certification~~ Registration and Organization Certification may be delegated to ~~regional entities~~ Regional Entities in accordance with the procedures in this Section ~~500, 500;~~ the NERC *Organization Registration and Organization Certification Manual*, which is incorporated into these rules as Appendix ~~5, 5;~~ and, approved ~~regional entity~~ Regional Entity delegation agreements or other applicable agreements.

1. NERC Compliance Registry — NERC shall establish and maintain ~~a compliance registry~~ the NCR of the bulk power system owners, operators, and users that are subject to approved reliability standards.
  - 1.1 (a) The ~~registry~~ NCR shall set forth the identity and functions performed for each organization responsible for meeting requirements/sub-requirements of the reliability standards including: ~~reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, transmission service providers,~~

~~planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers~~ Reliability Coordinators, Balancing Authorities, Transmission Operators, Transmission Owners, Generator Operators, Generator Owners, Transmission Service Providers, Planning Authorities, Transmission Planners, Resource Planners, Load-Serving Entities, Purchasing-Selling Entities, Interchange Authorities, Reserve Sharing Groups, and Distribution Providers. Bulk power system owners, operators, and users shall provide to NERC and the applicable ~~regional entity such~~ Regional Entity information ~~as is~~ necessary to complete the registration.

(b) A generation or transmission cooperative, a joint-action agency or another organization may register as a Joint Registration Organization (JRO), in lieu of each of the JRO's members or related entities being registered individually for one or more functions. Refer to Section 507.

(c) Multiple entities may each register using a Coordinated Functional Registration (CFR) for one or more reliability standard(s) and/or for one or more requirements/sub-requirements within particular reliability standard(s) applicable to a specific function pursuant to a written agreement for the division of compliance responsibility. Refer to Section 508.

1.2 ~~NERC and regional entities assisting NERC in~~ In the development of the ~~compliance registry~~ NCR, NERC and the Regional Entities shall consider the following factors in determining which organizations should be placed ~~in~~ on the ~~registry~~ NCR:

1.2.1 Owners ~~and~~, operators and users of the bulk power system ~~facilities will generally be included in the registry;~~

~~1.2.2~~ As identified by regional entities, will generally be included on the NCR. The bulk power system includes, as defined by the Regional Entity, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher ~~will be considered part of the bulk power system;~~

~~1.2.3~~ Radial transmission facilities serving only load with one transmission source, without more, will not be considered part of the bulk power system; are generally not included in this definition;

1.2.2 ~~1.2.4~~ A customer that receives electric service at retail and does not otherwise directly receive, sell, purchase, or transmit power over the bulk power system or own, operate, maintain, or control facilities or systems that are part of the bulk power system will not,

in general, be considered a user of the bulk power system, unless the entity's actions or facilities have material impact on the bulk power system;

1.2.3 ~~1.2.5~~ An entity directly connected to the bulk power system selling, purchasing, or transmitting electric energy over the bulk power system will generally be considered a user of the bulk power system, unless the entity's actions or facilities does not have ~~no~~ material impact on the bulk power system;

1.2.4 ~~1.2.6~~ Notwithstanding the other considerations in this Section 1.2, if the consequences of an entity's actions or inactions could have a material impact on the bulk power system, that entity may be considered a user of the bulk power system; and,

~~1.2.7 (a) A generation or transmission cooperative, a joint action agency or another organization (a Joint Registration Organization or JRO) may be registered, in lieu of each of the JRO's members or related entities being registering individually, by the JRO accepting the reliability functions identified in Section 1.1 above, or (b) a JRO and its members or related entities may enter into a written agreement as to which of them will be responsible for one or more reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards, in either case in accordance with the provisions specified in Section 507 (each of (a) and (b), a "joint registration").~~

~~For purpose of this Section 501.1.2.7 and Section 507, a "related entity" is an entity whose operations in relation to the operation of the JRO make it feasible for the JRO to accept responsibility for reliability functions for which the related entity would otherwise be responsible. A non-exclusive list of examples of JROs and related entities includes (i) a balancing authority or a transmission provider as the JRO, and (ii) a load-serving entity or a distribution provider within the balancing authority's control area or receiving transmission services from the transmission provider, as the related entity.~~

1.2.5 Further guidance for registration criteria may be found in the NERC Statement of Compliance Registry Criteria document.

1.3 NERC and the ~~regional entities~~ Regional Entities shall use the following ~~procedure rules~~ for establishing and maintaining the ~~compliance registry~~ NCR based on the registration criteria as identified by NERC:



- 1.3.1 NERC shall notify each organization ~~of its intent to place the organization on the compliance registry~~ that it is on the NCR. The entity is responsible for compliance with all the reliability standards applicable to the functions for which it is registered from the time it receives the registration notification from NERC.
- 1.3.2 Any organization receiving such a notice may challenge ~~the decision to include it on the compliance registry by filing its written objection with NERC's director of compliance within 21 days stating the reasons it believes it should not be considered a bulk power system owner, operator, or user~~ its placement on the NCR according to the process in Appendix 5 Organization Registration and Organization Certification Manual, Section V.
- 1.3.3 The Compliance Committee of the Board of Trustees ~~will~~shall promptly issue a written decision on the challenge, including the reasons for the decision.
- 1.3.4 The decision of the Compliance Committee of the Board of Trustees shall be final unless, within 21 days of the date of the Compliance Committee of the Board of Trustees decision, the organization appeals the decision to the applicable governmental authority.
- ~~1.3.5 At any time a person may recommend in writing, with supporting reasons, to the director of compliance that an organization be added to or removed from the compliance registry.~~
- ~~1.3.6 The compliance registry shall be dynamic and be revised as necessary to take account of changing circumstances. NERC will take such recommendations, and other applicable information, under advisement as it determines whether an entity should be on the compliance registry.~~
- 1.3.5 ~~1.3.7~~ Each entity identified ~~in~~on the ~~registry~~NCR shall notify ~~NERC and~~ its corresponding ~~regional entity~~Regional Entity(s) of any corrections, revisions, deletions, changes in ownership, corporate structure, or similar matters that affect the entity's responsibilities with respect to the reliability standards. Failure to notify will not relieve the entity from any responsibility to comply with the reliability standards or shield it from any penalties or sanctions associated with failing to comply with ~~such~~the standards applicable to its associated registration.
- 1.4 For all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the reliability

standards to the fullest extent practical, and (2) there is no unnecessary duplication of such coverage or of required oversight of such coverage. In particular the process shall:

- 1.4.1 Ensure that all areas are under the oversight of one and only one ~~reliability coordinator~~ Reliability Coordinator.
- 1.4.2 Ensure that all ~~balancing authorities and transmission operator~~ Balancing Authorities and Transmission Operator entities<sup>1</sup> are under the responsibility of one and only one ~~reliability coordinator~~ Reliability Coordinator.
- 1.4.3 Ensure that all transmission ~~elements~~ facilities of the bulk power system are the responsibility and under the control of one and only one ~~transmission planner, planning authority, and transmission operator~~ Transmission Planner, Planning Authority, and Transmission Operator.
- 1.4.4 Ensure that all loads and generators are under the responsibility and control of one and only one ~~balancing authority~~ Balancing Authority.
- 1.5 NERC shall maintain ~~publicly available process documentation~~ the NCR of organizations responsible for meeting the requirements/sub-requirements of the reliability standards currently in effect on its Web site and shall update the ~~compliance registry~~ NCR monthly.
2. **Entity Certification** — NERC shall provide for certification of all entities with primary reliability responsibilities requiring certification ~~as~~ This includes those entities that satisfy the criteria established in the NERC ~~reliability standards~~ Provisional Certification Process. The NERC ~~program~~ programs shall:
  - 2.1 Evaluate and certify the competency of entities performing reliability functions. The entities presently expected to be certified include ~~reliability coordinators, transmission operators, and balancing authorities~~. Other entities may be added, as required, by approved reliability standards. Reliability Coordinators, Transmission Operators, and Balancing Authorities.

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<sup>1</sup> Some organizations perform the listed functions (e.g., balancing authority, transmission operator) over areas that transcend the footprints of more than one reliability coordinator. Such organizations will have multiple registrations, with each such registration corresponding to that portion of the organization's overall area that is within the footprint of a particular reliability coordinator.

- 2.2 ~~Certify~~Evaluate and certify each ~~entity~~applicant's ability to meet the ~~minimum~~ requirements ~~established by the NERC reliability standards for each function~~for certification.
- 2.3 Maintain process documentation.
- 2.4 Maintain records of currently certified entities.
- 2.5 Issue a certification document to the applicant that successfully demonstrates its competency to perform the evaluated functions.

### 3. Delegation and Oversight

- 3.1 NERC may delegate the responsibilities of ~~registration and certification to regional entities~~Organization Registration and Organization Certification to Regional Entities in accordance with requirements established by NERC. Delegation will be via the delegation agreement between NERC and the ~~regional entity~~Regional Entity or other applicable agreement. The ~~regional entity~~Regional Entity shall administer ~~an organization registration and certification program~~Organization Registration and Organization Certification Programs to meet NERC's ~~program~~programs goals and requirements subject to NERC oversight.
- 3.2 NERC shall develop and maintain a plan to ensure the continuity of ~~organization registration and certification~~Organization Registration and Organization Certification within the geographic or electrical boundaries of a ~~regional entity~~Regional Entity in the event that no entity is ~~certified~~functioning as a ~~regional entity~~Regional Entity for that region, or the ~~regional entity~~Regional Entity withdraws as a ~~regional entity~~Regional Entity, or does not operate its ~~organization registration and certification program~~Organization Registration and Organization Certification Programs in accordance with delegation agreements ~~and other requirements~~.
- 3.3 NERC shall develop and maintain a program to monitor and oversee ~~each regional entity registration and certification program that is~~the NERC Organization Registration and Organization Certification Programs activities that are delegated ~~authority to each Regional Entity~~ through a delegation agreement or other applicable agreement.
  - 3.3.1 This program shall monitor whether the ~~regional entity~~Regional Entity carries out ~~its organization registration and certification program~~those delegated activities in accordance with NERC requirements, and whether there is consistency, fairness of administration, and comparability ~~of outcomes within each regional entity's certification and registration program and among all of the programs.~~

3.3.2 Monitoring and oversight shall be accomplished through direct participation in ~~certification audits and~~ the Organization Registration and Organization Certification Programs with periodic reviews of ~~program~~ documents and records ~~of both programs~~.

**502. ~~ERO~~ Organization Registration and Organization Certification Program Requirements**

1. NERC shall ~~have final authority in all matters constituting the organization registration and certification program~~ maintain the Organization Registration and Organization Certification Programs.
  - 1.1 The roles and authority of ~~regional entities~~ Regional Entities in the ~~program~~ programs are delegated from NERC pursuant to the ~~rules~~ Rules of ~~procedure~~ Procedure through regional delegation agreements or other applicable agreements.
  - 1.2 Processes for the ~~program~~ programs shall be ~~owned by NERC; materials that each regional entity may use to participate in the program may be adapted by that organization subject to prior~~ administered by NERC and the Regional Entities. Materials that each Regional Entity uses are subject to review and approval by NERC.
  - ~~1.3 Regional entities participating in the program shall perform their roles and responsibilities to meet NERC's requirements, as specified in the rules of procedure or NERC approved materials, including requirements for quality, thoroughness, timeliness, accuracy, efficiency, cost-effectiveness, and participation.~~
  - ~~1.4 Regional entity's decisions to grant or deny certifications shall be subject to NERC review and action, including modification or reversal.~~
  - 1.3 ~~1.5~~ Regional entity's decisions with respect to the use of the ~~transitional certification processes, as now provided for within the NERC~~ The appeals process for the Organization Registration and ~~Certification Manual (Appendix 5), are subject to NERC review and action, including modification or reversal, should NERC deem such review or action warranted.~~ Organization Certification Programs are identified in Appendix 5 Organization Registration and Organization Certification Manual, Sections V and VI, respectively.
  - ~~1.6 Notwithstanding an entity's interest and right to object to the makeup of the certification team that will conduct the review of that entity, NERC, or the regional entity as authorized by NERC, will have final authority on the membership and member roles of that team.~~
  - ~~1.7 NERC, or the regional entity as authorized by NERC, shall make all assessments and decisions with respect to all aspects of the organization~~

~~registration and certification program, including the completeness and accuracy of entities' applications.~~

1.4 The certification team membership is identified in Appendix 5 Organization Registration and Organization Certification Manual, Section IV.8.d.

2. To ensure consistency and fairness of the ~~program~~Organization Registration and Organization Certification Programs, NERC shall develop procedures to be used by all ~~regional entities in carrying out their organization registration and certification programs.~~Regional Entities and NERC in accordance with the following criteria:

2.1 NERC and the ~~regional entities~~Regional Entities shall have data management processes and procedures that provide for confidentiality, integrity, and retention of data and information collected.

2.2 Documentation used to substantiate the conclusions of the Regional Entity/ NERC related to registration and/or certification must be retained by the Regional Entity for (6) six years, unless a different retention period is otherwise identified, for the purposes of future audits of these programs.

2.3 ~~2.2~~-To maintain the integrity of the NERC Organization Registration and Organization Certification ~~Program~~Programs, NERC, ~~regional entities~~Regional Entities, certification team members, program audit team members (Section 506), and committee members shall maintain the confidentiality of information provided by an applicant or entities ~~in order to become registered or certified.~~

2.3.1 ~~2.2.1~~-NERC and the ~~regional entities~~Regional Entities shall have appropriate codes of conduct and confidentiality agreements for staff ~~and other, certification audit participants. Individuals not bound by ERO or approved regional entity codes of conduct and who serve on team,~~ certification- related committees ~~or audit teams shall sign an ERO confidentiality agreement prior to participating on the committee or,~~ and certification program audit team members.

2.3.2 ~~2.2.2~~ Staff, ~~committee, and~~NERC, Regional Entities, certification team members, program audit team members and committee members shall maintain the confidentiality of any registration or certification-related discussions or documents ~~that are~~ designated as confidential (see Section 1500 for types of confidential information). ~~Staff, committee, and audit team members shall treat as confidential the individual comments expressed during audits and report drafting sessions.~~

2.3.3 ~~NERC, Regional Entities, certification team members, program audit team members and committee members shall treat as confidential the individual comments expressed during evaluations, program audits and report-drafting sessions.~~

2.3.4 ~~2.2.3~~ Copies of notes, draft reports, and other interim documents developed or used during ~~an entity~~ certification ~~evaluation or program~~ audit shall be destroyed after the public posting of a final, uncontested report.

2.3.5 ~~2.2.4~~ Information deemed by an ~~applicant,~~ entity, a ~~regional entity~~ Regional Entity, or NERC as confidential ~~or, including~~ critical energy infrastructure information, shall not be released publicly or distributed outside of a committee or team, ~~or released publicly.~~

2.3.6 ~~2.2.5~~ In the event that ~~a staff, committee, or audit team member~~ an individual violates any of the confidentiality rules set forth above, ~~the staff, committee, or audit team member~~ that individual and any member organization with which the individual is associated ~~may~~ will be subject to immediate dismissal from the audit team and may be prohibited from future participation in compliance program activities by the ~~regional entity~~ Regional Entity or NERC.

2.3.7 ~~2.2.6~~ NERC shall develop and provide training in auditing skills to all individuals ~~who participate~~ prior to their participation in certification ~~audit~~ evaluations. Training for ~~ERO and regional entity personnel, as well as audit~~ certification team leaders, shall be more comprehensive than the training given to industry experts, ~~regional entity~~ Regional Entity members, and volunteers. Training for ~~regional entity~~ Regional Entity members and volunteers may be delegated to the ~~regional entity~~ Regional Entity.

2.4 ~~2.3~~ An ~~entity~~ applicant that is determined to be competent to perform a function after completing all certification requirements shall be deemed certified by NERC to perform that function for which it has demonstrated full competency.

~~2.3.1~~ An entity deemed certified by NERC to perform a function shall be considered and may be referred to, for example, as a certified transmission operator, certified balancing authority, or certified reliability coordinator. Only entities that have received such certifications from NERC shall be so designated.

~~2.3.2~~ NERC shall award certification to an entity only after it has demonstrated full competency to all certification requirements. An

~~entity shall be awarded certification only for each function for which it has demonstrated full competency~~

2.4.1 All NERC certified entities shall be included on the NCR.

**503. Regional Entity Implementation of Organization Registration and Organization Certification Program Requirements**

1. **Delegation** — Recognizing the ~~regional entity~~Regional Entity's knowledge of and experience with their members, NERC may delegate responsibility for ~~organization registration and certification to the regional entity~~Organization Registration and Organization Certification to the Regional Entity through a delegation agreement ~~or such responsibilities may be established through another applicable agreement.~~
2. **Registration** — The following ~~organization registration~~Organization Registration activities shall be ~~performed~~managed by the ~~regional entity in accordance with~~Regional Entity per the NERC *Organization Registration and Organization Certification Procedures Manual*, which ~~are~~is incorporated into the Rules of Procedure as Appendix ~~5.5~~ Organization Registration and Organization Certification Manual.
  - 2.1 ~~Entities~~An Entity seeking registration shall contact the ~~regional entity~~Regional Entity(ies) in which ~~they~~it operate to become registered and, if necessary, certified.
  - 2.2 Regional entities shall verify that all ~~balancing authorities and transmission operators are under the responsibility of one and only one reliability coordinator~~Reliability Coordinators, Balancing Authorities, and Transmission Operators meet the registration requirements of Section 501(1.4).
  - 2.3 ~~Regional entities shall verify that all transmission elements of the bulk power system operated within their geographic boundaries are under the authority and control of one and only one transmission planner, planning authority, transmission owner, and transmission operator.~~
  - 2.4 ~~Regional entities shall verify that all loads and generation sources within their geographic boundaries are under the authority and control of one and only one balancing authority.~~
  - 2.5 ~~Regional entities shall verify that no geographical or electrical areas of the bulk power system within their boundaries have duplication of coverage or are lacking an entity to perform required duties and tasks as identified in the reliability standards.~~

3. **Certification** — The following ~~organization~~Organization certification activities shall be ~~performed~~managed by the ~~regional entity~~Regional Entity in accordance with an approved ~~ERO~~ delegation agreement or another applicable agreement:
- 3.1 ~~Entities~~An entity seeking certification to perform one of the functions requiring certification shall contact the ~~regional entity~~Regional Entity for the region(s) in which ~~they~~it plans to operate to apply for certification. ~~NERC shall have oversight of the regional entity's certification activities and processes.~~
- 3.2 ~~Entities~~An entity seeking certification and other affected ~~operators~~entities shall provide all information and data requested by NERC or the ~~regional entity~~Regional Entity to conduct the certification process, ~~in accordance with 18 C.F.R. Section 39.2 in the United States.~~
- ~~3.3 — Regional entities shall contact entities directly and provide notice of the requirement to be certified by NERC and initiate the process to certify any entities that do not voluntarily contact the regional entity or NERC.~~
- ~~3.3~~ 3.4 Regional ~~entities~~Entities shall notify NERC of all certification applicants, ~~including those not voluntarily seeking certification.~~
- 3.4 NERC and/or the Regional Entity shall evaluate the competency of entities requiring certification to meet the NERC certification requirements.
- 3.5 ~~The regional entity~~NERC or the Regional Entity shall establish certification procedures to include ~~audit~~evaluation processes, schedules and deadlines, expectations of the applicants and all entities participating in the ~~audit~~evaluation and certification processes, and requirements for certification ~~auditors~~team members.
- 3.5.1 The ~~regional entity~~NERC / Regional Entity certification procedures will include provisions for on-site visits to the applicant's facilities to review the data collected through questionnaires, interviewing the operations and management personnel, inspecting the facilities and equipment (~~and~~including requesting a demonstration of all tools identified in the certification ~~standard~~process), reviewing all necessary documents and data (including all agreements, processes, and procedures identified in the certification ~~standard~~process), reviewing certification documents and projected system operator work schedules, and reviewing any additional documentation ~~that is~~ needed to support the completed questionnaire or inquiries arising during the site visit.
- ~~3.5.2 — All industry experts and regional members participating in certification audits shall successfully complete appropriate training~~



~~provided by NERC or the regional entity prior to performing an audit.~~

~~3.5.2~~ ~~3.5.3~~ The ~~regional entity~~NERC/ Regional Entity certification procedures will provide for preparation of a written report by the ~~audit~~certification team, detailing any deficiencies that must be resolved prior to granting certification, along with any other recommendations for consideration by the ~~entity~~applicant, the ~~regional entity~~Regional Entity, or NERC.

~~3.5.4—The regional entity shall evaluate the competency of entities requiring certification to meet the minimum requirements established by the standards for each such function based on the requirements established by NERC.~~

#### 504. Appeals

1. NERC shall maintain an appeals process to resolve any disputes related to registration or certification activities (~~per the Organization Registration and Organization Certification Manual—, which is incorporated in these rules as~~ Appendix ~~5~~5).
2. ~~Each regional entity with delegated responsibilities shall establish and maintain a fair, independent, and nondiscriminatory appeals process. The regional entity~~The Regional Entity registration and certification appeals process shall culminate with the regional board or a committee established by and reporting to the regional board as the final adjudicator, provided that: (1) in ~~ERCOT, the Public Utility Commission of Texas may~~Texas RE (TRE), as long as TRE is affiliated with ERCOT, the TRE Chief Compliance Office must act as the final adjudicator, and (2) where applicable, Canadian provincial governmental authorities may act as the final adjudicator in their jurisdictions. NERC shall be notified of all appeals and may observe any proceedings: (Appendix 5 Organization Registration and Organization Certification Manual).

#### 505. Program Maintenance

NERC shall maintain its program materials, including such manuals or other documents as it deems necessary, of the governing policies and procedures of the ~~organization registration and certification program~~Organization Registration and Organization Certification Programs.

#### 506. Independent Audit of NERC Organization Registration and Organization Certification Program

1. NERC , through the Compliance and Certification Committee, shall provide for an independent audit of its ~~organization certification program~~Organization Registration and Organization Certification Programs at least once every three

years, or more frequently, as determined by the ~~board~~Board. The audit shall be conducted by independent expert auditors as selected by the ~~board~~Board.

2. The audit shall evaluate the success ~~and effectiveness of the NERC organization certification program in achieving its mission,~~ effectiveness and consistency of the NERC Organization Registration and Organization Certification Programs.
3. The final report shall be posted by NERC for public viewing according to the ~~reporting~~Reporting and ~~disclosure process~~Disclosure Process in Section 408.
4. If the audit report includes recommendations to improve the program, the administrators of the program shall provide a written response ~~and plan~~ to the ~~board~~Board within 30 days of the final report, detailing the disposition of each and every recommendation, including an explanation of the reasons for rejecting a recommendation and an implementation plan for the recommendations accepted.

507. **Provisions Relating to Joint ~~Registrations and Joint~~ Registration Organizations (JRO)**

1. ~~1. — Registration by a JRO.~~ In addition to registering as the entity responsible for all functions that ~~a JRO~~it performs itself, ~~a JRO~~an entity may register as a JRO on behalf of one or more of its members or related entities for one or more functions ~~as to~~for which such members or related entities would otherwise be required to register, and, thereby, accept on behalf of such members or related entities all compliance responsibility, for that function or those functions including all reporting requirements, ~~for all requirements of reliability standards applicable to the function or functions for which the JRO has registered on behalf of its members or related entities.~~ Any entity seeking to register as a JRO ~~for any or all requirements identified in the reliability standards that~~must submit a written agreement with its members or related entities for all requirements/sub-requirements for the function(s) for which the entity is registering for and takes responsibility for, which would otherwise be the responsibility of one or more of its members or related entities ~~shall provide to the applicable regional entity information, in the form requested by the regional entity, sufficient to identify whether the entity or its member(s) or related entities will be responsible for compliance with each provision of the reliability standards for the applicable functional responsibilities covered by the joint registration. The JRO must identify its primary compliance contact. The JRO primary compliance contact is responsible for providing all of the information and data, including submitting reports, as needed by the regional entity for performing assessments of compliance.~~ Neither NERC nor the Regional Entity shall be parties to any such agreement, nor shall NERC or the Regional Entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the JRO registration.

- ~~2. — Joint registration pursuant to written agreement. Where a JRO and any of its members or related entities agree, in writing, upon a~~ division of compliance

~~responsibility among them for one or more reliability standard(s) applicable to a particular function, and/or for one or more requirements within particular reliability standard(s), both the JRO and such member(s) or related entity(ies) shall register as an organization responsible for that function. The JRO and its member(s) or related entity(ies) must have a written agreement that clearly specifies their respective responsibilities, which shall be submitted as part of the joint registration. Neither NERC nor the regional entity shall be parties to any such agreement between a JRO and its member or related entity(ies), nor shall NERC or the regional entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the joint registration.~~

2. The JRO registration data must include the same registration information as a normal compliance registration entry. The JRO is responsible for providing all of the information and data, including submitting reports, as needed by the Regional Entity for performing assessments of compliance.
3. The Regional Entity shall notify NERC of each JRO that the Regional Entity accepts. The notification will identify the point of contact and the function(s) being registered for on behalf of its members or related entities.
4. For purposes of compliance audits, the Regional Entity shall keep a list of all JROs. This document shall contain a list of each JRO's members or related entities and the function(s) for which the JRO is registered for that member(s) or related entity(s). It is the responsibility of the JRO to provide the Regional Entity with this information as well as the applicable JRO agreement(s).
5. ~~3.~~ NERC or the regional entityThe Regional Entity may request clarification of any list submitted to it that identifies the ~~compliance responsibilities~~members of the JRO and ~~its member(s) or related entity(ies), and~~ may request such additional information as ~~NERC or the regional entity~~Regional Entity deems appropriate.
6. ~~4.~~ The regional entity shall notify NERC of each joint registration that the regional entity accepts. The regional entityThe Regional Entity's acceptance of a joint registration a JRO shall be a representation by the ~~regional entity~~Regional Entity to NERC that the ~~regional entity~~Regional Entity has concluded the jointJRO will meet the registration ~~will result in (1) no areas lacking any entities to perform the duties and tasks identified in and required by the reliability standards, and (2) no unnecessary duplication of such coverage of areas by entities to perform the duties and task identified in and required by the reliability standards or of required oversight of such coverage~~requirements of Section 501(1.4).
7. ~~5.~~ NERC shall maintain, and shall post on its webWeb site, a Joint Registration OrganizationJRO registry listing all jointJRO registrations that have been reviewed and accepted by ~~NERC or by a regional entity and the reliability~~

~~standards or requirements thereof for which each JRO and each of its members or related entities is responsible under the joint registration. the Regional Entity. The postings on NERC's web site posting shall clearly identify the JRO entity taking compliance responsibilities of the JRO for itself and of each of its member(s) or related entit(ies). Such postings are intended to enable reliability coordinators and other system operators to be fully aware of responsibilities and chains of command in order to respond quickly and decisively to system operation events its members.~~

~~6. — Annually following submission of a joint registration, the JRO shall provide the regional entity with a list, in a form specified by the regional entity, that identifies the members or related entities and the functions for which the JRO has registered on behalf of such members or related entities and for which the JRO assumes compliance responsibility. Additionally, a JRO shall provide a revised list of compliance responsibilities to the regional entity each time the JRO accepts additional compliance responsibilities for a member or related entity or for a new member or related entity and each time that any compliance reliability reverts from the JRO to a member or related entity. The regional entity shall promptly notify NERC of each such revision.~~

~~7. — In the event of a violation of a reliability standard or of a requirement of a reliability standard, the JRO or its member or related entity identified in the Joint Registration Organization registry as responsible for such reliability standard or requirement shall be identified in the notice of alleged violation and shall be assessed the sanction or penalty for the violation. In accordance with the NERC *Sanctions Guidelines*, for a violation that is attributable to a member or related entity that is registered under the joint registration, the penalty or sanction imposed for the violation will bear reasonable relation to the violation as incurred by that member or related entity and not the JRO. In the event a regional entity is not able to determine, based on the joint registration and the annual or other revised list submitted by the JRO, which entity is responsible for a particular reliability standard or requirement thereof that has been violated, the regional entity shall issue the notice of alleged violation to, and shall impose any sanction or penalty on, the JRO. NERC and the regional entity shall have no responsibility for any allocation or collection of penalties or sanctions between or among the JRO and its member(s) or related entit(ies).~~

8. The JRO shall inform the Regional Entity of any changes to an existing JRO. The Regional Entity shall promptly notify NERC of each such revision.

~~8. — **Individual member registration.** Nothing in ~~this~~ Section 507 shall preclude a member of a JRO, a related entity, or any other entity, from registering on its own behalf and undertaking full compliance responsibility, including reporting requirements, for the reliability standards applicable to the function(s) for which the member or other entity is registering. A JRO member or related entity that registers as responsible for any reliability standard or requirement sub-requirement of a reliability ~~standards~~ standard shall inform the JRO of its registration.~~

**508. Provisions Relating to Coordinated Functional Registration (CFR) Entities**

1. In addition to registering as an entity responsible for all functions that it performs itself, multiple entities may each register using a CFR for one or more reliability standard(s) and/or for one or more requirements/sub-requirements within particular reliability standard(s) applicable to a specific function. The CFR submission must include a written agreement that governs itself and clearly specifies the entities' respective compliance responsibilities. The registration of the CFR is the complete registration for each entity. Additionally, each entity shall take full compliance responsibility for those standards and/or requirements/sub-requirements it has registered for in the CFR. Neither NERC nor the Regional Entity shall be parties to any such agreement, nor shall NERC or the Regional Entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the CFR.
2. Each CFR or each individual entity within a CFR must identify a point of contact that is responsible for providing information and data, including submitting reports as needed by the Regional Entity related to the CFR registration.
3. The Regional Entity shall notify NERC of each CFR that the Regional Entity accepts.
4. NERC or the Regional Entity may request clarification of any list submitted to it that identifies the compliance responsibilities of the CFR and may request such additional information as NERC or the Regional Entity deems appropriate.
5. The Regional Entity's acceptance of that CFR shall be a representation by the Regional Entity to NERC that the Regional Entity has concluded the CFR will meet the registration requirements of Section 501(1.4).
6. NERC shall maintain, and post on its Web site, a CFR registry listing all CFR registrations that have been accepted by NERC or by a Regional Entity. The posting shall clearly list all the reliability standards or requirements/sub-requirements thereof for which each entity of the CFR is responsible for under the CFR.
7. The point of contact shall inform the Regional Entity of any changes to an existing CFR. The Regional Entity shall promptly notify NERC of each such revision.
8. In the event of a violation of a reliability standard or of a requirement/sub requirement of a reliability standard for which an entity of a CFR is registered, that entity shall be identified in the notice of alleged violation and shall be assessed the sanction or penalty in accordance with the NERC Sanctions

Guidelines. In the event a Regional Entity is not able to determine which entity(ies) is responsible for a particular reliability standard, or requirements/sub requirements thereof that has been violated, the Regional Entity shall investigate the noncompliance in accordance with the NERC Rules of Procedure Section 400, Compliance Enforcement, to determine the entity(ies) to which the Regional Entity shall to issue the sanction or penalty for the violation.

9. Nothing in Section 508 shall preclude an entity registered in a CFR, or any other entity from registering on its own behalf and undertaking full compliance responsibility including reporting requirements for the reliability standards applicable to the function(s) for which the entity is registering. An entity registered in a CFR that registers as responsible for any reliability standard or requirement/sub requirement of a reliability standard shall inform the point of contact of its registration.

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Description	RoP-500 for CCC approval 100609
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Padding cell	

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Deletions	264
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Format changed	0
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## **ATTACHMENT 2**

Clean and Redline Version of Appendix 5A: Organization Registration and Organization  
Certification Manual



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# Appendix 5

# Organization Registration and Organization Certification Manual

10/6/09

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## Section I — Executive Summary

### Overview

The purpose of this document is twofold: (1) to define the process utilized in the Organization Registration Program by identifying which functional entities must register as owners, operators, and users of the bulk power system for compliance with reliability standards; and (2) to define the process utilized in the Organization Certification Program for certifying the following entities: Reliability Coordinator (RC), Balancing Authority (BA), and Transmission Operator (TOP). The NERC Compliance and Certification Committee (CCC) is responsible for approving and forwarding these processes to the NERC Board of Trustees for its approval. Where a proposal for revisions to these processes comes to the Board of Trustees from sources other than the CCC, the Board of Trustees will seek the concurrence of the CCC before taking action on the proposal.

### To Whom Does This Document Apply?

All industry participants responsible for or intending to be responsible for, the following functions must register with NERC through the Organization Registration Process. The entities are defined in the NERC Glossary of Terms used in reliability standards with responsibilities designated by the individual standards.

	<b>Entities that Must Register</b>	<b>Entities that Need to be Certified</b>
Reliability Coordinator (RC)	√	√
Transmission Operator (TOP)	√	√
Balancing Authority (BA)	√	√
Planning Coordinator (PC)	√	
Transmission Planner (TP)	√	
Transmission Service Provider (TSP)	√	
Transmission Owner (TO)	√	
Resource Planner (RP)	√	
Distribution Provider (DP)	√	
Generator Owner (GO)	√	
Generator Operator (GOP)	√	
Load-Serving Entity (LSE)	√	
Purchasing-Selling Entity (PSE)	√	
Interchange Authority (IA)	√	
Reserve Sharing Group (RSG)	√	

### **When did These Processes Begin?**

The initial registration process began in January of 2006. Registration of new entities is an ongoing process. If a Registered Entity's information changes, these changes must be submitted to the applicable Regional Entity(s).

Certification is ongoing for new entities in accordance with Section IV of this manual.

### **Where to Access and Submit Form(s)?**

Registration and certification forms are provided on each Regional Entity's [website](#). Completed forms are to be sent electronically to the compliance and certification manager of the applicable Regional Entity(s). It is desirable that entities operate within a single Regional Entity reliability region; however, if an entity operates in more than one Region, separate registration applications must be completed and submitted to each of the Regional Entities.

### **Roles and Responsibilities**

The following is a high-level overview of the roles and responsibilities in the registration and certification processes:

#### **NERC**

1. Oversight of entity processes performed by the Regional Entities, including:
  - a. Governance per the Regional Entity's delegation agreement with NERC.
  - b. Coordination of process execution when an entity is registering and/or certifying with multiple Regional Entities.
2. Manage each entity's NERC Compliance Registry identification number (NERC ID) including:
  - a. Sending a registration or certification letter that contains the NERC ID to the applicable Regional Entity(ies) for review and approval. If the Regional Entity(ies) agrees with all the information provided, it will notify NERC to issue the NERC ID to the registered entity and will send a copy of the notification being provided to the Regional Entity(ies).
  - b. Ensuring each entity has only one NERC ID for all Regional Entities in which registered.
3. Make modeling changes based on registration information.
4. Maintain accurate registration and certification records including granting certification certificates for the entity(ies) responsible for compliance (including JRO/CFR).
5. Maintain published up-to-date list of registered entities (i.e. the NERC Compliance Registry) on the NERC website.

#### **Regional Entity**

1. Performs data collection and mapping of Bulk Power System facilities and those facilities that have a material impact on the Bulk Power System within its Regional Entity defined reliability region boundaries.
2. Approves or disapproves entity registration applications.

3. Reviews entity certification applications for completeness.
4. Notifies NERC of entities registered with the Regional Entity.
5. Approves or denies Certification Team (CT) recommendations and notifies the entity and NERC of the decision.
6. Provides leadership to the CT throughout the certification process.

**Entity Submitting the Application**

1. Completes and submits registration and/or certification application.
2. Submits updates to registration and/or certification information as necessary and/or requested.
3. Responds to Regional Entity and/or NERC questions pertaining to registration and/or certification.
4. Provides documentation or other evidence requested or required to verify compliance with certification requirements.

## Section II — Introduction to Organization Registration and Organization Certification Processes

The processes utilized to implement the Organization Registration and Organization Certification Programs are administered by each Regional Entity. Pursuant to its delegation agreement with NERC, each Regional Entity is responsible for registering and certifying industry participants within its Regional Entity reliability region boundaries. Each Regional Entity must use the following NERC processes.

### **Organization Registration — Entities Required to Register**

All industry participants responsible for one or more of the functions below must register for each function through the Organization Registration Program. These entities are defined in the NERC Glossary of Terms used in reliability standards with responsibilities designated by the individual standards and the NERC *Statement of Compliance Registry Criteria* document.

- Reliability Coordinator
- Transmission Operator
- Balancing Authority
- Planning Coordinator
- Transmission Planner
- Transmission Service Provider
- Transmission Owner
- Resource Planner
- Distribution Provider
- Generator Owner
- Generator Operator
- Load-Serving Entity
- Purchasing-Selling Entity
- Interchange Authority
- Reserve Sharing Group

The registration procedure is in Section III of this manual.

### **Organization Certification**

All entities registered in the NERC Compliance Registry (NCR) for the RC, TOP, and/or BA functions shall be certified. Certification requires the entity to start operation within 12 months of being NERC certified. This certification process is described in Section IV of this manual.

## Section III — Organization Registration Process

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### Purpose and Scope

The purpose and scope of this process is to provide guidance on how a user, owner, and/or operator of the bulk power system should be registered in the NCR.

### Overview

Section 39.2 of the Commission’s regulations, and Title 18 of the C.F.R. § 39.2, requires each owner, operator, and user of the bulk power system to be registered with NERC and to comply with approved reliability standards.

Owners, operators, and users of the bulk power system will be registered by function(s) and are:

1. Responsible for compliance with all applicable requirements/sub-requirements within reliability standards approved by applicable government authorities, for the applicable functions for which the applicable entity is registered; and,
2. Subject to the compliance monitoring and enforcement requirements of Section 400 of the Rules of Procedure.

See Figure 1 *Organization Registration Process Overview*.

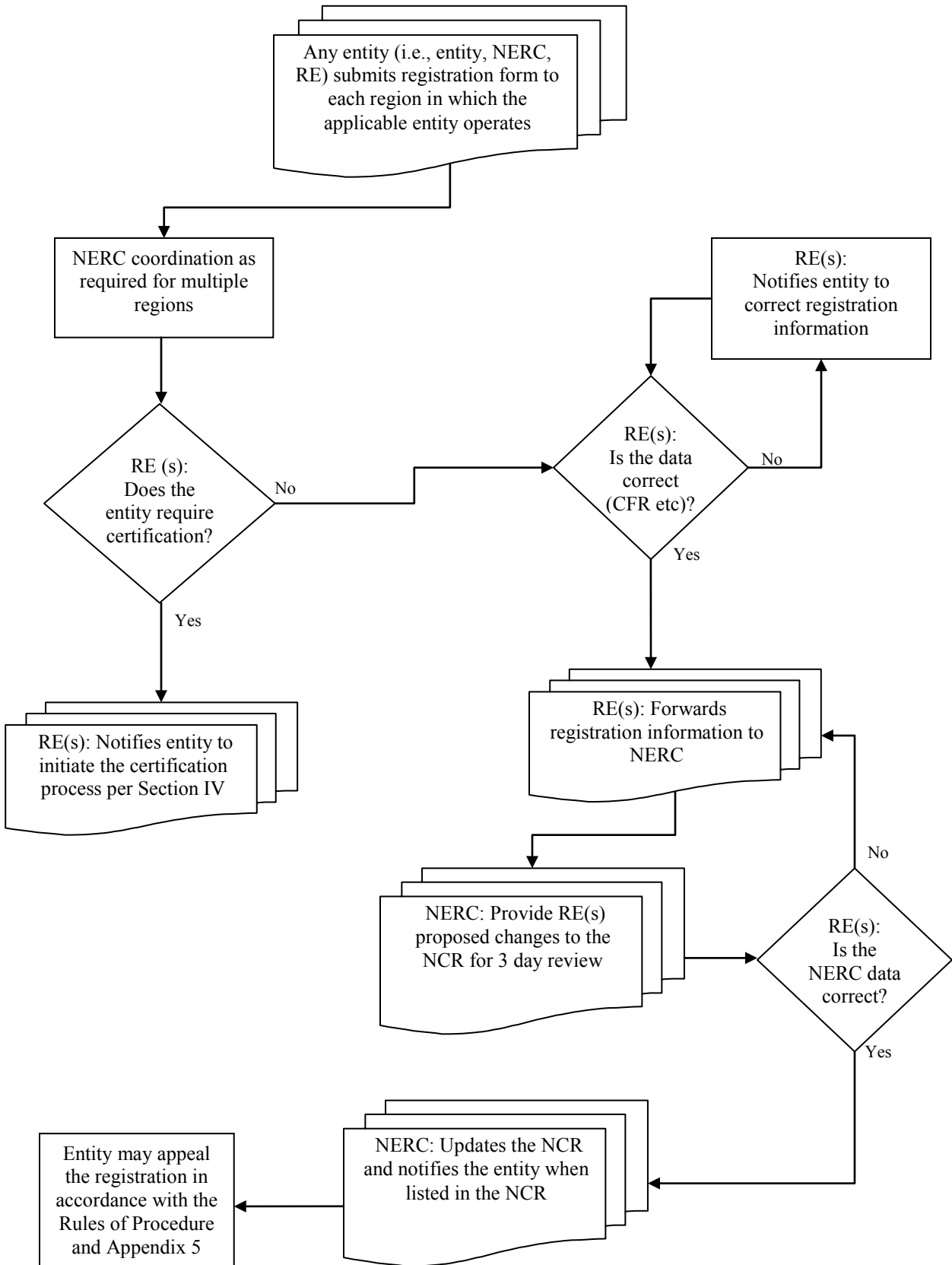
### Organization Registration Process

1. Applicable entities shall begin the registration process by submitting a completed registration application to the Regional Entity(ies) of the reliability region(s) where the entity intends to perform its function(s) (registration forms are provided on each Regional Entity’s [website](#)).
  - a. At any time an entity may recommend in writing, with supporting documentation, to the Regional Entity(ies) that an entity be added to or removed from the compliance registry.
  - b. The registration process for an entity may also be initiated by a Regional Entity, NERC, or applicable governmental authority.
2. NERC shall coordinate registration of entities that are required to register with multiple Regional Entities in order to ensure consistency of the registration process.
3. For entities that are required to be certified, the applicable Regional Entity(ies) shall ensure that the registration information provided is accurate for updating the NCR per items 4 through 12 below and notifies the entity to initiate the certification process per Section IV of this manual.
4. Entities that have a NERC ID shall use it on the form.
  - a. If an entity does not have a NERC ID, NERC shall assign one.
  - b. An entity responsible for more than one function will use a single NERC ID.

5. Regional Entities shall evaluate the submitted information and determine if the information is complete/correct. If the information is not complete/correct, the entity will be notified to complete/correct or clarify the registration information.
6. A single entity must register for all functions that it performs itself. In addition, that entity may register as a Joint Registration Organization (JRO) on behalf of one or more of its members or related entities for one or more functions for which such members or related entities would otherwise be required to register and, thereby, accept on behalf of such members or related entities all compliance responsibility for all requirements/sub-requirements of reliability standards applicable to that function or those functions including reporting requirements.(Rules of Procedure Section 507)
7. Multiple entities may each register using a Coordinated Functional Registration (CFR) for one or more reliability standard(s) and/or for one or more requirements/sub-requirements within particular reliability standard(s) applicable to a specific function.(Rules of Procedure Section 508)
8. In completing the regional entity responsibilities for the registration process, the following are key items the Regional Entity must verify:
  - a. That Regional Entity registrations meet the geographical and electrical registration boundaries requirements of the Rules of Procedure Section 501(1.4).
  - b. The registration submission includes all data requested by NERC that is necessary for accurately identifying and contacting the registered entity.
9. The Regional Entity shall forward all registration information to NERC:
  - a. NERC forwards the proposed additions or changes to the NCR to the Regional Entity for review and comments.
  - b. The Regional Entity has 5 working days to respond to the proposed changes.
  - c. If NERC does not receive any comments, the NCR will be revised.
10. NERC updates the NCR and notifies the applicable entity(ies) within 5 days of the update.
11. The entity may appeal the registration in accordance with the Rules of Procedure Section 500 and Section V of Appendix 5.
12. The NCR shall be dynamic and will be revised as necessary to take account of changing circumstances such as corrections, revisions, and or deletions. Per the Regional Entity's delegation agreement, the Regional Entity will take any recommendation received under Section 1.a, and other applicable information, under advisement as it determines whether an entity should be on the NCR.
  - a. Each entity identified in the NCR shall notify its corresponding Regional Entity and/or NERC of any corrections, revisions, deletions, changes in ownership, corporate structure, or similar matters that affect the entity's responsibilities with respect to the reliability standards. Failure to notify will not relieve the entity from any responsibility to comply with the reliability standards or shield it from any penalties or sanctions associated with failing to comply with the standards. (Rules of Procedure Section 400).



**Figure 1: Organization Registration Process Overview**



## Section IV — Organization Certification Process

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### **Purpose and Scope**

The purpose and scope of this process is to provide guidance for completing the certification of a new entity that will become NERC certified and registered as an RC, TOP, or BA.

### **Overview**

See Figure 2 *Organization Certification Process Overview* for an overview of the certification process.

### **Organization Certification Process**

1. Certification:
  - a. An entity in a single Regional Entity reliability region shall initiate the certification process by completing a certification application (certification applications are provided on each Regional Entity’s [website](#)) and sending it to the Regional Entity which will manage the certification process.
  - b. An entity in multiple Regional Entity reliability regions shall initiate the certification process by completing a certification application (certification applications are provided on each Regional Entity’s [website](#)) and sending it to the Regional Entities in those reliability regions. Each Regional Entity will inform NERC of the request. The Regional Entities will determine which Regional Entity will provide the leadership to manage the certification process.
  - c. Provisional Certification Process - All Reliability Coordinator Balancing Authorities, and/or Transmission Operators that were already registered and operating on June 18,2007 become “NERC Certified” upon completion of (1) a NERC Readiness Evaluation (on site activities completed by the evaluation team); and (2) a CMEP audit (on site activities completed by the audit team) after June 18, 2007. Recertification on a periodic basis of these entities will not be required. Demonstration of ongoing satisfactory performance of applicable RC, BA, and TOP functional requirements shall be accomplished by completion of a CMEP audit every three years per the requirements of the NERC Rules of Procedure.
2. For an entity that is not required to be certified, the Regional Entity(ies) shall reject the application and notify the entity that certification is not required.
3. If the application is not complete or accurate, the Regional Entity will notify the entity to revise the application as needed. When the application is deemed complete and accurate, it will be accepted. The entity and the Regional Entity shall agree to a timeline including specific milestones for the certification process.
4. The decision to certify changes to an already operating and certified entity is a collaborative decision between the affected Regional Entity(s) and NERC. NERC has the final authority regarding this decision. Items to consider for this decision include one or more of the following:

- a. Changes to an entity's footprint or operational challenges (i.e., TLRs) due to the changes
  - b. Organizational restructuring that could impact the BPS reliability
  - c. Relocation of the control center
  - d. Changes to entity ownership requiring major operating procedure changes
  - e. Significant changes to JRO / CFR assignments or agreements changes
  - f. Addition or removal of member JRO / CFR utilities or entities
  - g. Complete replacement of a SCADA/EMS system
5. The certification process shall be completed within nine months of the date of acceptance of the application unless agreed to by all parties involved in the process and approved by NERC.
  6. The Regional Entity(ies) shall notify NERC that the certification process has begun to enable NERC to carry out its roles and responsibilities.
  7. The Regional Entity will send a questionnaire with a submission deadline and a statement of expectations to all entities participating in the certification process. These questionnaires and other related documents are located on the [NERC Web site](#). The Regional Entity shall distribute questionnaires and other related documents to the following entities, as required:
    - a. Entity seeking certification.
    - b. Participating BAs, RCs, and TOPs in footprints in which the entity intends to operate or with which the entity intends to interconnect transmission facilities.
    - c. Participating TOs, TSPs, PAs, GOs, IAs, GOPs, TPs, DPs, and/or other applicable entities.
  8. The Regional Entity shall assemble a Certification Team (CT) that will be responsible for performing the activities included in the certification process.
    - a. The CT members shall adhere to NERC's confidentiality agreements for any data or information made available to the CT member through the certification process. Team members shall not be employees of or have a direct financial interest in the entity or any of its affiliates.
    - b. The Regional Entity, with concurrence of NERC, may increase or decrease the distribution of the questionnaires and other related documents based upon the complexity of the certification.
    - c. If the entity objects to any member of the CT, the entity must make that known, in writing, to the Regional Entity listing the reasons for the objection. The Regional Entity will either replace the team member or respond with written justification for keeping the member on the team.
    - d. CT composition
      - i. The BA CT shall consist of representatives from an existing BA, the entity's proposed RC, TOP, each affected Regional Entity, and NERC.
      - ii. The RC CT shall consist of representatives from an existing RC, a BA and a TOP in the proposed RC area, each affected Regional Entity, and NERC.

- iii. The TOP CT shall consist of representatives from an existing TOP, the entity's proposed RC, each affected Regional Entity, and NERC.
    - iv. Additional CT members with expertise in the any of the NERC registry functional areas can be added as necessary.
    - v. Additional CT members from NERC or Regional Entity staff may be added as necessary.
    - vi. Entities such as government representatives or other stakeholders may be observers in the certification process.
9. Each CT member must complete the NERC auditor training prior to participation.
10. The CT will review the entity's submitted documentation and address any issues prior to the site visit.
11. The CT shall inform the entity before the on-site visit of any documentation or clarification that is necessary to support the questionnaires.
12. The entity shall identify to the CT prior to the on-site visit all standards or requirements/sub-requirements which have been delegated to another entity.
  - a. The CT will review the entity(ies) ability to perform those delegated requirements/sub-requirements or standards.
13. The CT shall conduct at least one on-site visit to the entity's facilities. At a minimum, the team will:
  - a. Review with the entity the data collected through the questionnaires, and such data that is available only onsite;
  - b. Interview the operations and management personnel;
  - c. Inspect the facilities and equipment associated with the applicable reliability standards referenced in the questionnaire;
  - d. Request demonstration of all tools identified in the certification process;
  - e. Review documents and data including agreements, processes, and procedures identified in the certification process;
  - f. Verify operating personnel NERC certification documents and proposed work schedules; and,
  - g. Review any additional documentation resulting from inquiries arising during the site-visit.
14. The entity, in conjunction with the CT, shall attempt to resolve any deficiencies prior to issuance of the draft report.
15. The draft report is provided to the entity for review for fourteen (14) days and any resulting comments will be assessed by the CT for possible inclusion in the report.
16. The Regional Entity(ies) may grant a time extension, not to exceed 180 days, to the entity to allow the entity to resolve any open certification issues.
17. The CT shall provide a certification recommendation and identification of audit deficiencies in the final written report. All members of the CT shall have an equal voice in the certification recommendation. This allows for a minority opinion if the review team cannot

reach a consensus. The final written certification report is distributed to NERC, the entity, and the other affected Regional Entities, as applicable.

18. The following is the format for the final report:

- Title page
- Table of Contents
- Introduction – A brief discussion on the Regional Entity(ies) involved, the entity being certified, a description of the function the entity(ies) are being certified for, and a brief timeline of the certification project
- Certification Team (CT) – Provide the team makeup.
- Objective and Scope – Discussion on entity application (who, what, when, & how).
- Overall Conclusion – Recommendation being made by the CT.
- Certification Team Findings – Any item(s) needing to be closed prior to operation that do not hinder the certification team from making a recommendation.
- Positive Observations.
- Company History – Discussion on the applicant’s company history.
- Company Details– Specific details regarding why the entity is being certified and its relationship with other entities (BAs, RCs, and TOPs etc).
- Documentation List – Provide a list of critical documentation reviewed by the CT used to make the CT’s conclusion and the documentation retention requirements.
- Attachments – Describe those attachments that are for public viewing and those that are separated from the report due to confidentiality issues such as Critical Infrastructure documentation.

19. Certification recommendation and approval.

- a. If the entity intends to operate in a single Regional Entity’s reliability region, the CT shall make a certification recommendation to that Regional Entity. The Regional Entity shall approve or disapprove the recommendation. The Regional Entity shall notify the entity and NERC of the certification decision.
- b. If the entity intends to operate in multiple Regional Entities, the CT shall make a certification recommendation to all applicable Regional Entities in a single report. Certification recommendation by the Regional Entities must be unanimous. The Regional Entities shall notify the entity and NERC of the certification decision.
- c. NERC shall approve or disapprove all final certification recommendations and notify the entity of the decision.

20. The entity may appeal the decision in accordance with the NERC Rules of Procedure and Section VI of this manual.

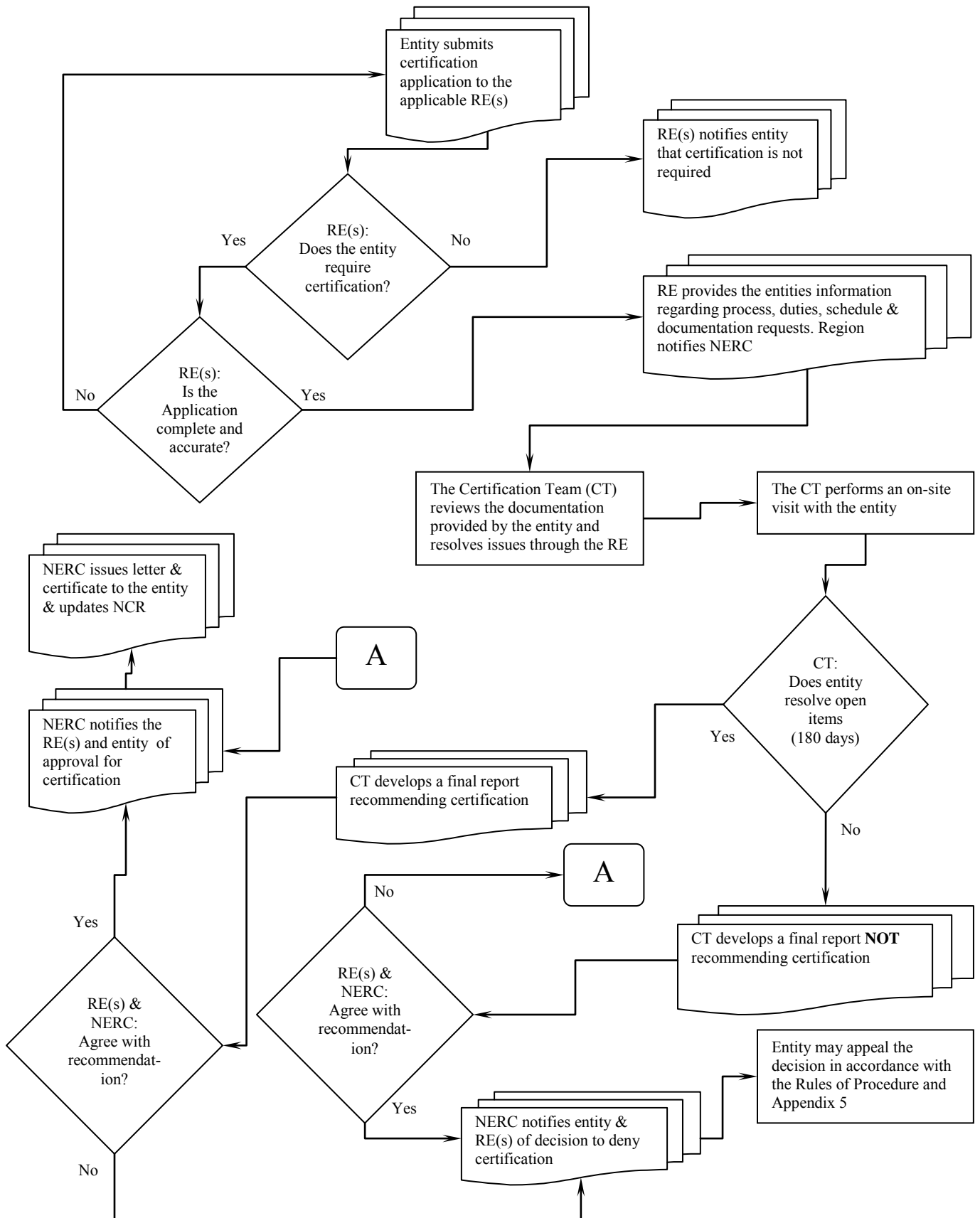
21. If the entity is approved for certification, NERC shall provide the entity a certification letter and a NERC certificate indicating that that entity is NERC certified as a BA, RC, and/or TOP as applicable.

- a. For those CFR entities that agree upon a division of compliance responsibilities for one or more reliability standards or requirements/sub-requirements, NERC shall provide all

entities responsible for BA, RC and/or TOP requirements/sub-requirements and approved for certification as BA, RC and/or TOP a NERC certificate indicating that those entities are NERC certified as a BA, RC, and/or TOP.

- b. NERC shall update the registry prior to the entity(s) going operational.
22. After the entity has been awarded certification, the Regional Entity(ies) shall notify all applicable entities as to the date that the entity may begin its operation as a certified entity. The entity must commence operation within 12 months of certification. Failure to begin operation within the 12-month period shall require the entity to reapply for certification.

**Figure 2: Organization Certification Process Overview**



## Section V — NERC Organization Registration Appeals Process

### **Purpose and Scope**

This section describes the process that any organization may appeal its listing and functional assignment on the NCR.

### **Overview**

NERC has established documented procedures to ensure a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness. See Figure 3, *Organization Registration Appeals Process Overview*.

### **Organization Registration Appeals Procedure**

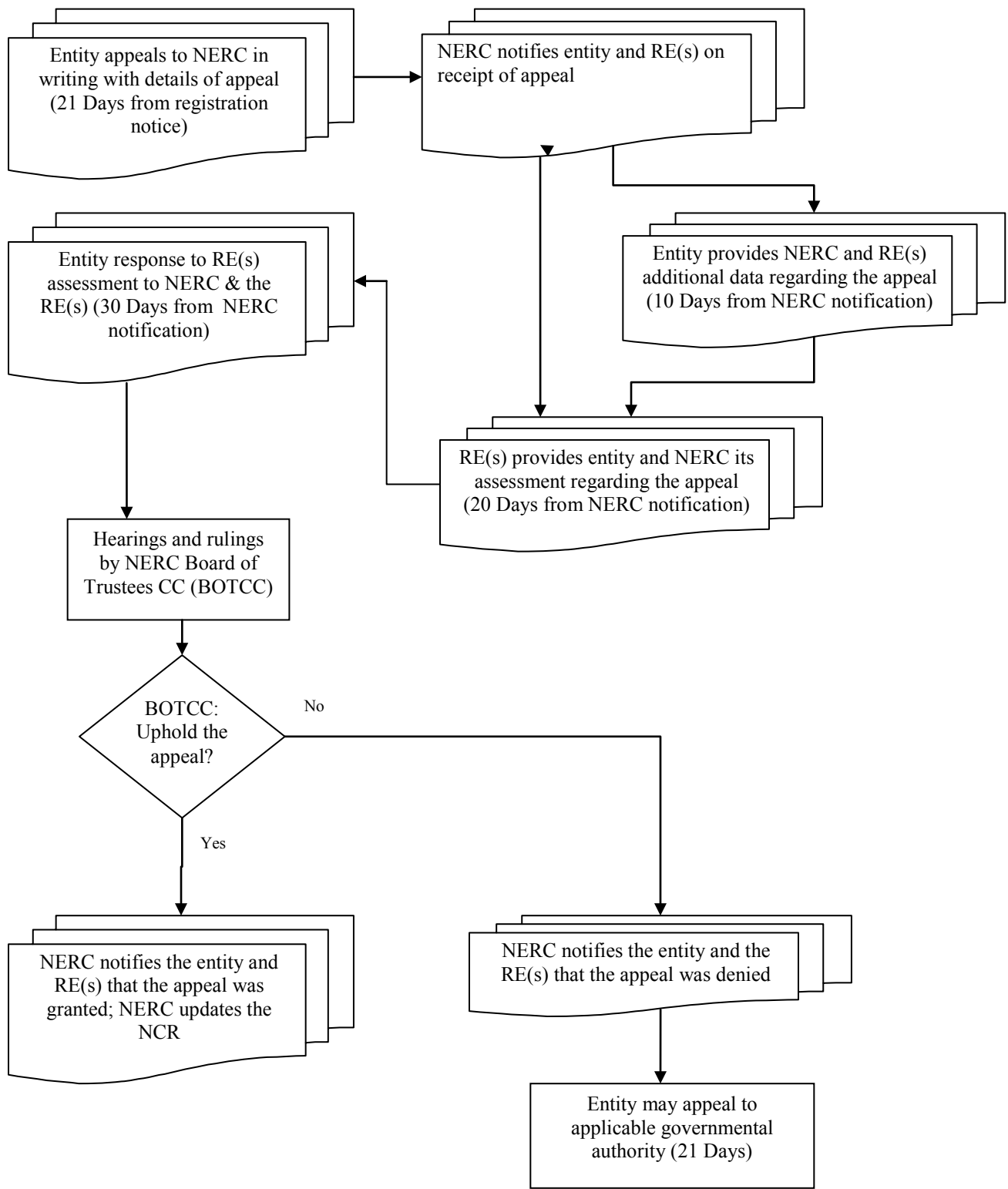
Any entity included on the NCR may challenge its listing and functional assignments with NERC.

1. All registration appeals must be filed in writing to NERC, via registered mail. Appeals are sent to:  
Vice President and Director of Compliance  
North American Electric Reliability Corporation  
116-390 Village Blvd.  
Princeton, New Jersey, 08540
2. Each party in the appeals process shall pay its own expenses for each step in the process.
3. A stipulation of invoking the appeals process is that the Regional Entity or entity requesting the appeal agrees that NERC (its members, Board of Trustees, committees, subcommittees, and staff), any person assisting in the appeals process, and any company employing a person assisting in the appeals process, shall not be liable for, and shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.
4. Parties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction.
5. All appeals must be received within 21 days of receipt of the NERC letter informing the entity that it is listed on the NCR. The appeal must state why the entity believes it should not be registered based on the NERC Rules of Procedure and the *NERC Statement of Compliance Registry Criteria*.



6. After receipt of the appeal, the registered entity has a 30 day period to work with the Regional Entity to resolve the appeal, if possible. If the appeal is resolved, the Regional Entity will notify NERC with the details of the resolution and NERC will close the appeal.
7. At any time through this appeals process, an entity may agree with the decision and/or agree to close the appeal. NERC shall notify the involved parties and the NERC Board of Trustees Compliance Committee (BOTCC) that the appeal is resolved and update the NCR as applicable.
8. NERC will notify the entity and the applicable Regional Entity(ies) regarding the appeal with the following expectations:
  - a. The entity will provide NERC and the applicable Regional Entity(ies) any additional data supporting its appeal within 10 days of the date of the NERC appeal notification.
  - b. The applicable Regional Entity(ies) will provide a copy of its assessment directly to the entity, as well as to NERC, within 20 days of the date of the NERC appeal notification.
  - c. The entity may submit a response to the Regional Entity(ies) assessment, with copies to the Regional Entity(ies) and NERC, within 30 days of the date of the NERC appeal notification.
  - d. To ensure there is no confusion with respect to the rights and responsibilities of the entity during the appeal process, the notification also confirms whether the entity will remain on the NERC Compliance Registry and will be responsible for compliance with approved reliability standards applicable to the function under appeal during the appeal.
9. Hearing and Ruling by the BOTCC
  - a. The BOTCC will resolve registration disputes.
  - b. The BOTCC may request additional data from NERC, the relevant Regional Entity(ies) or the entity, and prescribe the timeframe for the submitting the requested data.
  - c. The BOTCC will provide a written decision regarding any appeals, along with the basis for its decision.
  - d. If the BOTCC upholds the appeal, NERC will:
    - Notify the entity and Regional Entity(ies) that the appeal was granted.
    - Update the NCR.
  - e. If the BOTCC does not uphold the appeal, NERC will:
    - Notify the entity and the Regional Entity(ies) that the appeal was denied.
    - The entity may appeal to FERC or applicable Canadian Provincial regulator within 21 days of the notification of the decision.
  - f. A record of the appeals process shall be maintained by NERC. Confidentiality of the record of the appeal will be based on the NERC Rules of Procedure Section 1500.

**Figure 3: Organization Registration Appeals Process Overview**



## Section VI — NERC Organization Certification Appeals Process

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### Purpose and Scope

This section describes the process for an organization to appeal the certification decision that was determined in the certification process.

### Overview

The NERC Organization Certification Program provides a key means to fulfill NERC's mission. In conducting this program, NERC has established documented procedures to ensure a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness. See Figure 4 *Organization Certification Appeals Process Overview*.

### Organization Certification Appeals Procedure

#### 1. Appeal for an Organization Certification Finding.

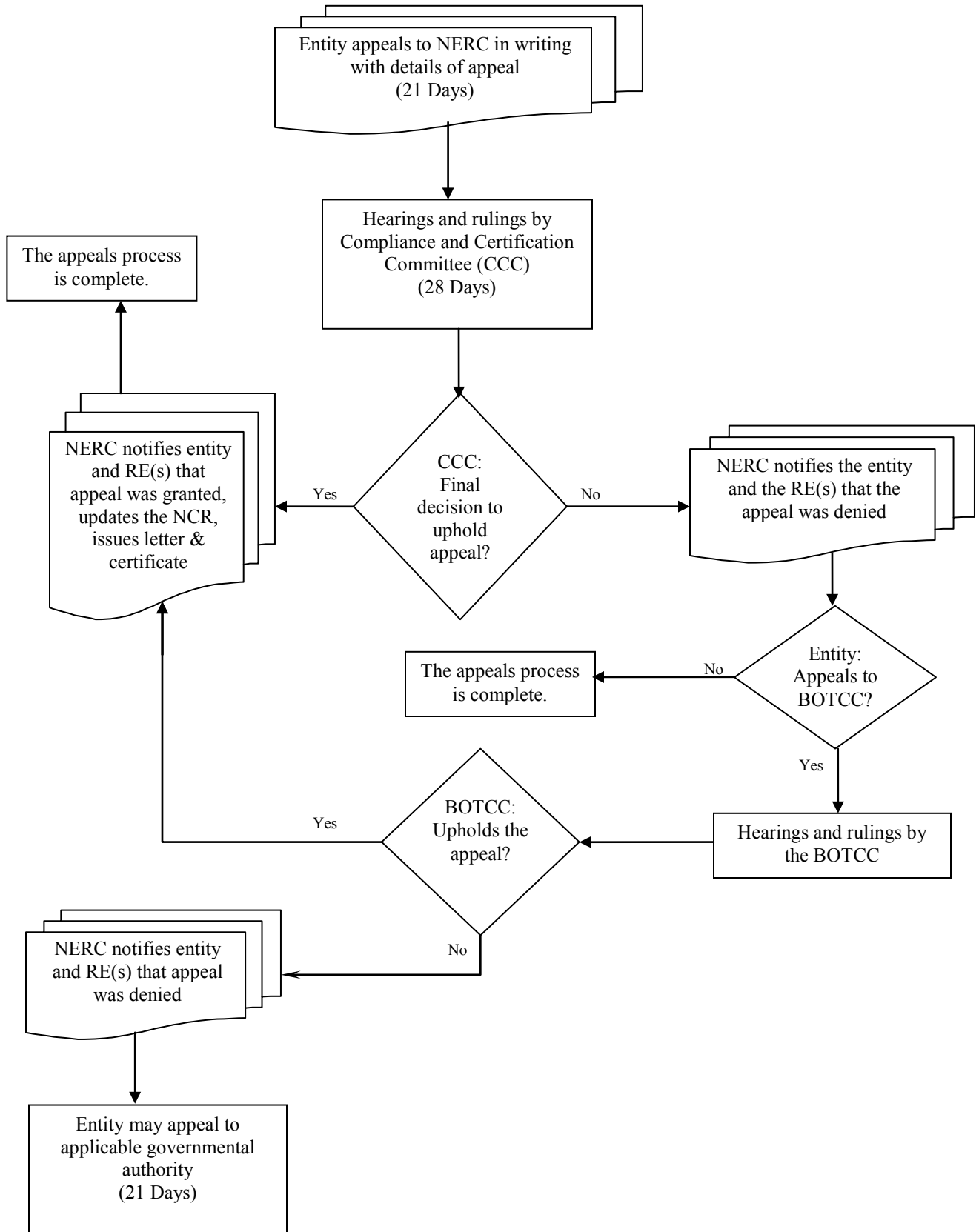
Any entity can appeal an organization certification decision issued as a result of the certification process.

#### 2. Requirements and Conditions for Appeals.

- a. For all appeals under the NERC Organization Certification Program, the appeals process begins when an entity notifies the NERC Vice President and Director of Compliance, in writing, that it wishes to use the NERC appeals process.
  - The Vice President and Director of Compliance is the main contact for all parties in all steps of the appeals process.
  - If an appeal is not filed within twenty one (21) days of the date that the certification report or finding is issued, or the final Regional Entity appeals process ruling is made, the finding shall be considered final and un-appealable.
- b. Each party in the appeals process shall pay its own expenses for each step in the process.
- c. A stipulation of invoking the appeals process is that the Regional Entity or entity requesting the appeal agrees that NERC (its members, Board of Trustees, committees, subcommittees, and staff), any person assisting in the appeals process, and any company employing a person assisting in the appeals process, shall not be liable, and shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.
- d. Parties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction.

3. At any time through this appeals process, an entity may withdraw its appeal.
4. Hearing and Ruling by the Compliance and Certification Committee.
  - a. Within twenty-eight (28) days of receiving notice from the NERC Vice President and Director of Compliance, the CCC will conduct a hearing where all the parties or representatives of the disputing parties will present the issue in question, in accordance with CCC procedure CCCPP-005, *Hearing Procedures for Use in Appeals of Certification Matters*.
  - b. If the appeal is upheld, NERC notifies the entity and RE(s), updates the NCR, and issues any appropriate letter and certificate to the entity.
  - c. If the appeal is denied, NERC notifies the entity and RE(s).
5. Hearings and Ruling by the BOTCC.
  - a. The BOTCC will be asked to resolve a dispute related to the NERC Organization Certification Program if any party to the appeal contests the CCC final order.
  - b. The BOTCC may request additional data from NERC, RE(s) or the entity and prescribe the timeframe for the submitting the requested data.
  - c. At the next regularly scheduled BOTCC meeting, or at a special meeting if the Board determines it is necessary, the Chairman of the CCC will present a summary of the dispute and the actions taken to the Board.
    - Each party will have an opportunity to state its case.
    - The BOTCC will then rule on the dispute.
  - d. If the BOTCC upholds the appeal, NERC will:
    - Notify the entity and the Regional Entity(ies) that the appeal was upheld.
    - Update the NCR.
    - Issue a certification letter and a certificate to the entity as applicable.
  - e. If the BOTCC does not uphold the appeal, NERC will notify the entity and the Regional Entity(ies) that the appeal was denied.
    - The entity may appeal to applicable governmental authorities within 21 days of the issuance of the decision.
  - f. A record of the appeals process shall be maintained by NERC and available upon request. Confidentiality of the record of the appeal will be based on the NERC Rules of Procedure Section 1500.

**Figure 4: Organization Certification Appeals Process Overview**



# Definitions

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<b>NERC Organization Certification</b>	The process undertaken by NERC and a Regional Entity to verify that a new entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator, and/or Reliability Coordinator.
<b>Compliance and Certification Manager</b>	The individual/individuals within the Regional Entity that is/are responsible for monitoring compliance of entities applicable NERC Reliability Standards.
<b>Days</b>	Days as used in the registration and certification processes are defined as calendar days.
<b>Footprint</b>	The geographical or electric area served by an entity.
<b>Functional Entity</b>	An entity responsible for a function that is required to ensure the reliable operation of the electric grid as identified in the NERC Reliability Standards.
<b>Mapping</b>	The process of determining whether a Regional Entity's footprint is being served by Registered Entities.
<b>NERC Identification Number (NERC ID)</b>	A number given to NERC Registered Entities that will be used to identify the entity for certain NERC activities. Note: corporate entities may have multiple NERC IDs to show different corporate involvement in NERC activities.
<b>Regional Entity</b>	NERC works with eight Regional Entities to improve the reliability of the bulk power system. The members of the Regional Entities come from all segments of the electric industry. These entities account for virtually all the electricity supplied in the United States, Canada, and a portion of Baja California Norte, Mexico. NERC delegates enforcement authority to these Regional Entities (FRCC, RFC, SPP, TRE, NPCC, MRO, SERC, & WECC).
<b>Registration</b>	Process undertaken by a Regional Entity to identify which entities are responsible for reliability functions within the Regional Entity's footprint.
<b>Coordinated Functional Registration (CFR)</b>	Where two or more entities (parties) agree in writing upon a division of compliance responsibility among the parties for one or more reliability standard(s) applicable to a particular function, and/or for one or more requirement(s)/sub-requirement(s) within particular reliability standard(s).

Appendix 5

Organization Registration and  
Organization Certification  
Manual —Draft

10/6/09

~~Version 3.3~~

~~North American Electric Reliability Corporation~~

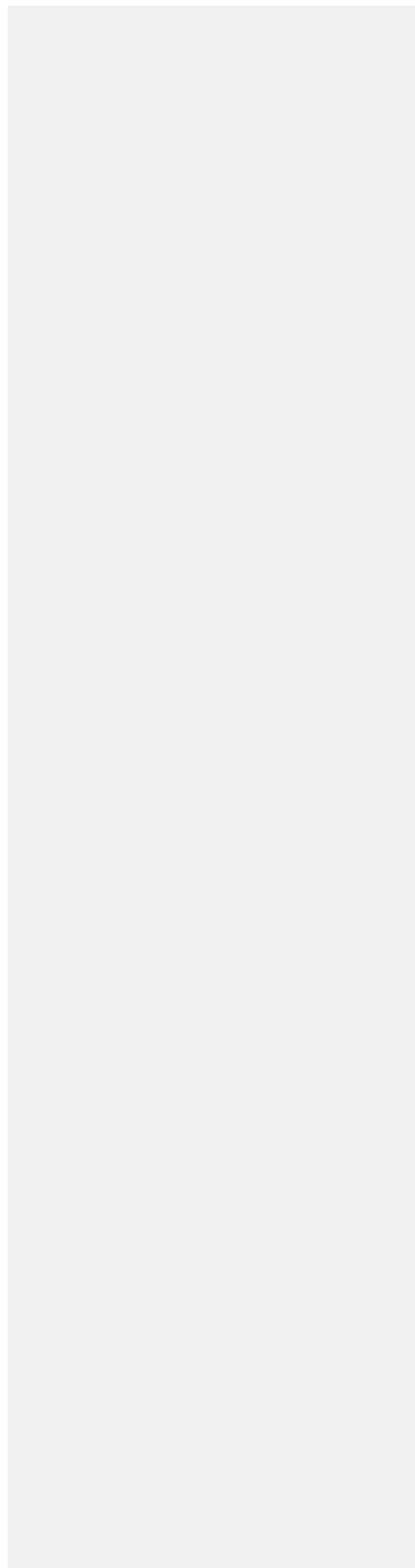


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## Section I — Executive Summary

### Overview

The NERC Compliance and Certification Committee (CCC) is responsible for developing and approving these processes. The CCC is comprised of representatives from a diverse set of industry segments and therefore represents the industry as a whole. Industry participants have input into the development and revision of this process through their segment representatives on the CCC.

The purpose of this document is threefold: (1) to define the registration process and to identify which functional entities must register as owners, operators, and users of the bulk power system required to comply with reliability standards; (2) to define the organization certification process; and (3) to define the transitional organization certification process and to identify which functional entities are eligible to use the transitional organization certification process.

In the fall of 2004 NERC requested that entities responsible for reliability coordinator, balancing authority, transmission operator, planning authority, and transmission planner function identify to their respective regional entities which of these functions they were currently responsible for. At that time information concerning the name of the organization, a contact name, and the footprint for which they had responsibility was required. Although the Functional Model identified 16 entities, only these five entities needed to provide information. Certification standards associated with the NERC Reliability Standards are under development and additional information and relationships need to be defined for these five entities as well as other functional entities.

Section I – Executive Summary

The purpose of this document is twofold: (1) to define the process utilized in the Organization Registration Program by identifying which functional entities must register as owners, operators, and users of the bulk power system for compliance with reliability standards; and (2) to define the process utilized in the Organization Certification Program for certifying the following entities: Reliability Coordinator (RC), Balancing Authority (BA), and Transmission Operator (TOP). The NERC Compliance and Certification Committee (CCC) is responsible for approving and forwarding these processes to the NERC Board of Trustees for its approval. Where a proposal for revisions to these processes comes to the Board of Trustees from sources other than the CCC, the Board of Trustees will seek the concurrence of the CCC before taking action on the proposal.

**To Whom Does This Document Apply?**

All industry participants responsible for, or intending to be responsible for, the following functions must register with NERC through the ~~organization registration process~~ Organization Registration Process. The entities are defined in the NERC Glossary of Terms used in reliability standards with responsibilities designated by the individual standards.

	<b>Entities that Must Register by 3/15/2006</b>	<b>Entities that <del>will</del> need to be certified</b>
Reliability Coordinator (RC)	√*	√
Transmission Operator (TOP)	√*	√
Balancing Authority (BA)	√*	√
Planning Authority Coordinator (PC)	√*	
Transmission Planner (TP)	√*	
Transmission Service Provider (TSP)	√	
Transmission Owner (TO)	√	
Resource Planner (RP)	√	
Distribution Provider (DP)	√	
Generator Owner (GO)	√	
Generator Operator (GOP)	√	
Load-serving Serving Entity (LSE)	√	
Purchasing-Selling Entity (PSE)	√	
Market Operator-Interchange Authority (IA)	√	
standards Developer-Reserve Sharing Group (RSG)	√	
Compliance Monitor	√	

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\*These entities may have already submitted initial mapping information through a pre-registration process, and must now complete a full registration which includes, but is not limited to, updating and verifying this previous information.

**What Processes Will Be Used?**

	<b>Registration</b>	<b>Certification</b>
Existing Certified Control Areas	√	√*

<del>Existing Non-Certified Control Areas</del>	<del>✓</del>	<del>✓</del>
<del>Existing Reliability Coordinators</del>	<del>✓</del>	<del>✓</del>
<del>New BA, TOP, and RC</del>	<del>✓</del>	<del>✓</del>
<del>TP and PA</del>	<del>✓</del>	<del>n.a.</del>
<del>Other FM entities</del>	<del>✓</del>	<del>n.a.</del>

~~\*At its discretion, a regional entity may accept use of the transitional certification process in lieu of the full certification process.~~

### When ~~will~~did These Processes Begin?

~~Registration~~The initial registration process began in January of 2006. Registration ~~for~~of new entities ~~will be~~is an ongoing process. If a ~~registered entity's~~Registered Entity's information changes, ~~a new application form indicating the~~these changes must be submitted to the applicable Regional Entity(s).

Certification ~~will begin upon implementation of the organization certification standards, expected to be about September 1, 2006, and must be completed for the existing entities by December 31, 2008.~~ Certification ~~will be~~is ongoing for new entities in accordance with Section IV of this manual.

~~Transitional certification of certified control areas to the certified functional entities will begin upon implementation of the organization certification standards, expected to be about September 1, 2006, and must be completed by December 31, 2008.~~

### Where to Access and Submit Form(s)?

Registration and certification forms ~~will be available~~are provided on ~~the NERC Web site and may be available by the regional entities through their respective Web sites~~each Regional Entity's website. Completed forms are to be sent electronically to the compliance and certification manager of the ~~applicant's regional entity~~.

~~According to the Role of the Regions<sup>1</sup> document, it~~applicable Regional Entity(s). It is desirable that entities operate within a single Regional Entity reliability region; however, if an ~~applicant entity~~ operates in more than one ~~region, they must complete and submit~~Region, separate registration applications must completed and submitted to each of ~~those regions~~the Regional Entities.

### Roles and Responsibilities

The following is a high-level overview of the roles and responsibilities in the registration and certification processes:

#### NERC

1. Oversight of entity processes performed by the ~~regional entities~~Regional Entities, including:
  - a. Governance ~~as~~per the ~~regional entity's~~Regional Entity's delegation agreement with NERC.
  - b. Coordination of process execution when ~~applicants~~are an entity is registering and/or certifying ~~in~~with multiple ~~regional entities~~Regional Entities.
2. Manage each entity's NERC ~~acronym management~~Compliance Registry identification number (NERC ID) including:
  - a. ~~Issue acronym~~Sending a registration or certification letter that contains the NERC ID to ~~entity and inform regional entity~~the applicable Regional Entity(ies) for review and approval. If the Regional Entity(ies) agrees with all the information provided, it will

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<sup>1</sup> "Role of the Regional Reliability Councils: Follow up Report" prepared by the Regional Managers Committee for the NERC Members Committee meeting on May 2, 2005.

- notify NERC to issue the NERC ID to the registered entity and will send a copy of the notification being provided to the Regional Entity(ies).
- b. ~~Ensure entities have~~Ensuring each entity has only one ~~aeronym for all regional entities~~NERC ID for all Regional Entities in which ~~they operate~~registered.
3. Make modeling changes based on registration information.
  4. Maintain accurate registration and certification records including granting certification certificates for the entity(ies) responsible for compliance (including JRO/CFR).
  5. ~~Publish~~Maintain published up-to-date list of ~~functional~~registered entities (i.e. the NERC Compliance Registry) on the NERC website.

### **Regional Entity**

1. Performs data collection and mapping of ~~footprints~~Bulk Power System facilities and those facilities that have a material impact on the Bulk Power System within its Regional Entity defined reliability region boundaries.
2. Approves or disapproves entity registration applications.
3. ~~Approves~~Reviews entity certification applications for completeness.
4. Notifies NERC of entities registered ~~within the regional entity~~with the Regional Entity.
5. ~~Notifies~~Approves or denies Certification Team (CT) recommendations and notifies the entity and NERC of ~~entities certified within the regional entity~~decision.
- ~~6. Ensures entity obtains acronym from NERC.~~
- ~~7. Ensures that all bulk power system assets within its footprint are within the footprint of a registered entity.~~

### **Applicant**

- ~~6. Complete and submit~~Provides leadership to the CT throughout the certification process.

### **Entity Submitting the Application**

1. Completes and submits registration and/or certification application.
2. ~~Submit~~Submits updates to registration and/or certification information as necessary and/or requested.
3. ~~Respond to regional entity~~Responds to Regional Entity and/or NERC questions pertaining to registration and/or certification.
4. ~~Provide~~Provides documentation or other evidence requested or required to verify compliance with certification ~~standard~~requirements.



## Section II — Introduction to Organization Registration and Organization Certification Processes

### **Regional Entity Process**

The ~~NERC organization registration and certification processes are regionally utilized to implement the Organization Registration and Organization Certification Programs are~~ administered by each Regional Entity. Pursuant ~~with~~to its delegation agreement with NERC, each ~~regional entity~~Regional Entity is responsible for registering and certifying industry participants within ~~their geographical footprint~~its Regional Entity reliability region boundaries. Each ~~regional entity~~Regional Entity must use the following NERC processes.

### **Organization Registration — Entities Required to Register**

All industry participants responsible for one or more of the functions ~~shown below~~ must register ~~as a performer of~~for each function through the ~~organization registration process~~Organization Registration Program. These entities are defined in the NERC Glossary of Terms used in reliability standards with responsibilities designated by the individual standards and the NERC Statement of Compliance Registry Criteria document.

- Reliability Coordinator
- Transmission Operator
- Balancing Authority
- Planning ~~Authority~~Coordinator
- Transmission Planner
- Transmission Service Provider
- Transmission Owner
- Resource Planner
- Distribution Provider
- Generator Owner
- Generator Operator
- Load-Serving Entity
- Purchasing-Selling Entity
- ~~Compliance Monitor~~
- Interchange Authority
- Reserve Sharing Group

The registration procedure is in Section III of this manual.

## Organization Certification

~~According to NERC organization certification standards, all entities responsible for the reliability coordinator, transmission operator, and/or balancing authority functions shall be certified. The objective is to have the entire NERC footprint covered by certified reliability coordinator, transmission operator, and balancing authority prior to January 1, 2009. As of January 1, 2009, control area will no longer be a recognized term at NERC. Historically, the certification process typically takes three to nine months to complete.~~

There are two processes through which organization certification will be accomplished.

1. **Transitional Organization Certification Process** — Previously certified control areas electing to become certified as a transmission operator and/or balancing authority function may be able to utilize the transitional organization certification process at the discretion of the regional entity. Existing certified control areas that wish to use the transitional organization certification process must do so prior to the expiry of the control area functional designation on January 1, 2009.

A regional entity's discretion respecting transitional certification extends to whether to allow the use of this process in their regional entity at all, as well as to whether they permit a given applicant to use it. Regional entity's decisions in this regard remain subject to NERC oversight and governance pursuant to approved delegation agreements.

Applicants wishing to use this process must have been certified — or must first complete their certification — as a control area in a manner, including documentation, that clearly and completely demonstrates full compliance with all certification process requirements that the transitional certification process provides relaxation for.

2. **Organization Certification Process** — All non-certified entities or a new entities seeking certification as a reliability coordinator, transmission operator, or balancing authority function must complete the organization certification process for each function.

Existing non-certified entities currently responsible for balancing authority and/or transmission operator functions can be certified as a control area. This control area certification process must be completed prior to December 1, 2006. However, the entity will have to be certified as a functional entity using the "transitional" or "regular" certification process before January 1, 2009.

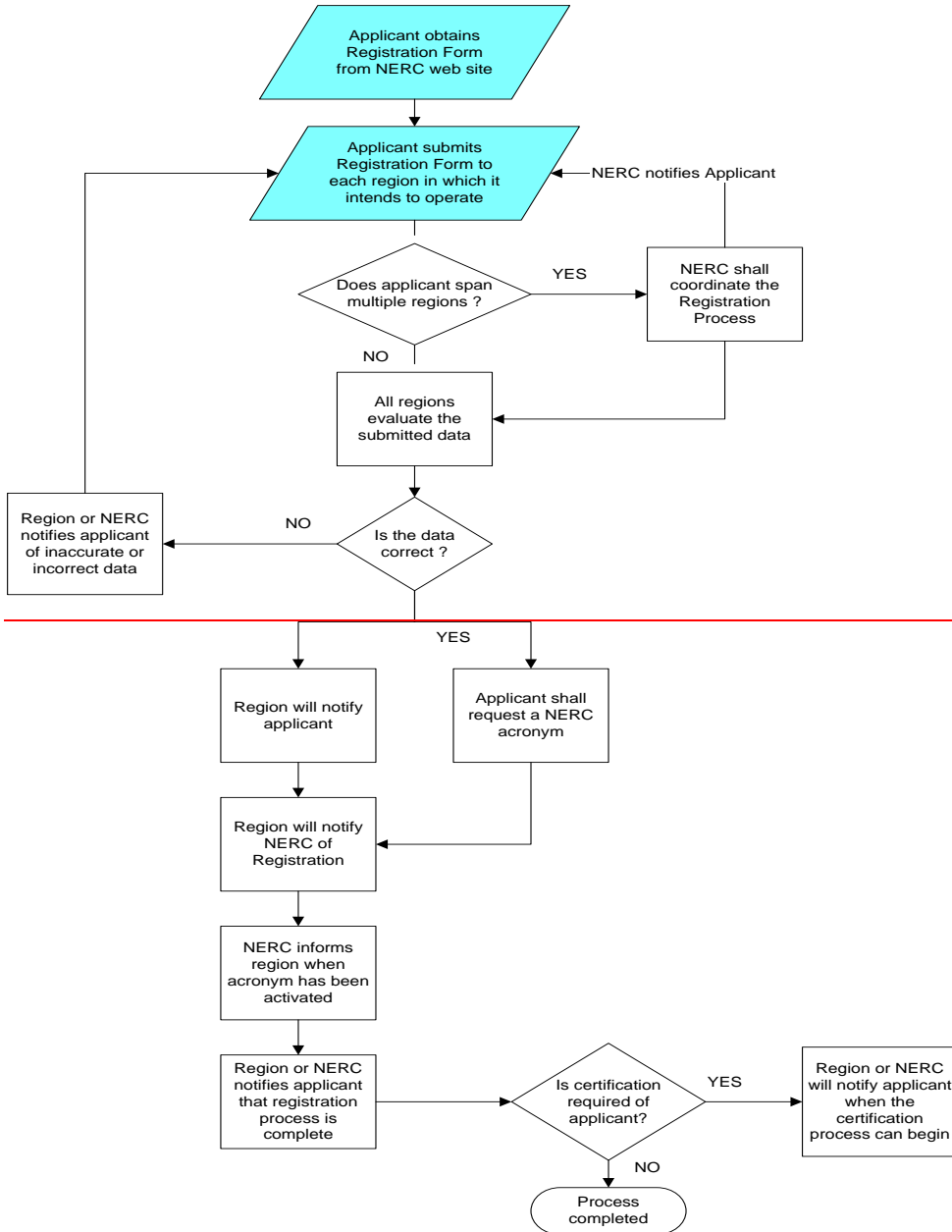
An existing control area or reliability coordinator currently responsible for reliability coordinator, transmission operator, and/or balancing authority functions and electing to:

1. Become certified as those functional model entities will be able to do so either all at the same time or one at a time as long as they become certified in all applicable functions prior to January 1, 2009.
2. Become certified in only one or two of the three can do so at any time but must continue to perform the other function(s) until such time as another entity becomes certified to perform those functions. If no other entity elects to become certified in the uncertified functions, then the control area or reliability coordinator must become certified in those functions prior to January 1, 2009.
3. Not become certified in any of the functions must continue to perform those functions until such time as another entity becomes certified to perform those functions. If no other entity becomes certified to perform any one or all of those functions, then the control area or reliability coordinator must become certified to perform the functions prior to January 1, 2009.

## ~~Section III — Organization Registration Procedure~~

- ~~1. The applicant seeking registration shall begin the process by submitting a completed registration application to the compliance and certification manager in each of the regional entities in which it intends to perform that function.~~
- ~~2. For applicants that span multiple regional entities, all affected regional entities will inform NERC of the request. In all such cases, NERC will be the coordinator and will notify the applicant of NERC's role.~~
- ~~3. Entities that have NERC acronyms shall use them on the form.
  - ~~a. If an entity does not have an acronym, NERC may initiate assignment of one or the entity can request one.~~
  - ~~b. An entity responsible for more than one function can use a single acronym or can use separate acronyms for each function it performs.~~
  - ~~c. Acronyms must be activated before they can be used.~~
  - ~~d. NERC activates acronyms.~~
  - ~~e. If/as applicable, acronyms will not be activated until the registration process is complete.~~
  - ~~f. Entities requiring certification will not have their acronym(s) activated until they have been certified.~~~~
- ~~4. All affected regional entities shall evaluate the submitted information and determine if any information is incomplete.~~
- ~~5. The regional entity region or NERC shall inform the applicant of any inaccurate or incomplete data.~~
- ~~6. When the data is complete and accurate the regional entity region or NERC shall notify the applicant.~~
- ~~7. The regional entity region shall inform NERC that the registration process is complete.~~
- ~~8. If/as applicable, NERC informs the regional entity when the acronym has been activated.~~
- ~~9. The regional entity or NERC notifies the applicant that the registration process is complete.~~
- ~~10. For applicants that are required to be certified, the regional entity or NERC shall notify the applicant when the certification process can begin.~~

**Registration Flow Diagram**



### **Transitional Certification**

~~(only available until January 1, 2009)~~

~~The transitional organization certification process may apply, at the discretion of the regional entity, to a control area previously certified to perform as a control area, electing to be certified as a balancing authority and/or transmission operator:~~

- ~~1. The entity will have to complete the appropriate certification self assessment questionnaire.~~
- ~~2. The entity will have to self assess its ability to perform any additional requirements that they are not currently certified to perform.~~
- ~~3. The entity by affidavit (a document signed by an officer of the company) will have to verify that they are capable of continuing to perform the requirements of the balancing authority or transmission operator that they are currently responsible for.~~
- ~~4. The Certification Review Team shall be formed. That team, using the above documents, shall determine whether the applicant meets NERC's organization certification requirements. This may be done without a site visit; however, the review team has at its disposal all of the tools accorded any review team (additional questionnaire, site visit, neighboring entity questionnaire, previous compliance issues, results of previous readiness audits, etc.):~~
  - ~~a. An on site visit is required of all entities that have not previously undergone a site visit for control area certification or readiness audit.~~

## ~~Section IV — Transitional Certification Procedure~~

### ~~Certification Process~~

- ~~1. Applicants seeking certification:
  - ~~a. In a single NERC regional entity shall initiate the certification process by completing a certification application and sending it to the compliance and certification manager in the regional entity. The regional entity in which the applicant plans to perform will conduct the certification process.~~
  - ~~b. In multiple regional entities shall initiate the certification process by completing a certification application and sending it to the compliance and certification manager in each affected regional entity, each of which will inform NERC. NERC will be the coordinator and will notify the applicant of NERC's role. NERC shall coordinate the certification process among the affected regional entities.~~~~
- ~~2. Upon receipt, the application will be assessed for completeness and accuracy. When the application is deemed complete and accurate it will be accepted; at that time the applicant and the regional entity or NERC shall agree to a timeline, including specific milestones for the certification process. The applicant and the regional entity or NERC shall complete the NERC organization certification process within nine months of the date of acceptance of the application unless agreed to differently by all parties involved in the process.~~
- ~~3. The regional entity or NERC shall require the entity to complete the transitional certification self assessment of its ability to perform any additional requirements that they are not currently certified to perform. The regional entity or NERC shall provide all participants with a copy of expectations regarding confidentiality and retention of all data reporting, completed questionnaires and forms, reports, and recommendations associated with the documentation it provides and receives.~~
- ~~4. The regional entity or NERC shall require the entity to complete an affidavit (a document signed by an officer of the company) verifying capability of continuing to perform the requirements of the organization certification standard that they are currently responsible for.~~
- ~~5. The regional entity or NERC shall assemble a Certification Review Team charged with the responsibility of determining if the applicant meets NERC's organization certification requirements. The review team members shall subject themselves to NERC confidentiality agreements for any data or information made available to them through the certification review process.
  - ~~a. If the applicant objects to any member of the certification team, the applicant must make that known, in writing, to the regional entity or NERC listing the reasons for the objection.~~
  - ~~b. The regional entity will either replace the team member or respond with written justification for keeping the member on the team.~~~~

**Section IV — Transitional Certification Procedure**

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~~6. The review team shall consist of a minimum of three individuals including a regional entity representative and a NERC representative at NERC's option. The selected individuals shall represent at least three of the categories listed below:~~

- ~~a. Balancing Authority~~
- ~~b. Reliability Coordinator~~
- ~~c. Transmission Operator~~
- ~~d. Transmission Owner~~
- ~~e. Transmission Service Provider~~
- ~~f. Transmission Planner~~
- ~~g. Planning Authority~~
- ~~h. Generation Operator~~
- ~~i. Generation Owner~~
- ~~j. Distribution Provider~~
- ~~k. Representative from NERC staff~~
- ~~l. Representative from regional entity staff~~
- ~~m. Representative from another regional entity~~
- ~~n. Representative from an RTO or ISO, when applicable~~

~~The balancing authority review team shall minimally consist of a balancing authority and its reliability coordinator; the reliability coordinator review team shall minimally consist of a reliability coordinator, one of its balancing authorities, and one of its transmission operators; and the transmission operator review team shall minimally consist of a transmission operator and reliability coordinator.~~

- ~~o. Review team members shall not be employees of or have a direct financial interest in the applicant or any of its affiliates.~~
- ~~p. Review processes that involve an entity that is responsible for a function identified in the Reliability Standards across regional entity boundaries shall have a review team that includes at least one representative from each of the affected regional entities. Each individual regional entity shall select its representative to the team.~~

~~7. The regional entity or NERC, with agreement of the applicant and all other affected regional entities, may elect to contract an independent review team.~~

~~8. The review team shall identify any deficiencies (to both the applicant and to the regional entities) that must be resolved to the satisfaction of the review team prior to the review team making a recommendation to certify.~~



**Section IV — Transitional Certification Procedure**

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- ~~9. The review team shall formulate a certification recommendation based on:~~
- ~~a. Data collected and validated from the questionnaires, if applicable.~~
  - ~~b. Data collected during a previous control area or readiness audit.~~
  - ~~c. Information, demonstrations, and reviews provided as part of a follow-up to correct identified deficiencies.~~
- ~~10. The review team shall support its recommendation through a written report. All members of the review team shall have an equal voice in the certification recommendation. This allows for a minority opinion if the review team cannot reach a consensus.~~
- ~~a. If the applicant intends to operate in a single NERC regional entity, the review team shall make a recommendation to the regional entity. The regional entity shall approve or disapprove the certification. The regional entity shall notify NERC of the certification decision.~~
  - ~~b. If the applicant intends to operate in multiple regional entities, the review team shall make a recommendation to those regional entities. All affected regional entities must approve granting of the certification or the certification shall be denied.~~
  - ~~c. The regional entity or NERC shall verify the regional entity approvals prior to allowing certification. The regional entity shall notify NERC of the certification decision.~~
- ~~11. The regional entity or NERC (in consultation with the affected regional entities) may grant a time extension, not to exceed 180 days, to the applicant.~~
- ~~a. If the applicant fails to meet the conditions set by the regional entity or NERC, within the granted timeframe, the applicant's request for certification shall be denied.~~
  - ~~b. If the applicant meets the conditions set by the regional entity(s), within the granted timeframe, the regional entity or NERC (in consultation with the affected regional entities) shall respond to the applicant's notification of completion of requirements within 30 days.~~
- ~~12. After the applicant has been awarded certification, the regional entity or NERC shall notify all appropriate entities as to the date that the applicant may begin its operation as a certified entity. The applicant must commence operation within 12 months of certification.~~
- ~~a. Failure to begin operation within the 12-month period shall require the applicant to re-apply for certification.~~
- ~~13. If the applicant disagrees with the decision, the applicant can initiate the regional entity alternate dispute resolution process within 60 days of the date of the written denial. If the dispute is still unresolved following the regional entity alternate dispute resolution process the applicant can initiate the NERC alternate dispute resolution process. NERC's decision shall be final.~~

~~The following additional steps may be included in the transitional certification process:~~

- ~~14. The regional entity or NERC shall provide the questionnaires, a certification schedule, the deadlines for questionnaire submission, and a statement of expectations of the applicant and all of the entities participating in the certification process to those entities that must complete these documents. These questionnaires and other related documents address the applicant's capabilities and actions as they relate to established entity functions and tasks. The regional entity shall distribute questionnaires and other related documents to the following entities as appropriate:~~
- ~~a. Applicant (i.e. entity seeking certification).~~
  - ~~b. All balancing authorities, transmission operator(s), and reliability coordinators in which the applicant intends to operate or interconnect transmission facilities.~~
  - ~~c. Relevant transmission owners, transmission service providers, planning authorities, generation owners, generation operators, transmission planner, distribution providers, and/or other applicable entities.~~
- ~~15. The review team shall inform the applicant before the on-site visit of any documentation or clarification that is necessary to support the questionnaire.~~
- ~~16. The applicant retains the responsibility for all delegated tasks. The applicant shall identify to the review team all tasks that have been delegated to another entity prior to the on-site visit.~~
- ~~17. The review team shall conduct at least one on-site visit to the applicant's facilities. This may also apply to the facilities of entities responsible for delegated tasks. During the visit, the review team will:~~
- ~~a. Review with the applicant the data collected through the questionnaires;~~
- All entities registered in the NERC Compliance Registry (NCR) for the RC, TOP, and/or BA functions shall be certified. Certification requires the entity to start operation within 12 months of being NERC certified. This certification process is described in Section IV of this manual.

## Section III — Organization Registration Process

### **Purpose and Scope**

The purpose and scope of this process is to provide guidance on how a user, owner, and/or operator of the bulk power system should be registered in the NCR.

### **Overview**

Section 39.2 of the Commission’s regulations, and Title 18 of the C.F.R. § 39.2, requires each owner, operator, and user of the bulk power system to be registered with NERC and to comply with approved reliability standards.

Owners, operators, and users of the bulk power system will be registered by function(s) and are:

1. Responsible for compliance with all applicable requirements/sub-requirements within reliability standards approved by applicable government authorities, for the applicable functions for which the applicable entity is registered; and.
2. Subject to the compliance monitoring and enforcement requirements of Section 400 of the Rules of Procedure.

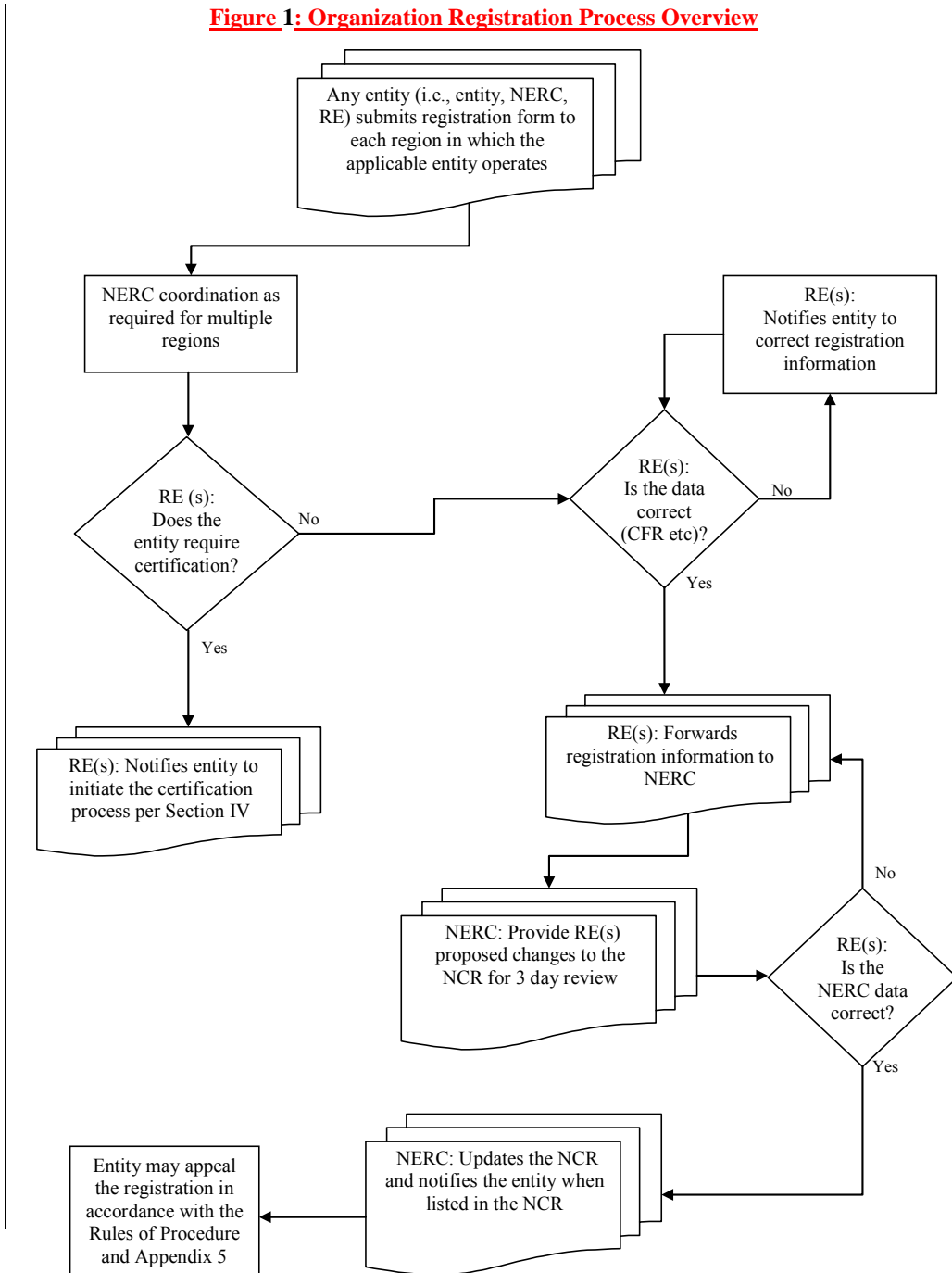
See Figure 1 *Organization Registration Process Overview*.

### **Organization Registration Process**

1. Applicable entities shall begin the registration process by submitting a completed registration application to the Regional Entity(ies) of the reliability region(s) where the entity intends to perform its function(s) (registration forms are provided on each Regional Entity’s website).
  - a. At any time an entity may recommend in writing, with supporting documentation, to the Regional Entity(ies) that an entity be added to or removed from the compliance registry.
  - b. The registration process for an entity may also be initiated by a Regional Entity, NERC, or applicable governmental authority.
2. NERC shall coordinate registration of entities that are required to register with multiple Regional Entities in order to ensure consistency of the registration process.
3. For entities that are required to be certified, the applicable Regional Entity(ies) shall ensure that the registration information provided is accurate for updating the NCR per items 4 through 12 below and notifies the entity to initiate the certification process per Section IV of this manual.
4. Entities that have a NERC ID shall use it on the form.
  - a. If an entity does not have a NERC ID, NERC shall assign one.
  - b. An entity responsible for more than one function will use a single NERC ID.

5. Regional Entities shall evaluate the submitted information and determine if the information is complete/correct. If the information is not complete/correct, the entity will be notified to complete/correct or clarify the registration information.
6. A single entity must register for all functions that it performs itself. In addition, that entity may register as a Joint Registration Organization (JRO) on behalf of one or more of its members or related entities for one or more functions for which such members or related entities would otherwise be required to register and, thereby, accept on behalf of such members or related entities all compliance responsibility for all requirements/sub-requirements of reliability standards applicable to that function or those functions including reporting requirements.(Rules of Procedure Section 507)
7. Multiple entities may each register using a Coordinated Functional Registration (CFR) for one or more reliability standard(s) and/or for one or more requirements/sub-requirements within particular reliability standard(s) applicable to a specific function.(Rules of Procedure Section 508)
8. In completing the regional entity responsibilities for the registration process, the following are key items the Regional Entity must verify:
  - a. That Regional Entity registrations meet the geographical and electrical registration boundaries requirements of the Rules of Procedure Section 501(1.4).
  - b. The registration submission includes all data requested by NERC that is necessary for accurately identifying and contacting the registered entity.
9. The Regional Entity shall forward all registration information to NERC:
  - a. NERC forwards the proposed additions or changes to the NCR to the Regional Entity for review and comments.
  - b. The Regional Entity has 5 working days to respond to the proposed changes.
  - c. If NERC does not receive any comments, the NCR will be revised.
10. NERC updates the NCR and notifies the applicable entity(ies) within 5 days of the update.
11. The entity may appeal the registration in accordance with the Rules of Procedure Section 500 and Section V of Appendix 5.
12. The NCR shall be dynamic and will be revised as necessary to take account of changing circumstances such as corrections, revisions, and or deletions. Per the Regional Entity's delegation agreement, the Regional Entity will take any recommendation received under Section 1.a. and other applicable information, under advisement as it determines whether an entity should be on the NCR.
  - a. Each entity identified in the NCR shall notify its corresponding Regional Entity and/or NERC of any corrections, revisions, deletions, changes in ownership, corporate structure, or similar matters that affect the entity's responsibilities with respect to the reliability standards. Failure to notify will not relieve the entity from any responsibility to comply with the reliability standards or shield it from any penalties or sanctions associated with failing to comply with the standards. (Rules of Procedure Section 400).

**Figure 1: Organization Registration Process Overview**



## Section IV — Organization Certification Process

### **Purpose and Scope**

The purpose and scope of this process is to provide guidance for completing the certification of a new entity that will become NERC certified and registered as an RC, TOP, or BA.

### **Overview**

See Figure 2 *Organization Certification Process Overview* for an overview of the certification process.

### **Organization Certification Process**

#### 1. Certification:

- a. An entity in a single Regional Entity reliability region shall initiate the certification process by completing a certification application (certification applications are provided on each Regional Entity's website) and sending it to the Regional Entity which will manage the certification process.
- b. An entity in multiple Regional Entity reliability regions shall initiate the certification process by completing a certification application (certification applications are provided on each Regional Entity's website) and sending it to the Regional Entities in those reliability regions. Each Regional Entity will inform NERC of the request. The Regional Entities will determine which Regional Entity will provide the leadership to manage the certification process.
- c. Provisional Certification Process - All Reliability Coordinator Balancing Authorities, and/or Transmission Operators that were already registered and operating on June 18, 2007 become "NERC Certified" upon completion of (1) a NERC Readiness Evaluation (on site activities completed by the evaluation team); and (2) a CMEP audit (on site activities completed by the audit team) after June 18, 2007. Recertification on a periodic basis of these entities will not be required. Demonstration of ongoing satisfactory performance of applicable RC, BA, and TOP functional requirements shall be accomplished by completion of a CMEP audit every three years per the requirements of the NERC Rules of Procedure.

2. For an entity that is not required to be certified, the Regional Entity(ies) shall reject the application and notify the entity that certification is not required.

3. If the application is not complete or accurate, the Regional Entity will notify the entity to revise the application as needed. When the application is deemed complete and accurate, it will be accepted. The entity and the Regional Entity shall agree to a timeline including specific milestones for the certification process.

4. The decision to certify changes to an already operating and certified entity is a collaborative decision between the affected Regional Entity(s) and NERC. NERC has the final authority regarding this decision. Items to consider for this decision include one or more of the following:

- a. Changes to an entity's footprint or operational challenges (i.e., TLRs) due to the changes
  - b. Organizational restructuring that could impact the BPS reliability
  - c. Relocation of the control center
  - d. Changes to entity ownership requiring major operating procedure changes
  - e. Significant changes to JRO / CFR assignments or agreements changes
  - f. Addition or removal of member JRO / CFR utilities or entities
  - g. Complete replacement of a SCADA/EMS system
- 5. The certification process shall be completed within nine months of the date of acceptance of the application unless agreed to by all parties involved in the process and approved by NERC.
- 6. The Regional Entity(ies) shall notify NERC that the certification process has begun to enable NERC to carry out its roles and responsibilities.
- 7. The Regional Entity will send a questionnaire with a submission deadline and a statement of expectations to all entities participating in the certification process. These questionnaires and other related documents are located on the NERC Web site. The Regional Entity shall distribute questionnaires and other related documents to the following entities, as required:
  - a. Entity seeking certification.
  - b. Participating BAs, RCs, and TOPs in footprints in which the entity intends to operate or with which the entity intends to interconnect transmission facilities.
  - c. Participating TOs, TSPs, PAs, GOs, IAs, GOPs, TPs, DPs, and/or other applicable entities.
- 8. The Regional Entity shall assemble a Certification Team (CT) that will be responsible for performing the activities included in the certification process.
  - a. The CT members shall adhere to NERC's confidentiality agreements for any data or information made available to the CT member through the certification process. Team members shall not be employees of or have a direct financial interest in the entity or any of its affiliates.
  - b. The Regional Entity, with concurrence of NERC, may increase or decrease the distribution of the questionnaires and other related documents based upon the complexity of the certification.
  - c. If the entity objects to any member of the CT, the entity must make that known, in writing, to the Regional Entity listing the reasons for the objection. The Regional Entity will either replace the team member or respond with written justification for keeping the member on the team.
  - d. CT composition
    - i. The BA CT shall consist of representatives from an existing BA, the entity's proposed RC, TOP, each affected Regional Entity, and NERC.
    - ii. The RC CT shall consist of representatives from an existing RC, a BA and a TOP in the proposed RC area, each affected Regional Entity, and NERC.

- iii. The TOP CT shall consist of representatives from an existing TOP, the entity's proposed RC, each affected Regional Entity, and NERC.
- iv. Additional CT members with expertise in the any of the NERC registry functional areas can be added as necessary.
- v. Additional CT members from NERC or Regional Entity staff may be added as necessary.
- vi. Entities such as government representatives or other stakeholders may be observers in the certification process.

- 9. Each CT member must complete the NERC auditor training prior to participation.
- 10. The CT will review the entity's submitted documentation and address any issues prior to the site visit.
- 11. The CT shall inform the entity before the on-site visit of any documentation or clarification that is necessary to support the questionnaires.
- 12. The entity shall identify to the CT prior to the on-site visit all standards or requirements/sub-requirements which have been delegated to another entity.
  - a. The CT will review the entity(ies) ability to perform those delegated requirements/sub-requirements or standards.
- 13. The CT shall conduct at least one on-site visit to the entity's facilities. At a minimum, the team will:
  - a. Review with the entity the data collected through the questionnaires, and such data that is available only onsite;
  - a-b. Interview the operations and management personnel;
  - b. Inspect the facilities and equipment;
  - c. Request a demonstration of all tools identified in the certification standard;
  - d. Review all necessary documents and data including all agreements, processes, and procedures identified in the certification standard;
  - e. Review certification documents and projected system operator work schedules; and
  - f. Review any additional documentation that is needed to support the completed questionnaire or inquiries arising during the site visit.



## Section V — Organization Certification Procedure

### Requirements — Certification Process

1. Applicants seeking certification:
  - a. In a single NERC regional entity, shall initiate the certification process by completing a certification application and sending it to the regional entity. The regional entity in which the applicant plans to operate will conduct the certification process.
  - b. In multiple regional entities, shall initiate the certification process by completing a certification application and sending it to the compliance and certification manager in each affected regional entity; each affected regional entity will inform NERC of the request. NERC will be the coordinator and will notify the applicant of NERC's role. NERC shall coordinate the review process among the affected regional entities.
2. Upon receipt, the application will be assessed for completeness and accuracy. When the application is deemed complete and accurate it will be accepted; at that time the applicant and regional entity or NERC shall agree to a timeline, including specific milestones for the certification process. The applicant and the regional entity or NERC shall complete the NERC organization certification process within nine months of the date of acceptance of the application unless agreed to differently by all parties involved in the process.
3. The regional entity or NERC shall notify all entities identified below that will provide input into the certification review and provide each with the necessary information regarding the applicant's request for certification, the certification process, and the duties expected from each entity. The regional entity or NERC shall provide all participants with a copy of expectations regarding confidentiality and retention of all data reporting, completed questionnaires and forms, reports, and recommendations associated with the documentation it provides and receives.
4. The regional entity shall notify NERC that the certification process has begun for the entity to enable NERC to carry out their roles and responsibilities.
5. NERC shall implement the required changes to integrate the new entity into the system.
6. The regional entity or NERC shall provide the questionnaires, a certification schedule, the deadlines for questionnaire submission, a statement of expectations of the applicant and all of the entities participating in the certification process to those entities that must complete these documents. These questionnaires and other related documents address the applicant's capabilities and actions as they relate to established entity functions and tasks. The regional entity shall distribute questionnaires and other related documents to the following entities as appropriate:
  - a. Applicant (i.e., entity seeking certification).
  - b. All balancing authorities, transmission operator(s), and reliability coordinators in which the applicant intends to operate or interconnect transmission facilities.

**Section V — Organization Certification Procedure**

~~e. Relevant transmission owners, transmission service providers, planning authorities, generation owners, generation operators, transmission planner, distribution providers, and/or other applicable entities.~~

~~7. The regional entity or NERC shall assemble a Certification Review Team charged with the responsibility of determining if the applicant meets NERC's organization certification requirements. The review team members shall subject themselves to NERC confidentiality agreements for any data or information made available to them through the certification review process.~~

~~a. If the applicant objects to any member of the certification team, the applicant must make that known, in writing, to the regional entity or NERC listing the reasons for the objection.~~

~~b. The regional entity will either replace the team member or respond with written justification for keeping the member on the team.~~

~~8. The review team shall consist of a minimum of three individuals including a regional entity representative and NERC (at NERC's option). The selected individuals shall represent at least three of the categories listed below:~~

~~a. Balancing Authority~~

~~b. Reliability Coordinator~~

~~c. Transmission Operator~~

~~d. Transmission Owner~~

~~e. Transmission Service Provider~~

~~f. Transmission Planner~~

~~g. Planning Authority~~

~~h. Generation Operator~~

~~i. Generation Owner~~

~~j. Distribution Provider~~

~~k. Representative from NERC staff~~

~~l. Representative from regional entity staff~~

~~m. Representative from another NERC regional entity~~

~~n. Representative from an RTO or ISO, when applicable~~

~~The balancing authority review team shall minimally consist of a balancing authority and its reliability coordinator; the reliability coordinator review team shall minimally consist of a reliability coordinator, one of its balancing authorities, and one of its transmission operators; and the transmission operator review team shall minimally consist of a transmission operator and reliability coordinator.~~

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**Section V — Organization Certification Procedure**

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- ~~o. Review team members shall not be employees of or have a direct financial interest in the applicant or any of its affiliates.~~
- ~~p. Review processes that involve an entity that is responsible for a function identified in the reliability standards across regional entity boundaries shall have a review team that includes at least one representative from each of the affected regional entities. Each regional entity, not the regional entity or NERC, shall select its representative to the team.~~
- ~~9. The regional entity or NERC may elect, with agreement of the applicant and all other affected regional entities, to contract an independent review team.~~
- ~~10. The review team shall inform the applicant before the on-site visit of any documentation or clarification that is necessary to support the questionnaire.~~
- ~~11. The applicant retains the responsibility for all delegated tasks. The applicant shall identify to the review team prior to the on-site visit all tasks that have been delegated to another entity.~~
- ~~12. The review team shall conduct at least one on-site visit to the applicant's facilities. This may also apply to the facilities of entities responsible for delegated tasks. During the visit, the review team will:
  - ~~a. Review with the applicant the data collected through the questionnaires;~~
  - ~~b. Interview the operations and management personnel;~~
  - ~~c. Inspect the facilities and equipment;~~
  - ~~d. Request a demonstration of all tools identified in the certification standard;~~
  - ~~e. Review all necessary documents and data including all agreements, processes, and procedures identified in the certification standard;~~
  - ~~f. Review certification documents and projected system operator work schedules; and~~
  - ~~g. Review any additional documentation that is needed to support the completed questionnaire or inquiries arising during the site visit.~~~~
- ~~13. The review team shall identify any deficiencies (to both the applicant and to the regional entity) that must be resolved to the satisfaction of the review team prior to the review team making a recommendation to certify.~~
- ~~14. The review team shall formulate a certification recommendation based on:
  - ~~a. Data collected and validated from the questionnaires;~~
  - ~~b. Data collected during demonstrations of tools and review of documents observed during on-site visit(s); and~~
  - ~~c. Information, demonstrations and reviews provided as part of a follow-up to correct identified deficiencies.~~~~
- ~~15. The review team shall support its recommendation through a written report. All members of the review team shall have an equal voice in the certification recommendation. This allows for a minority opinion if the review team cannot reach a consensus.~~

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**Section V — Organization Certification Procedure**

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- ~~a. If the applicant intends to operate in a single regional entity, the review team shall make a recommendation to the regional entity. The regional entity shall approve or disapprove the certification. The regional entity shall notify NERC of the certification decision.~~
- ~~b. If the applicant intends to operate in multiple regional entities, the review team shall make a recommendation to those regional entities. All affected regional entities must approve granting of the certification or the certification is denied.~~
- ~~c. The regional entity or NERC shall verify the regional entity approvals prior to allowing certification. The regional entity shall notify NERC of the certification decision.~~

~~16. The regional entity or NERC (in consultation with the affected regional entities) may grant a time extension, not to exceed 180 days, to the applicant.~~

- ~~a. If the applicant fails to meet the conditions set by the regional entity or NERC, within the granted timeframe, the applicant's request for certification shall be denied.~~

~~If the applicant meets the conditions set by the regional entity(s), within the granted timeframe, the regional entity or NERC (in consultation with the affected regional entities) shall respond to the applicant's notification of completion of requirements within 30 days.~~

~~17. After the applicant has been awarded certification, the regional entity or NERC shall notify all appropriate entities as to the date that the applicant may begin its operation as a certified entity. Applicant must commence operation within 12 months of certification.~~

- ~~a. Failure to begin operation within the 12-month period shall require the applicant to re-apply for certification.~~
- ~~b. If the applicant disagrees with the decision, the applicant can initiate the regional entities Alternate Dispute Resolution process within 60 days of the date of the written denial. If the dispute is still unresolved following the regional entities Alternate Dispute Resolution Process the applicant can initiate the NERC Alternate Dispute Resolution Process. NERC's decision shall be final.~~

## Definitions

- c. Inspect the facilities and equipment associated with the applicable reliability standards referenced in the questionnaire;
  - d. Request demonstration of all tools identified in the certification process;
  - e. Review documents and data including agreements, processes, and procedures identified in the certification process;
  - f. Verify operating personnel NERC certification documents and proposed work schedules; and,
  - g. Review any additional documentation resulting from inquiries arising during the site-visit.
14. The entity, in conjunction with the CT, shall attempt to resolve any deficiencies prior to issuance of the draft report.
15. The draft report is provided to the entity for review for fourteen (14) days and any resulting comments will be assessed by the CT for possible inclusion in the report.
16. The Regional Entity(ies) may grant a time extension, not to exceed 180 days, to the entity to allow the entity to resolve any open certification issues.
17. The CT shall provide a certification recommendation and identification of audit deficiencies in the final written report. All members of the CT shall have an equal voice in the certification recommendation. This allows for a minority opinion if the review team cannot reach a consensus. The final written certification report is distributed to NERC, the entity, and the other affected Regional Entities, as applicable.
18. The following is the format for the final report:
- Title page
  - Table of Contents
  - Introduction – A brief discussion on the Regional Entity(ies) involved, the entity being certified, a description of the function the entity(ies) are being certified for, and a brief timeline of the certification project
  - Certification Team (CT) – Provide the team makeup.
  - Objective and Scope – Discussion on entity application (who, what, when, & how).
  - Overall Conclusion – Recommendation being made by the CT.
  - Certification Team Findings – Any item(s) needing to be closed prior to operation that do not hinder the certification team from making a recommendation.
  - Positive Observations.
  - Company History – Discussion on the applicant’s company history.
  - Company Details– Specific details regarding why the entity is being certified and its relationship with other entities (BAs, RCs, and TOPs etc).
  - Documentation List – Provide a list of critical documentation reviewed by the CT used to make the CT’s conclusion and the documentation retention requirements.

- Attachments – Describe those attachments that are for public viewing and those that are separated from the report due to confidentiality issues such as Critical Infrastructure documentation.

19. Certification recommendation and approval.

- a. If the entity intends to operate in a single Regional Entity’s reliability region, the CT shall make a certification recommendation to that Regional Entity. The Regional Entity shall approve or disapprove the recommendation. The Regional Entity shall notify the entity and NERC of the certification decision.
- b. If the entity intends to operate in multiple Regional Entities, the CT shall make a certification recommendation to all applicable Regional Entities in a single report. Certification recommendation by the Regional Entities must be unanimous. The Regional Entities shall notify the entity and NERC of the certification decision.
- c. NERC shall approve or disapprove all final certification recommendations and notify the entity of the decision.

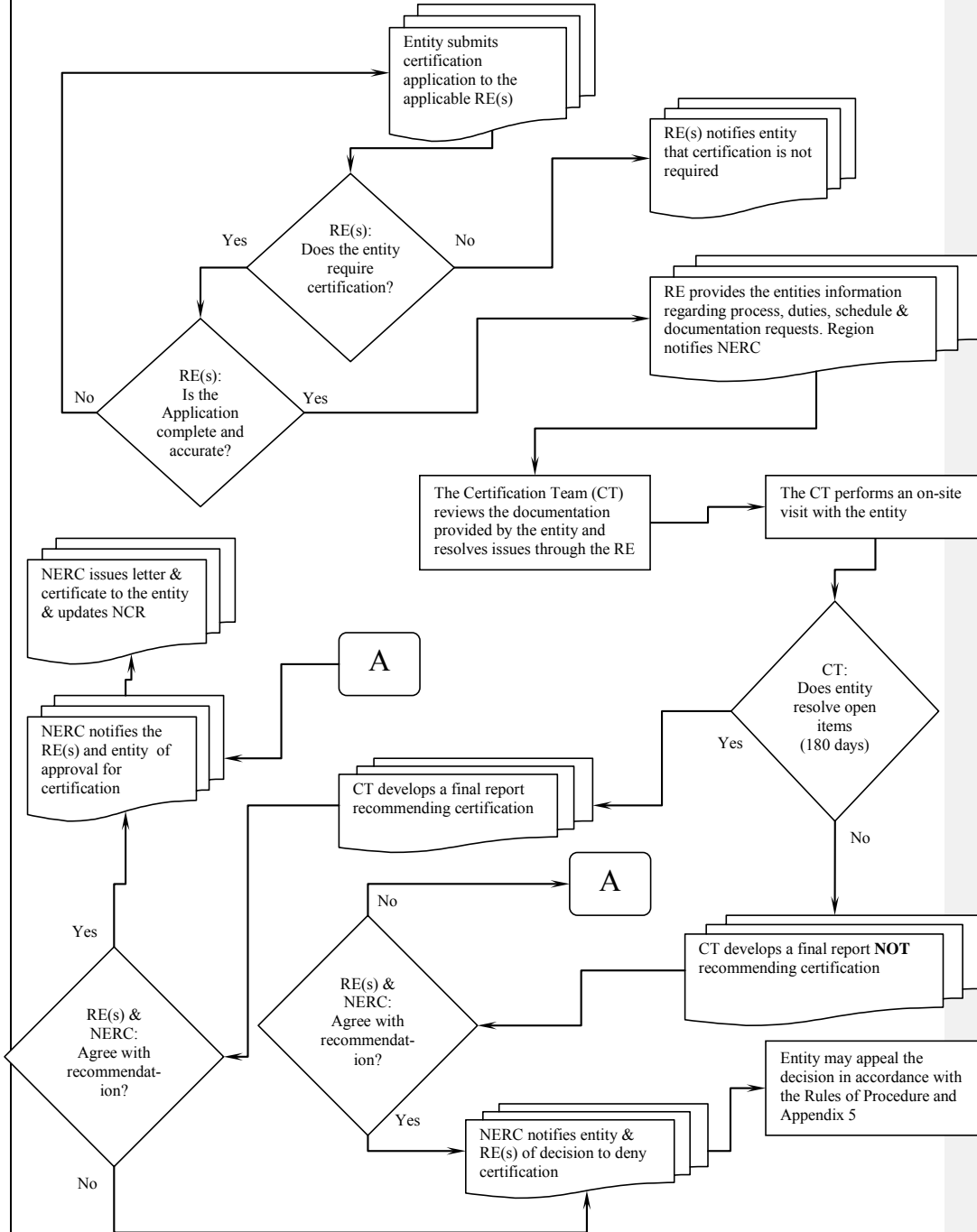
20. The entity may appeal the decision in accordance with the NERC Rules of Procedure and Section VI of this manual.

21. If the entity is approved for certification, NERC shall provide the entity a certification letter and a NERC certificate indicating that that entity is NERC certified as a BA, RC, and/or TOP as applicable.

- a. For those CFR entities that agree upon a division of compliance responsibilities for one or more reliability standards or requirements/sub-requirements, NERC shall provide all entities responsible for BA, RC and/or TOP requirements/sub-requirements and approved for certification as BA, RC and/or TOP a NERC certificate indicating that those entities are NERC certified as a BA, RC, and/or TOP.
- b. NERC shall update the registry prior to the entity(s) going operational.

22. After the entity has been awarded certification, the Regional Entity(ies) shall notify all applicable entities as to the date that the entity may begin its operation as a certified entity. The entity must commence operation within 12 months of certification. Failure to begin operation within the 12-month period shall require the entity to reapply for certification.

**Figure 2: Organization Certification Process Overview**



## Section V — NERC Organization Registration Appeals Process

### Purpose and Scope

This section describes the process that any organization may appeal its listing and functional assignment on the NCR.

### Overview

NERC has established documented procedures to ensure a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness. See Figure 3, *Organization Registration Appeals Process Overview*.

### Organization Registration Appeals Procedure

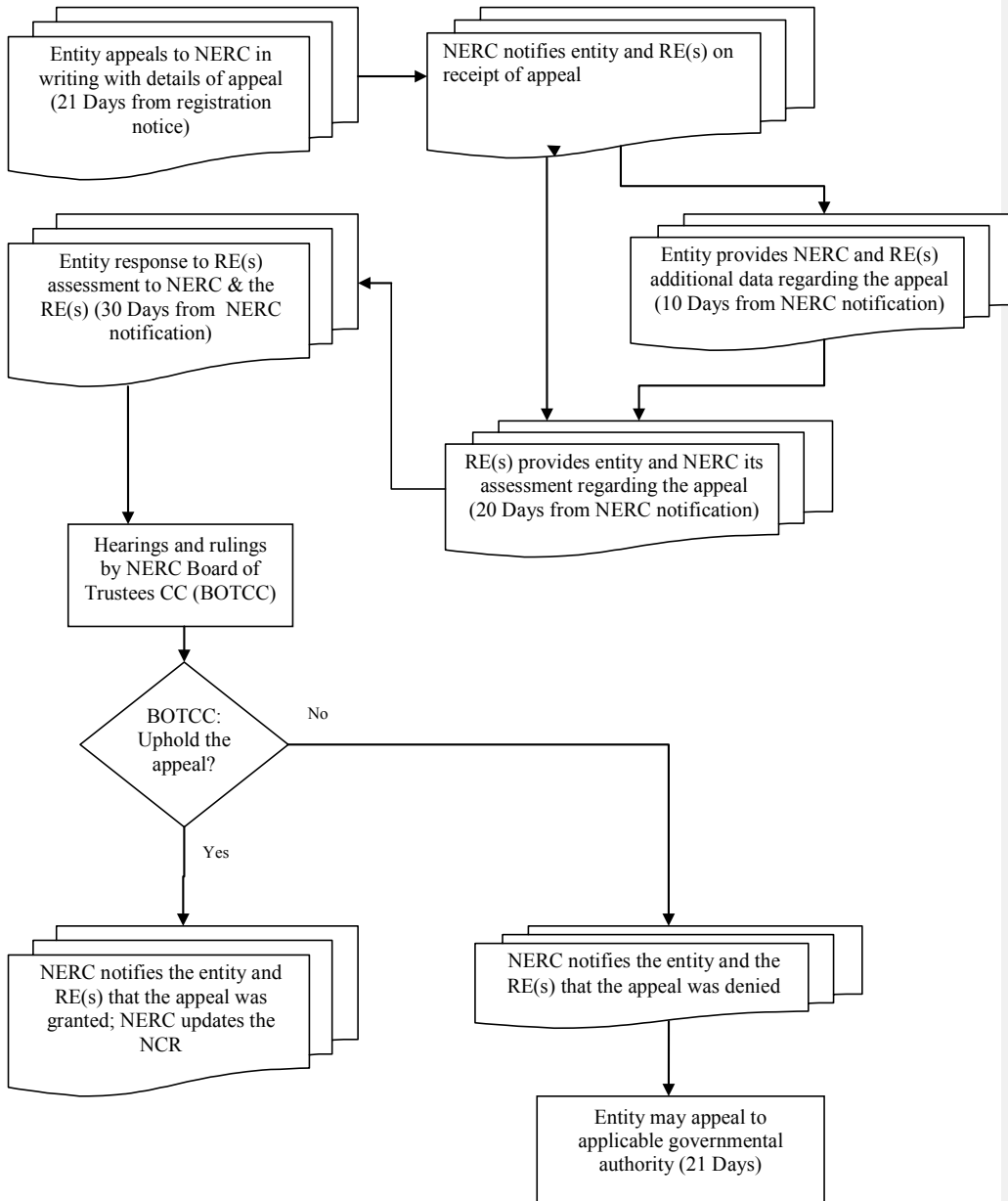
Any entity included on the NCR may challenge its listing and functional assignments with NERC.

1. All registration appeals must be filed in writing to NERC, via registered mail. Appeals are sent to:  
Vice President and Director of Compliance  
North American Electric Reliability Corporation  
116-390 Village Blvd.  
Princeton, New Jersey, 08540
2. Each party in the appeals process shall pay its own expenses for each step in the process.
3. A stipulation of invoking the appeals process is that the Regional Entity or entity requesting the appeal agrees that NERC (its members, Board of Trustees, committees, subcommittees, and staff), any person assisting in the appeals process, and any company employing a person assisting in the appeals process, shall not be liable for, and shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.
4. Parties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction.
5. All appeals must be received within 21 days of receipt of the NERC letter informing the entity that it is listed on the NCR. The appeal must state why the entity believes it should not be registered based on the NERC Rules of Procedure and the *NERC Statement of Compliance Registry Criteria*.



6. After receipt of the appeal, the registered entity has a 30 day period to work with the Regional Entity to resolve the appeal, if possible. If the appeal is resolved, the Regional Entity will notify NERC with the details of the resolution and NERC will close the appeal.
7. At any time through this appeals process, an entity may agree with the decision and/or agree to close the appeal. NERC shall notify the involved parties and the NERC Board of Trustees Compliance Committee (BOTCC) that the appeal is resolved and update the NCR as applicable.
8. NERC will notify the entity and the applicable Regional Entity(ies) regarding the appeal with the following expectations:
  - a. The entity will provide NERC and the applicable Regional Entity(ies) any additional data supporting its appeal within 10 days of the date of the NERC appeal notification.
  - b. The applicable Regional Entity(ies) will provide a copy of its assessment directly to the entity, as well as to NERC, within 20 days of the date of the NERC appeal notification.
  - c. The entity may submit a response to the Regional Entity(ies) assessment, with copies to the Regional Entity(ies) and NERC, within 30 days of the date of the NERC appeal notification.
  - d. To ensure there is no confusion with respect to the rights and responsibilities of the entity during the appeal process, the notification also confirms whether the entity will remain on the NERC Compliance Registry and will be responsible for compliance with approved reliability standards applicable to the function under appeal during the appeal.
9. Hearing and Ruling by the BOTCC
  - a. The BOTCC will resolve registration disputes.
  - b. The BOTCC may request additional data from NERC, the relevant Regional Entity(ies) or the entity, and prescribe the timeframe for the submitting the requested data.
  - c. The BOTCC will provide a written decision regarding any appeals, along with the basis for its decision.
  - d. If the BOTCC upholds the appeal, NERC will:
    - Notify the entity and Regional Entity(ies) that the appeal was granted.
    - Update the NCR.
  - e. If the BOTCC does not uphold the appeal, NERC will:
    - Notify the entity and the Regional Entity(ies) that the appeal was denied.
    - The entity may appeal to FERC or applicable Canadian Provincial regulator within 21 days of the notification of the decision.
  - f. A record of the appeals process shall be maintained by NERC. Confidentiality of the record of the appeal will be based on the NERC Rules of Procedure Section 1500.

**Figure 3: Organization Registration Appeals Process Overview**



## Section VI — NERC Organization Certification Appeals Process

### **Purpose and Scope**

This section describes the process for an organization to appeal the certification decision that was determined in the certification process.

### **Overview**

The NERC Organization Certification Program provides a key means to fulfill NERC’s mission. In conducting this program, NERC has established documented procedures to ensure a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness. See Figure 4 *Organization Certification Appeals Process Overview*.

### **Organization Certification Appeals Procedure**

#### **1. Appeal for an Organization Certification Finding.**

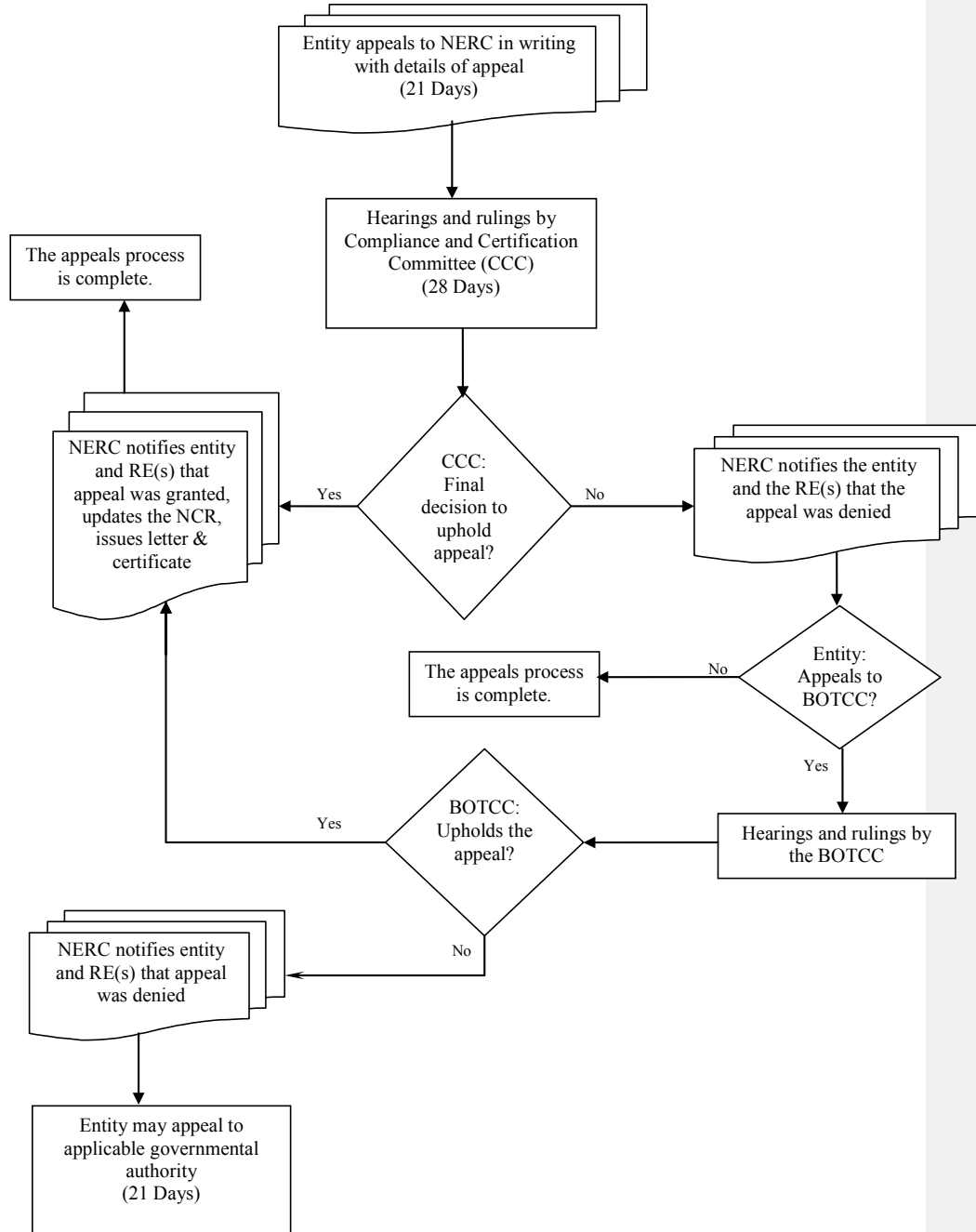
Any entity can appeal an organization certification decision issued as a result of the certification process.

#### **2. Requirements and Conditions for Appeals.**

- a. For all appeals under the NERC Organization Certification Program, the appeals process begins when an entity notifies the NERC Vice President and Director of Compliance, in writing, that it wishes to use the NERC appeals process.**
  - The Vice President and Director of Compliance is the main contact for all parties in all steps of the appeals process.**
  - If an appeal is not filed within twenty one (21) days of the date that the certification report or finding is issued, or the final Regional Entity appeals process ruling is made, the finding shall be considered final and un-appealable.**
- b. Each party in the appeals process shall pay its own expenses for each step in the process.**
- c. A stipulation of invoking the appeals process is that the Regional Entity or entity requesting the appeal agrees that NERC (its members, Board of Trustees, committees, subcommittees, and staff), any person assisting in the appeals process, and any company employing a person assisting in the appeals process, shall not be liable, and shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.**
- d. Parties retain the right to seek further review of a decision in whatever regulatory agency or court that may have jurisdiction.**

3. At any time through this appeals process, an entity may withdraw its appeal.
4. Hearing and Ruling by the Compliance and Certification Committee.
  - a. Within twenty-eight (28) days of receiving notice from the NERC Vice President and Director of Compliance, the CCC will conduct a hearing where all the parties or representatives of the disputing parties will present the issue in question, in accordance with CCC procedure CCCPP-005, *Hearing Procedures for Use in Appeals of Certification Matters*.
  - b. If the appeal is upheld, NERC notifies the entity and RE(s), updates the NCR, and issues any appropriate letter and certificate to the entity.
  - c. If the appeal is denied, NERC notifies the entity and RE(s).
5. Hearings and Ruling by the BOTCC.
  - a. The BOTCC will be asked to resolve a dispute related to the NERC Organization Certification Program if any party to the appeal contests the CCC final order.
  - b. The BOTCC may request additional data from NERC, RE(s) or the entity and prescribe the timeframe for the submitting the requested data.
  - c. At the next regularly scheduled BOTCC meeting, or at a special meeting if the Board determines it is necessary, the Chairman of the CCC will present a summary of the dispute and the actions taken to the Board.
    - Each party will have an opportunity to state its case.
    - The BOTCC will then rule on the dispute.
  - d. If the BOTCC upholds the appeal, NERC will:
    - Notify the entity and the Regional Entity(ies) that the appeal was upheld.
    - Update the NCR.
    - Issue a certification letter and a certificate to the entity as applicable.
  - e. If the BOTCC does not uphold the appeal, NERC will notify the entity and the Regional Entity(ies) that the appeal was denied.
    - The entity may appeal to applicable governmental authorities within 21 days of the issuance of the decision.
  - f. A record of the appeals process shall be maintained by NERC and available upon request. Confidentiality of the record of the appeal will be based on the NERC Rules of Procedure Section 1500.

**Figure 4: Organization Certification Appeals Process Overview**



## Definitions

<b>Applicant</b> <b>NERC Organization Certification</b>	Industry participant who formally submits an application to register or to become certified to perform one or more functional entity responsibilities. The process undertaken by NERC and a Regional Entity to verify that a new entity is capable of responsibilities for tasks associated with a particular function such as a Balancing Authority, Transmission Operator, and/or Reliability Coordinator.
<b>Compliance and Certification Manager</b>	The process undertaken by a regional entity to verify that an applicant is capable of responsibilities for tasks associated with a particular function such as control area, balancing authority, transmission operator, or reliability coordinator. The individual/individuals within the Regional Entity that is/are responsible for monitoring compliance of entities applicable NERC Reliability Standards.
<b>Compliance and Certification Manager</b>	The individual/individuals within the regional entity that is/are responsible for monitoring compliance of entities applicable NERC Reliability Standards.
<b>Days</b>	Days as used in the registration and certification processes are defined as calendar days.
<b>Footprint</b>	The geographical or electric area served by an entity.
<b>Functional Entity</b>	An entity responsible for a function that is required to ensure the reliable operation of the electric grid as identified in the NERC Reliability Standards.
<b>Mapping</b>	The process of determining whether a regional entity's Regional Entity's footprint is being served by registered entities. Registered Entities.
<b>NERC Acronym Identification Number (NERC ID)</b>	A name number given to NERC registered entities Registered Entities that will be used to identify the entity for certain NERC activities. Note: corporate entities may have multiple NERC acronyms IDs to show different corporate involvement in NERC activities.
<b>Non-Certified</b>	An entity that is responsible for a specific function but has not been certified to perform that function by the regional entity.
<b>Regional Entity</b>	NERC works with eight Regional Entities to improve the reliability of the bulk power system. The members of the

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Regional Entities come from all segments of the electric industry. These entities account for virtually all the electricity supplied in the United States, Canada, and a portion of Baja California Norte, Mexico. NERC delegates enforcement authority to these Regional Entities (FRCC, RFC, SPP, TRE, NPCC, MRO, SERC, & WECC).

**Registration**

Process undertaken by a ~~regional entity~~Regional Entity to identify which entities are responsible for reliability functions within the ~~regional entity's~~Regional Entity's footprint.

**Transitional  
Certification Coordinated  
Functional Registration  
(CFR)**

~~A process used by regional entities to transition control areas previously certified using the NERC control area certification process to certification as a functional entity. Where two or more entities (parties) agree in writing upon a division of compliance responsibility among the parties for one or more reliability standard(s) applicable to a particular function, and/or for one or more requirement(s)/sub-requirement(s) within particular reliability standard(s).~~

# Appendix A — NERC Organization Registration and Certification Form

## Sample Registration Form

**Organization:** \_\_\_\_\_  
**Corporate Address:** \_\_\_\_\_  
**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_  
**Current date and time:** \_\_\_\_\_  
**Last date/time Updated:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Phone #:** \_\_\_\_\_ **Fax #:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_

**Currently registered as:**

- Control Area \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Transmission Operator \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Reliability Coordinator \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Balancing Authority \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Planning Authority \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Transmission Planner \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Transmission Service Provider \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Transmission Owner \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Resource Planner \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Distribution Provider \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Generator Owner \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Generator Operator \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Load Serving Entity \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Purchasing selling Entity \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- Compliance Monitor \_\_\_\_\_ Current NERC acronym (If assigned) \_\_\_\_\_
- None \_\_\_\_\_

**Seeking registration as an:**

<input type="checkbox"/> Reliability Coordinator _____	<input type="checkbox"/> Transmission Operator _____
<input type="checkbox"/> Balancing Authority _____	<input type="checkbox"/> Planning Authority _____
<input type="checkbox"/> Transmission Planner _____	<input type="checkbox"/> Transmission Service Provider _____
<input type="checkbox"/> Transmission Owner _____	<input type="checkbox"/> Resource Planner _____
<input type="checkbox"/> Distribution Provider _____	<input type="checkbox"/> Generator Owner _____
<input type="checkbox"/> Generator Operator _____	<input type="checkbox"/> Load Serving Entity _____
<input type="checkbox"/> Purchasing selling Entity _____	<input type="checkbox"/> Compliance Monitor _____

**Date requested to begin new operation:** \_\_\_\_\_  
 Regional Entity Affiliation (membership): \_\_\_\_\_  
 If operating across multiple regional entities please list all: \_\_\_\_\_  
 If dates are different for requested operation in individual regional entities please list all:  
 \_\_\_\_\_

**Comments pertinent to this registration:** \_\_\_\_\_





**Sample Certification Form**

**Organization:** \_\_\_\_\_  
**Corporate Address:** \_\_\_\_\_  
**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_  
**Current date and time:** \_\_\_\_\_  
**Date of Registration:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Phone #:** \_\_\_\_\_ **Fax #:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_

**Currently Certified as (if applicable):** \_\_\_\_\_ **NERC Acronym**  
 Transmission Operator \_\_\_\_\_  
 Reliability Coordinator \_\_\_\_\_  
 Balancing Authority \_\_\_\_\_  
 Control Area \_\_\_\_\_  
 None \_\_\_\_\_

**Seeking certification as:** \_\_\_\_\_ **NERC Acronym** **Date**  
 Transmission Operator \_\_\_\_\_  
 Reliability Coordinator \_\_\_\_\_  
 Balancing Authority \_\_\_\_\_  
 Control Area \_\_\_\_\_

**Regional Entity affiliation (membership):** \_\_\_\_\_  
 If operating across multiple regional entities, list all: \_\_\_\_\_

Identify the following as applicable:  
 If certifying as an RC, adjacent RCs : \_\_\_\_\_ (is this box needed ??)  
 If certifying as a BA, adjacent BAs: \_\_\_\_\_ (links below may take)  
 If certifying as a TOP, adjacent TOPs: \_\_\_\_\_ (care of info needs)

**-(provide links here to access the questionnaires for specifics on agreements, etc)**

Comments pertinent to this certification: \_\_\_\_\_

## ~~Section VI — NERC Organization Certification Appeals Process~~

### ~~Overview~~

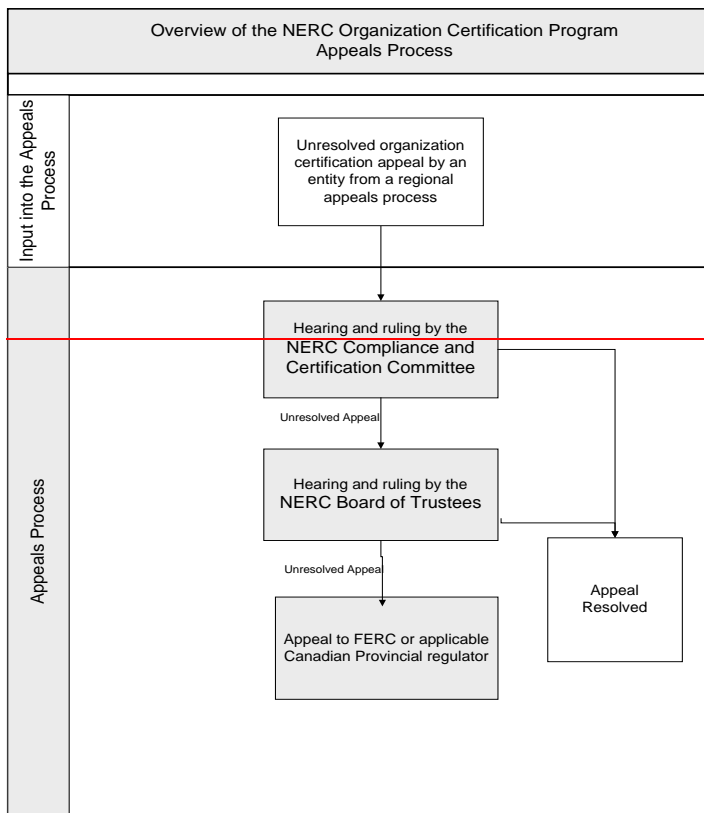
~~NERC's mission is to ensure that the bulk power system in North America is reliable, adequate, and secure. Since its formation in 1968, NERC has operated successfully as a voluntary, self-regulatory organization, relying on reciprocity, peer pressure, and the mutual self-interest of all those involved.~~

~~The NERC Organization Certification Program provides a key means to fulfill NERC's mission. In conducting this program, NERC has established documented procedures and will ensure due process to achieve fair and equitable certification of organizations.~~

### ~~Scope~~

~~This document describes the process for appealing organization certification findings from the NERC Organization Certification Program. Any entity reviewed under the Organization Certification Program can file an appeal using this process. The top of Figure 1 shows how an entity appeal of an organization certification decision will apply to the NERC appeals process.~~

Figure 1: Appeals Process Overview



## ~~Section VI — Organization Certification Appeals Process~~ Definitions

### ~~1. Appeal for an Organization Certification Finding~~

~~Any functional entity or Regional Entity (RE) can appeal an organization certification decision issued as a result of organization certification actions of the NERC Organization Certification Program. An appeal of certification decision can be initiated after using all steps in a RE appeals process have been exhausted and the entity or RE chooses to appeal further.~~

### ~~2. Requirements and Conditions for Appeals~~

~~a. For all appeals under the NERC Organization Certification Program, the appeals process begins when an entity notifies the NERC vice president compliance in writing that it wishes to use the NERC appeals process.~~

~~i) The vice president compliance is the main contact for all parties in all steps of the appeals process.~~

~~ii) If an appeal is not filed within fourteen calendar days of the date that the audit report or finding is issued, or the final RE appeals process ruling is made, the finding shall be considered final and unappealable.~~

~~b. Each party in the appeals process shall pay its own expenses for each step in the process.~~

~~c. A stipulation of invoking the appeals process is that the entity requesting the appeal agrees that neither NERC (its members, Board of Trustees, committees, subcommittees, and staff), any person assisting in the appeals process, nor any company employing a person assisting in the appeals process, shall be liable, and they shall be held harmless against the consequences of or any action or inaction or of any agreement reached in resolution of the dispute or any failure to reach agreement as a result of the appeals proceeding. This “hold harmless” clause does not extend to matters constituting gross negligence, intentional misconduct, or a breach of confidentiality.~~

~~d. Parties retain whatever rights they may have to seek further review of a decision in whatever regulatory agency or court may have jurisdiction.~~

### ~~3. Appeals Process — Hearing and Ruling by the Compliance and Certification Committee~~

~~a. Within twenty-eight calendar days of receiving notice from the NERC vice president compliance that the RE appeals process did not resolve the appeal, the CCC will conduct a hearing where all the parties or representatives of the disputing parties will present the issue in question.~~

~~i) The CCC must have a quorum present to conduct the hearing.~~

~~ii) The hearing shall be closed to the public to protect confidential information.~~

~~iii) CCC members who are interested parties or have an interest in the outcome shall not participate in the hearing.~~

~~b. The CCC will deliberate the issue in a one-day session, take a vote on how to resolve the appeal, and recommend a resolution based on a majority vote, all according to established CCC procedures.~~

~~i) Should both parties accept the solution, the matter will be considered resolved and the process terminated.~~

~~ii) If either of the parties wishes to pursue the appeal further, or if the CCC process cannot be completed in accordance with the timeline of the appeals process outlined~~

**~~Section VI — Organization Certification Appeals Process~~Definitions**

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~~in this document, the NERC vice president compliance shall be notified within seven calendar days.~~

~~The NERC vice president compliance will forward the appeal to the NERC board of trustees within seven calendar days of being notified for resolution.~~

**~~4. Appeals Process — Hearing and Ruling by the NERC Board of Trustees~~**

- ~~a. The NERC board will be asked to resolve a dispute related to the NERC Organization Certification Program if and only if the prior steps outlined in this procedure have failed to render an acceptable solution.~~
- ~~b. At the next regularly scheduled NERC board meeting, or at a special meeting if the board determines it is necessary, the chairman of the CCC will present to the board a summary of the dispute and the actions taken in an attempt to resolve it.
  - ~~i) Each party will then present their side of the dispute.~~
  - ~~ii) The NERC board will then decide the dispute.~~~~
- ~~c. A record of the appeals process shall be maintained and available upon request. Confidentiality of the record of the appeal will be based on the FERC guidelines for the treatment of critical infrastructure information. Entities may request information considered competitive or market sensitive information be withheld.~~

**~~5. General Requirement~~**

- ~~a. Parties are entitled to a fair and impartial appeals process. No one with a direct interest in a dispute may participate in the appeals process except as a party or witness.~~

CH114513843.1

**ATTACHMENT 3**

Proposed Appendix 4E  
NERC Compliance and Certification Committee Hearing Procedures;  
NERC Compliance and Certification Committee Hearing Procedures for Use in Appeals of  
Certification Matters; and  
NERC Compliance and Certification Committee Mediation Procedures

The NERC logo consists of the letters "NERC" in a bold, black, sans-serif font. A thick blue horizontal bar is positioned directly beneath the letters.

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

# NERC Compliance and Certification Committee Hearing Procedures

CCC Monitoring Program — CCCPP-004-1

A faint, light blue map of North America is visible in the background of the lower half of the page. The map shows the outlines of the United States, Canada, and Mexico, with some dotted lines indicating power grid connections.

to ensure  
the reliability of the  
bulk power system

Version 1.0

116-390 Village Blvd., Princeton, NJ 08540  
609.452.8060 | 609.452.9550 fax  
[www.nerc.com](http://www.nerc.com)



<b>NERC Compliance and Certification Committee</b>		<b>CCCPP-004-1</b>
<b>Title:</b> Hearing Procedures		
<b>Version: 1.0</b>	<b>Revision Date: n/a</b>	<b>Effective Date: May 6, 2009</b>

### **Summary**

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings in the United States as described in the North America Electric Reliability Corporation (“NERC”) Rules of Procedure (“ROP”). Specifically, as directed by the NERC Board of Trustees, CCC serves as the hearing body for any contest regarding findings of or penalties or sanctions for violation(s) of reliability standard(s) where NERC is directly monitoring the entity for compliance with those standards (Registered Entity by agreement with an Regional Entity or absent a delegation agreement; the Region itself where approved standards are applicable to the region) as described in the ROP Section 409.

### **Revision History**

<b>Date</b>	<b>Version Number</b>	<b>Comments</b>
03/03/09	1.0	Approved by CCC
05/06/09	1.0	Approved by the Board of Trustees

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# 1. Compliance and Certification Committee Hearing Procedures

## 1.1 Applicability, Definitions and Interpretation

### 1.1.1 Procedure Governed

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in the North America Electric Reliability Corporation (“NERC”) Rules of Procedure (“ROP”). Specifically, as directed by the NERC Board of Trustees, CCC serves as the hearing body for any contest regarding findings of or penalties or sanctions for violation(s) of reliability standard(s) where NERC is directly monitoring the entity for compliance with those standards (Registered Entity by agreement with an Regional Entity or absent a delegation agreement; the Region itself where approved standards are applicable to the region) as described in the ROP Section 409.

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

The standard of proof in any proceeding under these Hearing Procedures shall be by a preponderance of the evidence. The burden of persuasion on the merits of the proceedings shall rest upon the Compliance Staff alleging noncompliance with a Reliability Standard, proposing a penalty, opposing a 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 Panel, for good cause shown, either upon the Hearing Officer’s or the Hearing Panel’s own motion or upon the motion of any Participant.

### 1.1.3 Standards for Discretion

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

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

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

#### **1.1.4 Interpretation**

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

#### **1.1.5 Definitions**

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

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

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

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

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

“Director of Compliance” means the NERC Director of Compliance or his or her designee.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

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

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Officer” means (1) a CCC member or (2) an individual employed or contracted by NERC, as designated by the CCC to preside over hearings conducted pursuant to these Hearing Procedures. The CCC shall approve the individual appointed as the Hearing Officer. The Hearing Officer will not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Paragraph 1.1.1 above. Specifically, the CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the Hearing Panel shall be selected by vote of a valid quorum of the CCC. Voting members of the CCC at arm’s length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.

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

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

take into consideration any timely efforts made by the Respondent to remedy the violation.

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

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

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

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

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

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

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

### **1.2.1 Contents of Filings**

All filings made with the CCC must contain:

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

### **1.2.2 Form of Filings**

- a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11

inches with inside text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left-hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.

- b) All pleadings shall be composed in either Arial or Times New Roman font, black type on white background. The text of pleadings or documents shall be at least 12-point. Footnotes shall be at least 10-point. Other material not in the body of the text, such as schedules, attachments and exhibits, shall be at least 8-point.
- c) Reproductions may be by any process provided that all copies are clear and permanently legible.
- d) Testimony prepared for the purpose of being entered into evidence shall include line numbers on the left-hand side of each page of text. Line numbers shall be continuous.
- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### 1.2.3 Submission of Documents

#### a) Where to File

Filings shall be made with the NERC Director of Compliance located at NERC's principal office. The office will be open from 8 a.m. to 5 p.m., Eastern, each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

#### b) When to File

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

#### c) How to File

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

#### d) Number of Copies to File

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

#### e) Signature

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

**f) Verification**

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

**g) Certificate of Service**

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

#### **1.2.4 Service**

**a) Service List**

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

**b) By Participants**

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

**c) By the NERC Director of Compliance**

The NERC Director of Compliance shall serve all issuances of the Hearing Officer and Hearing Panel upon the members of the Hearing Panel and each individual whose name is on the service list for the proceeding. Service may be made by personal delivery, email, deposit in the United States mail properly addressed with first class postage



prepaid, registered mail properly addressed with postage prepaid or deposit with a private express courier service properly addressed with charges prepaid or payment arrangements made. The Hearing Panel shall ensure that the NERC Director of Compliance has a copy of the record of a proceeding at the time it issues a final order.

**d) Effective Date of Service**

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

**1.2.5 Computation of Time**

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

**1.2.6 Extensions of Time**

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

**1.2.7 Amendments**

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

**1.2.8 Transcripts**

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

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

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

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

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

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

### **1.2.11 Participant Participation**

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

### **1.2.12 Interventions Are Not Permitted**

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC or another Applicable Governmental Authority (in the case of non-U.S.-related proceedings), no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

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

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

### **1.2.14 Docketing System**

The NERC Director of Compliance shall maintain a system for docketing proceedings. A docketed proceeding shall be created upon the issuance of a notice of Alleged Violation or the findings of a regional compliance program audit. Unless NERC provides a different docketing system that will be used, docket numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash ("-"), followed by the letters "NERC", followed by a dash ("-"), followed by

a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year.

### **1.2.15 Hold Harmless**

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

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

### **1.3.1 Respondent’s Option to Request a Hearing**

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

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

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

A notice of Alleged Violation issued to a Respondent, a Staff statement setting forth its rejection of a Respondent’s proposed revised Mitigation Plan, or a report of the findings from a regional compliance program audit shall clearly state that the Respondent has the option to contest the Alleged Violation or proposed Penalty, or both, the regional compliance program audit finding, or the Compliance Staff’s rejection of the proposed revised Mitigation Plan, using either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Paragraphs 1.4 to 1.7. If the Respondent (or any Respondent if there are more than one Respondent) files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Paragraphs 1.4 to 1.7. If the Respondent (or all Respondents if there are more than one Respondent) requests the full hearing procedure, the full

hearing procedure shall apply. If the Respondent requests the shortened hearing procedure, Compliance Staff and any other Participant shall submit a filing within five (5) calendar days of the Respondent's hearing request that states whether Staff or such other Participant agrees to use the shortened hearing procedure. If Staff or another Participant makes a filing requesting the full hearing procedure, then the full hearing procedure shall apply; otherwise the shortened hearing procedure requested by the Respondent or Respondents shall be used. 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 hearing request shall include:

- a) A concise statement of the error or errors contained in the decision being appealed;
- b) A clear statement of the relief being sought;
- c) Argument in sufficient detail to justify such relief; and
- d) Attachments of the full text of the decision being appealed and whichever of the following are applicable:
  - 1) The Respondent's Self-Reporting of a violation;
  - 2) The notice of Alleged Violation and the Respondent's response thereto;
  - 3) The report of the regional compliance program audit and the Respondent's response thereto; and/or
  - 4) The Respondent's proposed revised Mitigation Plan and the Compliance Staff's statement rejecting the proposed revised Mitigation Plan.

### **1.3.2 Shortened Hearing Procedure**

The shortened hearing procedure shall be as set forth in this Paragraph. The rules applicable to the full hearing procedure shall apply to the shortened hearing procedure unless the context of such a rule is inconsistent with the procedure set forth in this Paragraph or otherwise renders it inapplicable to the shortened hearing procedure. The rules concerning ex parte communications in Paragraph 1.4.7 are hereby expressly made applicable to the shortened hearing procedure under this Paragraph.

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

- a) The Prehearing Conference shall be held within seven (7) calendar 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 five (5) calendar days after the date on which the notice of hearing is issued, Staff shall make documents available to the Respondent for inspection and copying pursuant to Paragraph 1.5.7.

- c) Within twenty-one (21) calendar days after 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 have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- d) Within fourteen (14) calendar days of Staff's initial comment filing pursuant to Subparagraph (c), the Respondent shall file:
  - 1) responsive comments stating the Respondent's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;
  - 2) all documents that the Respondent seeks to introduce in support of its position that have not already been submitted in the proceeding; and
  - 3) a verification attesting to the truthfulness of the facts alleged in the filing.
- e) Within seven (7) calendar days after the Respondent's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Respondent's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Respondent shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Respondent filing also shall be verified.
- f) The Hearing Officer shall issue an initial opinion within twenty-one (21) calendar days after the Staff's reply comments filing or any additional filing by the Respondent pursuant to Subparagraph (e).
- g) If either Participant requests, the Hearing Officer shall allow each Participant to file, within seven (7) calendar days after the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "brief on exceptions" in accordance with Paragraph 1.7.5 and within seven (7) calendar days thereafter, a reply brief designated "Brief in Reply to Exceptions."
- h) The Hearing Panel shall strive, but is not required, to issue a final order within ninety (90) calendar days of the notice of hearing.

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

## **1.4 General Hearing Procedure**

### **1.4.1 Notice of Hearing**

Within seven (7) calendar days of a Respondent requesting a hearing pursuant to Paragraph 1.3, the NERC Director of Compliance shall issue a notice of hearing in the docket. The notice of hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) calendar days after the notice of hearing is issued.

### **1.4.2 Hearing Officer**

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

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

- a) To administer oaths and affirmations;
- b) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- c) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- d) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- e) To supervise and issue orders concerning discovery;
- f) To conduct prehearing conferences, status hearings and evidentiary hearings;
- g) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- h) To rule on and receive evidence;
- i) To call upon a Participant to produce further evidence that is material and relevant to any issue;
- j) To issue protective orders pursuant to Paragraph 1.5.10;
- k) To issue initial opinions; and

- l) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

If the Hearing Panel uses a Hearing Officer to preside over a hearing, the Hearing Panel shall disclose the identity, employment history and professional affiliations of the Hearing Officer within two (2) calendar days of the Hearing Officer's assignment to the proceeding, and Participants to the hearing may raise objections to the Hearing Officer's participation in accordance with Paragraph 1.4.5.

### **1.4.3 Hearing Panel**

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

- a) The Hearing Panel shall receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written comments, testimony and evidence. The Hearing Panel shall not receive documents made available by Staff for inspection and copying by the Respondent, or other responses to discovery between the Participants, unless such documents are placed into the record pursuant to Paragraph 1.6.7.
- b) The Hearing Panel or any individual member thereof may, but is not required to, attend any prehearing conference, status hearing or evidentiary hearing, and/or to submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- c) The Hearing Panel shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the Hearing Panel shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- d) To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion or upon petition for interlocutory review meeting the requirements of Paragraph 1.4.4, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
- e) The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order. In issuing a final order, the Hearing Panel shall consider the Hearing Officer's initial opinion but shall have the authority to reject, modify or approve the initial opinion in whole or in part.

### **1.4.4 Interlocutory Review**

A Participant shall be allowed to seek interlocutory review by the Hearing Panel of any ruling of the Hearing Officer where the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding. Failure to seek such review shall

not operate as a waiver of any objection to such ruling. Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the Hearing Panel, the Participant seeking review shall file a petition for interlocutory review within fourteen (14) calendar days after the date of the action that is the subject of the petition. The petition shall contain, in a separately identified section, a demonstration that the ruling for which interlocutory review is sought presents an extraordinary circumstance which makes prompt review necessary to prevent prejudice to the Participant's ability to present its position in the proceeding. The petition shall be filed with any offer of proof and supported by affidavit if based on facts that do not appear of record. Responses to petitions for interlocutory review shall be filed within seven (7) calendar days after service of the petition. No replies to responses are allowed.

The Hearing Officer shall file a report to the Hearing Panel within fourteen (14) calendar days from the filing of the petition. The Hearing Officer's report shall set forth the relevant facts and other background information relating to the ruling on which interlocutory review is sought, the basis for the Hearing Officer's ruling, a summary of the Participants' arguments on the petition for interlocutory review, and the recommendation of the Hearing Officer for the disposition of the petition by the Hearing Panel.

On review of a Hearing Officer's ruling, the Hearing Panel may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. The Hearing Panel may reject the petition for interlocutory review on the grounds that the ruling for which review is sought does not present an extraordinary circumstance which makes prompt review necessary to prevent prejudice to a Participant's ability to present its position in the proceeding, without considering or ruling on the substance of the petitioner's arguments. Issuance of a ruling on a petition for interlocutory review shall require (i) a quorum (as defined in Paragraph 1.7.8) of the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (which number of members voting shall not be less than a quorum). Petitions to rehear or reconsider the Hearing Panel's action taken on interlocutory review shall not be allowed. Filing and disposition of a petition for interlocutory review of a ruling of the Hearing Officer shall not suspend or otherwise delay a hearing or any other scheduled dates in the proceeding except as authorized by the Hearing Officer or the Hearing Panel based on a finding of exceptional circumstances.

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

#### **1.4.5 Disqualification**

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

Any Participant may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the Hearing Panel from a proceeding on grounds of a conflict of interest,



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

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

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

#### **1.4.6 Technical Advisor**

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

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

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

- a) Once a Respondent requests a hearing pursuant to Paragraph 1.3:
  - 1) neither the Hearing Panel, the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; except that

- 2) the Hearing Panel, the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Participant or a Participant's representative:
  - A) in writing if the writing is simultaneously provided to all Participants; or
  - B) orally if a representative for every Participant is present in person or by telephone;
  - C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Compliance Staff from communicating with the Respondent, and representatives, agents or employees thereof on any topic, provided that any member of the Compliance Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the Hearing Panel, the Hearing Officer and any Technical Advisor.
- d) Any member of the Hearing Panel, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) calendar days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

#### **1.4.8 Appearances**

Participants shall file written appearances within seven (7) calendar days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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

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

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

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

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

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

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

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

### **1.5 Prehearing Procedure**

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

#### **1.5.2 Prehearing Conference**

The purpose of the prehearing conference shall be to:

- a) Preliminarily identify the issues;
- b) Discuss a schedule for any discovery to be conducted and address any discovery issues that are raised at that time;
- c) Explore the possibility of obtaining admissions of fact and of the genuineness of documents that would avoid unnecessary proof;
- d) Develop a schedule for the preparation and submission of evidence and witness testimony in advance of the evidentiary hearing;
- e) Schedule a date(s) for the evidentiary hearing; and

- f) Address such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

### **1.5.3 Summary Disposition**

A Hearing Officer, on the Hearing Officer's own motion or on the motion of a Participant, may issue an initial opinion granting, in whole or in part, summary disposition if it appears that there are no issues of material fact. If the Hearing Officer is considering summary disposition in the absence of a Participant motion, the Hearing Officer shall request the Participants to identify in writing any issues of material fact and to comment on the proposed disposition. Factual information in the Participants' comments shall be supported by affidavit. Following review of the Participants' comments, if it still appears to the Hearing Officer that there are no genuine issues of material fact, the Hearing Officer may proceed without an evidentiary hearing. The Hearing Officer shall, however, allow the Participants the opportunity to file briefs. When the Hearing Officer issues an initial opinion granting a motion for summary disposition in whole or in part, the ruling shall set forth the rationale for the grant. An initial opinion of the Hearing Officer granting summary disposition shall be confirmed, rejected or modified in a final order issued by the Hearing Panel.

### **1.5.4 Status Hearings**

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

### **1.5.5 Motions**

Unless otherwise provided, a Participant may file a motion at any time requesting any relief as may be appropriate. Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions shall be filed within fourteen (14) calendar days after service of the motion, and replies to responses shall be filed within seven (7) calendar days after service of the responses; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer, the filing of a motion does not stay the proceeding or extend any scheduled dates in the proceeding.

### **1.5.6 Experts**

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

**1.5.7 Inspection and Copying of Documents in Possession of Staff****a) Documents to be Available for Inspection and Copying**

- (1) Within five (5) calendar days after issuance of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, all documents prepared or obtained by Staff through or in connection with any compliance monitoring process(es) that led to the institution of proceedings. Such documents shall include but are not limited to:
  - (A) requests for information to the Respondent;
  - (B) every written request, including e-mail, directed to persons not employed by NERC to provide information or documents or to be interviewed;
  - (C) the documents provided in response to any such requests described in (A) and (B) above;
  - (D) all transcripts of testimony recorded during the Staff investigation and all exhibits to the transcript;
  - (E) all other documents obtained from the Respondent; and
  - (F) all other documents obtained from persons not employed by NERC.

The sole bases pursuant to which Staff shall be authorized to withhold documents from inspection and copying shall be the bases set forth in Paragraph 1.5.7(b); provided, however, the documents made available for inspection and copying need not include (i) exact copies of documents the Respondent previously provided to Staff, and (ii) any documents provided to the Respondent with or as part of the notice of Alleged Violation, notice of Penalty, assessment of proposed Mitigation Plan or Remedial Action Directive.

- (2) Where there are Participants in a proceeding in addition to a single Respondent and Compliance Staff, the Hearing Officer or Hearing Panel shall oversee the Staff's designation of documents to be produced to such other Participants and the development, execution and enforcement of any protective order deemed necessary. (3) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a notice of hearing, requests for information are issued by Staff related to the same compliance monitoring process(es) that led to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in Subparagraph (a), the additional documents shall be made available to the Respondent not later than fourteen (14) calendar days after Staff receives such documents. If a date for the evidentiary hearing has been scheduled, Staff shall make the additional documents available to the Respondent not less than ten (10) calendar days before the hearing. If Staff receives such documents ten or fewer calendar days before the hearing is scheduled to begin or after the hearing begins, Staff shall make the additional documents available immediately to the Respondent.

- (3) Nothing in subparagraph (a)(1) shall limit the discretion of NERC to make any other document available to the Respondent or the authority of the Hearing Officer to order the production of any other documents or information by any Participant.

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

- (1) Staff may withhold a document from inspection and copying by the Respondent if:
  - (A) the document is privileged to Staff or constitutes attorney work product of Staff's counsel (in applying this provision, the attorney-client privilege shall be recognized as absolute and any demand for production of attorney work product shall be granted only after a showing of substantial need by the Respondent);
  - (B) the document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Staff member that shall not be offered in evidence;
  - (C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline of NERC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization, that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the NERC, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or
  - (D) the Hearing Officer grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

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

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

**c) Withheld Document List**

At the time it is required to make documents available for inspection and copying, Staff shall also provide to the Hearing Officer, the Respondent and any other Participant to which documents are being made available, a list of documents withheld by Staff pursuant to Subparagraph (b)(1). Upon review, the Hearing

Officer may order Staff to make any document withheld available to the Respondent(s) for inspection and copying.

**d) Timing of Inspection and Copying**

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

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

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

**f) Copying Costs**

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

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

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

### **1.5.8 Other Discovery Procedures**

In addition to the production of documents by Staff for inspection and copying by Respondent pursuant to Paragraph 1.5.7, the Participants shall be entitled to utilize all other discovery methods provided for in Rules 402 through 409 of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.409, including data requests, written interrogatories and requests for production of documents or things, depositions by oral examination, requests for inspection of documents and other property, requests for admissions, and requests for issuance of orders to one or more Registered Entities to produce documents for inspection and copying or at the hearing or to provide testimony by an authorized representative in deposition or at the hearing. Unless otherwise directed by the Hearing Officer or Hearing Panel upon motion by a Participant or by the Hearing Officer, or by the Hearing Panel on its own motion, such discovery, and the resolution of any disputes concerning such discovery, shall be conducted in accordance with the provisions of Rules 402 through 410 and 510(e) of the FERC Rules of Practice and Procedure, 18 C.F.R. §385.402 through 385.410 and 385.510(e), which are hereby incorporated by reference

into these Hearing Procedures, subject to the following limitations and modifications to such Rules:

- a) The provisions of Subparagraphs (d), (e) and (f) of Paragraph 1.5.7 shall apply to any such discovery.
- b) Rule 403(b)(2) (18 C.F.R. §385.403(b)(2)) and Rule 410(d)(2) (18 C.F.R. §385.410(b)(2)) shall not be applicable.
- c) The Hearing Officer and the Hearing Panel have the authority to issue orders to compel the appearance by or production of documents or information by, only any Person that (i) is a Participant, or (ii) is a Registered Entity (including an authorized representative thereof) that is not a Participant. The Hearing Officer and the Hearing Panel do not have authority to require a United States marshal or deputy marshal to serve an order to produce or provide documents, information or testimony.
- d) References to “subpoena” in Rules 404, 409, 410 and 510(e) shall be deemed to be to an order to a non-Participant Registered Entity to produce or provide documents, information or testimony.
- e) References to the “Commission” in Rules 402 through 410 and 510(e) shall be to FERC except as follows: (i) the references in Rules 402(a), 404(b)(1) and 405(b), the second reference in Rule 410(d), and the references in Rule 510(e)(1) and (2) shall be deemed to be to the Hearing Panel, (ii) the reference in Rule 385.406(b)(4) to “Commission trial staff” shall be deemed to be to Compliance Staff, and (iii) the reference in Rule 510(e)(3) shall be deemed to be to the Hearing Officer or Hearing Panel.
- f) Unless otherwise ordered by the Hearing Officer or Hearing Panel, a data request, set of interrogatories, request for production of documents or things, request for inspection of documents or other property, request for admissions, or order to produce or provide documents, information, or testimony shall not specify a due date or response date that is fewer than 21 calendar days from the date of service of the request or date of the order.
- g) A list of withheld documents, if any, shall be provided by any Participant required to produce documents, at the time the documents are required to be produced, to the Hearing Officer and to each Participant entitled to receive production of the documents. Upon review, the Hearing Officer may order the Participant to make any document withheld available to any other Participant or Participants for inspection and copying.
- h) In the event a document or information required to be produced or provided by a Participant pursuant to discovery is not produced or provided by the Participant, no rehearing or amended decision of a proceeding already heard or decided shall be required where the failure to produce or provide the document or information was harmless error. Should a dispute arise as to whether a rehearing or amended decision is required due to the failure of a Participant to produce or provide a document or information, the burden shall be on the Participant that failed to produce or provide the document or information to show that such failure was



harmless error. The Hearing Officer or, upon review, the Hearing Panel shall determine whether the failure to make the document available was harmless error.

- i) Unless otherwise ordered by the Hearing Officer or Hearing Panel, all such discovery shall be requested, scheduled and conducted so as to be completed within six (6) months following the date of the initial prehearing conference held pursuant to Paragraphs 1.4.1 and 1.5.2.
- j) Notwithstanding (f) and (i), however, if the shortened hearing procedure in Paragraph 1.3.2 is used in a proceeding, the Hearing Officer, on his or her own motion or on motion of a Participant, shall establish a schedule for discovery, including response periods for responding to discovery requests, that are consistent with the expedited nature of the proceeding contemplated by the shortened hearing procedure.

The Hearing Officer's ruling on all motions relating to disputes concerning such discovery shall consider the following objectives: (i) full disclosure of all relevant documents and information; (ii) the exercise of due diligence in the conduct of discovery by a Participant; and (iii) disallowing use of discovery as a means to delay the proceeding or to harass or burden any other Participant.

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

Unless the Hearing Officer orders otherwise and with the exception of (i) any adverse Participant examination pursuant to Paragraph 1.6.16 and (ii) the testimony and documents of a non-Participant provided pursuant to an order to produce or provide documents, information or testimony, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and shall be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. Where a Participant intends to use a document or other demonstrative evidence that has not been filed as part of written testimony in the conduct of cross-examination (other than documents that are to be produced by a non-Participant at the hearing pursuant to an order to produce documents), the Participant intending to use such document or demonstrative evidence shall provide it to the other Participants and the Hearing Officer at least three (3) business days prior to the date at which the witness will be cross-examined at the evidentiary hearing.

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

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

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

The Participants shall file the documents they intend to offer into evidence in accordance with the Hearing Officer's schedule, as it may be amended. Such filings of written testimony and other evidence in advance of the evidentiary hearing shall not entitle the documents to be admitted into the evidentiary record. The Participants must offer their witnesses' testimony and other proposed evidence for admission into the evidentiary record during the evidentiary hearing.

Any Participant who fails, without good cause shown, to comply with the Hearing Officer's schedule for the filing of written testimony and other evidence in advance of the evidentiary hearing may be limited in the presentation of its evidence during the evidentiary hearing or have its participation in the evidentiary hearing otherwise restricted by the Hearing Officer to avoid undue prejudice and delay.

#### **1.5.10 Protective Orders**

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of any non-Participant ordered to produce documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection through a protective order: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information; (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of the ERO or any federal, state or foreign regulatory authority. 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 motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the

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

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

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

### **1.6 Evidentiary Hearing Procedure**

#### **1.6.1 Evidentiary Hearings**

The purpose of the evidentiary hearing shall be to admit the Participants' evidence into the record, and for each Participant to have the opportunity to cross-examine the other Participant's witnesses. A schedule for briefs, unless waived by the Participants, shall be set at the conclusion of the evidentiary hearing. The evidentiary hearing also may be used to address any other issue pending between the Participants.

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

In all proceedings Compliance Staff shall open and close.

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

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

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

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

### **1.6.5 Exhibits**

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

### **1.6.6 Witness Attendance at Evidentiary Hearing**

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

### **1.6.7 Admission of Evidence**

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

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

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness' testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness' testimony, or any part thereof, as set forth in Paragraph 1.6.11. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

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

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

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

#### **1.6.9 Stipulations**

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

#### **1.6.10 Official Notice**

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

- a) Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of NERC and Regional Entities.
- b) The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed proceedings of NERC.

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

All requests to take official notice shall be submitted in advance of the evidentiary hearing in accordance with a schedule established by the Hearing Officer. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested. An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

#### **1.6.11 Admissibility of Evidence**

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

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

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

#### **1.6.12 Offer of Proof**

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

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

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

#### **1.6.14 Cross-Examination**

Each witness shall be tendered for cross-examination subsequent to the admission of the witness' testimony into the evidentiary record. Each Participant shall have the right to cross-examine

each witness of any other Participants. A Participant may waive cross-examination of any witness. The Hearing Officer and any member of the Hearing Panel may ask the witness questions following the conclusion of the witness' cross-examination by the other Participant, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in writing to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

### **1.6.15 Redirect Examination**

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Panel. Any redirect examination shall be limited in scope to the witness' cross-examination and questions of the Hearing Officer and members of the Hearing Panel. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

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

Any Participant may call any adverse Participant, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Participant's behalf, and may conduct such oral examination as though the witness were under cross-examination. If a Participant intends to call an adverse Participant for examination, it shall give notice to the Hearing Officer and all other Participants setting forth the grounds for such examination at least fourteen (14) calendar 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) calendar days in advance of the evidentiary hearing. Any Participant may conduct oral examination of a witness testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, as though the witness were under cross-examination.

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

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

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

### **1.7.1 Briefs**

- a) At the close of the evidentiary hearing, Participants may file initial and reply briefs.
- b) Briefs shall be concise, and, if in excess of twenty (20) pages, excluding appendices, shall contain a table of contents. Statements of fact should be supported by record citations.

- c) The Hearing Officer will prescribe the time for filing briefs, giving due regard to the nature of the proceeding, the extent of the record, the number and complexity of the issues, and the objective of expedition.
- d) Unless the Hearing Officer prescribes otherwise, all Participants shall file initial and reply briefs simultaneously.
- e) Participants' reply briefs shall be limited in scope to responding to arguments and issues raised in other Participants' initial briefs.
- f) The Hearing Officer may, with the agreement of the Participants, allow oral closing statements to be made on the record in lieu of briefs.
- g) The Hearing Officer may establish reasonable page limitations applicable to briefs.

### **1.7.2 Other Pleadings**

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

### **1.7.3 Draft Initial Opinions**

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

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

Except as otherwise ordered by the Hearing Panel, at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the Hearing Panel's review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, Mitigation Plan or Remedial Action Directive that the Hearing Officer proposes the Hearing Panel require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order pursuant to Paragraph 1.5.10.

### **1.7.5 Exceptions**

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



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

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

### **1.7.6 Oral Argument**

The Hearing Panel may elect to hear oral argument. If oral argument is held without briefs having been filed, Participants will be given the opportunity to present argument on all issues. If oral argument is held where briefs have been filed, argument may be limited to issues identified by the Hearing Panel. The Hearing Panel will direct the NERC Director of Compliance to issue a notice of oral argument that identifies the date, time, place and issues for the argument.

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

### **1.7.7 Additional Hearings**

After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the Hearing Panel's own motion if there is reason to believe that reopening is warranted by any changes in conditions, or by the need to compile a complete evidentiary record on which to base the final order. Any Participant may file a motion to reopen

the record, which shall contain the reasons for reopening, including material changes in conditions or the identification of additional evidence that should be included in the record, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.

### **1.7.8 Hearing Panel Final Order**

Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the Hearing Panel shall issue its final order. Issuance of a final order shall require (i) a quorum of the Hearing Panel, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (which number of members voting shall not be less than a quorum). The Hearing Panel shall strive, but shall not be required, to issue its final order within thirty (30) calendar days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The final order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The final order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The Hearing Panel will base its determinations in the final order on the record. The final order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, Remedial Action Directive or Mitigation Plan required. If the final order imposes a Penalty, it shall be entitled "Final Order and Notice of Penalty". The final order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident, if any information in the proceeding was deemed to be Critical Energy Infrastructure Information, or if any information in the proceeding is the subject of a protective order issued pursuant to Paragraph 1.5.10. The Hearing Panel shall direct the NERC Director of Compliance to serve the final order on the Participants. The service of the final order shall include a notice informing the Participants of their appeal rights pursuant to Section 400 of the Rules of Procedure.

### **1.7.9 The Record**

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

- a) Notice of Alleged Violation and Respondent's response thereto;
- b) Respondent's proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;
- c) Remedial Action Directives and the Respondent's notice contesting the Remedial Action Directive;
- d) Respondent's request for a hearing;
- e) Participant filings, motions, and responses;
- f) Notices, rulings, orders and other issuances of the Hearing Officer and Hearing Panel;
- g) Transcripts;
- h) Evidence received;
- i) Written comments submitted in lieu of written testimony;

- j) Matters officially noticed;
- k) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;
- l) Briefs, pre-evidentiary hearing memorandums, and draft opinions;
- m) Post-hearing pleadings other than briefs;
- n) The Hearing Officer's initial opinion;
- o) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;
- p) The Hearing Panel's final order, any notice of Penalty issued therewith, and the NERC Director of Compliance's notice transmitting the final order to the Participants;
- q) All notices of ex parte communications; and
- r) Any notifications of recusal and motions for disqualification of a member of the Hearing Panel or Hearing Officer of Technical Advisor and any responses or replies thereto.

#### **1.7.10 Appeal**

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

### **1.8 Settlement**

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

### **1.9 Remedial Action Directives**

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

Staff may issue a Remedial Action Directive to a Respondent at any time, including during any proceeding related to an alleged violation of a Reliability Standard. The Remedial Action Directive shall be delivered to the Respondent in accordance with Section 7.0 of the NERC Compliance Monitoring and Enforcement Program.

The Respondent may contest the Remedial Action Directive by filing a written notice with the NERC Director of Compliance that states that the Respondent contests the Remedial Action Directive and that the Respondent requests a Remedial Action Directive hearing. The Respondent shall attach a copy of the Remedial Action Directive to its written notice. The Respondent must provide such notice within two (2) business days following the date of actual receipt (as defined in Section 7.0 of the NERC Compliance Monitoring and Enforcement Program) of the Remedial Action Directive. If the Respondent does not give written notice to the NERC Director of Compliance within the required time period, the Respondent shall be deemed to have waived its right to contest the Remedial Action Directive.

The NERC Director of Compliance shall assign a docket number, and issue a notice of hearing that sets forth the date, time and place at which the hearing will convene pursuant to Paragraph 1.4.1.

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

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

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

- a) The Hearing Officer or the Hearing Panel will hold a prehearing conference within two (2) business days after receipt of the Respondent's request for a hearing.
- b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) business days after the prehearing conference.
- c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Respondent shall present oral witness testimony and evidence to show why the Remedial Action Directive is not necessary or should be modified. All witness testimony shall be rendered under oath.
- d) At the evidentiary hearing, the Participants shall have the opportunity to make opening statements. In addition, the Participants shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Respondent's closing argument.
- e) The Participants may file initial briefs and reply briefs, and/or draft opinions, on an expedited schedule set by the Hearing Officer or the Hearing Panel. Oral argument shall not be held.
- f) The Hearing Panel shall issue a summary written decision within ten (10) calendar days following the hearing, stating whether the Respondent shall or shall not be required to comply with the Remedial Action Directive and identifying any modifications to the Remedial Action Directive that it finds appropriate.

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

# NERC

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

## NERC Compliance and Certification Committee

## Hearing Procedures for Use in Appeals of Certification Matters

CCC Monitoring Program — CCCPP-005-1

to ensure  
the reliability of the  
bulk power system

Version 1.0

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<b>NERC Compliance and Certification Committee</b>		<b>CCCPP-005-1</b>
<b>Title:</b> Hearing Procedures for Use in Appeals of Certification Matters		
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### **Summary**

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

### **Revision History**

<b>Date</b>	<b>Version Number</b>	<b>Comments</b>
03/03/09	1.0	Approved by CCC
05/06/09	1.0	Approved by the Board of Trustees

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# 1. Hearing Procedures for Use in Appeals of Certification Matters

## 1.1 Applicability, Definitions and Interpretation

### 1.1.1 Procedure Governed

The provisions set forth in this document (“Hearing Procedures”) shall apply to and govern practice and procedure before the Compliance and Certification Committee (the “CCC”) in hearings as described in Section 504 and Appendix 5 of the NERC Rules of Procedure (“ROP”) conducted into appeals to resolve any disputes related to Certification activities. Any hearing conducted pursuant to these Hearing Procedures shall be conducted before a Hearing Panel established by the CCC in accordance with Section 8.3 of the CCC Charter and Appendix 5 of the NERC ROP. The composition of the Hearing Panel, after any recusals or disqualifications, shall be such that no two industry segments may control, and no single industry segment may veto, any decision by the Hearing Panel on any matter brought before it for decision.

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

### 1.1.2 Deviation

To the extent permitted by law, any provision in these Hearing Procedures may be waived, suspended or modified by the Hearing Officer, as defined in Paragraph 1.1.5, or the Hearing Panel, for good cause shown, either upon the Hearing Officer’s or the Hearing Panel’s own motion or upon the motion of any Participant.

### 1.1.3 Standards for Discretion

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

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



- e) Impartiality — Persons appearing before the Hearing Panel should not be subject to discriminatory or preferential treatment. Respondents should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- f) Expedition — Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

#### **1.1.4 Interpretation**

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

#### **1.1.5 Definitions**

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

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

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

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

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

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

“Director of Compliance” means the NERC Director of Compliance, or his or her designee.

“Document” means, in addition to the commonly understood meaning of the term as information written or printed on paper, any electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained, and shall be translated by the producing party into reasonably usable form.

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

“FERC” means the Federal Energy Regulatory Commission.

“Hearing Officer” means (1) a CCC member or (2) another individual employed or contracted by NERC, as designated by the CCC to preside over hearings conducted pursuant to these Hearing Procedures. The CCC shall approve the individual appointed as the Hearing Officer. The Hearing Officer will not be a member of the Hearing Panel.

“Hearing Panel” means the five person hearing body established as set forth in the CCC Charter on a case by case basis and that is responsible for adjudicating a matter as set forth in Paragraph 1.1.1 above. Specifically, the CCC shall not have a standing Hearing Panel. When a hearing is to be conducted, the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the Hearing Panel shall be selected by vote of a valid quorum of the CCC. Voting members of the CCC at arm’s length from parties to the hearing may be nominated or volunteer to stand for selection to the Hearing Panel. One or more alternates may also be selected if the CCC deems appropriate for the circumstances. A member may serve on more than one Hearing Panel concurrently. A Hearing Panel is disbanded upon conclusion of the hearing proceedings for which it was formed.

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

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

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

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

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

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

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

### **1.2.1 Contents of Filings**

All filings made with the CCC must contain:

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

### **1.2.2 Form of Filings**

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

- e) Filings may include schedules, attachments or exhibits of a numerical or documentary nature which shall, whenever practical, conform to these requirements; however, any log, graph, map, drawing, chart or other such document will be accepted on paper larger than prescribed in subparagraph (a) if it cannot be provided legibly on letter size paper.

### **1.2.3 Submission of Documents**

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

Filings shall be made with the NERC Director of Compliance located at NERC's principal office. The office will be open from 8 a.m. to 5 p.m., Eastern, each day except Saturday, Sunday, legal holidays and any other day declared by NERC.

#### **b) When to File**

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

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

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

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

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

#### **e) Signature**

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

#### **f) Verification**

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

**g) Certificate of Service**

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

**1.2.4 Service****a) Service List**

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

**b) By Participants**

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

**c) By the NERC Director of Compliance**

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

**d) Effective Date of Service**

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

### **1.2.5 Computation of Time**

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

### **1.2.6 Extensions of Time**

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

### **1.2.7 Amendments**

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

### **1.2.8 Transcripts**

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

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

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

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

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

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

### **1.2.11 Participant Participation**

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

### **1.2.12 Interventions Are Not Permitted**

The Respondent(s) and Staff shall be Participants to the proceeding. Unless otherwise authorized by FERC or another Applicable Governmental Authority (in the case of non-U.S.-related proceedings), no other Persons shall be permitted to intervene or otherwise become a Participant to the proceeding.

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

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

### **1.2.14 Docketing System**

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

### **1.2.15 Hold Harmless**

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

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

#### **1.3.1 Respondent's Option to Request a Hearing**

To appeal a Certification decision, a Respondent must file a statement with the NERC Director of Compliance requesting a Certification hearing within fourteen (14) calendar days after (i) the Certification report or finding is issued, or (ii) the final regional entity appeal process ruling is made. If the Respondent does not file a hearing request within the time period set forth in this Paragraph, then the Respondent will be deemed to have agreed and waived any objection to the Certification decision.

A hearing request shall include:

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

#### **1.3.2 Hearing Procedure**

The Hearing Panel may utilize a Hearing Officer to preside over the hearing procedure in accordance with Paragraph 1.4.2. No evidentiary hearing will be held, and the Participants will not present witness testimony or file briefs, except as requested by the Hearing Officer and/or the Hearing Panel. Instead, the following events shall take place within the following periods:

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



- 2) all documents that the Respondent seeks to introduce in support of its position that have not already been submitted in the proceeding; and
- 3) a verification attesting to the truthfulness of the facts alleged in the filing.

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

## **1.4 General Hearing Procedure**

### **1.4.1 Notice of Hearing**

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

### **1.4.2 Hearing Officer**

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

The Hearing Panel may delegate to the Hearing Officer authority over the conduct of the hearing, including administering the hearing through the issuance of the opinion and any administrative hearing functions thereafter. The Hearing Officer shall have those duties and powers necessary to those ends, consistent with and as further enumerated in these Hearing Procedures, including the following:

- a) To administer oaths and affirmations;
- b) To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;
- c) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;
- d) Consistent with any timing or deadline requirements imposed by these Hearing Procedures or by applicable law, to modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Participant;
- e) To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;
- f) To issue protective orders pursuant to Paragraph 1.4.10; and

- g) To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.

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

### **1.4.3 Hearing Panel**

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

- a) The Hearing Panel shall receive all filings in a hearing.
- b) The Hearing Panel or any individual member thereof may, but is not required to, submit questions to the Hearing Officer to submit to a Participant or any witness at any such hearing.
- c) The Hearing Panel shall have the same authority as the Hearing Officer, as set forth in these Hearing Procedures, to require the Participants or any individual Participant to: (i) address a specific issue in testimony, evidence or briefs; or (ii) present oral argument on an issue. To this end, the Hearing Panel shall be entitled to issue questions or requests for information to any Participant or any witness at any time until the issuance of a final order.
- d) To the extent that the Hearing Panel disagrees with any issuance or ruling of the Hearing Officer, it may, on its own motion, reverse or modify the issuance or ruling in whole or in part, or take any other action as may be appropriate.
- e) The Hearing Panel shall resolve the issue(s) in every hearing through the issuance of a final order.

### **1.4.4 Disqualification**

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

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

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

If a quorum (as defined in Paragraph 1.5.15) of the Hearing Panel does not remain after any recusals and rulings on motions for disqualification, then the CCC shall appoint a new member(s) to the Hearing Panel to create a quorum, which new member(s) shall serve on the Hearing Panel through the conclusion of the proceeding but not thereafter. The CCC shall only appoint the number of new members as are necessary to create a quorum. Any new member of the Hearing Panel shall be subject to the provisions applicable herein to all Hearing Panel members.

#### **1.4.5 Technical Advisor**

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

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

#### **1.4.6 No Ex Parte Communications**

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

- C) subject to the requirement that the substance of any ruling on any issue discussed shall be memorialized on the record or by the issuance of a notice or ruling, and that any Participant objecting to the ruling shall have the opportunity to state its objection on the record.
- b) The proscription in Subparagraph (a)(1) does not prohibit members of the Certification Staff from communicating with the Respondent, and representatives, agents or employees thereof on any topic, provided that any member of the Certification Staff involved in any such communication relating to the subject matter of the proceeding may not be, and may not subsequently serve as, a Technical Advisor.
- c) The proscription in Subparagraph (a)(1) also does not prohibit communications between members of the Hearing Panel, the Hearing Officer and any Technical Advisor.
- d) Any member of the Hearing Panel, the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) calendar days of the communication, file and serve on the Participants in the proceeding a notice of ex parte communication setting forth the date, time and place of communication, a summary of the substance and nature of the communication and all responses thereto, and a list of each Person who made or received the communication and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.

#### **1.4.7 Appearances**

Participants shall file written appearances within seven (7) calendar days after the notice of hearing is issued. A Participant's written appearance shall identify the name(s) of each individual authorized to represent the Participant in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, limited liability company, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Participant. A Participant also may appear by an attorney.

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

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

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

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

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

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

#### **1.4.9 Experts**

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

#### **1.4.10 Protective Orders**

- a) All proceedings conducted pursuant to these Hearing Procedures, and any written testimony, exhibits, other evidence, transcripts, comments, briefs, rulings and other issuances, shall be non-public and shall be held in confidence by all Participants, except as the ERO (within the U.S., in accordance with the authorization previously granted by FERC to release information about a non-public proceeding) or FERC (in the case of U.S.-related information) or another Applicable Governmental Authority (in the case of non-U.S.-related information) authorizes or directs public disclosure of any portion of the record. In addition to this general proscription, at any time during a proceeding, the Hearing Officer, on his or her own motion or on the motion of any Participant or of a non-Participant ordered to produce documents, information or testimony, may enter a protective order to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Participant.
- b) The following types of information will be considered entitled to protection through a protective order: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information; (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; (vi) investigative files or documents that would disclose investigative techniques of Staff, any Regional Entity or any federal, state or foreign regulatory authority.
- c) A motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, documents or information, if any, and shall propose requirements or safeguards to be met for individuals participating in the

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

## **1.5 Hearing Procedure**

### **1.5.1 Order of Argument**

In all proceedings Respondent shall open and close.

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

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

### **1.5.3 Exhibits**

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

### **1.5.4 Witness Attendance at Hearing**

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

### **1.5.5 Admission of Evidence**

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

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

Once a witness has attested to the veracity of his or her testimony, the Participant on whose behalf the witness is testifying shall move for admission of the witness's testimony, including all exhibits, schedules and attachments thereto, into evidence. Other Participants may object to the introduction of the witness's testimony, or any part thereof, as set forth in Paragraph 1.5.8. Subject to the Hearing Officer's ruling on the objection, the witness' testimony shall be admitted into evidence. The witness shall then be turned over for cross-examination by other Participants, and for any questions by the Hearing Officer or any member of the Hearing Panel, in accordance with Paragraph 1.5.11, and then for redirect examination in accordance with Paragraph 1.5.12. Witnesses shall be cross-examined on all previously-served testimony (direct, rebuttal or surrebuttal) when they first take the witness stand.

Except (i) in exceptional cases and upon a showing of good cause and (ii) witnesses testifying pursuant to an order to produce or provide documents, information or testimony issued to a non-Participant, no witness shall be allowed to testify during the hearing unless a Participant has served the witness's written testimony in advance of the hearing in accordance with Paragraph 1.3.1. Due to the undue prejudice such surprise witness testimony would impose on other Participants, it is the CCC's policy to discourage witness testimony at a hearing when a Participant has not served the witness's written testimony in advance of the hearing. If such testimony is allowed, sufficient procedural steps shall be taken by the Hearing Officer to provide the other Participants with a fair opportunity for response and cross-examination.

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

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

material matter may be read into the record, or, if the Hearing Officer so directs, a separate copy of such matter in proper form shall be offered as an exhibit. All other Participants shall be afforded an opportunity to examine the book, paper or document and to offer in evidence in like manner other portions thereof if found to be material and relevant.

### **1.5.7 Stipulations**

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

### **1.5.8 Official Notice**

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

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

All requests to take official notice shall be submitted as part of the filings made pursuant to Paragraph 1.3.1. Before ruling on a request to take official notice, the Hearing Officer shall afford the other Participant opportunity to object or to show the contrary to the matter for which official notice is requested. An accurate copy of any item officially noticed shall be introduced into the record in the form of an exhibit presented by the Participant requesting official notice unless waived by the Participants and approved by the Hearing Officer. Any information officially noticed and not presented as an exhibit shall be set forth in a statement on the record.

### **1.5.9 Admissibility of Evidence**

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

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

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



**1.5.10 Offer of Proof**

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

**1.5.11 Evidentiary Ruling**

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

**1.5.12 Cross-Examination**

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

**1.5.13 Redirect Examination**

A Participant shall be entitled to conduct redirect examination of each of the Participant's witnesses who are subject to cross-examination or questions of the Hearing Officer or a member of the Hearing Panel. Any redirect examination shall be limited in scope to the witness's cross-examination and questions of the Hearing Officer and members of the Hearing Panel. If a member of the Hearing Panel seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.

**1.5.14 Close of the Evidentiary Record**

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

**1.5.15 Closing Statements**

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

**1.5.16 Hearing Panel Final Order**

Following the hearing, the Hearing Panel shall issue its final order. Issuance of a final order shall require (i) a quorum of the Hearing Panel, which shall be (after any recusals, disqualifications and appointments of replacement members) at least fifty (50) percent of the number of members normally assigned to the Hearing Panel, and (ii) majority vote of the members of the Hearing Panel voting on the final order (which number of members voting shall

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

#### **1.5.17 The Record**

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

#### **1.5.18 Appeal**

A Final Order of the Hearing Panel may be appealed to NERC in accordance with the NERC Organization Registration and Certification Manual, Section VI, Paragraph 4 of Appendix 5 to the NERC ROP.

# NERC

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

## NERC Compliance and Certification Committee Mediation Procedures

CCC Monitoring Program – CCCPP-006-1

to ensure  
the reliability of the  
bulk power system

Version 1.0

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<b>NERC Compliance and Certification Committee</b>		<b>CCCPP-006-1</b>
<b>Title: Mediation Procedures</b>		
<b>Version: 1.0</b>	<b>Revision Date: n/a</b>	<b>Effective Date: May 6, 2009</b>

**Summary:**

The NERC Compliance and Certification Committee (CCC) Mediation Program is designed as an informal, voluntary process in which a CCC mediation panel assists NERC and a Regional Entity to understand and work through disagreements or disputes concerning NERC performance audits of a Regional Entity's compliance program.

**Revision History:**

<b>Date</b>	<b>Version Number</b>	<b>Comments</b>
12/09/08 1.0		Approved by the Compliance and Certification Committee
05/06/09	1.0	Approved by the Board of Trustees

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# 1. Introduction

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The NERC Compliance and Certification Committee (CCC) Mediation Program is designed as an informal, voluntary process in which a CCC mediation panel assists NERC and a Regional Entity (RE) (NERC and the Regional Entity individually a Party, collectively, the Parties) to understand and work through disagreements or disputes concerning NERC performance audits of an RE's compliance program. Mediation is the intervention into a dispute or negotiation of an acceptable, impartial, and neutral third party panel that has no decision-making authority. The objective of the neutral third-party is to assist the parties in voluntarily reaching an acceptable resolution of the issues in dispute. The mediation process is voluntary and does not eliminate other dispute resolution options. Also, the mediation process is confidential, whether or not it results in settlement.

This alternative dispute resolution mechanism is intended to be a more collaborative, less adversarial method to attain a mutually agreeable resolution to the dispute, consistent with the NERC Rules of Procedure and without formal hearing proceedings.

The Parties to mediation are not obligated to reach agreement. If they do not reach a consensus, either Party may elect to proceed with other more "traditional" methods of resolving the dispute. In those instances where consensus is reached and memorialized in a written Mediation Settlement Agreement, the agreements of the entities as expressed therein will be binding and enforceable.

## 2. Mediators

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

Once NERC and a RE have decided to pursue a resolution of their dispute through mediation, each Party will provide the chair of the CCC with introductory information (*i.e.*, brief statements of the nature and history of the dispute, participants' names, and contact information). Each Party must be represented by participants who will have the authority to enter into an agreement to resolve the matter in dispute, if the Parties are able to reach an agreement. The chair then provides the introductory information to three impartial and independent third party neutral members of the CCC to whom the chair assigns to serve as mediators and who are acceptable to both Parties. Subject to the consent of both Parties, the chair may appoint in addition to the CCC members a disinterested professional mediator who is acceptable to both Parties, with the cost of the professional mediator shared equally between the Parties. The mediators may choose, but are not required, to select one of their number as the Lead Mediator to coordinate the process and serve as their primary contact with the Parties; if a professional mediator is appointed by the chair, then that person will serve as the Lead Mediator. After reviewing the information provided by the Parties, the Lead Mediator, if any, or the mediators will communicate with the Parties to arrange an agreeable time and location for the mediation to be held.

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

The materials provided as introductory information and all communications made during or in connection with mediation will be kept confidential by the mediators and both Parties, and statements made by the Parties during mediation may not be used against them in later proceedings. The sole exception to this rule of confidentiality would be any written Mediation Settlement Agreement entered into by the Parties, as discussed below. Should the mediation be unsuccessful, no one who participated as a mediator will serve in any capacity in connection with any subsequent legal, regulatory, administrative, or grievance proceeding regarding the subject of the mediation.

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

## 3. Mediation Process

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

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

- Introductory remarks;
- Statements of the issue(s) by the Parties;
- Information gathering;
- Issue identification;
- Determination and discussion of options; and
- A written Mediation Settlement Agreement.

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

In some cases, the Parties and mediators may agree that the mediation will adjourn and reconvene at a later agreed upon time and place. All participants should give the mediation every chance to resolve the dispute. Because mediation is a voluntary process, at any time, any participant may comment on any aspect of the process or propose changes. Also at any time, either Party or the mediators has the authority to terminate the mediation for any reason. If the mediation terminates without a written Mediation Settlement Agreement, either Party is free to pursue all other available legal, regulatory, administrative or grievance procedures.

### Introductory Remarks

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

The mediators or Lead Mediator may describe ground rules intended to help the mediation move smoothly. Ground rules may include such things as turning off beepers and cell phones, appropriate conduct, mutual respect, note taking, and any other special instructions concerning the mediation. The mediators shall remind the Parties that the mediation process is confidential, whether or not it results in settlement.

From time to time during the mediation, the mediators may ask each Party's participants to meet separately from the other Party, or to "caucus," in order to discuss aspects of the dispute and possible resolution among themselves or with some or all of the mediators. Throughout the process, Parties should try not to interrupt each other; the mediators will give each Party the opportunity to fully share their side.



### **Statements of the Issue (s) by the Parties**

The mediators will allow each Party the opportunity to explain, without interruption, its position and perception of the dispute. This statement is not necessarily a recital of the facts, but it is to give each Party an opportunity to frame the issues and to give the mediator more information on the Party's position. If a Party's attorney(ies) make the initial statement, the mediators may also invite the Party's other participants to supplement the statement. The intent is for each Party and the mediators to better understand the other Party's position or point of view.

### **Information Gathering**

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

### **Issue Identification**

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

### **Determination and Discussion of Options**

Methods for developing options may include caucuses, group processes, discussion groups or sub-groups, developing hypothetical plausible scenarios, or a mediator's proposal where the mediator puts a proposal on the table and the parties take turns modifying it. If a caucus is held, discussions in the caucus are confidential and the mediators will not share those discussions with the other Party unless the Party in the caucus specifically asks them to do so.

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

### **Written Mediation Settlement Agreement**

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

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

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

The draft agreement probably will be reviewed and revised repeatedly by each Party and will continue to be edited, expanded, condensed, and rewritten as necessary until both Parties reach an acceptable settlement. Only after final agreement is reached on all its parts, and a final version memorialized in writing, will the Parties be asked to sign the Mediation Settlement Agreement to indicate their understanding of and agreement to the agreement and their willingness to abide by its provisions.

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

**ATTACHMENT 4**

Amended Compliance and Certification Committee Charter  
Clean and Redline

Compliance and Certification Committee Charter

## Compliance and Certification Committee Charter

**Approved by the NERC Board of Trustees: February 16, 2010**

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## Section 1. Mission

In the capacity of a NERC Board-appointed stakeholder committee serving and reporting directly to the NERC Board the Compliance and Certification Committee (CCC) will engage with, support and advise the NERC Board and NERC Compliance regarding all facets of the NERC Compliance Monitoring and Enforcement Program (Compliance program), Organization Registration program (Registration program) and Organization Certification program (Certification program). As a committee providing support and advice but otherwise independent of the execution of these programs the CCC will monitor NERC's compliance with the Rules of Procedure for these programs on an ongoing basis. Also and in a similar manner, as a committee independent of the Reliability Standards development process the CCC will be the body responsible for monitoring NERC's compliance with the Rules of Procedure regarding the Reliability Standards development process, with the exception of appeals of substantive or procedural action or inaction associated with a reliability standard or the standards process as defined in the appeals section of the Reliability Standards Development Procedure.

## Section 2. Compliance and Certification Committee Functions

To fulfill its mission, the Compliance and Certification Committee performs the following functions:

1. **Organizes and conducts committee meetings** directly with NERC Compliance program staff regarding all facets of the Compliance, Registration and Certification programs.<sup>1</sup>
2. **Provides comments and recommendations to the NERC Board and NERC compliance staff:**
  - a. Provides comments to NERC with respect to stakeholders' perception of the policies, practices and effectiveness of the Compliance program, Registration program, and Certification program.
  - b. Recommends revisions of the ERO Rules of Procedure related to the Compliance program, Registration program, and Certification program to the NERC Board.
3. **Establishes and implements programs to monitor**<sup>2</sup>:
  - a. NERC's compliance with the reliability standards that apply to NERC.
  - b. The Compliance program's adherence to NERC's Rules of Procedure as specified in Section 405 of NERC's Rules of Procedure.
  - c. NERC's compliance with the Section 300 of the Rules of Procedure regarding the Reliability Standards development process with the exception of appeals of substantive or procedural action or inaction associated with a reliability standard or the standards process as defined in the appeals section of the Reliability Standards

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<sup>1</sup> Meetings are conducted pursuant to Section 4 of this Charter.

<sup>2</sup> Monitoring by the CCC is ongoing and does not preclude, interfere with or replace, in whole or in part, the NERC Board's responsibility to conduct and provide such reviews of these programs as required by FERC Order 672 at § 39.3.c: "The Electric Reliability Organization shall submit an assessment of its performance three years from the date of certification by the Commission, and every five years thereafter."

Development Procedure. Committee members who have participated in the development process for a particular Reliability Standard shall not participate in the Committee's monitoring of that process.

**4. Hearing body.** Serves as the hearing body for any contest regarding findings of or penalties or sanctions for violation(s) of reliability standard(s) where NERC is directly monitoring the entity for compliance with those standards (Registered Entity by agreement with an Regional Entity or absent a delegation agreement; the Region itself where approved standards are applicable to the region) as described in the NERC Rules of Procedure (ROP) Section 409.

**5. Mediator.** As directed by the NERC Board, serves as the mediator for any disagreements between NERC and the Regional Entities concerning NERC performance audits of Regional Entities' compliance programs. When directed by the Board to serve as mediator, the committee chair will appoint three disinterested members of the committee to meet with representatives of NERC and the Regional Entity to attempt to resolve the matter.

**6. Compliance administration.** Actively supports the Standards Committee in the development of new and revised standards by providing a pool of qualified compliance oriented personnel for participation in the compliance administration element phase of the standards development process.

**7. Organization registration and certification.** Provides assistance to NERC and the Regional Entities to implement the Compliance and Organization Registration and Certification **programs**.

**8. Board assignments.** Undertakes assignments from the Board or the Board's Compliance Committee related to compliance, organization registration and organization certification and standards development.

### Section 3. Membership

- 1. Goals.** The Compliance and Certification Committee provides for balanced discussion, commentary and recommendations on compliance issues by bringing together a wide diversity of opinions and perspectives from NERC member sector experts who have particular familiarity, knowledge and experience in the area of compliance and NERC and Regional standards.
- 2. Appointment and Terms of Service.** Members are appointed to the committee by the NERC Board and serve on the committee at the pleasure of the Board. Member terms are the lesser of: three years from appointment or interim approval (Section 5.b); replacement or removal by the Board. Members may be reappointed at the conclusion of a term. There is no limitation on the number of times a member may be reappointed. A member may be recommended to the Board for reappointment by the Nominating Subcommittee by self-nomination. To the extent practicable member terms will be staggered such that approximately one third of the committee is subject to reappointment or replacement each year.
- 3. Qualifications.** Individuals deemed qualified to serve on the committee will generally include senior level industry experts who have particular familiarity, knowledge and experience in the area of compliance, compliance enforcement, compliance administration and management, organization responsibilities and registration,



organization certification, and NERC and Regional standards. These individuals should be involved with internal compliance programs within their respective organizations.

**4. Expectations.** Committee members are expected to represent the interests of the sector they represent, to the best of their ability and judgment. In addition to the duties, rights, and privileges described elsewhere in this charter, committee members will:

- a. Act consistently during meetings with the procedures in this manual and Robert's Rules of Order.
- b. Demonstrate and provide knowledge and expertise in support of committee activities.
- c. Adjudicate in a fair and unbiased manner that meets applicable legal and due process requirements when participating in hearing procedures conducted pursuant to the NERC Rules of Procedure (ROP) Section 409.
- d. Solicit comments and opinions from constituents and groups of constituents or trade organizations represented by the member and convey them to the committee.
- e. Respond promptly to all committee requests, including requests for reviews, comments, and votes on issues before the committee.
- f. Arrange for a proxy to attend and vote at committee meetings in the member's absence.
- g. Respond promptly to all requests to register for committee meetings.

**5. Representation.** The membership structure of the Compliance and Certification Committee (CCC) will be modeled upon the membership structure of the NERC Member Representatives Committee (MRC) as described in NERC's Bylaws (the Bylaws) Article VIII Section 2 [see Attachment A]. This will produce a committee that has an appropriate balance of entities subject to compliance with the NERC Reliability Standards and NERC's Compliance program, and others affected by the standards and the Compliance program.

- a. **Regional Entities.** Each Regional Entity, or the applicable regional organization if no Regional Entity exists for the geographic area, may nominate one member to the committee. In aggregate the sector will have voting strength equivalent to two members. The voting weight of each regional member's vote will be set such that the sum of the weight of all available regional members' votes is two votes.
- b. **Canadian representation.** The committee structure will include representation by Canadians as laid out in Article VIII Section 4 of the Bylaws.
- c. **NERC membership.** Users, owners and operators of the bulk power system are subject to the Compliance, Registration and Certification programs irrespective of whether they are NERC members. It is expected that committee members will generally be from organizations who are NERC members. However, committee members may be non-members of NERC subject to the qualifications identified herein and meeting requirements laid out in the Bylaws for non-NERC-member participation in the MRC.

**6. Selection.** The CCC will conduct open nominations processes to receive nominations to fill any membership vacancies. Prospective members of the committee may be identified to the CCC via any means the committee finds acceptable, including: solicited or unsolicited nomination by a recognized industry group or association; general open solicitation by the committee for nomination(s); individuals' self-nomination; directed solicitation by the

committee to an individual or individuals; referral by the Board or other NERC body or committee.

- a. **Nominating Subcommittee.** The CCC will create a Nominating Subcommittee yearly to identify, qualify, and recommend individuals to fill sector representative vacancies on the committee or, when required, to serve as the chair or vice chair of the committee. The subcommittee will identify the individuals they are recommending to the full CCC for review. Individuals recommended by the subcommittee for appointment to the committee must be approved by the Board.
- b. **Interim approval.** Upon approval of the committee individuals identified and selected by the Nominating Subcommittee for membership on the committee may serve as members on an interim basis, pending their appointment by the Board.
- c. **Expertise.** When selecting individuals to recommend for committee membership, the Nominating Subcommittee will seek to engage individuals who, in aggregate, provide the committee with a level and breadth of expertise sufficient to achieve its goals and fulfill its scope and responsibilities, while respecting other important factors such as industry sector, region, Interconnection, and country.
- d. **Regional Entity Members.** Each Regional Entity, or the applicable regional organization if no Regional Entity exists for the geographic area, may nominate an individual to serve as a member representing their organization. The Nominating Subcommittee will defer to these nominations. The nomination is non-binding upon the Board. Vacancies on the committee will exist where the regional reliability organization or regional entity has not provided a nomination.
- e. **Canadian Members.** The Nominating Subcommittee will endeavor to attract and engage Canadians with suitable qualifications and expertise in adequate numbers to satisfy Article VIII Section 4 of the Bylaws. Recognized Canadian organizations such as the Canadian Electricity Association and CAMPUT will be consulted and solicited for assistance in recruiting Canadians to serve on the committee and all members considered to be serving as Canadians on the committee will be expected to have an endorsement, as appropriate, of such an organization. Canadian representatives should be capable of representing Canadian viewpoints in committee activities, in addition to the sector which they otherwise represent. Consistent with practice regarding the MRC the Board may appoint additional Canadian individuals to the committee towards satisfying Article VIII Section 4 of the Bylaws.

**7. Industry Sector Members.** The Nominating Subcommittee will assess the qualifications of nominees and select individuals to recommend to the NERC Board for appointment to the committee. The subcommittee may give preference to candidates nominated by organizations generally considered by the industry as representative of a broad cross section of the industry sector in question, such as an industry trade association. A NERC Member sector may elect to identify sector representatives for nomination to the Nominating Subcommittee through a process approved by the NERC Board.

**8. General Nominations and Appointment Process.** The committee's secretary administers the general nominations process.

- a. **Requesting nominations.** The NERC staff will request nominations NERC staff will forward nominations received to the Nominations Subcommittee. The Nominating Subcommittee will then prepare its recommended slate of members. The recommended slate will be reviewed by the whole committee for information

purposes before it is submitted to the Board. The committee may approve the slate to serve as members on an interim basis, pending appointment by the Board at the Board's earliest convenience, but will not otherwise act on the slate.

- b. **Board approval.** The Nominating Subcommittee will present the recommended committee membership slate to the Board for approval. If the Board approves the recommended committee slate each member on the slate is appointed. The Board may also appoint members individually as needed to meet membership balance and fill vacancies.

9. **Vacancies and Non-participation.** The committee's secretary will administer the nominations process for vacancies on the committee.

- a. **Addressed on an ongoing basis.** Vacancies on the committee can be addressed on an ongoing basis through receipt and consideration of both solicited and unsolicited nominations for the vacant positions.
- b. **Role of the Nominating Subcommittee.** Nominations received for vacancies will be vetted by the Nominating Subcommittee in the same manner as nominations received as general nominations. The subcommittee may subsequently and individually recommend nominees they deem qualified to the NERC Board for consideration for appointment to the committee; existing committee members may also approve such individuals to serve as members on an interim basis pending full appointment by the Board.

10. **Resignations.**

- a. **By the member.** In the event a member can no longer serve on the committee, that member will submit a written resignation to the committee chair or the secretary.
- b. **Requested by the chair.** The chair may request any committee member who ceases to participate in the committee, as indicated by not attending or sending a proxy for two consecutive meetings, to submit a resignation or to request continuation of membership with an explanation of extenuating circumstances. If a written response is not received within 30 days of the chair's request, the lack of response will be considered a resignation.
- c. **Referral to the Nominating Subcommittee.** The committee chair will refer the vacancy resulting from a resignation to the Nominating Subcommittee of the committee. If a recent list of nominations is available to the Nominating Subcommittee that it deems to be valid, the subcommittee will recommend a replacement nominee; otherwise, the subcommittee will request NERC staff prepare a new solicitation for nominations to fill that position. The Nominating Subcommittee will follow the previously stated criteria in recommending a replacement.
- d. **By the Board.** Committee members serve at the pleasure of the Board who may request resignation, remove or replace a member from the committee as the Board deems appropriate.

11. **Interim approval.** The committee chair may seek a vote of the committee to allow the proposed replacement member to be seated, pending appointment of the replacement, at the Board's next scheduled meeting.

**12. Proxies.** A substitute representative, or proxy, may attend and vote during all or a portion of a committee meeting in lieu of a voting member, provided the absent member notifies the committee chair, vice chair, or secretary of the proxy.

- a. **Notification.** Such notification will be in writing (electronic medium is acceptable). The proxy representatives and their affiliation will be named in the correspondence.
- b. **May not serve as a proxy for another member.** A voting member of a committee may not serve as a proxy for another voting member on the same committee (i.e. a member may not cast more than their own vote).

**13. Exclusions.**

- a. **Regional Entity staff.** Regional Entity staff members who administer any portion of the Compliance program, Registration program, Certification program, or Readiness Evaluation program for that Regional Entity, or for any other Regional Entity, may not serve as a member of the CCC.
- b. **Organizations.** No two individuals from the same organization, or affiliated organizations, may serve concurrently on the committee. Any committee member who has a membership conflict of this nature is obligated to notify the committee secretary, who shall inform the committee chair. Members impacted by such a conflict, such as through a merger of organizations, may confer between themselves to determine which member should resign from the committee and notify the committee secretary and chair. However, if both members are within the same industry sector and cannot reach an amicable solution by determining the member to remain, the Nominating Subcommittee will review the qualifications of each member and propose the member to remain to the full committee who will determine which member shall continue to serve, subject to Board approval. If the conflict is not resolved in a timely manner by the impacted members, the committee chair shall notify all members of the affected industry sectors recommending actions to resolve the conflict. If the membership conflict is still unresolved, the committee chair shall take the conflict to the NERC Board for resolution.
- c. **NERC Staff.** The Director of Compliance Operations shall not be a member of the committee or vote on committee business. The Director of Compliance Operations and the Secretary shall be recused from participating in any committee activity that involves monitoring of NERC's compliance with Rules of Procedure or activity that the Director of Compliance Operations oversees. If the NERC staff coordinator has been recused from participating in a Committee activity, the chair shall appoint another member of the committee as acting secretary for any meetings or other activities from which the NERC staff coordinator is recused.

**14. Changes in Member Affiliation.** A committee member whose affiliation has changed may retain the membership position if:

- a. The new organization is in the same industry sector, and
- b. The member meets all other membership requirements.

**15. Conflict of Interest.** No committee member may have a conflict of interest that would impair his or her ability to fulfill obligations under this charter. Any committee member who knows of any form of membership conflict, such as working for an entity affiliated with that of another committee member, will notify the committee chair within ten business days of obtaining that knowledge.

## Section 4. Meetings

In the absence of specific provisions in this manual, all committee meetings will follow Roberts Rules of Order, Newly Revised.

### 1. Quorum.

- a. **Two-thirds of the voting members.** The quorum necessary for transacting business at meetings of the committee is two-thirds of the voting members currently on the committee's roster.
- b. **Includes members approved on interim basis.** Voting members approved by the committee on an interim basis, pending appointment by the Board, will be counted in the determination of a quorum.
- c. **Lack of a quorum.** If a quorum is not present at the beginning of the meeting, the committee may not take any actions requiring a vote by the committee. However, the chair may, with the consent of the members present, elect to allow discussion of the agenda items.

**2. Voting – actions require two-thirds majority.** Actions by members of the Committee will be approved upon receipt of the affirmative vote of two-thirds of the votes present (including proportional votes by Regional Representatives) at any meeting at which a quorum is present. The chairman and vice-chairman may vote.

**3. Antitrust Guidelines.** All persons attending or otherwise participating in a NERC committee meeting will act in accordance with NERC's Antitrust Compliance Guidelines at all times during the meeting.

**4. Open Meetings.** NERC committee meetings will be open to the public, except as noted below under Confidential Information.

**5. Confidential Sessions.** At the discretion of the CCC Chair, a meeting or portion of a meeting of a committee may have attendance limited based on confidentiality of the information to be disclosed at the meeting. Such limitations should be applied sparingly and on a non-discriminatory basis as needed to protect information that is sensitive information or confidential information to one or more parties. All hearings of compliance matters will be confidential sessions. Confidential information will only be disclosed as provided by NERC Rule of Procedure 1500. Confidentiality agreements may also be applied, as necessary, to protect sensitive information or confidential information.

**6. Types of Meetings.** Meetings may be conducted in person, by conference call, or other means. The procedures contained in this manual will apply to all meetings regardless of how they are conducted.

**7. Majority and minority views.** All members of a committee will be afforded the opportunity to provide alternative views on an issue. The results of committee actions, including recorded minutes, will reflect the majority as well as any minority views of the committee members. The chair will communicate both the majority and any minority views in presenting results to the Board.

## 8. Action without a Meeting.

- a. **Requires two-thirds majority.** Any action required or permitted at a meeting of the committee may be taken without a meeting if two-thirds of the total votes available to the members of the CCC (including the proportional votes available to Regional Representatives) approve taking the action outside of a meeting.
- b. **Procedure.** Such action without a meeting will be performed by mail or electronic ballot (e.g., telephone, facsimile, e-mail, or Internet), and will be recorded in the minutes as a roll call ballot. The secretary will announce the action required at least 10 days prior to the date on which the action is to be voted. As time permits, members should be allowed a window of ten business days to vote. The secretary will provide the results of such an action within ten business days of the close of the voting period.

## Section 5. Officers and Staff

### 1. General.

- a. **Number of Positions.** The committee will have two officers and a secretary.
- b. **Officers.** The committee officers will be one chair and one vice chair.
- c. **Executive.** As a minimum the committee shall retain an Executive of five persons consisting of the committee officers and the Director of Compliance Operations together with additional committee members selected as follows: The Chair of any Subcommittee the committee may establish in accordance with Section 7 of this Charter will be a member of the Executive; additional Executive members, if any are required and up to the number required to meet the five person minimum, will be selected by vote of the remaining non-Executive members of the committee.
- d. **Secretary.** The NERC staff coordinator will serve as the committee's secretary.
- e. **Officers may vote.** The committee chair and vice chair are voting members of the committee.
- f. **Officers nominated by the Nominating Subcommittee.** The CCC Nominating Subcommittee will recommend a chair and a vice chair who are then appointed by the NERC Board for a two-year term. The term of the chair and the vice chair, except for the first year, will begin on July 1 and end on June 30.
- g. **Officers remain sector representatives.** The chair and vice-chair are selected from the membership of the committee and, in addition to their chair or vice chair responsibilities, will continue to serve as a member for the sector for which they were appointed to the committee.

### 2. Chair. The chair will direct and provide general supervision of committee activities, including:

- a. Coordinate the schedule of all committee meetings including approval of meeting duration and location.
- b. Develop committee agendas and rule on any deviation, addition, or deletion from a published agenda.

- c. Preside at and manage committee meetings including the nature and length of discussion, recognition of speakers and proxies, motions, and voting.
- d. Will lead or direct the conduct of any hearings and the preparation of any adjudicatory documents by the committee pursuant to the NERC Rules of Procedure (ROP) Section 409.
- e. Will insure actions and undertakings by the committee pursuant to the NERC Rules of Procedure (ROP) Section 409 meet all applicable legal and due process requirements.
- f. Will act as spokesperson for the committee at forums within and outside of NERC.
- g. May attend meetings of the NERC Board when necessary to report to the Board on committee activities.

**3. Vice chair.** The vice chair will assume the responsibilities of the chair under the following conditions:

- a. At the discretion of the chair (for brief periods of time);
- b. When the chair is absent or temporarily unable to perform the chair's duties; or
- c. When the chair is permanently unavailable or unable to perform the chair's duties. In the case of a permanent change, the vice chair will continue to serve until a new chair is nominated and selected by the Board.

**4. Staff Coordinator.** A member of the NERC staff will be selected by NERC's Director of Compliance Operations to serve as the staff coordinator and secretary of the committee. The staff coordinator is not a committee member and does not have a vote. Under the direction of the committee executive and applicable NERC bylaws, guidelines and rules of procedure, the staff coordinator will:

- a. Manage the day-to-day operation and business of the committee.
- b. Prepare and distribute the notices of the committee meetings, prepare the meeting agenda, and prepare and distribute the minutes of the committee meetings.
- c. Act as the committee's parliamentarian.

## **Section 6. Nominating Subcommittee**

**1. Appointment.** The Compliance and Certification Committee (CCC) will annually appoint a Nominating Subcommittee.

- a. **Five members.** The subcommittee will consist of five members nominated by the committee chair and approved by the committee. The chair of the subcommittee will be selected by the CCC chair from among the five subcommittee members.
- b. **Appointed annually.** The chairman will appoint the subcommittee members at the first regular meeting of the committee of the calendar year.
- c. **Serve for 14 months.** The subcommittee members will serve for up to 14 months or until such time as a new Nominating Subcommittee is authorized, whichever is earlier.

**2. Duties.** In addition to the duties, rights, and privileges described elsewhere in this manual, members of the Nominating Subcommittee will:

- a. Prepare a slate of committee officer candidates for submission to the NERC Board for approval.
- b. Prepare a slate of recommended individuals to fill designated committee vacancies as required.

## **Section 7. Subordinate Groups.**

**1. Committee organization hierarchy.** The Compliance and Certification Committee organizational structure will be arranged as allowed in the NERC Bylaws to support a superior-subordinate hierarchy that is ordered as follows:

- Committee
- Subcommittee
- Working Group
- Task Force

**2. Establishing subgroups.** The committee may establish subcommittees, working groups, and task forces as necessary. The committee chair may also form any of these subordinate groups on behalf of the committee. The committee will be the responsible sponsor of all subordinate subcommittees, working groups, or task forces it may create, or that its subordinate subcommittees and working groups may create. The committee will keep the Board informed of all groups subordinate to the committee.

**3. Subcommittees.** The committee may establish subcommittees to which the committee may delegate certain of the committee's broadly defined continuing functions. The committee will approve the scope of each subcommittee it forms. The committee chair will appoint the subcommittee officers (typically a chair and vice chair) for a specific term (generally two years). The subcommittee officers may be reappointed for up to two additional terms. The subcommittee will work within its assigned scope and be accountable for the responsibilities assigned to it by the committee. The formation of a subcommittee, due to the permanency of the subcommittee, will be approved by the Board.

**4. Working Groups.** The committee or any of its subcommittees may delegate specific continuing functions to a working group. The sponsoring committee or subcommittee will approve the scope of each working group it forms. The chair of the sponsoring committee or subcommittee will appoint the working group officers (typically a chair and vice chair) for a specific term (generally two years). The working group officers may be reappointed for up to two additional terms. The sponsoring committee or subcommittee will conduct a "sunset" review of each working group every two years. The working group will be accountable for the responsibilities assigned to it by the committee or subcommittee and will at all times work within its assigned scope.

**5. Task Forces.** The committee, subcommittee, or working group may assign specific work of a finite duration to a taskforce. The sponsoring committee, subcommittee, or working group will approve the scope of each taskforce it forms. The chair of the sponsoring committee, subcommittee, or working group will appoint the taskforce officers (typically a chair and vice chair). Each taskforce will have a finite duration, normally less than one year. The sponsoring group will review the taskforce scope at the end of the expected duration and at each subsequent meeting of the sponsoring group after that until the taskforce is retired. Action of the task force sponsoring group is required to continue the taskforce past its



defined duration. The sponsoring group should consider promoting to a working group any taskforce that is required to work longer than one year.

#### **6. Subgroup Membership and Representation.**

- a. The membership of each subcommittee, working group, and taskforce should be established to address the need for expertise and balance of interests. Each group's membership requirements will be defined within the group's approved scope.
- b. As a general guide, the broader the group's scope, the more emphasis there should be on balancing of interests. Therefore subcommittees would be expected to have the broadest representation of appropriate industry sectors, while a taskforce may be more focused on simply having the necessary expertise and a working group may be somewhere between.
- c. Each member of a subordinate group, and its officers, will be appointed by the chair of the sponsoring committee or group.
- d. To the extent subgroup membership is of a representative nature, recommendations for staffing of the group should be provided in a manner consistent with the principles outlined in the staffing of a committee, including the use of an open nominations process. Regional Entity representatives should be recommended by the Regional Entity and Canadian representatives by the Canadian Electricity Association. Preference may also be given to representatives recommended by broadly-based industry associations.
- e. To the extent subgroup membership is based on providing requisite expertise, the chair of the sponsoring committee or group may appoint members based on the relevant technical qualifications.

**7. Subgroup Procedures.** Subcommittees, working groups, and taskforces will conduct business in a manner consistent with all applicable sections of this manual and Robert's Rules of Order.

### **Section 8. Hearings.**

- 1. General.** The Compliance and Certification Committee will conduct hearings as necessary to fulfill its function of serving as the hearing body for any contest between NERC and a Regional Entity (RE) regarding NERC findings of or penalties or sanctions for violation(s) of reliability standard(s) by the RE as described in the NERC Rules of Procedure (ROP) Section 409.
- 2. Hearing Procedure.** Unless specifically identified otherwise elsewhere in this charter the CCC's hearing procedure shall follow the hearing procedure mandated and approved by jurisdictional authorities for use by NERC and the Regional Entities in the Compliance program.
- 3. Hearing Panel.** The committee shall not have a standing hearing panel. When a hearing is to be conducted the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the panel shall be selected by vote of a valid quorum of the committee. Voting members of the committee at arm's length from parties to the hearing may be nominated or volunteer to stand for selection to the hearing panel. One or more alternates may also be selected if/as the committee deems appropriate for the circumstances. A member may serve on more than one panel concurrently. A panel is disbanded upon conclusion of the hearing proceedings for which it was formed.

Attachment A --- CCC Membership Structure

Primary Sector	Sub-Sector	Number of Members	Full Voting	Proportional Voting	Non-Voting
Investor-Owned Utility		2	X		
State/Municipal Utility		2	X		
Cooperative Utility		2	X		
Federal or Provincial Utility/Federal Power Marketing Administration		2	X		
Transmission Dependent Utility		2	X		
Merchant Electricity Generator		2	X		
Electricity Marketer		2	X		
Large End-use Electricity Customer		2	X		
Small End-use Electricity Customer		2	X		
Independent System Operator/Regional Transmission Organization		2	X		
Regional Entity	FRCC	1		X	
	RFC	1		X	
	ERCOT	1		X	
	MRO	1		X	
	NPCC	1		X	
	SERC	1		X	
	SPP	1		X	
	WECC	1		X	
Government	U.S. State	2	X		
	U.S. Federal	2			X
	Canadian Provincial	1			X
	Canadian Federal	1			X
<b>Total</b>		<b>34</b>			

Compliance and Certification Committee Charter

~~Effective October 18, 2007~~

Compliance and Certification Committee Charter

Approved by the NERC Board of Trustees: ~~August 1, 2007~~ February 16, 2010

~~Effective October 18, 2007~~

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## Section 1. Mission

In the capacity of a NERC Board-appointed stakeholder committee serving and reporting directly to the NERC Board the Compliance and Certification Committee (CCC) will engage with, support and advise the NERC Board and NERC Compliance regarding all facets of the NERC Compliance Monitoring and Enforcement Program (Compliance program), Organization Registration program (Registration program) and Organization Certification program (Certification program). As a committee providing support and advice but otherwise independent of the execution of these programs the CCC will monitor NERC's compliance with the Rules of Procedure for these programs on an ongoing basis. Also and in a similar manner, as a committee independent of the Reliability Standards development process the CCC will be the body responsible for monitoring NERC's compliance with the Rules of Procedure regarding the Reliability Standards development process, with the exception of appeals of substantive or procedural action or inaction associated with a reliability standard or the standards process as defined in the appeals section of the Reliability Standards Development Procedure.

## Section 2. Compliance and Certification Committee Functions

To fulfill its mission, the Compliance and Certification Committee performs the following functions:

1. **Organizes and conducts committee meetings** directly with NERC Compliance program staff regarding all facets of the Compliance, Registration and Certification programs.<sup>1</sup>
2. **Provides comments and recommendations to the NERC Board and NERC compliance staff:**
  - a. Provides comments to NERC with respect to stakeholders' perception of the policies, practices and effectiveness of the Compliance program, Registration program, and Certification program.
  - b. Recommends revisions of the ERO Rules of Procedure related to the Compliance program, Registration program, and Certification program to the NERC Board.
3. **Establishes and implements programs to monitor**<sup>2</sup>:
  - a. NERC's compliance with the reliability standards that apply to NERC.
  - b. The Compliance program's adherence to NERC's Rules of Procedure as specified in Section 405 of NERC's Rules of Procedure.
  - c. NERC's compliance with the Section ~~306~~**300** of the Rules of Procedure regarding the Reliability Standards development process with the exception of appeals of substantive or procedural action or inaction associated with a reliability standard or the standards process as defined in the appeals section of the Reliability Standards

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<sup>1</sup> Meetings are conducted pursuant to Section 4 of this Charter.

<sup>2</sup> Monitoring by the CCC is ongoing and does not preclude, interfere with or replace, in whole or in part, the NERC Board's responsibility to conduct and provide such reviews of these programs as required by FERC Order 672 at § 39.3.c: "The Electric Reliability Organization shall submit an assessment of its performance three years from the date of certification by the Commission, and every five years thereafter."

Development Procedure. Committee members who have participated in the development process for a particular Reliability Standard shall not participate in the Committee's monitoring of that process.

4. **Hearing body.** ~~As directed by the NERC Board, s~~Serves as the hearing body for any contest regarding findings of or penalties or sanctions for violation(s) of reliability standard(s) where NERC is directly monitoring the entity for compliance with those standards (Registered Entity by agreement with an Regional Entity or absent a delegation agreement; the Region itself where approved standards are applicable to the region) as described in the NERC Rules of Procedure (ROP) Section 409.

5. **Mediator.** As directed by the NERC Board, serves as the mediator for any disagreements between NERC and the Regional Entities concerning NERC performance audits of Regional Entities' compliance programs. When directed by the Board to serve as mediator, the committee chair will appoint three disinterested members of the committee to meet with representatives of NERC and the Regional Entity to attempt to resolve the matter.

6. **Compliance administration.** ~~Develops compliance administration elements for proposed reliability standards under development or for proposed revisions to existing reliability standards as requested and authorized by the NERC Standards Committee. Actively supports the Standards Committee in the development of new and revised standards by providing a pool of qualified compliance oriented personnel for participation in the compliance administration element phase of the standards development process.~~

7. **Organization registration and certification.** Provides assistance to NERC and the Regional Entities to implement the Compliance and Organization Registration and Certification **programs**.

8. **Board assignments.** Undertakes assignments from the Board or the Board's Compliance Committee related to compliance, organization registration and organization certification and standards development.

### Section 3. Membership

1. **Goals.** The Compliance and Certification Committee provides for balanced discussion, commentary and recommendations on compliance issues by bringing together a wide diversity of opinions and perspectives from NERC member sector experts who have particular familiarity, knowledge and experience in the area of compliance and NERC and Regional standards.
2. **Appointment and Terms of Service.** Members are appointed to the committee by the NERC Board and serve on the committee at the pleasure of the Board. Member terms are the lesser of: three years from appointment or interim approval (Section 5.b); replacement or removal by the Board. Members may be reappointed at the conclusion of a term. There is no limitation on the number of times a member may be reappointed. A member may be recommended to the Board for reappointment by the Nominating Subcommittee by self-nomination. To the extent practicable member terms will be staggered such that approximately one third of the committee is subject to reappointment or replacement each year.
3. **Qualifications.** Individuals deemed qualified to serve on the committee will generally include senior level industry experts who have particular familiarity, knowledge and

experience in the area of compliance, compliance enforcement, compliance administration and management, organization responsibilities and registration, organization certification, and NERC and Regional standards. These individuals should be involved with internal compliance programs within their respective organizations.

4. **Expectations.** Committee members are expected to represent the interests of the sector they represent, to the best of their ability and judgment. In addition to the duties, rights, and privileges described elsewhere in this charter, committee members will:

- a. Act consistently during meetings with the procedures in this manual and Robert's Rules of Order.
- b. Demonstrate and provide knowledge and expertise in support of committee activities.
- c. Adjudicate in a fair and unbiased manner that meets applicable legal and due process requirements when participating in hearing procedures conducted pursuant to the NERC Rules of Procedure (ROP) Section 409.
- d. Solicit comments and opinions from constituents and groups of constituents or trade organizations represented by the member and convey them to the committee.
- e. Respond promptly to all committee requests, including requests for reviews, comments, and votes on issues before the committee.
- f. Arrange for a proxy to attend and vote at committee meetings in the member's absence.
- g. Respond promptly to all requests to register for committee meetings.

5. **Representation.** The membership structure of the Compliance and Certification Committee (CCC) will be modeled upon the membership structure of the NERC Member Representatives Committee (MRC) as described in NERC's Bylaws (the Bylaws) Article VIII Section 2 [see Attachment A]. This will produce a committee that has an appropriate balance of entities subject to compliance with the NERC Reliability Standards and NERC's Compliance program, and others affected by the standards and the Compliance program.

- a. **Regional Entities.** Each Regional Entity, or the applicable regional organization if no Regional Entity exists for the geographic area, may nominate one member to the committee. In aggregate the sector will have voting strength equivalent to two members. The voting weight of each regional member's vote will be set such that the sum of the weight of all available regional members' votes is two votes.
- b. **Canadian representation.** The committee structure will include representation by Canadians as laid out in Article VIII Section 4 of the Bylaws.
- c. **NERC membership.** Users, owners and operators of the bulk power system are subject to the Compliance, Registration and Certification programs irrespective of whether they are NERC members. It is expected that committee members will generally be from organizations who are NERC members. However, committee members may be non-members of NERC subject to the qualifications identified herein and meeting requirements laid out in the Bylaws for non-NERC-member participation in the MRC.

6. **Selection.** The CCC will conduct open nominations processes to receive nominations to fill any membership vacancies. Prospective members of the committee may be identified to the CCC via any means the committee finds acceptable, including: solicited or unsolicited nomination by a recognized industry group or association; general open solicitation by the



committee for nomination(s); individuals' self-nomination; directed solicitation by the committee to an individual or individuals; referral by the Board or other NERC body or committee.

- a. **Nominating Subcommittee.** The CCC will create a Nominating Subcommittee yearly to identify, qualify, and recommend individuals to fill sector representative vacancies on the committee or, when required, to serve as the chair or vice chair of the committee. The subcommittee will identify the individuals they are recommending to the full CCC for review. Individuals recommended by the subcommittee for appointment to the committee must be approved by the Board.
- b. **Interim approval.** Upon approval of the committee individuals identified and selected by the Nominating Subcommittee for membership on the committee may serve as members on an interim basis, pending their appointment by the Board.
- c. **Expertise.** When selecting individuals to recommend for committee membership, the Nominating Subcommittee will seek to engage individuals who, in aggregate, provide the committee with a level and breadth of expertise sufficient to achieve its goals and fulfill its scope and responsibilities, while respecting other important factors such as industry sector, region, Interconnection, and country.
- d. **Regional Entity Members.** Each Regional Entity, or the applicable regional organization if no Regional Entity exists for the geographic area, may nominate an individual to serve as a member representing their organization. The Nominating Subcommittee will defer to these nominations. The nomination is non-binding upon the Board. Vacancies on the committee will exist where the regional reliability organization or regional entity has not provided a nomination.
- e. **Canadian Members.** The Nominating Subcommittee will endeavor to attract and engage Canadians with suitable qualifications and expertise in adequate numbers to satisfy Article VIII Section 4 of the Bylaws. Recognized Canadian organizations such as the Canadian Electricity Association and CAMPUT will be consulted and solicited for assistance in recruiting Canadians to serve on the committee and all members considered to be serving as Canadians on the committee will be expected to have an endorsement, as appropriate, of such an organization. Canadian representatives should be capable of representing Canadian viewpoints in committee activities, in addition to the sector which they otherwise represent. Consistent with practice regarding the MRC the Board may appoint additional Canadian individuals to the committee towards satisfying Article VIII Section 4 of the Bylaws.

**7. Industry Sector Members.** The Nominating Subcommittee will assess the qualifications of nominees and select individuals to recommend to the NERC Board for appointment to the committee. The subcommittee may give preference to candidates nominated by organizations generally considered by the industry as representative of a broad cross section of the industry sector in question, such as an industry trade association. A NERC Member sector may elect to identify sector representatives for nomination to the Nominating Subcommittee through a process approved by the NERC Board.

**8. General Nominations and Appointment Process.** The committee's secretary administers the general nominations process.

- a. **Requesting nominations.** The NERC staff will request nominations NERC staff will forward nominations received to the Nominations Subcommittee. The Nominating Subcommittee will then prepare its recommended slate of members. The

recommended slate will be reviewed by the whole committee for information purposes before it is submitted to the Board. The committee may approve the slate to serve as members on an interim basis, pending appointment by the Board at the Board's earliest convenience, but will not otherwise act on the slate.

- b. **Board approval.** The Nominating Subcommittee will present the recommended committee membership slate to the Board for approval. If the Board approves the recommended committee slate each member on the slate is appointed. The Board may also appoint members individually as needed to meet membership balance and fill vacancies.

9. **Vacancies and Non-participation.** The committee's secretary will administer the nominations process for vacancies on the committee.

- a. **Addressed on an ongoing basis.** Vacancies on the committee can be addressed on an ongoing basis through receipt and consideration of both solicited and unsolicited nominations for the vacant positions.
- b. **Role of the Nominating Subcommittee.** Nominations received for vacancies will be vetted by the Nominating Subcommittee in the same manner as nominations received as general nominations. The subcommittee may subsequently and individually recommend nominees they deem qualified to the NERC Board for consideration for appointment to the committee; existing committee members may also approve such individuals to serve as members on an interim basis pending full appointment by the Board.

10. **Resignations.**

- a. **By the member.** In the event a member can no longer serve on the committee, that member will submit a written resignation to the committee chair or the secretary.
- b. **Requested by the chair.** The chair may request any committee member who ceases to participate in the committee, as indicated by not attending or sending a proxy for two consecutive meetings, to submit a resignation or to request continuation of membership with an explanation of extenuating circumstances. If a written response is not received within 30 days of the chair's request, the lack of response will be considered a resignation.
- c. **Referral to the Nominating Subcommittee.** The committee chair will refer the vacancy resulting from a resignation to the Nominating Subcommittee of the committee. If a recent list of nominations is available to the Nominating Subcommittee that it deems to be valid, the subcommittee will recommend a replacement nominee; otherwise, the subcommittee will request NERC staff prepare a new solicitation for nominations to fill that position. The Nominating Subcommittee will follow the previously stated criteria in recommending a replacement.
- d. **By the Board.** Committee members serve at the pleasure of the Board who may request resignation, remove or replace a member from the committee as the Board deems appropriate.

11. **Interim approval.** The committee chair may seek a vote of the committee to allow the proposed replacement member to be seated, pending appointment of the replacement, at the Board's next scheduled meeting.

**12. Proxies.** A substitute representative, or proxy, may attend and vote during all or a portion of a committee meeting in lieu of a voting member, provided the absent member notifies the committee chair, vice chair, or secretary of the proxy.

- a. **Notification.** Such notification will be in writing (electronic medium is acceptable). The proxy representatives and their affiliation will be named in the correspondence.
- b. **May not serve as a proxy for another member.** A voting member of a committee may not serve as a proxy for another voting member on the same committee (i.e. a member may not cast more than their own vote).

**13. Exclusions.**

- a. **Regional Entity staff.** Regional Entity staff members who administer any portion of the Compliance program, Registration program, Certification program, or Readiness Evaluation program for that Regional Entity, or for any other Regional Entity, may not serve as a member of the CCC.
- b. **Organizations.** No two individuals from the same organization, or affiliated organizations, may serve concurrently on the committee. Any committee member who has a membership conflict of this nature is obligated to notify the committee secretary, who shall inform the committee chair. Members impacted by such a conflict, such as through a merger of organizations, may confer between themselves to determine which member should resign from the committee and notify the committee secretary and chair. However, if both members are within the same industry sector and cannot reach an amicable solution by determining the member to remain, the Nominating Subcommittee will review the qualifications of each member and propose the member to remain to the full committee who will determine which member shall continue to serve, subject to Board approval. If the conflict is not resolved in a timely manner by the impacted members, the committee chair shall notify all members of the affected industry sectors recommending actions to resolve the conflict. If the membership conflict is still unresolved, the committee chair shall take the conflict to the NERC Board for resolution.
- c. **NERC Staff.** The Director of Compliance **Operations** shall not be a member of the committee or vote on committee business. The Director of Compliance **Operations** and the Secretary shall be recused from participating in any committee activity that involves monitoring of NERC's compliance with Rules of Procedure or activity that the Director of Compliance **Operations** oversees. If the NERC staff coordinator has been recused from participating in a Committee activity, the chair shall appoint another member of the committee as acting secretary for any meetings or other activities from which the NERC staff coordinator is recused.

**14. Changes in Member Affiliation.** A committee member whose affiliation has changed may retain the membership position if:

- a. The new organization is in the same industry sector, and
- b. The member meets all other membership requirements.

**15. Conflict of Interest.** No committee member may have a conflict of interest that would impair his or her ability to fulfill obligations under this charter. Any committee member who knows of any form of membership conflict, such as working for an entity affiliated with that of another committee member, will notify the committee chair within ten business days of obtaining that knowledge.

## Section 4. Meetings

In the absence of specific provisions in this manual, all committee meetings will follow Roberts Rules of Order, Newly Revised.

### 1. Quorum.

- a. **Two-thirds of the voting members.** The quorum necessary for transacting business at meetings of the committee is two-thirds of the voting members currently on the committee's roster.
- b. **Includes members approved on interim basis.** Voting members approved by the committee on an interim basis, pending appointment by the Board, will be counted in the determination of a quorum.
- c. **Lack of a quorum.** If a quorum is not present at the beginning of the meeting, the committee may not take any actions requiring a vote by the committee. However, the chair may, with the consent of the members present, elect to allow discussion of the agenda items.

2. **Voting – actions require ~~2/3~~two-thirds majority.** Actions by members of the Committee will be approved upon receipt of the affirmative vote of ~~2/3~~two-thirds of the votes present (including proportional votes by Regional Representatives) ~~of the voting members of the Committee present and voting, in person or by proxy,~~ at any meeting at which a quorum is present. The chairman and vice-chairman may vote.

3. **Antitrust Guidelines.** All persons attending or otherwise participating in a NERC committee meeting will act in accordance with NERC's Antitrust Compliance Guidelines at all times during the meeting.

4. **Open Meetings.** NERC committee meetings will be open to the public, except as noted below under Confidential Information.

5. **Confidential Sessions.** ~~At the discretion of the CCC Chair, With approval of the NERC Director of Compliance,~~ a meeting or portion of a meeting of a committee may have attendance limited based on confidentiality of the information to be disclosed at the meeting. Such limitations should be applied sparingly and on a non-discriminatory basis as needed to protect information that is sensitive information or confidential information to one or more parties. All hearings of compliance matters will be confidential sessions. Confidential information will only be disclosed as provided by NERC Rule of Procedure 1500. Confidentiality agreements may also be applied, as necessary, to protect sensitive information or confidential information.

6. **Types of Meetings.** Meetings may be conducted in person, by conference call, or other means. The procedures contained in this manual will apply to all meetings regardless of how they are conducted.

7. **Majority and minority views.** All members of a committee will be afforded the opportunity to provide alternative views on an issue. The results of committee actions, including recorded minutes, will reflect the majority as well as any minority views of the

## Compliance and Certification Committee Charter

**committee members. The chair will communicate both the majority and any minority views in presenting results to the Board.**

## 8. Action without a Meeting.

- a. **Requires ~~2/3 two-thirds~~ majority.** Any action required or permitted at a meeting of the committee may be taken without a meeting if ~~a two-thirds majority~~ of the total votes available to the members of the CCC (including the proportional votes available to Regional Representatives) ~~committee members entitled to vote on the action~~ approves taking the action outside of a meeting.
- b. **Procedure.** Such action without a meeting will be performed by mail or electronic ballot (e.g., telephone, facsimile, e-mail, or Internet), and will be recorded in the minutes as a roll call ballot. The secretary will announce the action required at least 10 days prior to the date on which the action is to be voted. As time permits, members should be allowed a window of ten business days to vote. The secretary will provide the results of such an action within ten business days of the close of the voting period.

## Section 5. Officers and Staff

### 1. General.

- a. **Number of Positions.** The committee will have two officers and a secretary.
- b. **Officers.** The committee officers will be one chair and one vice chair.
- c. **Executive.** As a minimum the committee shall retain an Executive of five persons consisting of the committee officers and the Director of Compliance Operations together with additional committee members selected as follows: The Chair of any Subcommittee the committee may establish in accordance with Section 7 of this Charter will be a member of the Executive; additional Executive members, if any are required and up to the number required to meet the five person minimum, will be selected by vote of the remaining non-Executive members of the committee.
- d. **Secretary.** The NERC staff coordinator will serve as the committee's secretary.
- e. **Officers may vote.** The committee chair and vice chair are voting members of the committee.
- f. **Officers nominated by the Nominating Subcommittee.** The CCC Nominating Subcommittee will recommend a chair and a vice chair who are then appointed by the NERC Board for a two-year term. The term of the chair and the vice chair, except for the first year, will begin on July 1 and end on June 30.
- g. **Officers remain sector representatives.** The chair and vice-chair are selected from the membership of the committee and, in addition to their chair or vice chair responsibilities, will continue to serve as a member for the sector for which they were appointed to the committee.

2. **Chair.** The chair will direct and provide general supervision of committee activities, including:

- a. Coordinate the schedule of all committee meetings including approval of meeting duration and location.
- b. Develop committee agendas and rule on any deviation, addition, or deletion from a published agenda.

- c. Preside at and manage committee meetings including the nature and length of discussion, recognition of speakers and proxies, motions, and voting.
- d. Will lead or direct the conduct of any hearings and the preparation of any adjudicatory documents by the committee pursuant to the NERC Rules of Procedure (ROP) Section 409.
- e. Will insure actions and undertakings by the committee pursuant to the NERC Rules of Procedure (ROP) Section 409 meet all applicable legal and due process requirements.
- f. Will act as spokesperson for the committee at forums within and outside of NERC.
- g. May attend meetings of the NERC Board when necessary to report to the Board on committee activities.

3. **Vice chair.** The vice chair will assume the responsibilities of the chair under the following conditions:

- a. At the discretion of the chair (for brief periods of time);
- b. When the chair is absent or temporarily unable to perform the chair's duties; or
- c. When the chair is permanently unavailable or unable to perform the chair's duties. In the case of a permanent change, the vice chair will continue to serve until a new chair is nominated and selected by the Board.

4. **Staff Coordinator.** A member of the NERC staff will be selected by NERC's Director of Compliance Operations to serve as the staff coordinator and secretary of the committee. The staff coordinator is not a committee member and does not have a vote. Under the direction of the committee executive and applicable NERC bylaws, guidelines and rules of procedure, the staff coordinator will:

- a. Manage the day-to-day operation and business of the committee.
- b. Prepare and distribute the notices of the committee meetings, prepare the meeting agenda, and prepare and distribute the minutes of the committee meetings.
- c. Act as the committee's parliamentarian.

## Section 6. Nominating Subcommittee

1. **Appointment.** The Compliance and Certification Committee (CCC) will annually appoint a Nominating Subcommittee.

- a. **Five members.** The subcommittee will consist of five members nominated by the committee chair and approved by the committee. The chair of the subcommittee will be selected by the CCC chair from among the five subcommittee members.
- b. **Appointed annually.** The chairman will appoint the subcommittee members at the first regular meeting of the committee of the calendar year.
- c. **Serve for 14 months.** The subcommittee members will serve for up to 14 months or until such time as a new Nominating Subcommittee is authorized, whichever is earlier.

2. **Duties.** In addition to the duties, rights, and privileges described elsewhere in this manual, members of the Nominating Subcommittee will:

- a. Prepare a slate of committee officer candidates for submission to the NERC Board for approval.
- b. Prepare a slate of recommended individuals to fill designated committee vacancies as required.

## **Section 7. Subordinate Groups.**

**1. Committee organization hierarchy.** The Compliance and Certification Committee organizational structure will be arranged as allowed in the NERC Bylaws to support a superior-subordinate hierarchy that is ordered as follows:

- Committee
- Subcommittee
- Working Group
- Task Force

**2. Establishing subgroups.** The committee may establish subcommittees, working groups, and task forces as necessary. The committee chair may also form any of these subordinate groups on behalf of the committee. The committee will be the responsible sponsor of all subordinate subcommittees, working groups, or task forces it may create, or that its subordinate subcommittees and working groups may create. The committee will keep the Board informed of all groups subordinate to the committee.

**3. Subcommittees.** The committee may establish subcommittees to which the committee may delegate certain of the committee's broadly defined continuing functions. The committee will approve the scope of each subcommittee it forms. The committee chair will appoint the subcommittee officers (typically a chair and vice chair) for a specific term (generally two years). The subcommittee officers may be reappointed for up to two additional terms. The subcommittee will work within its assigned scope and be accountable for the responsibilities assigned to it by the committee. The formation of a subcommittee, due to the permanency of the subcommittee, will be approved by the Board.

**4. Working Groups.** The committee or any of its subcommittees may delegate specific continuing functions to a working group. The sponsoring committee or subcommittee will approve the scope of each working group it forms. The chair of the sponsoring committee or subcommittee will appoint the working group officers (typically a chair and vice chair) for a specific term (generally two years). The working group officers may be reappointed for up to two additional terms. The sponsoring committee or subcommittee will conduct a "sunset" review of each working group every two years. The working group will be accountable for the responsibilities assigned to it by the committee or subcommittee and will at all times work within its assigned scope.

**5. Task Forces.** The committee, subcommittee, or working group may assign specific work of a finite duration to a taskforce. The sponsoring committee, subcommittee, or working group will approve the scope of each taskforce it forms. The chair of the sponsoring committee, subcommittee, or working group will appoint the taskforce officers (typically a chair and vice chair). Each taskforce will have a finite duration, normally less than one year. The sponsoring group will review the taskforce scope at the end of the expected duration and at each subsequent meeting of the sponsoring group after that until the taskforce is retired. Action of the task force sponsoring group is required to continue the taskforce past its



defined duration. The sponsoring group should consider promoting to a working group any taskforce that is required to work longer than one year.

#### 6. Subgroup Membership and Representation.

- a. The membership of each subcommittee, working group, and taskforce should be established to address the need for expertise and balance of interests. Each group's membership requirements will be defined within the group's approved scope.
- b. As a general guide, the broader the group's scope, the more emphasis there should be on balancing of interests. Therefore subcommittees would be expected to have the broadest representation of appropriate industry sectors, while a taskforce may be more focused on simply having the necessary expertise and a working group may be somewhere between.
- c. Each member of a subordinate group, and its officers, will be appointed by the chair of the sponsoring committee or group.
- d. To the extent subgroup membership is of a representative nature, recommendations for staffing of the group should be provided in a manner consistent with the principles outlined in the staffing of a committee, including the use of an open nominations process. Regional Entity representatives should be recommended by the Regional Entity and Canadian representatives by the Canadian Electricity Association. Preference may also be given to representatives recommended by broadly-based industry associations.
- e. To the extent subgroup membership is based on providing requisite expertise, the chair of the sponsoring committee or group may appoint members based on the relevant technical qualifications.

7. **Subgroup Procedures.** Subcommittees, working groups, and taskforces will conduct business in a manner consistent with all applicable sections of this manual and Robert's Rules of Order.

### Section 8. Hearings.

1. **General.** The Compliance and Certification Committee will conduct hearings as necessary to fulfill its function of serving as the hearing body for any contest between NERC and a ~~Regional Reliability Organization (RRO) or~~ Regional Entity (RE) regarding NERC findings of or penalties or sanctions for violation(s) of reliability standard(s) by the ~~RRO or~~ RE as described in the NERC Rules of Procedure (ROP) Section 409.
2. **Hearing Procedure.** Unless specifically identified otherwise elsewhere in this charter the CCC's hearing procedure shall follow the hearing procedure mandated and approved by jurisdictional authorities for use by NERC and the Regional Entities in the Compliance program.
3. **Hearing Panel.** The committee shall not have a standing hearing panel. When a hearing is to be conducted the CCC shall select five members to serve as the adjudicatory panel for that hearing. Members to serve on the panel shall be selected by vote of a valid quorum of the committee. Voting members of the committee at arm's length from parties to the hearing may be nominated or volunteer to stand for selection to the hearing panel. One or more alternates may also be selected if/as the committee deems appropriate for the circumstances. A member may serve on more than one panel concurrently. A panel is disbanded upon conclusion of the hearing proceedings for which it was formed.

Attachment A --- CCC Membership Structure

Primary Sector	Sub-Sector	Number of Members	Full Voting	Proportional Voting	Non-Voting
Investor-Owned Utility		2	X		
State/Municipal Utility		2	X		
Cooperative Utility		2	X		
Federal or Provincial Utility/Federal Power Marketing Administration		2	X		
Transmission Dependent Utility		2	X		
Merchant Electricity Generator		2	X		
Electricity Marketer		2	X		
Large End-use Electricity Customer		2	X		
Small End-use Electricity Customer		2	X		
Independent System Operator/Regional Transmission Organization		2	X		
Regional Entity	FRCC	1		X	
	RFC	1		X	
	ERCOT	1		X	
	MRO	1		X	
	NPCC	1		X	
	SERC	1		X	
	SPP	1		X	
	WECC	1		X	
Government	U.S. State	2	X		
	U.S. Federal	2			X
	Canadian Provincial	1			X
	Canadian Federal	1			X
<b>Total</b>		<b>34</b>			