

1.0 HEARING PROCEDURES ATTACHMENT 2 – RULES OF PROCEDURE

1.1 Applicability, Definitions and Interpretation

1.1.1 Procedure Governed

The provisions set forth in this ~~Paragraph 1.0~~ Attachment 2 to the Texas Regional Entity, a division of Electric Reliability Council of Texas (“Texas RE” or “Compliance Enforcement Authority”) (“Rules of Procedure”) shall apply to and govern practice and procedure before ~~[REGIONAL ENTITY]~~ the Compliance Enforcement Authority and Hearing Board, as defined herein, in hearings in the ERCOT region of the United States conducted into (i) whether Registered Entities within ~~[REGIONAL ENTITY]~~ the Compliance Enforcement Authority’s area of responsibility have violated Reliability Standards, and (ii) if so, to determine the appropriate mitigation plans 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). Any hearing conducted pursuant to these Rules of Procedure shall be conducted before the Public Utility Commission of Texas (“Commission”), as is further provided herein.

1.1.2 Deviation-

1.1.2 Deviations and Exceptions

- (a) To the extent permitted by law, any provision in these Rules of Procedure may be waived, suspended or modified by the Presiding Officer or the Hearing Officer ~~Body~~, as defined in ~~Paragraph 1.1.5, or the [HEARING BODY], as defined in Paragraph 1.1.5,~~ Section 1.1.5, for good cause shown, either upon the Hearing Presiding Officer’s or the ~~[HEARING BODY]~~ Hearing Body’s own motion or upon the motion of any Party.
- (b) Where an issue is not addressed by the terms of these Rules, the Hearing Body shall use the Chapter 22 Procedural Rules.
- (c) The following provisions of Chapter 22 shall not be applicable to proceedings brought under these Procedural Rules:
 - (1) P.U.C. PROC. R. § 22.32;
 - (2) P.U.C. PROC. R. § 22.33;
 - (3) P.U.C. PROC. R. § 22.35;
 - (4) P.U.C. PROC. R. §§ 22.51-22.54;
 - (5) P.U.C. PROC. R. § 22.56;
 - (6) P.U.C. PROC. R. § 22.71(j);
 - (7) P.U.C. PROC. R. §§ 22.102(a)(3), (4) and (c);

(8) P.U.C. PROC. R. §§ 22.103-22.105;

(9) P.U.C. PROC. R. §§ 22.125-22.126;

(10) P.U.C. PROC. R. § 22.202(e);

(11) P.U.C. PROC. R. §§ 22.206-22.207;

(12) P.U.C. PROC. R. §§ 22.241-22.246;

(13) P.U.C. PROC. R. §§ 22.251-22.252;

(14) P.U.C. PROC. R. § 22.263(d); and

(15) P.U.C. PROC. R. §§ 22.281-22.284.

(d) For purposes of this Attachment 2—Rules of Procedure, the following shall supplement the terms of a Chapter 22 Rule, as specified:

(1) P.U.C. PROC. R. § 22.31. The following subsection (d) shall be added:

“(d) The Hearing Body Clerk shall designate each proceeding brought under these rules as a docket.”

(2) P.U.C. PROC. R. § 22.72(e). The following sentence shall be added at the end of this subsection:

“A party or its authorized representative shall also provide in its signature block one or more electronic mail addresses to which service may be made.”

(3) P.U.C. PROC. R. § 22.74(b). The following sentence shall be added at the end of this subsection:

“(b) . . . Service may be made by electronic mail to the email address included in a signature block of a party or its authorized representative.

* * *

“(4) Service by email shall be complete upon transmission of the communication from the electronic mail server of the serving party.”

- (e) All proceedings filed under these rules shall be conducted under the Commission's Chapter 22 Procedural Rules, as modified herein, but may not be referred to the State Office of Administrative Hearings.

1.1.3 Standards for Discretion

~~[REGIONAL ENTITY]~~ The Hearing Body's discretion under these Rules of Procedure 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 ~~[REGIONAL ENTITY]~~ Compliance Enforcement Authority proceedings should be treated fairly. To this end, Parties 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 Party that would otherwise result from another Party'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, Party 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 ~~[REGIONAL ENTITY]~~ Compliance Enforcement Authority's conflict of interest policy.
- (e) Impartiality - Persons appearing before the ~~[HEARING BODY]~~ Hearing Body should not be subject to discriminatory or preferential treatment. Registered Entities should be treated consistently unless a reasonable basis is shown in any particular proceeding to depart from prior rulings, decisions or orders.
- (f) Expedition - Proceedings shall be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

1.1.4 Interpretation

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

1.1.5 Definitions

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

~~“Bulk-Power System,” for the purposes of these procedures, has the identical meaning as the definition of “Bulk Electric System” under the NERC Glossary.~~
Rules of Procedure, has the meaning set forth in 16 U.S.C. §824o(a)(1).

~~“[HEARING BODY]” [—————]. No two industry sectors may control any decision and no single segment may veto any matter brought before the [HEARING BODY] either before or after any recusals or disqualifications in accordance with Paragraph 1.4.5.~~

“Chapter 22” or “Commission Procedural Rules” shall mean the Chapter 22 Procedural Rules of the Commission, 16 TEX. ADMIN. CODE ch. 22., and be cited as “P.U.C. PROC. R. § [I].”

“Chief Compliance Officer” means the Chief Executive Officer of the Texas Regional Entity.

“Commission” means the Public Utility Commission of Texas.

“Compliance Enforcement Authority Clerk,” as designated by the [REGIONAL ENTITY] Compliance Enforcement Authority.

“Compliance Enforcement Authority” means the Regional Entity, by and through its Chief Compliance Officer.

“Compliance Enforcement Authority’s area of responsibility” means the Texas Regional Entity’s corporate region.

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

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

“Cybersecurity Incident” means ~~a~~any malicious act or suspicious event that ~~disrupts~~compromises, or was an attempt to ~~disrupt, the operation~~compromise, the Electronic Security Perimeter or Physical Security Perimeter of those programmable electronic devices and communications networks including hardware, software, and data that are

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essential to the Reliable Operation of the ~~Bulk Power System~~facilities, systems, and equipment which, if destroyed, degraded or otherwise rendered unavailable, would affect the reliability or operability of the Bulk Power System (a “Critical Cyber Asset”), or disrupts, or is an attempt to disrupt, the operation of a Critical Cyber Asset.

~~“Director of Compliance” means the Director of Compliance of [REGIONAL ENTITY], who is responsible for the management and supervision of Compliance Staff.—~~

“ERO” means the Electric Reliability Organization, currently the North American Electric Reliability Corporation, or any successor organization, certified by FERC pursuant to 18 C.F.R. ~~Section 39.3, the purpose of which is to establish and enforce Reliability Standards for the Bulk Power System subject to FERC review.~~§39.3.

“FERC” means the Federal Energy Regulatory Commission.

~~“Hearing Officer” means an individual employed or contracted by [REGIONAL ENTITY] and designated by [REGIONAL ENTITY] to preside over hearings conducted pursuant to these Rules of Procedure.—~~

“Filing Clerk” or “Hearing Body Clerk” means the Central Records filing clerk of the Public Utility Commission of Texas.

“Hearing Body” means the Public Utility Commission of Texas.

“Mitigation Plan” means an action plan developed by a Registered Entity to (i) correct a violation of a Reliability Standard and (ii) prevent reoccurrence of the violation. A Mitigation Plan is usually required whenever a Registered Entity violates a Reliability Standard as determined by any means including Compliance Enforcement Authority Decision, settlement agreement, or otherwise.

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

“Penalty” as used herein includes all penalties and sanctions that may be imposed pursuant to 16 U.S.C. §824o-1 and applicable regulations, including but not limited to a monetary or non-monetary penalty; a limitation on an activity, function, operation or other appropriate sanction; or the addition of the Registered Entity to a reliability watch list composed of major violators. Penalties must be within the range set forth in the NERC ERO Sanction Guidelines ~~of the North American Electric Reliability Council~~ approved by FERC pursuant to 18 C.F.R. Section 39.7(g)(2), and shall bear a reasonable relation to the seriousness of a Registered

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Entity's violation and take into consideration any timely efforts made by the Registered Entity 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.

~~"Mitigation Plan" means a plan to eliminate the violation of a Reliability Standard and its underlying causes.—~~

"Presiding Officer" or "Hearing Examiner" means an individual employed or contracted by the Hearing Body and designated by the Hearing Body to preside over hearings conducted pursuant to these Rules of Procedure.

"North American Electric Reliability Council" or "NERC" means North American Electric Reliability Corporation.

"Registered Entity" means each user, owner and operator of the Bulk-Power System within the United States that is required to register with ~~[REGIONAL ENTITY]~~ the Regional Entity pursuant to 18 C.F.R. ~~Section~~ § 39.2.

~~"[REGIONAL ENTITY]" means [REGIONAL ENTITY] Corporation.~~

~~"[REGIONAL ENTITY]'s area of responsibility" means [REGIONAL ENTITY]'s corporate region.—~~

"Regional Entity" means Texas Regional Entity or Texas RE, a division of Electric Reliability Council of Texas.

"Reliable Operation" has the meaning set forth in Section 215 of the Federal Power Act, ~~as it may be amended from time to time.~~

"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.

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

"Respondent" means the Registered Entity who is ~~a Party to a proceeding and~~ the subject of the Notice of Alleged Violation or contested Mitigation Plan that is the basis for the proceeding, whichever is applicable.

~~"Rules of Procedure" means the rules of [REGIONAL ENTITY] as set forth in this Paragraph 1. "Staff" or "Compliance Staff" means individuals employed~~

or contracted by ~~[REGIONAL ENTITY]~~the Compliance Enforcement Authority who have the authority to make initial determinations of Registered Entities' compliance with or violation ~~with~~of the Reliability Standards ~~by Registered Entities~~ and associated Penalties and Mitigation Plans. ~~—Staff members may participate and be represented by counsel in [REGIONAL ENTITY] proceedings, and shall have the rights and duties of any Party. Staff members must satisfy [REGIONAL ENTITY]'s conflict of interest policy.—~~

“Technical Advisor” means any Staff member, Hearing Body employee, third-party contractor, or industry stakeholder who satisfies ~~[REGIONAL ENTITY]~~the Compliance Enforcement Authority's conflict of interest policy and is selected to assist in a proceeding by providing technical advice to the ~~Hearing~~Presiding Officer and/or the ~~[HEARING BODY]~~Hearing Body.

1.2 General Provisions including Filing, Service, Transcription and Participation

1.2.1 Contents of Filings

~~All filings made with [REGIONAL ENTITY] 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 Party on whose behalf the filing is made;—~~
- ~~c) The full name, address, telephone number and email address of the Party or the representative of the Party making the filing;—~~
- ~~d) A plain and concise statement of any facts upon which the filing is based, which facts shall be supported by citations to the record if available; and~~
- ~~e) The specific relief sought, which may be in the alternative, and the authority that provides for or otherwise allows the relief sought.—~~

1.2.2 Form of Filings

- ~~a) All filings shall be typewritten, printed, reproduced or prepared using a computer or other word or data processing equipment on white paper 8½ inches by 11 inches with inside-text margins of not less than one inch. Page numbers shall be centered and have a bottom margin of not less than ½ inch. Line numbers, if any, shall have a left hand margin of not less than ½ inch. The impression shall be on one side of the paper only and shall be double spaced; footnotes may be single spaced and quotations may be single spaced and indented.~~

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

1.2.3 Submission of Documents

a) ~~Where to File~~

~~Filings shall be made with the Clerk of the [REGIONAL ENTITY] located at the principal office of [REGIONAL ENTITY]. The office will be open from [REGIONAL ENTITY] business hours] local time each day except Saturday, Sunday, legal holidays and any other day declared by the [REGIONAL ENTITY].~~

b) ~~When to File~~

~~Filings shall be made within the time limits set forth in these Rules of Procedure or as otherwise directed by the Hearing Officer or the [HEARING BODY]. Filings will be considered made when they are date stamped received by the Clerk. To be timely, filings must be received no later than [REGIONAL ENTITY close of business] local time on the date specified.~~

c) ~~How to File~~

~~Filings may be made by personal delivery, mailing documents that are properly addressed with first class postage prepaid, or depositing properly addressed documents with a private express courier service with charges prepaid or payment arrangements made.~~

d) ~~Number of Copies to File~~

~~One original and five exact copies of any document shall be filed. The Clerk will provide each member of the [HEARING BODY] with a copy of each filing.~~

e) ~~Signature~~

~~The original of every filing shall be signed by the Party on whose behalf the filing is made, either by an attorney of the Party or, by the individual if the Party is an individual, by an Officer of the Party if the Party is not an individual, or if the Party 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 Rules of Procedure, the Hearing Officer or the [HEARING BODY]. If verification is required, it must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by an individual other than the signer, a statement must be attached to the verification explaining why a person other than the signer is providing verification.~~

g) Certificate of Service

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

1.2.4 Service

a) Service List

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

b) By Parties

~~Any Party 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.~~

e) ~~By the Clerk~~

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

d) ~~Effective Date of Service~~

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

1.2.5 ~~Computation of Time~~

~~The time in which any action is required to be done shall be computed by excluding the day of the act or event from which the time period begins to run, and by including the last day of the time period, unless the last day is a Saturday, Sunday, legal holiday or any other day upon which the Office of [REGIONAL ENTITY] is closed, in which event it also shall be excluded and the date upon which the action is required shall be the first succeeding day that is not a Saturday, Sunday, legal holiday, or day upon which the Office of [REGIONAL ENTITY] is closed. The time in which any action is required to be done shall be computed by excluding intermediate Saturdays, Sundays, and legal holidays, or days upon which the Office of [REGIONAL ENTITY] is closed when the period is less than fifteen (15) days.—~~

1.2.6 ~~Extensions of Time~~

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

1.2.7 ~~Amendments~~

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

1.2.8 Transcripts [036]

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

~~[REGIONAL ENTITY] will pay for transcription services, for a copy of the transcript for the record and for a copy of the transcript for Staff. Any other Party shall pay for its own copy of the transcript if it chooses to obtain one and, should any Party seek to obtain a copy of the transcript on an expedited basis, it shall pay for the expedited transcription services.—~~

1.2.9 Rulings, Notices, Orders and Other Issuances

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

1.2.10 Location of Hearings and Conferences

~~All hearings oral arguments shall be held at the principal office of [REGIONAL ENTITY] unless the Hearing Officer or [HEARING BODY] elects a different location.—~~

1.2.11 Party Participation

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

(b) For purposes of this Attachment 2--Rules of Procedure and in application to any proceeding brought under these rules, the following terms shall be substituted for the term used in a Chapter 22 rule:

“Administrative law judge” shall mean and refer to the defined term “Presiding Officer.”

“Central records” shall mean “Hearing Body Clerk.”

“Final order” shall mean “final recommendation.”

“Proposal for decision” shall mean “draft recommendation.”

“Public utility” shall mean “party.”

- (c) If a term is defined in this Attachment 2—Rules of Procedure and in Chapter 22, the meaning expressed herein shall prevail.

1.2.12 1.1.6 Interventions Are Not Permitted

The Respondent(s) and Compliance Staff shall be Parties to the proceeding. Unless otherwise authorized by FERC, ~~a Person that is not a Party to a docketed proceeding is not~~ no other Persons shall be permitted to intervene or otherwise become a Party to ~~that~~ the proceeding.

1.2.13 1.1.7 Proceedings ~~Closed~~ Open to the Public

~~No hearing~~ All hearings, oral ~~argument or meeting~~ arguments, and meetings of the ~~[HEARING BODY]~~ Hearing Body shall be open to the public, and ~~no~~ every notice, ruling, order or any other issuance of the ~~Hearing Officer or [HEARING BODY]~~ Presiding Officer or Hearing Body, and any transcript, made in any proceeding shall be publicly released unless ~~the ERO or FERC determine that public release is appropriate. Only the members of the [HEARING BODY], the Parties, the Hearing Officer and the Technical Advisors, if any, shall be allowed to participate in or obtain information relating to a proceeding~~ a Party has requested that it be kept confidential in accordance with Texas law, and the Presiding Officer or Hearing Body determines that the information should not be released publicly.

1.2.14 1.1.8 Numbering and Docketing System

The ~~Clerk~~ Staff of the Compliance Enforcement Authority shall maintain a system ~~for docketing proceedings. A docketed~~ of numbering proceedings before they are sent to the Hearing Body for a hearing under these procedures. A numbered proceeding shall be created within the Compliance Enforcement Authority upon the issuance of a ~~Notice~~ notice of Alleged Violation. Unless NERC provides a different docketing system that will be used uniformly by the ~~Regional Entities, docket~~ Compliance Enforcement Authority, proceeding numbers shall be assigned sequentially beginning with a two digit number that relates to the last two digits of the year in which the docket is initiated, followed by a dash (“-”), followed by the letters “[RE]”, followed by a dash (“-”), followed by a four digit number that will be “0001” on January 1 of each calendar year and ascend sequentially until December 31 of the same calendar year. If the proceeding is not settled and becomes a contested matter before the Hearing Body, the Hearing Body’s numbering and docketing system shall govern the tracking of such filings while under the Hearing Body’s administration.

1.2.15 1.2 Hold Harmless

A condition of a Party invoking these Rules of Procedure and participating in a hearing is that the Party agrees ~~[REGIONAL ENTITY]~~ that the Compliance Enforcement Authority, including without limitation its members, ~~Board~~ board of directors or trustees, compliance committee, any other committees or subcommittees, Staff, contracted employees, attorneys and experts (outside or in-house), Hearing Body members, Presiding Officers and Technical Advisors, shall not be liable, and shall be held harmless against the consequences of, or any action or inaction arising out of, the hearing process, or of any agreement reached in resolution of a dispute or any failure to reach agreement as a result of a proceeding. This “hold harmless” ~~clause~~ provision does not extend to matters constituting gross negligence or intentional misconduct.

1.3 Initiation of the Hearing Process

~~1.3.1 Registered Entity’s Option to Request a Hearing~~

Except when contesting a Remedial Action Directive pursuant to section ~~1.8~~ 1.5 of these ~~procedures~~ Rules of Procedure, a Registered Entity may file a ~~statement with the [REGIONAL ENTITY] response or complaint with the Compliance Enforcement Authority and the Filing Clerk~~ requesting a hearing if ~~either~~:

- (a) The Registered Entity ~~files a Response to~~ contests a Notice of Alleged Violation ~~that contests either~~ as to the existence or scope of the alleged violation, the proposed Penalty, or both; or
- (b) The ~~Compliance Staff submits to the Registered Entity a statement identifying a disagreement with a Registered Entity’s proposed Mitigation Plan~~ Registered Entity contests the Compliance Enforcement Authority’s rejection of Registered Entity’s Mitigation Proposal in whole or in part.

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

Either a ~~Notice~~ notice of Alleged Violation issued to a Registered Entity or a Staff statement setting forth its disagreement with a Registered Entity’s ~~proposed Mitigation Plan~~ Proposal shall clearly state that the Registered Entity has the option to contest the ~~alleged violation~~ Alleged Violation, proposed Penalty, or both, or the Compliance Staff’s position on the ~~proposed Mitigation Plan, under either the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in Sections 1.4 to 1.7. If the Registered Entity files a hearing request within the requisite time period, it shall state within its hearing request whether it requests the shortened hearing procedure pursuant to Paragraph 1.3.2 or the full hearing procedure described in section Sections 1.4 to 1.7. If the Registered Entity~~

~~requests the full hearing procedure, the full hearing procedure shall apply. If the Registered Entity requests the shortened hearing procedure, Compliance Staff shall submit a filing within five (5) days of the Registered Entity's hearing request that states whether Staff agrees to use the shortened hearing procedure. If Staff either fails to file or files but does not agree to use the shortened hearing procedure, then the full hearing procedure shall apply. Once either the full or shortened hearing procedure has been selected, the Parties shall not be allowed to revert to the non-selected hearing procedure unless the Parties mutually agree.~~ Registered Entity's Mitigation Proposal.

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

- (a) The Registered Entity's ~~self-report~~ Self-Reporting of a violation;
- (b) The Notice of Alleged Violation and the Registered Entity's ~~Response~~ response thereto; ~~and/or~~
- (c) The Registered Entity's ~~proposed~~ Mitigation Plan Proposal and the Compliance Staff's statement identifying its disagreement with the ~~proposed~~ Registered Entity's Mitigation Plan Proposal.

1.3.2 Shortened Hearing Procedure

~~The shortened hearing procedure shall be as set forth in this Paragraph. The rules applicable to the full hearing procedure shall apply to the shortened hearing procedure unless a rule's context is inconsistent with the procedure set forth in this Paragraph or otherwise renders it inapplicable to the shortened hearing procedure.~~

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

- ~~a) The Prehearing Conference shall be held within seven (7) days after the date on which the Notice of Hearing is issued. In addition to any other matters set forth in Paragraph 1.5.2 that may apply, the Prehearing Conference will be used to develop a schedule for the preparation and submission of comments in accordance with Subparagraphs (c) through (e).~~
- ~~b) Within seven (7) days after the date on which the Notice of Hearing is issued, Staff shall make documents available to the Registered Entity for inspection and copying pursuant to Paragraph 1.5.7.~~
- ~~c) Within twenty-one (21) days of the Prehearing Conference, the Staff shall file:~~

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- ~~1) initial comments stating Staff's position on all issues and the rationale in support of its position, including all factual and legal argument;~~
- ~~2) all documents that Staff seeks to introduce in support of its position that are not already in the record; and~~
- ~~3) a verification attesting to the truthfulness of the facts alleged in the filing.~~
- d) ~~Within fourteen (14) days of Staff's initial comment filing pursuant to Subparagraph (c), the Registered Entity shall file:~~
 - ~~1) responsive comments stating the Registered Entity's position on all issues and the rationale in support of its position, including all factual and legal argument, which comment also may respond to Staff's initial comments;~~
 - ~~2) all documents that the Registered Entity seeks to introduce in support of its position that are not already in the record; and~~
 - ~~3) a verification attesting to the truthfulness of the facts alleged in the filing.~~
- e) ~~Within seven (7) after the Registered Entity's responsive comment filing pursuant to Subparagraph (d), Staff shall file reply comments that shall be limited in scope to responding to the Registered Entity's responsive comments and be supported by a verification attesting to the truthfulness of the facts alleged in the filing. Staff shall not submit any additional documents in support of its position as part of this filing except upon motion and good cause shown. If Staff is allowed to file additional documents in support of its position based upon such a motion, the Registered Entity shall have the right to file additional documents in support of its position that are responsive to the additional documents that Staff is allowed to file provided that any additional Registered Entity filing also shall be verified.~~
- f) ~~The Hearing Officer shall issue an initial opinion within twenty one (21) days of the Staff's reply comments filing pursuant to Subparagraph (e).~~
- g) ~~If either Party requests, the Hearing Officer shall allow each Party to file, within seven (7) days of the Hearing Officer's initial opinion, exceptions to the Hearing Officer's initial opinion in a brief designated "Brief on Exceptions" in accordance with Paragraph 1.7.4. No replies to Briefs on Exceptions shall be allowed.~~
- h) ~~The [HEARING BODY] shall strive, but is not required, to issue a Final Order within ninety (90) days of the Notice of Hearing.~~

~~The Hearing Officer or [HEARING BODY] may modify any time period set forth within this Paragraph as warranted by the circumstances but it will be the objective of the [HEARING BODY] to issue the Final Order within ninety (90) days of the Notice of Hearing.~~

1.4 General Hearing Procedure

Except as otherwise specified in this Attachment 2—Rules of Procedure, the procedures and timelines set forth in Chapter 22 shall govern the conduct of a hearing arising under these rules.

1.4.1 ~~Notice of~~ Hearing Body

~~Within seven (7) days of a Registered Entity requesting a hearing pursuant to Paragraph 1.3, the Clerk shall issue a Notice of Hearing in the docket. The Notice of Hearing shall identify the Hearing Officer, if designated at that time, and the date, time, and place for the prehearing conference, which should occur no later than fourteen (14) days after the Notice of Hearing.~~

1.4.2 Hearing Officer

~~[REGIONAL ENTITY] may utilize a Hearing Officer to preside over each hearing conducted pursuant to these Rules of Procedure, provided that the Hearing Officer's actions shall be subject to the authority of the [HEARING BODY] as set forth in Paragraph 1.4.3. The [HEARING BODY] reserves its right to attend any aspect of the hearing as a body or by individual members.~~

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

- ~~1)- To administer oaths and affirmations;~~
- ~~2)- To schedule and otherwise regulate the course of the hearing, including the ability to call to recess, reconvene, postpone or adjourn a hearing;~~
- ~~3)- To separate any issue or group of issues from other issues in a proceeding and treat such issue(s) as a separate phase of the proceeding;~~
- ~~4)- To modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any other Party;~~
- ~~5)- To supervise discovery;~~
- ~~6)- To conduct prehearing conferences, status hearings and evidentiary hearings;~~
- ~~7)- To rule upon all objections, motions and other requests that do not result in the final determination of the proceeding;~~
- ~~8)- To rule on and receive evidence;~~

- ~~9)- To call upon a Party to produce further evidence that is material and relevant to any issue;~~
- ~~10)- To issue initial opinions; and~~
- ~~11)- To ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings.~~

~~If the [HEARING BODY] uses a Hearing Officer to preside over a hearing, the [HEARING BODY] shall disclose the identity and professional affiliations of the Hearing Officer within two (2) days of the Hearing Officer's assignment to the proceeding, and Parties to the hearing may raise objections to the Hearing Officer's participation in accordance with Paragraph 1.4.5.~~

~~1.4.3 [HEARING BODY]~~

~~The [HEARING BODY] is vested with the authority to issue an order resolving the issue(s) in all cases. To that end:~~ Hearing Body, consisting of a quorum of the Commission, shall hear all proceedings brought under these Rules of Procedure, unless the Commission elects to delegate all or part of the proceeding to a Presiding Officer who is a member of the Commission Staff. The Hearing Body is vested with the exclusive authority to issue a final recommendation to the Chief Compliance Officer for the resolution of the issue(s) presented. The following procedures shall also apply:

- ~~1)- The [HEARING BODY] shall be entitled to receive all filings in a hearing, including but not limited to all issuances of the Hearing Officer, all motions and responses thereto, and all written testimony and evidence.~~
- ~~2(a)~~ The [HEARING BODY]Hearing Body or any individual member thereof shall be entitled~~may~~, but is not required, to, attend any prehearing conference, status hearing or evidentiary hearing, ~~and/or~~ to submit questions to the ~~Hearing~~Presiding Officer to submit to a Party or any witness at any such hearing. No more than one member of the Hearing Body may be present for any prehearing conference, status hearing, or evidentiary hearing unless the Hearing Body has complied with the Open Meetings requirements of Texas law.
- ~~3)- The [HEARING BODY] shall have the same authority as the Hearing Officer, as set forth in these Rules of Procedure, to require the Parties or any individual Party to: (i) address a specific issue in testimony, evidence or briefs; (ii) present oral argument on an issue; (iii) file pre-evidentiary hearing memorandums; or (iv) produce further evidence that is material and relevant to any issue. To this end, the [HEARING BODY] shall be entitled to issue questions or requests for information to any Party or any witness at any time until the issuance of a Final Order.~~

- 4) ~~The [HEARING BODY] or any individual member thereof shall be entitled to offer information or documents, including books, papers, logs, graphs, maps, drawings, charts or any other written material, for submission into the evidentiary record at any time until the issuance of a Final Order; provided that the Parties shall be provided an opportunity to object to the introduction of such information or documents into the evidentiary record, and to present testimony and other evidence in relation to such information or documents. The [HEARING BODY] and individual members thereof shall strive to submit any such information or documents in a timely manner to avoid any undue delay in the hearing process.~~
- 5) ~~To the extent that the [HEARING BODY] disagrees with any issuance or ruling of the Hearing Officer, it shall be entitled, on its own motion or upon petition for interlocutory review, to reverse or modify the issuance or ruling in whole or in part, or to take any other action as may be appropriate.—~~
- 6(b) The ~~[HEARING BODY]~~Hearing Body shall resolve the issue(s) in every hearing through the issuance of a ~~Final Order. In issuing a Final Order, the [HEARING BODY] final recommendation to the Chief Compliance Officer.~~In issuing a final recommendation to the Chief Compliance Officer, the Hearing Body shall consider the ~~Hearing~~Presiding Officer's ~~initial opinion~~draft recommendation but shall have the authority to reject, modify or approve the ~~initial opinion~~draft recommendation in whole or in part in issuing its final recommendation.

1.4.4 Interlocutory Review

~~A Party shall be allowed to seek interlocutory review of any Hearing Officer ruling with the [HEARING BODY] provided that failure to seek such review shall not operate as a waiver of any objection to such ruling. Unless good cause is shown or unless otherwise ordered by the Hearing Officer or the [HEARING BODY], the Party seeking review shall file a petition for interlocutory review within fourteen (14) days after the date of the action that is the subject of the petition. The petition shall be filed with any offer of proof and supported by affidavit if based on facts that do not appear of record. Responses to petitions for interlocutory review shall be filed within seven (7) days after service of the petition. No replies to responses are allowed. The Hearing Officer shall file a report to the [HEARING BODY] within fourteen (14) days from the filing of the petition.—~~

~~On review of a Hearing Officer's ruling, the [HEARING BODY] may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. Petitions to rehear or reconsider the [HEARING BODY'S] action taken on interlocutory review shall not be allowed. Only in exceptional circumstances shall an interlocutory review of a ruling of the Hearing Officer suspend a hearing.—~~

1.4.5 Disqualification

~~A Hearing Officer, Technical Advisor or member of the [HEARING BODY] shall recuse himself or herself from a proceeding if participation would violate [REGIONAL ENTITY]'s applicable conflict of interest policy.~~

~~Any Party may file a motion to disqualify or for recusal of a Hearing Officer, Technical Advisor or member of the [HEARING BODY] from a proceeding on grounds of a conflict of interest, an ex parte communication prohibited by section 1.4.7, or the existence of other circumstances that could interfere with the impartial performance of his or her duties. The Party shall set forth and support its alleged grounds for disqualification by affidavit. A motion for disqualification shall be filed within fifteen (15) days after the later of: (1) the time when the Party learns of the facts believed to constitute the basis for disqualification; or (2) the time when the Party is notified of the assignment of the Hearing Officer or Technical Advisor.~~

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

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

1.4.6 Technical Advisor

1.4.2 Technical Advisor

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

If the ~~Hearing~~Presiding Officer or ~~[HEARING BODY]~~Hearing Body uses a Technical Advisor to assist in any hearing, the ~~Hearing~~Presiding Officer or ~~[HEARING~~

~~BODY~~ Hearing Body shall disclose the identity and professional affiliations of the Technical Advisor within two (2) days of the Technical Advisor's assignment to the proceeding, and Parties to the hearing may raise objections to the Technical Advisor's participation ~~in accordance with Paragraph 1.4.5.—~~

~~1.4.7 No Ex Parte Communications~~

- a) ~~Once a Registered Entity requests a hearing pursuant to Paragraph 1.3:~~
- ~~1) neither the [HEARING BODY], the Hearing Officer, nor the Technical Advisor(s), if any, may communicate either directly or indirectly with any Person concerning any issue in the proceeding outside of the hearing process; but~~
 - ~~2) the [HEARING BODY], the Hearing Officer, and the Technical Advisor(s), if any, may communicate outside of the hearing process either directly or indirectly with a Party or a Party's representative:~~
 - ~~A) in writing if the writing is simultaneously provided to all Parties; or~~
 - ~~B) orally if a representative for every Party is present in person or by telephone;~~
 - ~~C) subject to the requirement that the substance of ruling on such issue be memorialized on the record or by the issuance of a notice or ruling, and that any Party objecting to the ruling have the opportunity to state its objection on the record.—~~
- b) ~~This proscription does not prohibit members of the Compliance Staff from communicating with the Registered Entity, and representatives, agents or employees thereof, provided that any member of the Compliance Staff involved in such communication may not be and may not subsequently serve as a Technical Advisor.—~~
- c) ~~This proscription also does not prohibit communications between members of the [HEARING BODY], the Hearing Officer and any Technical Advisor.—~~
- d) ~~Any member of the [HEARING BODY], the Hearing Officer or any Technical Advisor who receives or who makes or knowingly causes to be made a communication prohibited by this Paragraph shall, within seven (7) days of the communication, file and serve on the Parties in the proceeding a Notice of Ex Parte Communication setting forth the date, time and place of communication, and a summary of the substance and nature of the communication and all responses thereto, and, if the communication or any response thereto was in writing, a copy of the written communication shall be attached.—~~

~~1.4.8 Appearances~~

~~Parties shall file written appearances within seven (7) days of the Notice of Hearing. A Party's written appearance shall identify the name(s) of each individual authorized to represent the Party in the proceeding exclusive of witnesses. An individual may appear on his or her own behalf. A corporation, association, partnership or governmental body may appear by any bona fide officer or designee who has the authority to act on behalf of the Party. A Party also may appear by an attorney.—~~

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

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

~~Any attorney appearing on behalf of a Party shall be licensed to practice and in good standing before the Supreme Court of the United States or the highest court of any State, territory of the United States or the District of Columbia.—~~

~~Individuals representing Parties 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 Party to appear during any hearing without good cause and without notification may be grounds for dismissal or deciding against the interests of such defaulting Party. Any hearing costs incurred as a failure to appear may be assessed against such Party.—~~

1.5 Prehearing Procedure

1.5.1 Waiver of Time Limits

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

1.5.2 Prehearing Conference

~~The purpose of the prehearing conference shall be to:~~

- ~~1) Preliminarily identify the issues;~~
- ~~2) Address any discovery issues;—~~

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

1.5.3 Summary Disposition

~~A Hearing Officer, on the Hearing Officer's own motion or on the motion of a Party, may grant, in whole or in part, a motion for summary disposition if it appears that there are no issues of material fact. If the Hearing Officer is considering summary disposition in the absence of a Party motion, the Hearing Officer shall request the Parties to identify in writing any issues of material fact and to comment on the proposed disposition. Factual information in the Parties' comments shall be supported by affidavit. Following review of the Parties' 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 Parties the opportunity to file briefs. When the Hearing Officer grants a motion for summary disposition in whole or in part, the ruling shall set forth the rationale for the grant and shall be considered an initial opinion.~~

1.5.4 Status Hearings

~~Any Party 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 Parties. Such issues may include, but are not limited to, discovery disputes and scheduling matters. The Hearing Officer shall direct the Clerk to issue a notice of status hearing that sets forth the date, time and place for the hearing, and identifies the matters to be addressed at the hearing.~~

1.5.5 Motions

~~Unless otherwise provided, a Party may file a motion at any time requesting any relief as may be appropriate. Unless a Hearing Officer allows a motion to be made orally on the record, motions shall be filed in writing. Motions based on facts that do not appear of record shall be supported by affidavit. Unless otherwise specified by the Hearing Officer, responses to motions shall be filed within fourteen (14) days after service of the motion, and replies to responses shall be filed within seven (7) days after service of the responses; however, a Hearing Officer may deny dilatory, repetitive, or frivolous motions without awaiting a response. Unless otherwise ordered by a Hearing Officer, the filing of a motion does not stay a hearing proceeding. When the Hearing Officer grants a motion to dismiss a proceeding in whole or in part, the ruling shall set forth the rationale for the grant and shall be considered an initial opinion.~~

1.5.6 Experts

~~A Party may employ an expert to testify or consult in a proceeding. Any expert utilized in either capacity shall sign a confidentiality agreement appropriate to the level of involvement in the proceeding. The Party employing the expert shall propose the confidentiality agreement for approval via a motion, and its approval shall be subject, in addition to consideration of any objection, to ensuring that appropriate safeguards are maintained to protect the confidentiality of the proceeding and the information disclosed therein.~~

1.5.7 Inspection and Copying of Documents in Possession of Staff

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

~~(1) Unless otherwise provided by this Rule, or by order of the Hearing Officer or [HEARING BODY], within five (5) days of the notice of hearing, Staff shall make available for inspection and copying by the Respondent, documents prepared or obtained by Staff in connection with the investigation that led to the institution of proceedings. Such documents include but are not limited to:~~

~~(A) requests for information;~~

~~(B) every written request, including e-mail, directed to persons not employed by the [REGIONAL ENTITY] to provide documents or to be interviewed;~~

~~(C) the documents provided in response to any such requests described in (A) and (B) above;~~

~~(D) all transcripts and transcript exhibits; and~~

~~(E) all other documents obtained from persons not employed by the [REGIONAL ENTITY].~~

~~(2) Staff shall promptly inform the Hearing Officer and each other Respondent if, after the issuance of a Notice of Hearing, requests for information are issued related to the same investigation leading to the institution of the proceeding. If Staff receives documents pursuant to a request for information after documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such documents are material and relevant to the proceeding, the additional documents shall be made available to the Respondent not later than fourteen (14) days after Staff receives such documents. If the hearing is scheduled to begin, Staff shall make the additional documents available to the Respondent not less than ten (10) days before the hearing. If Staff receives such documents ten or fewer days before the hearing is scheduled to begin or after such hearing begins, Staff shall make the additional documents available immediately to the Respondent.~~

~~(3) Nothing in subparagraph (a)(1) shall limit the discretion of the [REGIONAL ENTITY] to make available any other document or the authority of the Hearing Officer to order the production of any other document.~~

~~(b) Documents That May Be Withheld~~

~~(1) Staff may withhold a document if:~~

~~(A) the document is privileged or constitutes attorney work product;~~

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

~~(C) the document would disclose (i) an examination, investigatory or enforcement technique or guideline of the [REGIONAL ENTITY], 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 [REGIONAL ENTITY], 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.~~

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

~~(c) Withheld Document List~~

~~The Hearing Officer may require Staff to submit to the Hearing Officer a list of documents withheld pursuant to subparagraphs (b)(1)(A) through (D) or to submit to the Hearing Officer any document withheld. Upon review, the Hearing Officer may order Staff to make the list or any document withheld available to the other Respondents for inspection and copying. A motion to require Staff to produce a list of documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a document is being withheld in violation of the rules set forth herein.~~

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

~~Except as set forth in this Paragraph, the Hearing Officer shall determine the schedule of production of documents pursuant to this Rule 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 [REGIONAL ENTITY] 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 Parties otherwise agree. A Respondent shall be given access to the documents at the [REGIONAL ENTITY]'s offices during normal business hours. A Respondent shall not be given custody of the documents or be permitted to remove the documents from the [REGIONAL ENTITY]'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, charges for copies made at the request of a Respondent shall be at a rate to be established by the [REGIONAL ENTITY].~~

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

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

1.5.8 Pre-Evidentiary Hearing Submission of Testimony and Evidence

~~Unless the Hearing Officer orders otherwise and with the exception of any adverse Party examination pursuant to Paragraph 1.6.16, all witness testimony in a hearing must be prepared in written form, may have exhibits, schedules and attachments thereto, and will be filed in advance of the evidentiary hearing pursuant to a schedule determined by the Hearing Officer, as it may be amended. This requirement does not preclude a Party from using a document or other demonstrative evidence if grounds exist for such use in the conduct of proper cross-examination even if the Party did not file the document in advance of 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 Registered Entity shall file the documents it intends to offer into evidence as its direct case, which also may be responsive to Staff's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, second. Staff shall file as its rebuttal case the documents it intends to offer into evidence in response to the~~

~~Registered Entity's direct case, including the written testimony of its witnesses along with exhibits, schedules and attachments thereto, third.—~~

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

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

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

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

~~1.5.9 Protective Orders~~

- ~~a)- At any time during a proceeding, on the Hearing Officer's own motion or on the motion of any Party, an order may be entered to designate as proprietary and protect the confidential, proprietary or trade secret nature of any data, information or studies, or any other information the public release of which may cause a security risk or harm to a Party.—~~
- ~~b) The following types of information will be considered entitled to protection: (i) confidential business and market information, including information that is proprietary, commercially valuable, or competitively sensitive; (ii) critical energy infrastructure information, for which *NERC Security Guidelines for the Electricity Sector—Protecting Potentially Sensitive Information* may be used as a guide; (iii) information related to a Cybersecurity Incident; (iv) personnel information that identifies or could be used to identify a specific individual, or that reveals personnel, financial, medical or other personal information; (v) audit work papers; or (vi) investigative files.—~~
- ~~c)- A Party submitting a motion for a protective order shall specify the proposed expiration date for the proprietary status of the data, information or studies, if any, and shall propose requirements or safeguards to be met for individuals participating in the proceeding to review the protected information.—~~
- ~~d)- A document submitted and marked as proprietary, or a statement made at a hearing and identified as proprietary, shall be afforded proprietary treatment pending the timely—~~

~~submission of a motion to protect the confidential, proprietary or trade secret nature of that document or statement and a ruling on such a motion by the Hearing Officer.~~

- ~~e) The protective order shall identify the data, information or studies that will be accorded proprietary treatment; the individuals participating in the proceeding, by category or otherwise, entitled to view the proprietary information; and the requirements, conditions or safeguards that must be met before an individual may view the information.~~
- ~~f) A public redacted version of each document and transcript that contains information that is protected pursuant to this Paragraph must be filed with the proprietary version and must be served on each Party for distribution to those individuals participating in the proceeding who are not entitled to view the proprietary information.~~
- ~~g) Should it be necessary to address proprietary information during a hearing, the Hearing Officer shall close the hearing while the information is addressed to all individuals other than those entitled to view the proprietary information in accordance with the protective order.~~

1.5.10 Pre-Evidentiary Hearing Memorandum

~~The Hearing Officer or the [HEARING BODY] may request, as needed on a case by case basis due to the number or complexity of the issue(s), the submission of memorandums prior to the evidentiary hearing that outline each Party's position on the issue(s) in dispute, the key facts and arguments, and the applicable Reliability Standard, rules, orders or other authority. The purpose of such memorandums will be to aid the Hearing Officer and [HEARING BODY] in preparation for the evidentiary hearing. A Party 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 Parties' evidence into the record, and for each Party to have the opportunity to cross-examine the other Party's witnesses. A schedule for briefs, unless waived by the Parties, 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 Parties.~~

1.6.2 Burden of Proof and Order of Receiving Evidence

~~The standard of proof in the hearing shall be by a preponderance of the evidence. The burden of persuasion on the merits of the hearing shall rest upon Compliance Staff alleging noncompliance with a Reliability Standard, proposing a Penalty or opposing a Registered Entity's Mitigation Plan. As such, 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 Party, and shall be required when requested by the Hearing Officer or the [HEARING BODY]. Any Party's request for such statements, or Hearing Officer or [HEARING BODY] notice requiring such statements, shall be made at least ten (10) days in advance of the evidentiary hearing.~~

1.6.4 Right of Party to Present Evidence~~A Party 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.~~within 10 business days of disclosure.

1.6.5 Exhibits

~~All material offered in evidence, unless the Hearing Officer allows oral testimony, shall be offered in the form of an exhibit. Each exhibit must be marked for identification. A Party must provide the court reporter with two (2) copies of every exhibit that the Party offers into evidence, and will provide copies of any exhibit not served in advance of the evidentiary hearing to the Parties and the Hearing Officer.~~

1.6.6 Witness Attendance at Evidentiary Hearing

~~Each witness shall attend the evidentiary hearing in person unless a Party has been informed in advance of the evidentiary hearing that all other Parties waive cross-examination of the witness and neither the Hearing Officer nor the members of the [HEARING BODY] have any questions for the witness, in which event the witness does need not be present at the evidentiary hearing. If a witness is not required to attend the evidentiary hearing, then the Party on whose behalf the witness prepared testimony shall file an affidavit of the witness attesting to the veracity of the witness' testimony and the Party 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 Registered Entity second, unless the Parties agree otherwise. All testimony is to be under oath or affirmation.~~

~~Except for witnesses who are not required to attend the evidentiary hearing, the Parties shall call each witness in turn. Following the witness' swearing in, the witness shall attest to the veracity of his or her written testimony. The witness may identify any language and/or figures in his or her written testimony that the witness would like to change or correct. Subject to objection, such changes or corrections may be allowed at the Hearing Officer's discretion for the purpose of obtaining a full, accurate and complete record without imposing undue delay or prejudice on any Party.~~

~~Once a witness has attested to the veracity of his or her testimony, the Party 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 Parties 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 Parties, and for any questions by the Hearing Officer or any member of the [HEARING BODY], in accordance with Paragraph 1.6.14, and then for redirect examination in accordance with Paragraph 1.6.15. Witnesses shall be cross examined on all previously served testimony (direct, rebuttal or surebuttal) when they first take the witness stand.~~

~~Except in exceptional cases and upon a showing of good cause, no witness shall be allowed to testify during the evidentiary hearing unless a Party has served the witness' written testimony in advance of the evidentiary hearing. Due to the undue prejudice such surprise witness testimony would impose on other Parties, it is [REGIONAL ENTITY]'s policy to discourage witness testimony at an evidentiary hearing when a Party has not served the witness' written testimony in advance of the evidentiary hearing. If such testimony is allowed, sufficient procedural steps shall be taken to provide the other Parties with a fair opportunity for response and cross examination.~~

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

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

~~1.6.9 Stipulation~~

~~The Parties 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 when the public interest requires.~~

~~1.6.10 Official Notice~~

~~The Hearing Officer may take official notice of any of the following:~~

- ~~1)- Rules, regulations, administrative rulings and orders, written policies of governmental bodies, and rulings and orders of regional reliability entities other than [REGIONAL ENTITY].~~

- ~~2)- The orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed [REGIONAL ENTITY] proceedings.~~
- ~~3)- State and Federal statutes and municipal and local ordinances.~~
- ~~4)- The decisions of State and Federal courts.~~
- ~~5)- Generally recognized scientific or technical facts within the specialized knowledge of the [REGIONAL ENTITY].~~
- ~~6)- All other matters of which the courts of the United States may take judicial notice.~~

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

1.6.11 Admissibility of Evidence

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

~~Generally recognized rules of evidence shall not apply. Rather, the Hearing Officer will exercise discretion in the admission of evidence based upon arguments advanced by the Parties, and evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. However, the Hearing Officer may only exclude material from the record in response to a motion or objection by a party.~~

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

1.6.12 Offer of Proof

~~Any Party 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 Party claims would have been adduced, or any written or documentary exhibit that the Party 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 Parties to file written arguments in relation thereto. If the Hearing Officer reserves the ruling, appropriate steps shall be taken during the evidentiary hearing to ensure a full,~~

~~complete and accurate record in relation to the objected-to evidence in the event the objection to the evidence's admissibility is overruled.~~

~~1.6.14 Cross Examination~~

~~Each witness shall be tendered for cross examination subsequent to the admission of the witness' testimony into the evidentiary record. A Party may waive cross examination of any witness. The Hearing Officer and any member of the [HEARING BODY] shall be entitled to ask the witness questions following the conclusion of the witness' cross examination, and prior to the witness' redirect examination pursuant to Paragraph 1.6.15. If a member of the [HEARING BODY] seeks to ask a witness questions, the member shall do so by submitting the question in written form to the Hearing Officer, and the Hearing Officer shall ask the question of the witness.~~

~~1.6.15 Redirect Examination~~

~~A Party shall be entitled to conduct redirect examination of each of the Party's witnesses who are subject to cross examination or questions of the Hearing Officer or a member of the [HEARING BODY]. Any redirect examination shall be limited in scope to the witness' cross examination and questions of the Hearing Officer and members of the [HEARING BODY].~~

~~1.6.16 Examination of Adverse Party~~

~~Any Party may call any adverse Party, or any employee or agent thereof, during the evidentiary hearing to provide oral testimony on the Party's behalf, and may conduct such oral examination as though the witness were under cross examination. If a Party intends to do so, it shall give notice to the Hearing Officer and all other Parties setting forth the grounds for such examination at least fourteen (14) days in advance of the evidentiary hearing, and the Party who, or whose employee or agent, is sought to be called shall file any objection at least seven (7) days in advance of the evidentiary hearing.~~

~~1.6.17 Close of the Evidentiary Record~~

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

~~1.7 Post-Evidentiary Hearing Procedure~~

~~1.7.1 Briefs~~

- ~~a) At the close of the evidentiary hearing, Parties 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.~~

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

~~1.7.2 Other Pleadings~~

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

~~1.7.3 Draft Opinions~~

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

~~1.7.4 Hearing Officer's Initial Opinion~~

~~Except as otherwise ordered by the [HEARING BODY], at the conclusion of the evidentiary hearing, and following the submission of initial and reply briefs and draft orders, if any, the Hearing Officer shall prepare an initial opinion for the [HEARING BODY]'s review and consideration. The initial opinion shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The initial opinion also shall contain the appropriate orders to dispose of the proceeding, including any Penalty or Mitigation Plan that the Hearing Officer proposes the [HEARING BODY] require. If the initial opinion proposes a Penalty, the initial opinion shall include a proposed Notice of Penalty. The initial opinion shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be Critical Energy Infrastructure Information protected pursuant to Paragraph 1.5.9.~~

~~1.7.5 Exceptions~~

- ~~a) Within twenty one (21) days after service of the initial opinion, or such other time as is fixed by the Hearing Officer, any Party may file exceptions to the initial opinion in a brief designated "Brief on Exceptions" and, within fourteen (14) days after the time for filing~~

~~"Briefs on Exceptions" or such other time as is set by the Hearing Officer, any Party may file as a reply, "Brief in Reply to Exceptions."~~

- ~~b)- Exceptions and replies thereto with respect to statements, findings of fact or rulings of law must be specific and must be stated and numbered separately in the brief. With regard to each, the Party must specify each error of fact or law asserted, and include a concise discussion of any policy considerations applicable and any other arguments in support of the Party'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 30 pages, shall contain a table of contents.~~
- ~~d)- Parties shall not raise arguments in their briefs in reply to exceptions that are not responsive to any argument raised in any other Party's brief on exceptions.~~
- ~~e)- Statements of fact should be supported by citation to the record.~~
- ~~f)- The Hearing Officer may establish reasonable page limitations applicable to arguments included in briefs on exception and briefs in reply to exceptions.~~
- ~~g)- Unless good cause is shown, if a Party does not file a brief on exceptions, or if a Party filed a brief on exceptions that does not object to a part of the initial opinion, the Party 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 Party did not object, whichever applies.~~

1.7.6 Oral Argument

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

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

~~argument shall be served on all Parties not less than 48 hours prior to the time and date of oral argument.~~

~~1.7.7 Additional Hearings~~

~~After the evidentiary record has been closed but before issuance of an initial opinion, the Hearing Officer may reopen the evidentiary record and hold additional hearings. Such action may be taken on the Hearing Officer's or the [HEARING BODY]'s own motion if there is reason to believe that reopening is warranted by any changes in conditions of fact or law, or by the public interest. Any Party may file a motion to reopen the record, which shall contain the reasons for reopening, including material changes of fact or of law, and a brief statement of proposed additional evidence and an explanation why such evidence was not previously adduced.~~

~~1.7.8 [HEARING BODY] Final Order~~

~~Following the receipt of the initial opinion, any exceptions and replies thereto, and oral argument, if any, the [HEARING BODY] shall issue its Final Order. The [HEARING BODY] shall strive, but shall not be required, to issue its Final Order within thirty (30) days following the last to occur of the initial opinion, exceptions or replies thereto, or oral argument. The Final Order may adopt, modify, amend or reject the initial opinion in its entirety or in part. The Final Order shall include a statement of each finding and conclusion, and the reasons or basis therefore, for all material issues of fact, law or discretion presented on the record. The Final Order also shall contain the appropriate orders to dispose of the proceeding, including any Penalty, sanction, remedial action or Mitigation Plan required. If the initial opinion imposes a Penalty, it shall be entitled Final Order and Notice of Penalty. The Final Order shall note if the subject of the proceeding has been deemed to involve a Cybersecurity Incident or if any information in the proceeding was deemed to be critical energy infrastructure information protected pursuant to Paragraph 1.5.9. When the [HEARING BODY] serves the Final Order, it will inform the Parties of their appeal rights.~~

~~1.7.9 The Record~~

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

- ~~1)- Notice of Alleged Violation and Registered Entity's Response thereto;~~
- ~~2)- Registered Entity's Proposed Mitigation Plan and Staff's statement identifying its disagreement(s) therewith;~~
- ~~3)- Registered Entity's request for a hearing;~~
- ~~4)- Party filings, motions, and responses;~~

- ~~5) Notices, rulings, orders and other issuances of the Hearing Officer and [HEARING BODY];~~
- ~~6) Transcripts;~~
- ~~7) Evidence received;~~
- ~~8) Matters officially noticed;~~
- ~~9) Offers of proof, objections and rulings thereon, and any written or documentary evidence excluded from the evidentiary record;~~
- ~~10) Briefs, pre-evidentiary hearing memorandums, and draft opinions;~~
- ~~11) Post-hearing pleadings other than briefs;~~
- ~~12) The Hearing Officer's initial opinion;~~
- ~~13) Exceptions to the Hearing Officer's initial opinion, and any replies thereto;~~
- ~~14) The [HEARING BODY]'s Final Order and any Notice of Penalty therewith;~~
- ~~15) All Notices of Ex Parte Communications; and~~
- ~~16) Any notifications of recusal and motions for disqualification of a member of the [HEARING BODY] or Hearing Officer or Technical Advisor and any responses or replies thereto.~~

1.7.10 Appeal

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

~~**1.8 Settlement**~~

~~Settlements may be entered into at any time pursuant to [REGIONAL ENTITY]'s settlement procedures.~~

~~**1.9 Remedial Action Directives**~~

1.9.11.5 Initiation of Remedial Action Directive Hearing

Staff~~]~~ may issue a Remedial Action Directive to a Registered Entity at any time, including during any proceeding related to an alleged violation of a Reliability Standard. ~~[REGIONAL ENTITY]~~The Compliance Enforcement Authority will notify NERC within two (2) days after its Staff issues a Remedial Action Directive.

The Registered Entity may contest the Remedial Action Directive in accordance with these Rules of Procedure and Delegation Agreement, Exhibit D, Attachment 1, §10, by filing a written notice with the ~~Clerk of the [REGIONAL ENTITY]~~ Compliance Enforcement Authority that states that the Registered Entity contests the Remedial Action Directive and that the Registered Entity requests a Remedial Action Directive hearing. The Registered Entity shall attach a copy of the Remedial Action Directive to its written notice. The Registered Entity must provide such notice within two (2) business days following issuance of the Remedial Action Directive. If the Registered Entity does not give written notice to ~~[REGIONAL ENTITY]~~ the Compliance Enforcement Authority within the required time period, the Registered Entity shall be deemed to have waived its right to contest the Remedial Action Directive.

The Registered Entity shall simultaneously file with the Hearing Body Clerk a copy of the notice that it is contesting the Remedial Action Directive.

The Hearing Body Clerk shall assign a docket number, and issue a Notice of Hearing that sets forth the date, time and place at which the hearing will convene ~~pursuant to Paragraph 1.8.2(a).~~

1.9.2 Remedial Action Directive Hearing Procedure

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

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

- ~~a) The Hearing Officer or the [HEARING BODY] will hold a prehearing conference within two (2) days after receipt of the Registered Entity's request for a hearing.~~
- ~~b) An evidentiary hearing will be conducted on the matter, in person or by teleconference, within seven (7) days after the prehearing conference.~~
- ~~c) At the evidentiary hearing, Staff shall present oral witness testimony and evidence to show why the Remedial Action Directive should be complied with, and the Registered Entity shall present oral witness testimony and evidence to show why 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 Parties shall have the opportunity to make opening statements. In addition, the Parties shall have the opportunity to make closing arguments, and Staff shall have the opportunity to make a rebuttal to the Registered Entity's closing argument.~~

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

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