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## Policy and Procedure 6: Dispute Resolution

### 1. Objective

Pursuant to Article 18.2 of the Midwest Reliability Organization (MRO) Bylaws, the objective of this policy and procedure is to establish dispute resolution procedures for disputes between Members, or between a Member and MRO, for issues arising under the Bylaws.

### 2. Policy

Pursuant to Article 18.2 of the MRO Bylaws, determinations related to violations of Reliability Standards will be resolved in accordance with the NERC Rules of Procedure, except as otherwise provided in applicable agreements and/or law governing a Member's membership in MRO.

### 3. Provisions

Dispute resolution procedures are provided in Appendix 6-1. Disputes not involving enforcement of, or compliance with, Reliability Standards shall follow the dispute resolution procedures as outlined in Appendix 6-1.



## Appendix 6-1: Dispute Resolution Procedures

### Overview of Dispute Resolution Procedures

Article 18 of the Midwest Reliability Organization (“MRO”) Bylaws establishes provisions for dispute resolution. The Governance and Personnel Committee (GPC), with the assistance of MRO’s General Counsel, manages the process, but does not settle disputes. This document outlines the procedures a Member or the Corporation must take to utilize the Dispute Resolution Process.

### Disputes Not Involving Compliance with Reliability Standards

The dispute resolution procedures in this Part A shall apply only to disputes between Members or between a Member and the Corporation (“Parties”), arising under the bylaws or policies of the Corporation, that do not concern enforcement of or compliance with an Reliability Standard or related policy or requirement of the Corporation. A dispute is considered to arise when a Member or the Corporation asserts that an action, decision or failure to act by the other Party is:

- based on an error of fact; and/or
- inconsistent with the Corporation bylaws, or any policy or requirement approved by the Board; and/or
- inconsistent with applicable regulatory requirements or legal standards.

#### 1. Definitions

Board shall mean the Board of Directors of Midwest Reliability Organization.

Business Day shall mean Monday through Friday, excluding Canadian federal (where the dispute includes a Canadian Party) and United States federal holidays.

Calendar Day shall mean actual calendar days, including weekends and holidays.

Corporation shall mean Midwest Reliability Organization (MRO).

Day shall mean a Calendar Day as defined above, unless otherwise indicated.

Electric Reliability Organization shall mean the entity approved by FERC and Canadian authorities that is responsible for the development of reliability standards for the bulk power system.

Intervenor shall mean a Member who demonstrates that it will be materially affected by the decision of the arbitration and will not be adequately represented by an existing Party to the arbitration. Once an Intervenor has been accepted by the Arbitrator(s), the Intervenor will have input to arbitration schedules and full Party involvement in the arbitration proceedings. An Intervenor shall not have input to the selection of the Arbitrator(s).

Member shall have the same definition as the definition of Member in the MRO bylaws.



Party shall mean either the Initiating Party or the Respondent but shall not include Intervenor, unless specified otherwise. A Party may consist of more than one organization or individual that is appearing jointly.

Procedure Arbitrator shall mean either the sole arbitrator of a dispute or, in the case where a panel of arbitrators is hearing the dispute, the neutral arbitrator selected by the arbitrators named by the Parties.

Reliability Standard shall have the same meaning as defined in the MRO Bylaws.

Respondent shall mean the Party responding to a Request for Arbitration.

Start-the-Clock Date shall mean the date that is established by the GPC, which appears in the Acknowledgment of Request for Arbitration. Such date shall not be earlier than the date of the Acknowledgment. Unless identified otherwise, all deadlines contained in these procedures are measured from the Start-the-Clock Date.

## 2. **Informal Dispute Resolution by Parties**

Prior to the submission of a dispute to mediation or arbitration pursuant to these procedures or the submission of a dispute to a court of competent jurisdiction, the Parties shall each appoint a senior representative, with authority to settle the dispute, who shall attempt to resolve the dispute in a manner that meets the interests of each Party.

The Party alleging the dispute (“Initiating Party”) shall initiate the informal resolution process by notifying the other Party in writing of the nature of the dispute and the Party’s basis for its position. Within ten (10) Business Days of receiving notification of the dispute, the other Party (“Respondent”) shall respond in writing to the Initiating Party with its position regarding the dispute and the basis for its position. If within ten (10) Business Days after receiving the Respondent’s letter, the Initiating Party does not accept the Respondent’s position, the Initiating Party shall request a meeting (by teleconference or in person) between the designated senior representatives of the Parties at a mutually agreed time and location to attempt to resolve the dispute. If a meeting cannot be arranged within ten (10) Business Days or a meeting does not result in a resolution of the dispute, the Parties may, by mutual agreement, proceed to mediation.

## 3. **Mediation**

Any dispute, which has not been resolved informally by the Parties, may, by mutual agreement, proceed to voluntary non-binding mediation, in accordance with the Procedures specified herein. Any party may elect to bypass mediation and proceed directly to arbitration, in accordance with the Procedures specified herein.

### **3.1. Notification of the Governance and Personnel Committee**

If the Parties agree to mediation, then the Initiating Party must notify the GPC in writing of a request for mediation of a dispute. This notification shall be sent to the attention of MRO’s General Counsel at the MRO corporate office and a copy shall simultaneously be sent to all other Parties.



Notification shall be sent by registered mail or some other type of mail system that provides a proof of receipt. The notice letter shall include, at a minimum, the following information:

- A request for mediation pursuant to these procedures;
- A brief description of the type of dispute (ex. breach of MRO bylaws, incorrect fee assessment);
- The Parties to the dispute (and their addresses); and
- A list of names and full addresses, if known, of the attorney(s) for the Initiating Party and Respondent

As soon as practical after receipt of the letter invoking the mediation process, the General Counsel shall send the disputing Parties notification that the Dispute Resolution Procedures are available on MRO's website, and provide the disputing Parties with a list of five (5) mediator arbitrators and technical advisors.

### **3.2. Selection of Mediator**

Within five (5) Business Days after receipt of the list of mediator arbitrators and technical advisors, the Parties may notify the General Counsel and all other Parties if any individual on the list of mediator arbitrators or technical advisors are objectionable to the Parties because of a conflict of interest. The Parties shall select and notify the General Counsel of their selection of a mutually agreeable mediator and technical advisor, if necessary, within fifteen (15) Business Days after receipt of the list of mediator arbitrators and technical advisors from the General Counsel. If the Parties have not notified the General Counsel of their selection of a mediator and technical advisor within this time frame, the General Counsel will select the mediator and technical advisor from the list compiled, excluding any individuals with conflicts of interest identified by the Parties. The General Counsel shall consult with the disputing Parties regarding the choice of a mediator. The General Counsel shall also consult with other members of the GPC.

### **3.3. Pre-Mediation Conference Call**

Within fifteen (15) Business Days of being selected, the mediator shall advise the Parties of:

- Available dates for the scheduling of a pre-mediation conference call between Parties, their attorneys and the mediator to determine the content of and set deadlines for the submission of materials to be sent directly to the mediator;
- Fee expectations for the mediator's and the technical advisor's time; and
- Administrative costs, if any, of MRO.

### **3.4. Submission of Information**

Each Party shall, within the deadline established by the mediator, submit the following information to the mediator who shall keep it confidential and shall not share it with any other party or anyone else:

- The nature of the dispute including a concise statement of facts and legal issues involved;



- The nature of the relationship between the Parties;
- Past history of the dispute and previous dispute resolution attempts;
- The nature of the resolution desired by the Parties; and,
- Other factors that the mediator considers relevant.

### **3.5. Mediation Conference**

The mediator shall inform the disputing Parties of the date, time and location of the mediation conference. The mediator shall confirm all arrangements with the Parties and the mediation conference shall proceed as scheduled.

The technical advisor shall be available to the mediator for consultation.

Subsequent to the mediation conference and prior to making a recommendation, the mediator may:

- Ask the Parties to meet for face-to-face discussions, with or without the mediator present;
- Act as an intermediary between the disputing Parties; and,
- Request the disputing Parties to submit additional written statements.

### **3.6. Resolution of Dispute**

If resolution of the dispute is not reached within thirty (30) days after the appointment of the mediator (or other date if agreed to by the Parties), the mediator, at the mutual request of the Parties, shall within ten (10) Business Days provide each disputing Party with a written, confidential, non-binding recommendation on resolution of the dispute. The mediator may ask for assistance from the technical advisor in the writing of the recommendation.

After the Parties have received this assessment, they shall meet in good faith, with the mediator (in person or by teleconference), within five (5) Business Days to discuss resolution. Each disputing Party shall be represented at the meeting by a person with authority to settle the dispute and any other persons deemed appropriate by that Party.

If the dispute is still not resolved within five (5) Business Days after a meeting of the Parties, then a disputing Party may commence such arbitration, judicial, regulatory or other proceedings as may be appropriate as provided in these Procedures.

The recommendation of the mediator shall have no further force or effect and shall not be admissible for any purpose in any subsequent proceeding.

### **3.7. Costs of Mediation**

The costs of the time, expenses and other charges of the mediator, the technical advisor and of the mediation process, including the administrative costs of MRO, shall be borne by all Parties to the dispute. The Initiating Party shall bear 50% and the Responding Party shall bear 50% of the costs. Each Party shall bear its own costs and attorney's fees incurred in connection with any mediation



under these Procedures. When mediation is complete, the mediator shall issue final invoices to the Parties within thirty (30) days. Said invoices are payable within thirty (30) days of the date of issuance.

#### **4. Arbitration**

Any dispute that has been referred to mediation and has not been resolved through the mediation process shall be resolved by binding arbitration, if such process is mutually agreed to by the disputing Parties (see Section 18.2 of the MRO bylaws). Arbitration of disputes shall be conducted in accordance with the Procedures specified herein.

##### **4.1. Preservation of Rights**

Any dispute involving matters under FERC jurisdiction may proceed directly to FERC for resolution at the request of at least one disputing Party. Any dispute involving matters under Canadian regulatory jurisdiction may proceed directly to the applicable Canadian regulator for resolution in accordance with applicable law.

Any assertion that any provision of the MRO bylaws, including any principle, policy, requirement, plan or procedure, or that any act or failure to act of the MRO, any Member(s) or other person or entity is contrary to any United States federal or state law or regulation, or any Canadian federal or provincial law or regulation, shall be heard by any court or agency having jurisdiction thereof and over the Parties, unless all Parties consent to binding arbitration of such an assertion.

##### **4.2. Governing Law**

Disputes between United States Members of MRO or between a United States Member(s) and MRO shall be governed by United States law and arbitration procedures for such disputes shall be governed by American Arbitration Association (and/or Federal Arbitration Association) rules, except as specified otherwise in these Procedures. Disputes between Canadian Members of MRO or between a Canadian Member and MRO shall be governed by the law (including arbitration legislation) of the provincial jurisdiction of the Canadian Member involved, or where more than one Canadian Member is involved, the law of the jurisdiction agreed to by the Parties.

##### **4.3. Initiation of Arbitration**

If any Party to a dispute wishes to commence arbitration, it must send three (3) copies of a written Request for Arbitration to the attention of the General Counsel, and simultaneously to each Party to the dispute. The Request for Arbitration shall be sent by registered mail or some other type of mail system that provides a proof of receipt.

At a minimum, the Request for Arbitration must contain:

- A brief summary of the dispute.
- A brief summary of the pertinent MRO decisions and the dispute resolution processes that have been completed.
- A statement setting forth each claim to be considered in the arbitration.



- A statement setting forth the basis for arbitration of the claim under the terms of the MRO bylaws and policies or procedures. Parties must cite the pertinent article and section of the relevant document, precedential decision, or other relevant authority.
- The type and amount of relief requested for each claim.
- A statement setting forth the basis for relief for each claim.

#### **4.4. Acknowledgement of Request for Arbitration**

Within fifteen (15) Business Days of receipt of the Request for Arbitration, the General Counsel shall review the Request to ensure the Request for Arbitration is complete.

When the General Counsel determines that the Request for Arbitration is complete, the General Counsel shall send the Parties an Acknowledgment of Request for Arbitration. This Acknowledgment of Request for Arbitration will contain the Start-the-Clock Date and a list of qualified Arbitrators.

#### **4.5. Response to Request for Arbitration**

The Party(s) named in the Request for Arbitration shall have ten (10) Business Days following the Start-the-Clock Date to respond to the Request for Arbitration. The Respondent(s) must send three (3) copies of a written Response to the Request for Arbitration to the attention of the General Counsel and simultaneously copy all other Parties named in the Request for Arbitration. The Response to the Request for Arbitration shall be sent by registered mail or some other type of mail system that provides a proof of receipt.

The Response to the Request for Arbitration must respond to each of the claims in the Request for Arbitration. The Response to the Request for Arbitration must include a statement indicating whether the Respondent agrees to arbitration and if so:

- A brief summary of the dispute if different from the summary contained in the Request for Arbitration.
- A brief summary of MRO decisions and dispute resolution processes that have been completed, if different from the summary contained in the Request for Arbitration.
- A statement responding to each claim to be considered in the arbitration.
- A statement responding to any claimed basis for arbitration of any claim under the terms of the MRO bylaws, policies or procedures. The Respondent must cite the article and section of the relevant document, precedential decision or other relevant authority.
- A statement responding to the type and amount of relief requested for each claim.
- A statement responding to the basis for relief for each claim. The Respondent must cite any article and section of the relevant document, precedential decision, or other relevant authority.

#### **4.6. Notification to Membership**



If MRO is a Party to the dispute and agrees to arbitration, the General Counsel shall publish the Request for Arbitration and the Response to Request for Arbitration to the MRO membership.

#### **4.7. Counterclaims**

If the Respondent has a counterclaim relating to the matters asserted in the Request for Arbitration, such counterclaim must be included with the Response to the Request for Arbitration. Failure to assert such counterclaim will constitute a waiver of the right to assert such counterclaim during the arbitration process. The counterclaim must contain:

- A brief summary of the dispute giving rise to counterclaim.
- A brief summary of the MRO decisions and dispute resolution processes related specifically to the counterclaim.
- A statement setting forth each counterclaim to be considered in the arbitration.
- A statement setting forth the basis for arbitration of the counterclaim under the terms of the MRO bylaws, policies and procedures. The Respondent must cite the article and section of the relevant document, precedential decision, or other relevant authority.
- The type and amount of relief requested for each counterclaim.
- A statement setting forth the basis for relief for each counterclaim. The Respondent must cite the article and section of the relevant document, precedential decision, or other relevant authority.

#### **4.8. Invocation of FERC Jurisdiction**

Notwithstanding any prior agreement by the Parties to arbitrate, within twenty (20) Business Days of the Start-the-Clock Date, any Party to the arbitration may invoke FERC or applicable Canadian regulatory jurisdiction over the dispute. The Party shall simultaneously notify, in writing, the General Counsel and all of the other Parties to the arbitration that the Party is invoking FERC or applicable Canadian regulatory jurisdiction.

If FERC or applicable Canadian regulatory jurisdiction is properly invoked, the General Counsel will “stop the clock” for sixty (60) Calendar Days.

The Party that notifies the General Counsel that it is invoking FERC or applicable Canadian regulatory jurisdiction in the dispute must, within the sixty-day (60-day) period, provide the General Counsel with evidence that it has made the requisite filing to commence proceedings at FERC or applicable Canadian regulatory agency.

If the General Counsel does not receive evidence that the Party has made the requisite filing to commence proceedings at FERC or applicable Canadian regulatory agency within that sixty-day (60-day) period, the dispute shall revert to arbitration.

The notice of invocation of FERC or applicable Canadian regulatory jurisdiction shall be sent by registered mail or some other type of mail system that provides a proof of receipt.





#### **4.9. Selection of Arbitrator(s)**

The Parties to a dispute may unanimously agree on any person to serve as a single Arbitrator or shall endeavor in good faith to agree on an Arbitrator from the list of qualified Arbitrators provided with the Acknowledgement of Request for Arbitration.

If, within twenty (20) Business Days from the Start-the-Clock date, the Parties are unable to agree on a single Arbitrator, then, not later than five (5) Business Days thereafter, each Party shall select an individual to act as an Arbitrator, provided that person meets the criteria of a qualified neutral, or a similar equivalent, in at least one jurisdiction. The Arbitrators so chosen shall choose a third Arbitrator within five (5) Business Days. The Arbitrators shall try and select the third Arbitrator from the list, but if such a selection is infeasible, the Arbitrators may select any individual to act as an Arbitrator, provided that person meets the criteria of a qualified neutral, or a similar equivalent, in at least one jurisdiction. This Arbitrator shall be the Procedure Arbitrator. A panel of three Arbitrators shall hear the dispute unless the Parties mutually agree that the Procedure Arbitrator shall act as the Sole Arbitrator.

The Arbitrator(s) shall disclose any real or perceived conflict of interest prior to their appointment. If the selection of such Arbitrator(s) is not objected to by any Party within five (5) Business Days based upon the disclosure, the Arbitrator(s) shall be officially notified of their appointment to hear the case and provided with the MRO Dispute Resolution Procedures by the Initiating Party. The Arbitrator(s) shall send a signed acceptance of appointment and acknowledgment of the receipt of these Procedures to all Parties and the General Counsel within five (5) Business Days.

The Parties and Intervenors are prohibited from having ex parte communication with the Arbitrator(s) regardless of whether that communication is oral, written, or by email.

#### **4.10. Intervention in the Arbitration**

Within twenty (20) Business Days of the Start-the-Clock Date, and upon a showing of good cause, any Member who demonstrates that it will be materially affected by the arbitration and will not be adequately represented by an existing Party to the arbitration may request the Right to Intervene in the Arbitration. The Arbitrator(s) will determine whether the Member will be permitted to intervene, based upon good cause shown. The intervention procedure may be modified or adapted by the Arbitrator(s) for use in a particular proceeding.

In order for a Request for the Right to Intervene to be considered, each Member wishing to intervene in arbitration of the dispute must simultaneously notify in writing the Corporate Secretary and all original Parties to the dispute of its intent to intervene. Such notice shall be sent by registered mail or some other type of mail system that provides proof of receipt.

At a minimum, the Request for the Right to Intervene must contain:

- A brief summary of the prospective Intervenor's interests in the dispute, which may be affected by the outcome of the arbitration.
- A brief summary evidencing good cause for intervention.



- A brief summary of the MRO decisions and dispute resolution processes that have been completed.
- Whether the prospective Intervenor has a separate but related dispute with any of the original Parties under consideration, or with any MRO organizational group.
- A statement setting forth each claim or counterclaim that the prospective Intervenor wishes to have resolved in the arbitration.
- A statement setting forth the basis for arbitration of the prospective Intervenor's claim(s) and/or counterclaim(s) under the terms of the MRO bylaws, policies or procedures. The prospective Intervenor must cite the article and section of the relevant document, precedential decision or other relevant authority.
- The type and amount of relief requested for each claim/counterclaim.
- A statement setting forth the basis for relief for each claim/counterclaim. The prospective Intervenor must cite the article and section of the relevant document, precedential decision, or other relevant authority.
- An acknowledgment that the Intervenor will bear a pro-rata share of the cost of the arbitration assessed to all Parties to the dispute.

Within ten (10) Business Days of the selection of the Arbitrator(s), the Procedure Arbitrator shall notify Intervenors and Parties of acceptance or denial of the Intervention request(s).

#### **4.11. Changes/Amendments to Claim or Counterclaim**

Parties to the arbitration shall have the right to add, delete, change or amend claims or counterclaims at will until the Arbitrator has been selected. Once the Arbitrator(s) is selected, additions, deletions, changes or amendments to claims and counterclaims will be accepted or denied at the discretion of the Arbitrator(s).

Notice, in writing, of additions, deletions, changes or amendments to claims and counterclaims must be simultaneously made to the General Counsel, the Arbitrator(s), if selected, and all Parties and Intervenors.

#### **4.12. Administrative Conference**

Within fifteen (15) Business Days of the selection of the Arbitrator(s), the Procedure Arbitrator shall contact the Parties and Intervenors, to schedule an administrative conference. The administrative conference may be conducted by conference call at the discretion of the Arbitrator(s).

The administrative conference shall address:

- The applicable rules for discovery and evidence.
- The schedules for discovery.
- The date for submission of documents.
- The date for the arbitration's evidentiary hearing, unless waived by the Parties pursuant to Section 4.13.



- The Arbitrator shall set the date for the issuance of the arbitral decision. The arbitral decision shall be issued not later than eight (8) months from the date of the selection of the Arbitrator(s), unless agreed otherwise by the Parties and Intervenors. While the Parties and Intervenors, may agree to an arbitration schedule that allows the Arbitrator(s) to prepare a decision earlier than eight (8) months after selection of the Arbitrator(s), the Arbitrator(s) shall manage the arbitration calendar to allow a maximum of forty-five (45) days, following the close of the evidentiary hearing, for the preparation of the decision.

Additional meetings, such as a preliminary hearing on the admissibility of witnesses and/or evidence, shall be arranged at this time.

The Arbitrator(s) shall have the power to impose sanctions for dilatory tactics or undue delays in completing the arbitral proceedings.

#### **4.13. Date, Time and Place of Hearing**

After consultation with the Parties and Intervenors, the Arbitrator(s) shall set the date, time and place for each hearing and notify the Parties, Intervenors and the General Counsel in writing. The Parties and Intervenors may provide, by written agreement, for the waiver of oral hearings.

#### **4.14. Representation**

Any Party or Intervenor may be represented by counsel or other representative. A Party intending to be represented shall notify the Arbitrator(s) and all other Parties and Intervenors of the name and address of the representative at least five (5) Business Days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates arbitration or responds for a Party or Intervenor, notice is deemed to have been given.

#### **4.15. Stenographic Record**

The Arbitrator(s) shall make arrangements for the preparation of a Stenographic Record and shall notify the Parties and Intervenors of these arrangements in advance of the hearing. The Parties and Intervenors shall pay the cost of the record. At the request of any Party or Intervenor, the Arbitrator(s) shall determine a fair and equitable allocation of the cost of the preparation of a record between or among Parties and Intervenors to the proceeding. The transcript shall be the official record of the proceeding and it must be made available to the Arbitrator(s) for inspection at a date, time, and place determined by the Arbitrator(s).

#### **4.16. Interpreters**

Any Party or Intervenor wishing an interpreter shall make arrangements directly with the interpreter and shall be responsible for the costs thereof.

#### **4.17. Attendance at Hearings**

The Arbitrator(s) shall maintain the privacy of the proceedings. The original Parties and Intervenors are entitled to attend hearings. The Arbitrator(s) shall otherwise have the power to require the exclusion of any witness, other than a Party or Intervenor, or other essential person, during the



testimony of any witness. It shall be discretionary with the Arbitrator(s) to determine the propriety of the attendance of any person.

#### **4.18. Postponements**

The Arbitrator(s), for good cause shown, may postpone any hearing upon the request of a Party, Intervenor, or upon the Arbitrator(s)' own initiative and shall also grant such postponement when all Parties and Intervenors agree thereto.

#### **4.19. Oaths**

Before proceeding with any hearing, each Arbitrator shall take an oath of office. The Arbitrator(s) shall require witnesses to testify under oath or solemn affirmation administered by any qualified person.

#### **4.20. Majority Decision**

All decisions of the Arbitrators must be by a majority.

#### **4.21. Order of Proceedings and Communication with Arbitrator**

A hearing shall be opened by:

- The filing of the oath of the Arbitrator(s).
- Recording of the date, time and place of the hearing.
- The presence of the Parties, Intervenors and their representatives, if any.
- The receipt into evidence by the Arbitrator(s) of the Request for Arbitration and the Response(s) to the Request for Arbitration, Counterclaim(s), and Request(s) for Right to Intervene in Arbitration (if any).

The Arbitrator(s) may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the administrative conference conducted by the Arbitrator(s) pursuant to Section 4.12, above.

The Initiating Party shall then present evidence to support its claim. The Respondent(s) shall then present evidence supporting its defense and counterclaims. Each Intervenor shall present evidence to support its claims and counterclaims. Witnesses for each Party or Intervenor shall submit to questions or other examination under oath. The Arbitrator(s) shall afford a full and equal opportunity to all Parties and Intervenors for the presentation of material and relevant evidence.

Exhibits, when offered by Parties or Intervenors, may be received in evidence by the Arbitrator(s).

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no direct communication between any Party or Intervenor and an Arbitrator(s) other than at oral hearing.



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#### **4.22. Arbitration in the Absence of a Party or Representative**

Unless the governing law provides to the contrary, the arbitration may proceed in the absence of any Party or Intervenor, or representative who, after due notice, fails to be present or fails to obtain a postponement. The Arbitrator(s) shall require the Party or Intervenor, who is present to submit such evidence as the Arbitrator(s) may require for the making of a decision.

#### **4.23. Evidence**

The Parties and Intervenors may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the Arbitrator(s) may deem necessary to an understanding and determination of the dispute. An Arbitrator or other person authorized by law to subpoena witnesses or documents may do so independently or upon the request of any Party or Intervenor. The requesting Party is responsible for subpoena service and any charges related thereto.

Subject to the following paragraph, the forms and methods for taking evidence shall be as described in the Federal Rules of Evidence. Notwithstanding the previous sentence, the Arbitrator(s) may admit hearsay evidence if the evidence is the type of evidence a reasonable person would rely upon. The Arbitrator(s) shall be the judge of the relevance and materiality of the evidence offered.

The rules of evidence for the arbitration of disputes involving Members that are Canadian shall be governed by the provincial Evidence Act of the Canadian Member's jurisdiction.

The Arbitrator(s) may require submissions from the Parties and Intervenors, as shall be deemed appropriate, including submission of the direct testimony of witnesses, which shall be in written form and served on the other Parties and Intervenors in advance of the hearing. The Arbitrator(s) may exclude any evidence that is irrelevant, immaterial, or privileged.

#### **4.24. Confidentiality**

Any document or other information obtained from another Party or Intervenor in the course of an arbitral proceeding and not otherwise available to the receiving Party or Intervenor, including any such information contained in documents or other means of recording information created during the course of the proceeding, may be designated "Confidential" by the producing Party.

The Party producing documents or other information marked "Confidential" shall have twenty-one (21) days from the production of such material to submit a request to the Procedure Arbitrator to establish such requirements for the protection of such documents or other information designated as "Confidential" as may be reasonable and necessary to protect the confidentiality and commercial value of such information and the rights of the Parties and Intervenors.

Prior to the decision of the Procedure Arbitrator on a request for confidential treatment, documents or other information designated as "Confidential".



- Shall not be used by the receiving Party or Parties, Intervenor(s), the Arbitrator(s) or anyone working for or on behalf of any of the foregoing, for any purpose other than the arbitration proceeding.
- Shall not be disclosed in any form to any person not involved in the arbitration proceeding without the prior written consent of the Party producing the information or as permitted by the Arbitrator(s).

Any person or entity receiving a request or demand for disclosure, whether by compulsory process, discovery request, or otherwise, of documents or information obtained in the course of an arbitration proceeding that have been designated “Confidential” and that are subject to a non-disclosure requirement under the decision of the Arbitrator(s), shall immediately inform the person or entity from whom the information was obtained, and shall take all reasonable steps to afford the person or entity from whom the information was obtained an opportunity to protect the information from disclosure.

Any person disclosing information in violation of the requirements established by the Arbitrator(s) shall thereby waive any right to introduce or otherwise use such information in any judicial, regulatory or other legal dispute resolution proceeding, including the proceeding in which the information was obtained.

Nothing in these procedures shall preclude any person or entity from using documents or information properly obtained outside of an arbitral proceeding, or otherwise public, for any legitimate purpose, notwithstanding that the information was also obtained in the course of the arbitral proceeding.

#### **4.25. Inspection or Investigation**

An Arbitrator, finding it necessary to make an inspection or investigation in connection with the arbitration, shall so advise the Parties and Intervenors and set the date and time of such inspection or investigation. Any Party or Intervenor who so desires may be present at such an inspection or investigation. In the event that one or all Parties or Intervenors are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the Parties and Intervenors and afford them an opportunity to comment. All Parties or Intervenors have the opportunity to be present for or receive a copy of the Arbitrator’s verbal or written report.

#### **4.26. Summary Disposition**

If it appears at any time there are no disputed issues as to any material fact, any Party or Intervenor may request the Arbitrator’s summary decision, and the Arbitrator(s) shall proceed to determine the same under the provision of Rule 56, Fed R. Civ. P. or applicable Provincial Evidence Act.

The forum for such argument, allowable discovery, and the timing for the summary decision shall be determined by the Arbitrator(s) at the administrative conference.

#### **4.27. Interim Measures**



At any time during the arbitration process, any Party or Intervenor may request (in writing, with copies to all other Parties and Intervenors) that the Arbitrator(s) render a written interim decision requiring that any action or decision that is the subject of a dispute not be put into effect, or imposing such other interim measures as the Arbitrator(s) may deem necessary or appropriate, to preserve the rights and obligations of the Parties and Intervenors during the arbitration process.

The Arbitrator(s) may issue such orders for interim relief as may be deemed necessary or appropriate to preserve the rights and obligations of the Parties and Intervenors during the arbitration process. The Arbitrator(s) shall not issue an interim decision or impose interim measures that exceed the scope of decision described in Section 4.34, below.

The Arbitrator(s) shall determine the urgency of a request for interim measures based upon the content of the request.

Not later than two (2) Business Days from the Arbitrator(s)' receipt of a request for interim measures, the Arbitrator(s) shall set an appropriate hearing time.

The delivery of the decision shall be as soon as possible, but not more than five (5) Business Days after the hearing.

#### **4.28. Closing of Hearing**

The Arbitrator(s) shall specifically inquire of all Parties and Intervenors whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, or if satisfied that the record is complete, the Arbitrator(s) shall declare the hearing closed.

If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Arbitrator(s) for the receipt of briefs. The time limit within which the Arbitrator(s) is required to make the decision shall commence to run, in the absence of other agreements by the Parties and Intervenors, upon the closing of the hearing.

#### **4.29. Reopening of Hearing**

The hearing may be reopened on the Arbitrator's initiative or upon showing of good cause by a Party or Intervenor to reopen, at any time before the decision is made. If reopening the hearing would prevent making the decision within the eight (8) month time limit specified by these Procedures, the matter may not be reopened unless the Parties and Intervenors agree in writing to an extension of time.

#### **4.30. Waiver of Rules**

Any Party or Intervenor that proceeds with the arbitration after knowledge that any provision or requirement of these procedures has not been complied with and who fails to state an objection in writing within five (5) Business Days shall be deemed to have waived the right to object.

#### **4.31. Serving of Notice**



Each Party and Intervenor shall be deemed to have consented that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these procedures, for any court action in connection therewith, or for the entry of judgment on any decision made under these rules may be served on a Party or Intervenor by registered mail addressed to an officer of the Party, Intervenor or its representative at its last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the Party or Intervenor.

The Parties and Intervenors may agree to use facsimile transmission, telegram or other written forms of electronic communication to give the notices required by these rules. However, the Request for Arbitration must be sent by registered mail or some other type of mail system that provides a proof of receipt.

#### **4.32. Time of Decision**

The decision shall be made promptly by the Arbitrator(s). The decision shall be issued no later than eight (8) months from the date of the selection of the Arbitrator(s) and, unless otherwise agreed to by the Parties and Intervenors or specified by law, no later than forty-five (45) Calendar Days from the date of the closing of the hearing, or, if oral hearings have been waived, from the date of the Parties' and Intervenors' transmittal of the final statements and proofs to the Arbitrator(s).

#### **4.33. Form of Decision**

The decision shall be in writing and shall be signed by a majority of the Arbitrators. It shall be executed in the manner required by law. The decision shall include findings of fact and conclusions of law for the decision.

#### **4.34. Scope of Decision**

The arbitral decision shall be based on:

- The evidence in the record.
- The terms of the MRO bylaws, including any policy, requirement, procedure, plan or other right or obligation established by or pursuant to the MRO bylaws.
- Applicable United States federal and state and Canadian federal and provincial laws, including the Federal Power Act and any applicable regulations and decisions and international treaties or agreements as applicable.
- Relevant decisions in previous arbitration proceedings under the MRO bylaws.

The Arbitrator(s) shall have no authority to amend any provision of the MRO bylaws, policies, procedures or other requirements.

#### **4.35. Enforcement**

The decision of the Arbitrator(s) shall be binding as allowed by law, provided that any Party or Intervenor affected thereby may request FERC or any other federal, state, or Canadian provincial regulatory or judicial authority having jurisdiction to vacate, modify or take such other action as may





be appropriate with respect to any arbitral decision that is based upon an error of law or is contrary to the statutes, rules or regulations administered by such authority.

Any Party or Intervenor making, responding to or intervening in proceedings resulting from any such request to vacate, modify or take such other action as may be appropriate with respect to any arbitral decision, shall request the authority to adopt the resolution, if not clearly erroneous, of any issue of fact expressly or necessarily decided in the arbitral proceeding, whether or not the Party participated in the arbitral proceeding.

Parties and Intervenors to the Arbitration shall be deemed to have consented that judgment upon the arbitration decision may be entered in any United States federal or state or Canadian federal or provincial court having jurisdiction thereof.

#### **4.36. Decision upon Settlement**

If all the Parties and Intervenors settle their dispute during the course of arbitration, the Arbitrator may set forth the terms of the agreed settlement in a decision. Such a decision is referred to as a consent decision and shall have no precedential effect for future arbitrations under the MRO bylaws.

#### **4.37. Delivery of Decision to Parties**

Parties and Intervenors shall accept as legal delivery of the decision the placing of the decision or a true copy thereof in the registered mail addressed to the last known address of an officer of the Party or its representative, personal service of the decision, or the filing of the decision in any other manner that is permitted by law. If delivery by one of these means is not possible, the Parties and Intervenors shall accept as legal delivery of the decision in any other manner that is permitted by law.

The Arbitrator(s) shall deliver the decision or a true copy thereof to the General Counsel. All decisions of the Arbitrator(s) shall be maintained by the General Counsel and shall, subject to any applicable confidentiality provisions, be made available to all MRO Members and regulatory authorities on request.

#### **4.38. Release of Documents for Judicial Proceedings**

The Arbitrator(s) shall, upon written request of a Party or Intervenor furnish to the Party or Intervenor, at that Party's or Intervenor's expense, certified copies of any papers in the Arbitrator's possession that may be required in judicial proceedings relating to the arbitration.

#### **4.39. Exclusion of Liability**

Neither the GPC members nor any Arbitrator in a proceeding under these rules is a necessary Party in judicial proceedings relating to the arbitration.

Neither the GPC nor any Arbitrator shall be liable to any Party or Intervenor for any act or omission in connection with any arbitration conducted under these procedures. Additionally, the mediator and arbitrator are immune from any subsequent subpoenas from the Parties or Intervenors.



#### **4.40. Expenses**

Unless the Arbitrator(s) shall decide otherwise, the costs of the time, expenses and other charges of the Arbitrator(s) and MRO, in its capacity as an administer of these procedures, be borne by the Parties to the dispute, with each Party and Intervenor on an arbitrated issue bearing a pro-rata share of such costs. These MRO administration costs shall include, but not be limited to:

- Initial paperwork
- Conference calls
- Overnight mail delivery
- Facility location and scheduling of meeting room(s)
- Selection and scheduling of mediator or arbitrator(s)
- Selection and scheduling of technical advisor
- Billing and collection costs
- Database maintenance

Each Party and Intervenor to an arbitral proceeding shall bear its own costs and fees.

The expenses of witnesses for either side shall be paid by the Party or Intervenor producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the Arbitrator(s), shall be borne equally by each side, unless they agree otherwise or unless the Arbitrator(s), in the decision, assesses such expenses or any part thereof against any specified Party, Parties or Intervenors.

If, in the reasoned opinion of the Arbitrator(s), the Request for Arbitration, Response to a Request for Arbitration or Counterclaim does not have a good faith basis in either law or fact, the Arbitrator(s) has the discretion to award the costs, expenses and other charges, including attorney(s)' fees and wages of persons involved, and the Arbitrators (s)' fees to the prevailing Party.

The Arbitrator(s) may also assign all or a portion of the costs of the time, expenses and other charges of the Arbitrator(s), the cost of arbitration, attorney(s)' fees, and the costs of mediation, if any, to any Party that substantially prevails on an issue determined by the Arbitrator(s) to have been raised without a substantial basis.

#### **4.41. Arbitrator's Compensation**

Arbitrators shall charge a rate consistent with the Arbitrator's stated hourly rate of compensation beginning with preparatory meetings through the delivery of the decision.

#### **4.42. Captions**

All captions used in these Procedures are for convenience only and shall not control or affect the meaning of any of the provisions thereof.



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*If you have questions or comments about the Midwest Reliability Organization (Midwest Reliability Organization) Dispute Resolution Process, contact the Midwest Reliability Organization General Counsel, 380 St. Peter Street, Suite 800, Saint Paul, Minnesota 55102, or at [generalcounsel@mro.net](mailto:generalcounsel@mro.net)*

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**Attachments/Exhibits/etc.**